

Policy of Establishment of Jewish Settlement

1. Israel first began establishing settlements in the occupied territories in 1967 as para-military *nahals*. A number of *nahals* over a period of time became civilian settlements as they became economically viable. Israel is known to have commenced the establishment of civilian settlements the following year i.e., 1968. Civilian settlements are supported by the Government and also by the non-governmental settlement movements affiliated with political parties. Most of the settlements are claimed to be built on public lands outside the boundaries of any municipality but many have in fact been built on private or municipal lands expropriated for the purpose. It should also be pointed out that in any case the public lands do not belong to Israel and in international law it has no claim to them which could justify the establishment of settlements thereon.

2. By 1978 some seventy-five Israeli settlements had been established in the occupied territories. These, however, excluded some of the military camps on the West Bank into which small groups of civilians had moved. By 1983 Israel had established 204 settlements in the occupied Arab territories and had publicly stated its plan to increase that number. In 1987 it was announced that preparations were under way in Israel for the settlement of a further million and a half Jewish settlers in the occupied West Bank during the subsequent years and that settlement plans and projects were ready to be implemented in different areas of the occupied West Bank.¹ According to the West Bank Data Project (WBDP) approximately 67,700 Jewish settlers lived in the Israeli settlements in the West Bank and Gaza Strip in April 1987.

3. It should be pointed out that the ideal of "the ingathering of the exiles", the return of the Jews to Israel from the countries of their dispersion, is one of the basic tenets on which the State of Israel was founded. The Declaration of Independence provides that the "State of Israel will be open for Jewish immigration and for the ingathering of the exiles". In the years prior to the establishment of Israel, the majority came from Europe. Immediately following establishment, Israel's population doubled with the arrival of Holocaust survivors and Jews from Arab lands. Since then the *Olim* (immigrants) have continued to come from all over the world. In recent years thousands of new comers from the ancient Jewish community of Ethiopia have gone to Israel. In the wake of the recent far-reaching political changes in Eastern Europe, and relaxation of travel restrictions a new wave of Jewish immigrants began arriving, mainly from the Soviet Union with almost all of them choosing to live in Israel's large cities.

¹ Quoted from *News from Israel*, Vol. XXXVIII, No. 7 (Bombay, July 1990).

4. The Israeli policy of expropriation of Palestinian land in the occupied territories, construction of new settlements and improvement and 'thickening' of the existing ones continued, unabated, during the 1980s. The modes and techniques of acquiring land included the long established practice of confiscating land and declaring it "closed" for military training purposes, declaring Palestinian land as "State land", expropriating land for "public (Jewish) use" or confiscating it for nature preserves. The impact this policy has had on the Palestinians was summarised in a United States Department of State report thus :

"The use of land by Israeli authorities for military purposes, roads, settlements, and other Israeli purposes which restrict access by Palestinians, discriminates against Palestinians and adversely affects their lives and economic activities. Approximately 2.5 per cent of the total area of the West Bank and East Jerusalem has been turned over to Israeli nationals for residential, agricultural, and industrial use by settlers. Palestinians do not participate in the Higher Planning Council, which plans land use in the territories and exercises certain powers transferred from local, municipal and village councils in 1971."²

5. These processes were accompanied by a noticeable growth in the settlements during the years 1984 to 1988. According to West Bank Data Project, 11 settlements were populated over this period in the West Bank. In the Gaza Strip, 6 settlements were added to the 12 already existing there. It should also be noted that one-third of the Gaza Strip land has been declared "State land" or confiscated for Jewish settlement by the occupation authorities. In the Gaza Strip, with its small territory with very high population density of approximately 3,754 per square mile with 85 per cent of the population being urban, the establishment of an Israeli settlement network presents a particularly serious problem for the Palestinians. In some cases, the settlements physically impinge on the Palestinian communities and refugee camps, blocking their expansion and development. The town of Khan Yunis, for example, was virtually enveloped by a cluster of Israeli settlements. Reports from the occupied territory clearly indicate that the Israeli authorities are making intensive efforts, within the framework of a new plan designed to increase the number of Jewish settlers in the occupied West Bank, to raise their number to the equivalent of 40 per cent of the total Arab population. This information was revealed by one of the Israeli Prime Minister's Advisers on December 3, 1987 and was later confirmed by the Chairman of the World Zionist Organisation's Settlement Department at a press conference where he said that "Israel's objective in the West Bank (was) to raise the population of Jews to 40 to 60 per cent of the

