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**ASIAN-AFRICAN LEGAL CONSULTATIVE ORGANIZATION**



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

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

## **I. INTRODUCTION**

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 initiative of the Government of the Islamic Republic of Iran at the AALCO’s Twenty Seventh Session which was held in Singapore (1988). During the 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.” 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. The item has since been discussed at successive sessions<sup>1</sup> of the Organization as part of its Work Programme.

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. The study prepared for the Thirty Sixth Session (Tehran, 1997) apprised the AALCO Member States of the developments in the occupied territories which could lead to deterioration of the situation in the region and to resumed cycle of tension and violence, endangering peace and security in the Middle East.

4. For the Thirty Seventh (New Delhi, 1998) Session, the Secretariat brief monitored the situation, which unfortunately was not satisfactory. The Israeli Government had continued to evade the implementation of the agreements, among them the Wye River memorandum (1998) which *inter alia* comprised of steps to facilitate the implementation of the Israeli-Palestinian Agreement of 1995 and other related agreements, including the Note of the Record of 1997 and commitments that had been agreed upon, thus

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1. The topic has been considered at the 28<sup>th</sup> (Nairobi); 29<sup>th</sup> (Beijing); 30<sup>th</sup> (Cairo); 31<sup>st</sup> (Islamabad 1992); 32<sup>nd</sup> (Kampala 1993).

endangering the whole peace process. At that Session the scope of the topic was expanded to “Deportation of Palestinians and other Israeli Practices”. 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).

5. For the Thirty Ninth (Cairo, 2000) Session, the Secretariat monitored the situation in the Middle East and observed that the year 1999 had witnessed important regional and international meetings aimed at saving the peace process and enhancing the applicability of the rule of law and implementation of the agreements signed between the parties. However, while the negotiations concerning the final settlement of the Middle East Peace Process had gained momentum, yet there were many uncertain factors, one of the most important being the Israeli Government’s continued illegal and destructive settlement activities. During this session it was decided to 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.

## **II. DELIBERATIONS DURING THE FORTY FOURTH SESSION OF AALCO HELD IN NAIROBI, KENYA (2005)**

6. During the Forty Fourth Session of AALCO, delegates unequivocally condemned the continuing Israeli practices in the Occupied Palestinian territories, which violates the UN Charter, International humanitarian and human rights law. The Delegates urged Israel to comply with the International Court of Justice Advisory opinion on *Legal Consequences of the Construction of a wall in the Occupied Palestinian Territory*.

7. One delegation stated that it believed that international law was one and indivisible which applies equally to all the countries of the world, big or small, powerful or not. In the same vein, Security Council Resolutions were binding on all UN members States and should be respected and fully implemented by all at all times. Failure to do so creates frustrations and cultivates a climate of despair and disillusionment easily exploited by various extremists with devastating effects.

8. Another delegate expressed the grave concern over the tragic events in the Occupied Palestinian Territory, including East Jerusalem, since 28 September 2000 and the continuing deterioration of the situation, including the rising number of deaths and injuries, mostly among Palestinian civilians, the deepening humanitarian crisis facing the Palestinian people and the widespread destruction of Palestinian property and infrastructure, both private and public, including institutions of the Palestinian Authority. He expressed profound concern over the repeated military actions in the Occupied Palestinian Territory and the re-occupation of Palestinian population centers by the Israeli occupying forces.

9. Delegates observed that on July 9<sup>th</sup>, 2004, the International Court of Justice had marked a historical development to the question of Palestine. The Court had rendered its

Advisory Opinion to the question submitted by the United Nations General Assembly at its Tenth Emergency Special Session through UN General Assembly Resolution A/RES/ES-10/14 of December 2003. It was the first time the highest judicial body of the United Nations addressed a substantive issue related to the question of “*What are the Legal Consequences arising from the Construction for the Wall being Built by Israel, the Occupying Power, in the Occupied Palestinian Territory, including in and around East Jerusalem, as Described in the Report of the Security-General, considering the Rules and Principles of International Law, including in the Fourth Geneva Convention of 1949, and relevant Security Council and General Assembly resolutions.*”

10. Delegations welcomed and supported the Court’s Advisory Opinion that the construction of the wall in the occupied Palestinian Territory, including in and around East Jerusalem, were contrary to international law. The delegation was of the view that the United Nations, especially the General Assembly and the Security Council, should consider further action required to bring to an end the illegal situation resulting from the construction of the wall, taking due account of the present Advisory Opinion. One Delegate believed that the Court’s Advisory Opinion could provide an authoritative and important guide to create a positive contribution of the Israel-Palestine peace process. He called all peace loving nations to compel Israel to abide the Court’s Advisory Opinion so that a just and equitable solution could be found for the Palestinian problem.

11. One delegate pointed out that deportation of Palestinian from their paternal land and other Israeli practices like massive immigration and settlement of Jews in occupied territories had been going on in an unabated way. In its submission before the International Court of Justice (ICJ) his country very candidly said that such activities of deportation, construction of wall by destroying houses, lands and other sources of their livelihood were clear violation of 4<sup>th</sup> Geneva Convention 1949 and its two Protocols and such activities also fell within the purview of offences as defined in the Rome Statute of 1998. He further said that provision of 4<sup>th</sup> Geneva Convention confirmed provision of Hague Convention (IV) of 1907, which inter alia, provides that ‘the occupying power shall respect private property’. His delegation believed that provisions of Hague Convention and 4<sup>th</sup> Geneva Convention prohibited any act by the occupying power that resulted in deprivation of the occupied people. This was a blanket prohibition, which does not admit of any derogation. So deportation of Palestinian people under various pretexts is clear violation of 4<sup>th</sup> Geneva Convention 1949, which may attract criminal liability in international law.

