

(iii) Secretariat Study : Deportation of Palestinians In Violation of International Law particularly the Forth Geneva Convention of 1949 and the Massive Immigration and Settlement of Jews in the Occupied Territories.

Pursuant to the resolution adopted at the Tehran Session the AALCC Secretariat monitored the developments on the subject. In the year that was, not a single day passed without a home or more being demolished by the Israeli occupation authorities in the occupied territories. Such a policy primarily aims at displacing the indigenous Palestinian population from their land. These acts of demolition and the expansion of Jewish settlements on Palestinian occupied land are clearly policies designed to undo the "peace process" and continue to create a status quo.

These policies of the Israeli Government have been adopted and implemented to deliberately destroy the agreements, thus reversing the path of Palestinian - Israeli reconciliation, and possibly bringing to an end the whole Middle East Peace Process. At the same time the perpetration of these acts which occur in line with the Government's policy are completely heterogeneous with the Declaration of Principles regulating all the steps to be taken during the transitional period. This Declaration should have led to a permanent settlement based on Security Council resolutions 242 and 338. These policies aim precisely at preventing such a final settlement through a total methodological violation of all the main components of the agreements on the transitional period. These main components can be summarized as follows:

(a) The first relates to the establishment and expansion of the jurisdiction of the Palestinian National Authority and the Palestinian elected council to all of the West Bank and Gaza, except Jerusalem, the Israeli Settlements and military locations. Linked to this is the withdrawal and successive redeployment of the Israeli army upto specified locations, the dissolution of the Israeli civil administration, and the withdrawal of the military Government.

(b) The second relates to the territorial integrity of the West Bank and Gaza, and linked to that, the safe passage between them, the freedom of movement of all persons and goods, and the need to preserve the lawful ownership of the land.

(c) The third relates to the improvement of living conditions of the Palestinian people, the development of the Palestinian economy, and co-operation between the two sides in economic fields, as detailed in the Paris Agreement.

(d) The fourth component relates to the postponement of negotiations on specific issues, such as Jerusalem and settlement, to the final status negotiations, which normally require that parties will not create new "facts on the ground", prejudging the outcome of these talks.

All of these components, as well as many other detailed and important elements of the agreements have been systematically and comprehensively disregarded and violated by the Israeli side. For instance, Palestinian Jurisdiction is still limited to a small percentage of the territory; Israeli redeployment to specified locations has not taken place; all kinds of restrictions on freedom of movement have been imposed; confiscation of lands and theft of natural resources continue, the living condition of the Palestinian people has sharply deteriorated; creation of new "facts on ground" has intensified, and attempts to change the demographic conditions and legal status of Jerusalem continues, as do illegal settlement activities. In addition, return of displaced Palestinians, totalling more than half a million people has been stopped. Finally, direct Israeli oppression against the Palestinian people goes on, including assassinations and demolition of their homes. This systematic violation of the "peace process" compelled the international community to take some decisive decisions on how to bring back peace to the region, some steps taken in this regard are mentioned below.

On 15 July 1997, the Tenth Emergency Special Session (ESS) of the General Assembly on illegal Israeli actions in occupied East Jerusalem and the rest of the occupied Palestinian Territory was resumed. A resolution (ES-10/3), among the strongest ever, was adopted. The resumed tenth ESS was

convened following the presentation of a report by the Secretary General of the United Nations, in accordance with resolution ES-10/2. The report provided additional information on the illegal policies and practices of the Israeli government, especially with regard to Jerusalem and illegal settlement activities, as well as many, serious ramifications of these measures.

The report indicated that Israel, in rejection of the provisions of resolution ES-10/2, has not ceased its construction of a new settlement at Jabal Abu Ghneim and emphasized the dangers of that settlement for demographic, economic and other reasons, as well as for its negative effects on the peace process. It stressed the fact that Israel continues its overall illegal settlement campaign, confiscating land, expanding existing settlements and building bypass roads, contrary to Security Council resolutions. Further, the Israeli government continues to implement illegal measures in Jerusalem aimed at altering the city's character, legal status and demographic composition, including attempts to deal with Palestinian Jerusalemites as "resident immigrants", subject to discriminatory immigration controls, a practice now threatening 60-80,000 Palestinian Jerusalemites.