total population of the occupied West Bank by the end of the present century."³

Emigration of Soviet Jews to Israel

6. At the Twenty-ninth Session held in Beijing several delegates expressed concern at the massive emigration of Jews from the Soviet Union and their settlement in the occupied territories of Palestine. From the end of World War II to September 1978 a total of 168,000 Jews left the Soviet Union to reunite with their families. Exit visa was refused to only 2,249 persons or 1.6 per cent of the total; 98.4 per cent of requests for exit visa are said to have been granted.⁴

7. In recent years Jews wishing to emigrate from the Soviet Union find it far easier to do so and an increasing number are choosing to leave. In 1980 over 70,000 Jews left the Soviet Union⁵—the highest annual figure since the modern wave of emigration began 20 years ago. Of the 70,000 Jews who left the Soviet Union in 1989, at least 12,000 are known to have emigrated to Israel.

8. The open gates stance of the Soviet Union coupled with the American Government's decision to stop the near automatic granting of refugee status to all Soviet Jews wishing to emigrate there has meant that most Jews from Soviet Union have been heading for Israel and have created a wave of immigration not witnessed since the 1950s. Their dreams most often lie in America but the United States will admit only 50,000 Soviets in 1991.

9. Of the 300,000 Soviet Jews expected to emigrate this year (1991), 112,000 had already reportedly done so by September 1991. However, Israeli officials expect an additional one million Soviet Jews to resettle in Israel between 1991 and 1996. For a country of 4.8 million to plan to absorb such numbers represents a massive commitment to expansion. To meet the costs for the resettlement of these immigrants the Prime Minister Yitzhak Shamir of Israel requested the United States of America to grant his country ten billion dollars in loan guarantees. The Secretary of State Mr. James Baker, on his part, however, made it clear that the USA did not intend to grant the loan to help accommodate an estimated one million Soviet emigrants. More significantly, he implied that the U.S. would not grant the Israelis any loan guarantees unless Israel agreed to freeze settlements in the occupied West Bank, Golan Heights and the Gaza Strip.

10. The economic factor may prove important because Israel's agricultural produce made in Kibbutzim will come in handy in the USSR. The existence

² See *Country Reports on Human Rights Practices for 1988*. Reports submitted to the Committee for Foreign Relations (US Senate) and Committee on Foreign Affairs (US House of Representatives) by the Department of State, Feb. 1989, pp. 1385-1386.

³ See Letter from the Permanent Representative of Jordan to the United Nations addressed to the Secretary-General, February 1989. A/43/118-S/19473.

⁴ See *The White Book (Moscow)*, 1979 in Russian cited in Medvedev and Kulikov : *Human Rights and Freedoms in the USSR* (Progress Publishers, Moscow, 1981) at p. 147.

⁵ See *The Soviet Aliya : A New Beginning*, in *News from Israel*, Vol. XXXVII, No. 5 (Bombay) May 1990, p. 8.

of a large group of commercially active Jewish population will boost economic contacts with Israel. In view of a quick transition to the market and the dismantling of the USSR, many Soviet Jews who planned to leave for Israel have changed their minds in the hope of doing business in the former USSR.

11. The Note by the Secretary-General which prefaced the Secretariat Study on the Deportation of Palestinians in Violation of International Law in particular the Geneva Conventions of 1949 prepared for the Twenty-eighth Session held in Nairobi in 1989 had *inter alia* observed that 'it is indeed regrettable that in flagrant violation of the relevant articles of the Hague Convention (II) of 1890 and Hague Convention of 1907 Israel has made "unauthorised use of the West Bank and the Golan Heights land by converting part of it into settlements for its own nationals."⁶ The Israeli Government reportedly intends to move up to two million Israelis to these settlements. In respect of the settlements in the Golan Heights, the former Israeli Prime Minister Yitzhak Rabin stated that Israel did not build the settlements in the Golan Heights so as to abandon them or to create a situation as a result of which they would not be part of the Jewish State. A former Minister of Housing, Abraham Ofer, admitted that "These settlements are important to us in defining the borders of the State and in strengthening our security." Thus, the Israeli Government is committing an act of annexation of Arab territories, in signal violation of international law. The United Nations General Assembly has repeatedly stressed the impermissibility of annexing occupied territory.

12. The brief prepared by the Secretariat for consideration by the Committee at its Twenty-eighth Session held in Nairobi in 1989 had pointed out that the creation of militarised settlements runs counter to Article 53 of the Geneva Convention for it is merely a means of depriving the local inhabitants of their property and a method of implementing discrimination.⁷ Only Jews are allowed to live on the lands seized from the Arabs and intended for settlers. The United Nations condemned these Israeli actions.⁸ By its resolution 252 of May 21, 1968 the Security Council declared them juridically invalid.

13. Recently the Soviet Government made a representation concerning the intention of Israeli authorities to use immigration, including that from the Soviet Union, for settlement in the occupied Arab territories. The Soviet Union urged the Israeli Government to cease immediately its policy of settlement in the occupied territories, including East Jerusalem and Gaza

⁶ See Doc. No. AALCC/XXVII/89/2.

⁷ Article 53 of the Convention reads as follows: "Any destruction by the occupying power of real or personal property belonging individually or collectively to private persons, or to the State, or to other public authorities, or to social or cooperative organizations, is prohibited, except where such destruction is rendered absolutely necessary by military operations."

⁸ Artshasov Ivan: *In Disregard of the Law* (Progress Publishers, Moscow, 1981), p. 200.

Strip and to give unequivocal assurances that it won't permit such use of immigrants coming to the country.⁹

14. As a result of the Israeli policies and practices of establishing settlements in the Palestinian and other Arab territories, occupied since 1967, the Security Council, by its resolution 446 (1979) determined that the policy of Israel in establishing settlements in the Palestinian and other Arab territories occupied since 1967 had no legal validity and constituted a serious obstruction to achieving a comprehensive, just and lasting peace in the Middle East. The Security Council called on Israel to abide by the Geneva Convention relative to the Protection of Civilian Persons in Time of War, 1949¹⁰ and to desist from taking any action which would result in changing the legal status and geographical nature and materially affecting the demographic composition of the Arab territories occupied since 1967, including Jerusalem and, in particular, not to transfer parts of its own civilian populations into the occupied Arab territories.

15. It may be recalled that the Security Council had also established a Commission of three members of the Council, to examine the situation relating to settlement in the Arab territories occupied since 1967, including Jerusalem.¹¹

16. Thereafter the Security Council by its resolution 465 of 1 March 1980 *inter alia* determined that "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 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."¹²

17. That resolution also called upon "all States not to provide Israel with any assistance to be used specifically in connection with settlements in the occupied territories". The Security Council requested the Commission *inter alia* to continue to examine the situation relating to settlements in the Arab territories occupied since 1967, including Jerusalem.

18. The Israeli practice and policy of establishment of settlements on Palestinian territories occupied since 1967 has been condemned by the members of the international community—individually and collectively. At

⁹ *Tass*, Moscow, 12 March 1990.

¹⁰ For the text of the Convention See: *UNTS*, Vol. 75 (1950).

¹¹ The members of the Commission were Bolivia, Portugal and Zambia. The Commission filed a preliminary report in July 1979.