The principle of territorial integrity, which was agreed upon in the Declaration of Principles, has been frustrated by the closure and severe Israeli restrictions on the movement of persons and goods, and that the government of Israel has not accepted the *de jure* applicability of the Fourth Geneva Convention of 1949 to all the territories occupied since 1967, in contrast to all other High Contracting Parties, who retain consensus on that applicability.

The practical elements of the GA Resolution ES-10/4 focussed on the prevention of support for any settlement activities, recommending to Member States that they actively discourage activities which directly contribute to any construction or development of Israeli settlements in the Occupied Palestinian Territory, including Jerusalem, as these activities contravene international law. Another element including, recommending the convening of a Conference of the High Contracting parties to the Fourth Geneva Convention to consider measures to enforce the Convention in the occupied Palestinian Territory, including Jerusalem, and to ensure its respect in accordance with common article 1 of the Convention. The resolution affirms also the

responsibilities, including personal, arising from persistent violations and grave breaches of the Conventions.

Ministers Meeting in New York

In late September, 1997, the regular ministerial - level meeting of the Arab Group, Organization of the Islamic Conference (OIC), Non-Aligned Movement (NAM) and the Group of 77 (G 77) were held parallel to the general debate of the General Assembly, marking the start of the 52nd Session of the UNGA, with foreign ministers present, all four groups adopted strong positions in support of the Palestinian cause and the UN work in this regard.

The ministers expressed, *inter alia*, their deep concern over the serious deterioration of the Middle East Peace Process and the increased tension in the occupied Palestinian Territory, including Jerusalem and in the region as a whole as a result of the policies and actions of the current Israeli Government. The ministers also expressed their support for the recommendation contained in resolution ES-10/3 (10th Emergency Special Session) to convene a Conference of the High Contracting Parties to the Fourth Geneva Convention on measures to enforce the Convention in the occupied Palestinian Territory, including Jerusalem, and to ensure its respect.

On 13 November, 1997 the 10th Emergency Special Session of the General Assembly (uniting for Peace Formula) was resumed for a second time to consider the continuation of illegal Israeli actions in occupied East Jerusalem and the rest of the occupied Palestinian Territory. The resumption was a follow up of the results of the previous meetings of the ESS and to specifically consider the report of the Secretary General of the UN on the issue of the convening of a conference of the High Contracting Parties to the Fourth Geneva Convention of 12 August 1949, on measures to enforce the Convention in the occupied Palestinian Territory, including Jerusalem. The Session was also resumed in light of the complete non-compliance by Israel with the demands made by the General Assembly regarding the cessation of illegal settlements activities and illegal actions in Jerusalem, in particular the construction of the settlement in Jabal Abu Gheim to the south of Occupied East Jerusalem.

The text of the GA Resolution ES-10/4, entitled "Illegal Israeli actions in Occupied East Jerusalem and the rest of the Occupied Palestinian Territory"¹ contains three main issues. The first included reiteration of all the demands made in resolution ES-10/2 and ES-10/3, reiteration of the recommendations made for collective measures and condemnation of Israeli non-compliance. The second consisted of reiteration of the recommendation to convene a conference of the High Contracting Parties to the Fourth Geneva Convention and to take specific steps to convene the conference. The third included the need for the Assembly to express determination in case of continuous Israeli lack of compliance, to reconsider the situation and take additional appropriate collective measures. All three issues were incorporated in the final text of the adopted resolution, including the recommendation by the Assembly to the government of Switzerland, in its capacity as the depository of the Geneva Conventions, to undertake the necessary steps including the convening of a meeting of Experts of States Parties to the Fourth Geneva Conventions, as soon as possible with a target date not later than the end of February 1998, in order to follow up on the recommendation to convene a Conference. Both the meeting of experts and the conference to follow will represent the first time that such a meeting is convened since the Geneva Conventions entered into force. (Text of the Resolution is Annexure 1 to this brief)

By all counts, the resumed 10th ESS was a tremendous success. This success establishes the Session as a serious follow up process on the critical issue of illegal Israeli actions in occupied East Jerusalem and the rest of the occupied Palestinian Territory, particularly settlement activities. It puts us on the road to the convening of the conference on the enforcement of the Fourth Geneva Convention.