¹² The Security Council adopted Resolution 465 (1980) after considering the 2nd Report of the 3-Member Commission it had established by its resolution 446 (1979). For the Report of the Commission See: S/13679.

its Forty-fourth Session the General Assembly condemned the Israeli policies and practices of "establishment of new Israeli settlements and expansion of the existing settlements on private and public Palestinian and other Arab lands, and transfer of an alien population"¹³ and the eviction, deportation, expulsion, displacement and transfer of Palestinians and other Arabs from those occupied territories and denial of their right to return.¹⁴

19. It also condemned the arming of Israeli settlers in those occupied territories to perpetrate and commit acts of violence against Palestinians and other Arabs, causing deaths and injuries.¹⁵ The General Assembly also reaffirmed that all measures taken by Israel to change the physical character, demographic composition, institutional structure and legal status of those occupied territories, or any part thereof, including Jerusalem are null and void and that Israel's policy of settling parts of its population and new immigrants in those occupied territories constitutes a flagrant violation of the Geneva Convention of 1949 and of the relevant resolutions of the United Nations.¹⁶

20. While demanding *inter alia* that Israel desist forthwith from the policies and practices mentioned above, the General Assembly reiterated its call upon all States, in particular those Parties to the Geneva Convention of 1949, and upon international organizations, including the specialised agencies not to recognise any change carried out by Israel, in those occupied territories and to avoid actions which might be used by Israel in its pursuit of the policies of annexation or colonization or any of the other policies and practices referred to in the resolution.

21. By its resolution 44/48C the General Assembly *inter alia* expressed grave anxiety and concern at the present serious situation in the Palestinian and other Arab occupied territories, including Jerusalem, as a result of the continued Israeli occupation and the measures and actions taken by Israel, designed to change the legal status, geographical nature and demographic composition of those territories. It determined that all measures and actions taken by Israel in the Palestinian and other Arab occupied territories since 1967, including Jerusalem, are in violation of the relevant provisions of the Fourth Geneva Convention of 1949 and constitute a serious obstacle to the efforts to achieve a comprehensive, just and lasting peace in the region and therefore have no legal validity. While deploring Israel's persistence on carrying out such measures, in particular, the establishment of settlements in the Palestinian and other occupied Arab territories including Jerusalem, the General Assembly demanded that Israel desist forthwith from taking

any action that would result in changing the legal status, geographical nature or demographic composition of the Arab territories occupied since 1967.¹⁷ It also demanded that Israel comply strictly with its international obligations in accordance with the principles of international law and the provisions of the Fourth Geneva Convention of 1949. By its resolution 45/74C adopted on December 11, 1990 it also called upon all State Parties to the Geneva Convention to respect and to urgently exert all efforts in order to ensure respect for and compliance with its provisions in all occupied Palestinian territory, including Jerusalem and other Arab territories occupied by Israel since 1967.

The Convening of A Peace Conference

22. By a vote of 151 in favour, 3 against and 1 abstention, the General Assembly at its Forty-fourth Session emphasized that achieving a comprehensive settlement of the Middle East conflict, the core of which is the question of Palestine, will constitute a significant contribution to international peace and security. It also reaffirmed the principles for the achievement of comprehensive peace which *inter alia* included the withdrawal of Israel from the Palestinian territory occupied since 1967 including Jerusalem, and from the other occupied Arab territories and the dismantling of Israeli settlements in the territories occupied since 1967.¹⁸

23. At its Forty-fifth Session the General Assembly while reaffirming the urgent need to achieve a just and comprehensive settlement of the Arab-Israeli conflict, the core of which is the question of Palestine, called once again for the convening of the International Peace Conference on the Middle East under the auspices of the United Nations, with the participation of all parties to the conflict, including the Palestine Liberation Organization, on an equal footing, and the five permanent members of the Security Council, based on Security Council Resolutions 242 (1967) of 22 November 1967 and 338 (1973) of 22 October 1973 and the legitimate national rights of the Palestinian people primarily the right to self-determination.¹⁹ The General Assembly Resolution 45/68 also noted the expressed desire and endeavours to place the Palestinian territory occupied since 1967 including

13 See General Assembly Resolution 44/48 operative paragraph 8(d).

14 *Ibid.*, paragraph 8(c).

15 *Ibid.*, operative paragraph 11.

16 *Ibid.*, paragraph 14. (Emphasis added). The expression relevant resolutions of the United Nations, needless to say, refers to the resolutions of any or all of the organs of the United Nations.

17 The resolution was adopted by 146 votes in favour, 1 against and 3 abstentions. While Israel alone opposed the resolution, Dominica, Kenya and the United States abstained.

18 See General Assembly Resolution 44/42 on Question of Palestine which was opposed by Dominica, Israel and the United States while Belize abstained from taking part in the vote. The other principles for the achievement of a comprehensive peace in the Middle East identified in the resolution are guaranteeing arrangements for security of all States in the region, including those named in resolution 181(II) of November 29, 1947 within secure and internationally recognised boundaries, resolving the problems of the Palestine refugees in conformity with General Assembly resolution 194(II) of December 11, 1948 and subsequent relevant resolutions; and guaranteeing freedom of access to Holy Places, religious buildings and sites.

19 See General Assembly Resolution 45/68 entitled "International Peace Conference on the Middle East" adopted on 6 December 1990.

Jerusalem under the supervision of the United Nations for a limited period as part of the peace process.

24. However, at the Middle East Peace Conference convened in Madrid in October 1991 Israel once again rejected the Arab 'Land for Peace' proposal and any role for the United Nations in the Conference. In fact, on the eve of the Madrid Peace Conference Israel Radio reported that Israel will inaugurate a new settlement in the Golan Heights. According to the report the settlement of Kela was to be opened to civilian habitation just prior to the October 30, 1991 Conference after having served as an army base in recent years. The Office of the Prime Minister Mr. Itzhak Shamir is reported to have appealed to the Golan settlers to delay the start of the settlement on the ground that "it would appear to the United States as a provocation."

INTIFADAH

25. In its resolution on 'Living Conditions of the Palestinian People in the Occupied Palestinian Territory' the General Assembly at its Forty-fourth Session taking into account the *intifadah* of the Palestinian people against the Israeli occupation and alarmed by the continuation of the Israeli settlement policies in the Palestinian territory occupied by Israel since 1967, including Jerusalem, which have been declared null and void and a major obstacle to peace, rejected the Israeli plans and actions intended to change the demographic composition of the occupied Palestinian territory, in particular the increase and expansion of the Israeli settlements.²⁰

26. At its Forty-fifth Session the General Assembly, aware of the *intifadah* of the Palestinian people since 9 December 1987 against Israeli occupation, expressed its deep concern at the alarming situation in the Palestinian territory occupied since 1967 as a result of the continued occupation by Israel, the occupying power, and of its persistent policies and practices against the Palestinian people. By a recorded vote of 141 for, 2 against and 3 abstentions the General Assembly by its resolution 45/69 condemned the policies and practices of Israel which violate the human rights of the Palestinian people in the occupied Palestinian territory, including Jerusalem and demanded that Israel abide scrupulously by the Geneva Convention relative to the Protection of Civilian Persons in Time of War, 1949 and desist immediately from those policies and practices which are in violation of the Convention.²¹ It also called upon States Parties to the Geneva Convention to ensure respect for the Convention in all circumstances, in conformity with Article 1 of the aforementioned Geneva Convention.

20 See General Assembly Resolution 44/174 of 19 December 1989 adopted by a recorded vote of 146 for, 2 against and 8 abstentions.