¹ GA Resolution ES-10/4, was adopted on 13 November 1997 by a vote of 139 in favor, 3 against and 13 abstentions. The draft resolution was introduced by Jordan (Chairman of the Arab Group for November) on behalf of its cosponsors, which included Algeria, Bahrain, Bangladesh, Brunei, Darussalam, Comoros, Cuba, Djibouti, Egypt, Indonesia, Jordan, Kuwait, Malaysia, Mauritania, Morocco, Oman, Pakistan, Qatar, Saudi Arabia, Sierra Leone, Sudan, Tunisia, United Arab Emirates, Vietnam and Yemen.

Debate During the 52nd Session of the General Assembly

The 52nd Session of the United Nations General Assembly witnessed an increase in positive votes on most resolutions related to the Question of Palestine and the Situation in the Middle East, which had already been receiving overwhelming support in the past. Of the twentytwo resolutions adopted, nineteen specifically concerned Palestinian issues.

The content of the resolutions was based on the resolutions adopted during the 51st Session, with changes made to reflect the current situation in the Occupied Palestinian Territory, including Jerusalem, and the Middle East Peace Process due to Israel's illegal practices and policies. Fundamental principles and positions contained in previous resolutions were reaffirmed by the Assembly, including the right of the Palestinian people to self-determination; the applicability of the Fourth Geneva Convention to the occupied Palestinian Territory, including Jerusalem; the illegality of all Israeli actions aimed at changing the character and Status of Jerusalem; the illegality of Israeli Settlement, the right of Palestinian people to sovereignty over their natural resources; the right of Palestinian refugees to their properties and their revenues; the need to maintain the important and necessary work of the UNRWA; the illegality of Israeli practices and policies violating the human rights of the Palestinian people; and the principles for the peaceful Settlement of the Question of Palestine.

For Palestine, the outcome of the work of the General Assembly in its 52nd Session is important as it reiterates a clear message to the Israeli government about the unwavering positions of the international community with regard to the question of Palestine and the situation in the Middle East in all aspects. Such a reaffirmation by the General Assembly is an integral part of the permanent responsibility of the UN towards the Question of Palestine and in upholding international law and Security Council resolutions as well in this regard. When the matter was discussed in the fourth committee on the 26 of November, 1997, a draft resolution entitled "Israeli settlements in the occupied Palestinian territory, including Jerusalem, and the occupied Syrian Golan"², was discussed and adopted by 122 votes against 2 with four

² See annexure II "Draft Resolution on Israeli settlements in the occupied Palestinian territory, including Jerusalem, and the occupied Syrian Golan

abstentions. (Text of the resolution is annexed in this chapter).

Assessments

The Secretariat in this study on Deportation of Palestinians in Violation of International Law particularly the Fourth Geneva Convention of 1949 the massive Immigration and Settlement of Jews in the occupied Territory has exposed to the AALCC Member States the current most serious developments in the occupied territories which could likely lead to a deterioration of the situation in the region and to a resumed cycle of tension and violence, thereby endangering peace and security not only in the Middle East but throughout the world. There is therefore an urgent need to reach a final settlement of the question of Palestine that will allow Palestinian people to attain their legitimate rights, in keeping with international law and with the fundamental principles established at the Madrid Conference and in the Oslo and subsequent Agreements and to ensure security and stability for all in the Region.

In view of the deliberations and resolution of the 36th (Tehran 1997) Session as well as the developments thereafter, the AALCC at its forthcoming 37th Session to be held in New Delhi may wish to consider the future work of the Secretariat on this topic.

“Illegal Israeli Actions in Occupied East Jerusalem and The Rest of the Occupied Palestinian Territory”

The General Assembly

Having received the report of the Secretary General, submitted in accordance with paragraph 10 of its resolution ES- 10/3 of 15 July 1997.

Having received at an earlier date the report of the Secretary General submitted in accordance with paragraph 9 of its resolution Es- 10/2 of 25 April 1997.

Determined to uphold the purposes and principles of the Charter of the United Nations, international humanitarian law and all other instruments of international law, as well as relevant General Assembly and Security Council resolutions.