21 While Israel and the United States of America opposed the resolution, Costa Rica, Dominica and Honduras abstained.

27. Apart from the collective and individual denunciation of Israel's policy of establishing settlements in occupied Arab Territories listed above, this policy of "Climb the Mountain and open up the desert" has also been denounced in several other fora including the AALCC, the OAU and the NAM. It would have been observed that Israel's policy of establishing settlements in territories annexed and occupied by force is not only violative of all norms of international law, the Declarations on Friendly Relations,²² the United Nations Charter and the Fourth Geneva Convention, it (the policy of establishing settlements on occupied Arab territories) is also the extenuation of the Zionist Slogan "land for people for people without land". The practice and policy of deportation of Palestinians from Palestine and other occupied Arab territories are thus two faces of the same ugly picture.

28. The international community has repeatedly declared that the Israeli policies and practices in the occupied Palestinian territory are in violation of its obligations as a party to the Geneva Convention Relative to the Protection of Civilian Persons in Time of War and contrary to the resolutions of the United Nations as well as generally recognised norms of international law.

29. Recently the General Assembly by its resolution 45/74A of 11 December 1990 condemned the continued and persistent violation by Israel of the said Geneva Convention of 1949 and other applicable international instruments. It condemned in particular those violations which the Convention designates as "grave breaches" thereof. The Assembly also declared that Israel's grave breaches of the Geneva Convention are war crimes and an affront to humanity.

30. The international community has deplored the statements made by the Israeli officials, implying the prospect of increased settlement of immigrants in the occupied Palestinian territory even as Israel continues to deny Palestinians the right to return to their homes. Whilst the international community

22 The Declaration on Principles of International Law Governing Friendly Relations and Cooperation Between States in accordance with the Charter of the United Nations *inter alia* provides:

"The territory of a State shall not be the object of military occupation resulting from the use of force in contravention of the provisions of the Charter. The territory of a State shall not be the object of acquisition by another State resulting from the threat or use of force. No territorial acquisition resulting from the threat or use of force shall be recognised as legal. Nothing in the foregoing shall be construed as affecting:

(a) Provisions of the Charter or any international agreement prior to the Charter regime and valid under international law; or

(b) The powers of the Security Council under the Charter. The use of force to deprive peoples of their national identity constitutes a violation of their inalienable rights and of the principle of non-intervention; and

"Every State has the duty to refrain from any forcible action which deprives people referred to above in the declaration of the present principle of their right to self-determination and freedom and independence. In their actions against, and resistance to, such forcible action in pursuit of the exercise of their right to self-determination, such peoples are entitled to seek and to receive support in accordance with the purposes and principles of the Charter."

recognises and supports the right of freedom of movement and the right of everyone to leave any country and the right to return to one's own country, it believes that these rights cannot be used as a pretext to settle immigrants or Israeli civilians in the occupied Palestinian territory, including Jerusalem.

31. Reference may in this regard be made to General Assembly resolution 45/83 on the situation in the Middle East which *inter alia* condemned Israel's aggression, policies and practices against the Palestinian territory and outside this territory, including appropriation, establishment of settlements, annexation and other terrorist, aggressive and repressive measures which are in violation of the Charter and the principles of international law and the relevant international conventions. By that resolution the General Assembly also condemned the imposition by Israel of its laws, jurisdiction and administration on the occupied Syrian Arab Golan, its annexation policies and practices, the establishment of settlements, the confiscation of lands, the diversion of water resources and the imposition of Israeli citizenship on Syrian nationals. It declared all these measures to be null and void and constituted a violation of the principles and rules of international law, relative to belligerent occupation in particular the Fourth Geneva Convention of 1949. By its resolution 45/74 the General Assembly *inter alia* condemned the persistence of Israel in changing the physical character, demographic composition, institutional structure and legal status of the occupied Syrian Arab Golan.

32. More significantly, the General Assembly at its Forty-fifth session *inter alia* strongly condemned the establishment of the Israeli settlements and expansion of the existing ones on private and public Palestinian and other Arab lands, and transfer of an alien population thereto, reaffirming that all measures taken by Israel to change the physical character, demographic composition, institutional structure or legal status of the occupied territories or any part thereof, including Jerusalem, are null and void and that Israel's policy of settling parts of its population and new immigrants in those occupied territories constitutes a flagrant violation of the Fourth Geneva Convention and of the other relevant resolutions of the United Nations. The General Assembly by its resolution 45/74 demanded that Israel desist from those policies and practices.

33. In this regard the policy of deportation of Palestinians from occupied territories is in violation of international law in general and the Laws and Customs of War as enshrined in the Geneva Conventions of 1949 in particular. Secondly, while Israel has in part sought to justify the establishment of Jewish settlements on occupied Arab territories on the right of movement and the right to leave any country including one's own and also the right to return to one's own country, Israel has denied the same right to the Palestinians. In any case this right cannot be used as a pretext to settle immigrants or Israeli civilians in the occupied Palestinian territory, including Jerusalem.

34. A word about the right to return may be in order. Numerous international instruments such as the Universal Declaration on Human Rights 1948, the International Covenant on Civil and Political Rights 1966; the Declaration on the International Convention on the Elimination of Discrimination Against Women, 1979 all recognise both the right to freedom of movement and the right also to leave any country including one's own, but both the Universal Declaration on Human Rights and the International Covenant on Civil and Political Rights also recognise the right to return to one's own country.

35. However, Israel denies this right to freedom of movement to Palestinian nationals in blatant and flagrant violation of all norms of international law. In the West Bank and Gaza, Military Order No. 3 gives the military commander power to declare "closed areas" and consequently forbid movement into or out of such areas without a permit. A permit is needed to leave the West Bank and it is granted or denied at the sole discretion of the military governor.²³ Palestinians who are denied by these methods the right to travel to and reside in their own homelands are convinced that these restrictions are not related to security considerations but refer to the Israeli intention to rid the land of its original inhabitants.

36. The right of the Palestinian people to return to their country has not only been recognised by the Universal Declaration on Human Rights and the International Covenant on Civil and Political Rights, it has also been specifically affirmed and reiterated in several resolutions of the General Assembly. The General Assembly at its seventh emergency session in 1980 on the question of Palestine adopted resolutions ES-7/2 which *inter alia* reaffirmed :

"The inalienable right of the Palestinian people to return to their homes and property in Palestine, from which they have been displaced and uprooted, and calls for their return."

The right to return is an acknowledged fundamental human right guaranteed to all peoples and the Palestinian people are no exception to this norm of international law.

37. At its Forty-fifth Session the General Assembly by its resolution 45/73 of 11 December 1990 *inter alia* reaffirmed the inalienable right of all displaced persons to return to their homes or former places of residence in the territories occupied by Israel since 1967. It declared that any attempt to restrict, or to attach conditions to the free exercise of the right to return by any displaced person to be inconsistent with that inalienable right and, therefore, inadmissible. The General Assembly considered any and all agree-

²³ Although the reasons for denying a permit often appear arbitrary there is said to be a specific political motive behind it. The occasion for granting a permit is at times used as an opportunity for the military governor to exert pressure on a particular person. A mayor, or a political activist, may be granted or denied this permit depending on the acceptability of his views to the Israeli Government.

ments embodying any restriction or condition for the return of the displaced inhabitants as null and void. Having thus implicitly and explicitly accorded to the norm of the right of displaced inhabitants to return to their homes the status of *jus cogens* the General Assembly deplored the continual refusal of the Israeli authorities to take steps for the return of the displaced inhabitants. It called upon Israel to (i) take immediate steps for the return of all displaced inhabitants; and (ii) desist from all measures that obstruct the return of the displaced inhabitants including measures affecting the physical and demographic structure of the occupied territories.

38. A reference may at this juncture be made to the Conference on Palestine held at Tehran in October 1991 at the initiative of the Government of the Islamic Republic of Iran.²⁴ The main objective of the said Conference, which the Secretary-General of the AALCC had been invited to participate as an Observer, was to support the Palestinian cause. Although divergent views were expressed in the course of discussions which took place against the backdrop of the West Asia Peace Conference, the majority of the participants were opposed to the Madrid Conference.²⁵ These participants were of the view that the Madrid Conference would not solve the problem of Palestine and was being convened only to wrest more concessions out of Palestine.