Reiterating the demands made in resolutions ES-10/2 and ES-10/3, namely:

- (a) The immediate and full cessation of the construction in Jabal Abu Ghneim and of all other Israeli settlement activities, as well as of all illegal measures and actions in Jerusalem.
- (b) That Israel accept the de pure applicability of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, to all the territories occupied since 1967, and that it comply with relevant Security Council resolutions in accordance with the Charter of the United Nations.
- (c) That Israel, the occupying Power, immediately cease and reverse all actions taken illegally, in contravention of international law, against Palestinian Jerusalemites.

- (d) That Israel, the occupying Power, make available to Member States the necessary information about goods produced or manufactured in the illegal settlements in the Occupied Palestinian Territory, including Jerusalem.

Aware that Israel, the occupying Power, has not heeded any of the above mentioned demands and that it continues with its illegal actions in Occupied East Jerusalem and the rest of the Occupied Palestinian Territory.

Having been informed by the report of the Secretary General of the responses by the High Contracting Parties to the Geneva Convention, and of the collective responses transmitted through letters from the President of the Coordinating Bureau of the Movement of Non-Aligned Countries, the Secretary General of the League of Arab States and the Presidency of the Council of the European Union, to the note sent by the Government of Switzerland in, its capacity as the depository of the Convention.

Reaffirming the permanent responsibility of the United Nations with regard to the question of Palestine until it is solved in all its aspects.

Having received a letter dated 20 August 1997 from the Permanent Observer Mission of Palestine to the United Nations, informing about specific cases of assistance by individuals for illegal settlement activities.

Gravely concerned at the continuing deterioration of the Middle East peace process and the lack of implementation of the agreements reached.

Reaffirming that all illegal Israeli actions in Occupied East Jerusalem and the rest of the Occupied Palestinian Territory, especially settlement activities, and the practical results thereof, cannot be recognized irrespective of the passage of time.

Rejecting terrorism in all its forms and manifestations, in accordance with all relevant United Nations resolutions and declarations.

1. Condemns the failure of the Government of Israel to comply

with the provisions of resolutions Es-10/2 and ES/10/3, in particular the continuation of the building of a new settlement in Jabal Abu Ghneim to the south of Occupied East Jerusalem;

2. Reiterates its call for the cessation of all forms of assistance and support for illegal Israeli activities in the Occupied Palestinian Territory, including Jerusalem, in particular settlement activities;
3. Reiterates also its recommendation to the High Contracting parties to the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, to take measures on a national or regional level, in fulfillment of their obligations under article 1 of the Convention, to ensure respect by Israel, the occupying Power, of the Convention, as well as its recommendation to Member States to actively discourage activities which directly contribute to any construction or development of Israeli settlements in the Occupied Palestinian Territory including Jerusalem, as these activities contravene international law;
4. Reiterates its recommendation that the High Contracting Parties to the Geneva Convention convene a conference on measures to enforce the Convention in the Occupied Palestinian Territory, including Jerusalem, and to ensure its respect in accordance with common article 1;
5. Recommends to the Government of Switzerland, in its capacity as the depository of the Fourth Geneva Convention, to undertake the necessary steps, including the convening of a meeting experts in order to follow up on the above-mentioned reconunendation, as soon as possible with a target date not later than the end of February 1998;
6. Requests the Government of Switzerland to invite the Palestine Liberation Organization to participate in the above mentioned conference and any preparatory steps for that conference;

DRAFT RESOLUTION III

**Israeli settlements in the occupied Palestinian territory,
including Jerusalem, and the occupied Syrian Golan**

The General Assembly

Guided by the principles of the charter of the United Nations, and affirming the inadmissibility of the acquisition of territory by force,

Recalling its relevant resolutions, including those adopted at its tenth emergency special session, as well as relevant Security Council resolutions including resolutions 242 (1967) of 22 November 1967, 446 (1979) of 22 March 1979, 465 (1980) of 1 March 1980 and 497 (1981) of 17 December 1981,

Reaffirming the 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 Jerusalem, and to the occupied Syrian Golan,

Aware of the Middle East peace process started at Madrid and the agreements reached between the parties, in particular the Declaration of Principles on Interim Self-Government Arrangements of 13 September 1993³ and the Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip of 28 September 1995⁴

Expressing grave concern about the decision of the Government of Israel to resume settlement activities, including the construction of the new settlement in Jabal Abu Ghneim, in violation of international humanitarian law,

³ A/48/486-S/26560, annex: see Official Records of the Security Council, Forty-eighth Year, Supplement for October, November and December 1993, document S/26560

⁴ A51/889-S/1997/357, annex.