39. In a statement circulated on behalf of the AALCC at the Tehran Conference the Secretary-General had *inter alia* stated that :

"One possible solution to the problem is the convening at an early date the Middle East Peace Conference. In our view, along with the permanent members of the Security Council, all the States in the region as well as the Palestinian people represented by their legitimate leaders must also be present in their own right"—and that the "Parties to the multilateral negotiations must agree to the obvious fact that the presence and participation of the Palestinian people is a *sine qua non* of any possibility of a just and lasting peace in the region. The urgency of an international conference on Middle East which will resolve peace and stability in the region cannot be over emphasized."

40. In his statement circulated at the Tehran Conference the Secretary-General had also pointed out that the Draft Articles on the Code of Crimes Against the Peace and Security of Mankind as adopted on first reading by the International Law Commission at its recently concluded Forty-third Session *inter alia* provided for the conviction and sentence of an individual who orders the commission of an exceptionally serious war crime. Draft Article 22 of the aforementioned Code, among other things, defines the term "Exceptionally Serious War Crimes" and includes the establishment of settlers

in an occupied territory and changes to the demographic composition of an occupied territory.

41. Finally, it may be stated that in the opinion of the Secretariat of the AALCC, both the issue of deportation of Palestinians as well as the massive immigration of Jews into Israel and their settlement in the occupied Arab territories including the West Bank and Jerusalem have been adequately considered since the item was first taken up for consideration by the AALCC. The AALCC may at its Thirty-first Session while considering the future course that the work on this agenda item could take consider mandating the Secretariat to prepare for the International Peace Conference scheduled to be held at the end of the United Nations Decade of International Law.

²⁴ The Conference on Palestine was held at Tehran from October 19 to 22, 1991.

²⁵ The Madrid Conference opened on October 30, 1991.

IV. RESPONSIBILITY AND ACCOUNTABILITY OF FORMER COLONIAL POWERS

(i) INTRODUCTION

1. The item "Responsibility and Accountability of former Colonial Powers" was included in the agenda of the Twenty-ninth Session held in Beijing from 12th to 19th March 1990, at the request of the Government of the Libyan Arab Jamahiriya. It may be recalled that the Memorandum¹ submitted by the Libyan Government requested the AALCC to include the following four items on its agenda :

- (i) Accountability of the colonial powers for the losses caused to the Libyan Arab people due to the left-over mines and other vestiges of the Second World War on the Libyan soil which was the arena of major battles between the warring colonial forces.
- (ii) Accountability of the colonial powers for the losses caused to the colonised countries in general which include the looting of their resources and subjugating their peoples.
- (iii) Accountability of the colonial powers for freezing the assets of the developing countries in their banks which resulted in loss to those countries and amounted to the violation of international law.
- (iv) Responsibility of the colonial powers to give compensation and provide information on the fate of those who were exiled during the period of colonial domination."

2. At the Beijing Session it was decided to group these items under the heading "Responsibility and Accountability of former Colonial Powers".

3. At that Session the item was taken up for discussion at the Sixth Plenary Meeting held on the 16th of March 1990. The Delegate of Libya in his detailed statement underscored the importance of issues involved in the consideration of the item and drew attention to their particular relevance in the context of his country. He asked the Secretariat to examine the legal principles establishing the liability of the colonial powers, payment of compensation for the damage caused to the Libyan people and restoration of historical monuments and cultural property. The Delegates of Sudan, Syria, State of Palestine, Kuwait, Saudi Arabia and Yemen Arab Republic supported the Libyan request. The Delegate of Egypt while endorsing the Libyan proposal for preparation of a legal study suggested that the AALCC should undertake a joint programme in cooperation with the UNEP.

¹ See Document No. AALCC/XXIX/90/8.