7. Calls for reinjecting momentum into the stalled Middle East peace process and for the implementation of the agreements reached between the Government of Israel and the Palestine Liberation Organization, as well as for the upholding of the principles of the process, including the exchange of land for peace;
8. Decides that, in case of the continuous lack of compliance by Israel, the occupying Power, with the provision of resolution ES-10/2 and ES-10/3, it shall reconsider the situation with a view to making further appropriate recommendations to the States Members of the United Nations in accordance with its resolution 377 A(V) of 3 November 1950;
9. Decides to adjourn the tenth emergency special session temporarily and to authorize the President of the most recent General Assembly to resume its meetings upon request from Member States.

relevant United Nations resolutions and the agreements reached between the parties,

Gravely concerned in Particular about the dangerous situation resulting from actions taken by the illegal armed Israeli settlers in the occupied territory, as illustrated by the massacre of Palestinian worshippers by an illegal Israeli settler in Al-Khalil on 25 February 1994,

Taking note of the report of the Secretary-General,⁵

1. Reaffirms that Israeli settlements in the Palestinian territory, including Jerusalem, and in the occupied Syrian Golan are illegal and an obstacle to peace and economic and social development;
2. Calls upon Israel to accept the de jure 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 Jerusalem, and to the occupied Syrian Golan and to abide scrupulously by the provisions of the Convention, in particular article 49;
3. Demands complete cessation of the construction of the new settlement in Jabal Abu Ghneim and of all Israeli settlement activities in the occupied Palestinian territory, including Jerusalem, and in the occupied Syrian Golan;
4. Stresses the need for full implementation of Security Council resolution 904 (1994) of 18 March 1994, in which, among other things, the Council called upon Israel, the occupying Power, to continue to take and implement measures, including inter alia, confiscation of arms, with the aim of preventing illegal acts of violence by Israeli settlers, and called for measures to be taken to guarantee the safety and protection of the Palestinian civilians in the occupied territory.

X. EXTRA-TERRITORIAL APPLICATION OF THE NATIONAL LEGISLATION : SANCTIONS IMPOSED AGAINST THIRD PARTIES - REPORT OF THE SEMINER HELD IN TEHRAN, ISLAMIC REPUBLIC OF IRAN, 24-25 JANUARY 1998

(i) Introduction

The item "Extra-territorial Application of National Legislation: Sanctions Imposed Against Third Parties on the work programme of the AALCC following a reference made, in accordance with the Statute of the Committee, by the Government of the Islamic Republic of Iran. The Explanatory Memorandum accompanying the reference had requested the Secretariat to carry out a comprehensive study concerning the legality of unilateral measures, taking into account the positions and reactions of various governments, including the positions of the Committee's Member States.

A preliminary study prepared by the Secretariat was thereafter considered at the 36th Session of the AALCC held in Tehran in May 1997. The preliminary study apart from referring to some more recent instances such as the United States : Cuban Liberty and Democratic Solidarity (LIBERTAD) Act, (generally known as the Helms - Burton Act), and the Iran and Libya Sanctions Act, 1996 (commonly referred to as the D'Amato - Kennedy Act), made an endeavour to provide an overview of the limits imposed by international law on the Extra-territorial Application of National Law; and the response or reaction of the international community to such actions. The brief of documents inter alia recounted the various ways in which the international community had expressed its concern about the promulgation and application of laws and regulations whose extra-territorial application effects affect the sovereignty of other States, the legitimate interests of persons-both natural and legal (companies, corporations etc.) within their jurisdiction as also the freedom of trade and navigation.

The Secretariat study had also sought to demonstrate that the question of extra-territorial application of national legislation covered a wide spectrum of international relations viz. political, legal and trade. It had pointed out that the use of unilateral actions, in particular those, with extraterritorial effects can

⁵ A/51/517