12. Another delegation emphasized on the repeated violation of International humanitarian law by the occupying power, Israel in the Occupied Palestinian Territories. In addition to the violation of international humanitarian law, the building of the separation wall would lead to demographic change in the occupied territories. Demolishing the houses, confiscation of Palestinian lands; killing of children, destruction of villages and killing of innocent civilians had been condemned by the international community, including League of Arab States and NAM. Arab Summit of 2002 had called Israel to fully withdraw from the Occupied Palestinian Territories, repatriation of

refugees and full implementation of Road Map. Sharm El Sheikh Commitments had to be taken seriously by Israel.

### **III. ISRAEL'S VIOLATIONS OF INTERNATIONAL LAW INCLUDING UNITED NATIONS SECURITY COUNCIL AND GENERAL ASSEMBLY RESOLUTIONS**

13. For more than 35 years, 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.<sup>2</sup> 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 obtained 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.

14. Until such time as Israel respects this obligation, the relevant principles of international law that need to be implemented are contained in the Fourth Geneva Convention concerning 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. 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 Israel failed to withdraw from the occupied territories, but during the occupation Israel has created facts, heavily armed settlements, bypass roads and security zones in the midst of a future Palestinian State that seriously compromise basic Palestinian rights.

#### **A. Israeli violations of the Fourth Geneva Convention in the Occupied Palestinian Territory (OPT)**

15. 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 Convention obligations by Israel to the utter dismay of international community. Both parties to the conflict are parties to the Geneva Conventions.<sup>3</sup> 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.<sup>4</sup>

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

<sup>3</sup>. Israel ratified the Geneva Conventions on 06.07.1951  
On 21 June 1989, the Swiss Federal Department of Foreign Affairs received a letter from the Permanent Observer of Palestine to the United Nations Office at Geneva informing the Swiss Federal Council "that the Executive Committee of the Palestine Liberation Organization, entrusted with the functions of the Government of the State of Palestine by decision of the Palestine National Council, decided, on 4 May 1989, to adhere to the Four Geneva Conventions of 12 August 1949 and the two Protocols additional thereto". On 13 September 1989, the Swiss Federal Council informed the States that it was not in a position to decide whether the letter constituted an

16. Israel claims that it is not in “occupation” of OPT but is in “administration” and therefore, does not come under the purview of the Fourth Geneva Convention and the law of belligerent occupation. To justify its position Israel resorted to legal fiction and attempted to bring forth doctrinal justification developed in vacuum. Accordingly, Missing Reversioner theory was developed to strengthen its arguments for its non-compliance with Fourth Geneva Convention and law of belligerent occupation.<sup>5</sup> This theory contended that Jordan and Egypt were not the legitimate sovereign 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. 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.

17. 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.

18. However, these arguments of Israel were strongly refuted by international law scholars<sup>6</sup> as “strained and artificial in character, and commanded little or no respect

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instrument of accession, “due to the uncertainty within the international community as to the existence or non-existence of a State of Palestine”. The note also stated: “The unilateral declaration of application of the four Geneva Conventions and of the Additional Protocol I made on 7 June 1982 by the Palestine Liberation Organization remains valid”.

<sup>4</sup>. Initially Israel was in favor of applying the Geneva Convention to Occupied Palestine Territory but later on it changed its position and the same continues till today. This can be seen from the relevant military orders. Article 35 of Proclamation No. 3, issued by Chaim Herzog, then the Military Governor, instituted military courts and stated that the military court and its officers, ‘must apply the provisions of the Geneva Conventions of 13 August 1949 regarding the protection of civilians during war as to all which pertains to legal proceedings. If there should be any contradiction between the provisions of the order and the Geneva Conventions, the provisions of the Conventions should apply.’ In October 1967, Article 35 was deleted by Military Order 144, and in 1970, Proclamation No. 3 was replaced by Military Order 378.

<sup>5</sup>. 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).

<sup>6</sup>. 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

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.’<sup>7</sup> In 1980, by a vote of 14 to none, with one abstention, the Security Council censured the enactment by Israel of a ‘basic law’ on Jerusalem, which it found to constitute a violation of international law that did not affect the continued application of the Fourth Convention.<sup>8</sup> 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.<sup>9</sup> 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.”<sup>10</sup>

19. Thus, Israel’s compliance with the Fourth Geneva Convention is not optional based unilateral interpretations. Therefore, enumeration of Israeli activities in the OPT that violated the Fourth Geneva Convention and other relevant 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.

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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).

<sup>7</sup>. UN SC Presidential Statement: UN doc. S/PV.1922, 26 May 1976.

<sup>8</sup>. SC res. 478 (1980).

<sup>9</sup>. Conference of High Contracting Parties to the Fourth Geneva Convention: Declaration, Geneva, 5 December 2001.

<sup>10</sup>. *Legality of the Threat of Use of Nuclear Weapons*, Advisory Opinion, ICJ Reports, 1996, 226, 257, paras. 79, 82.



## **a. Annexation and Illegal Expropriation of Palestinian Land**

20. 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 e.g., Military Order N. 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 91968), 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.

21. 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.<sup>11</sup> 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.<sup>12</sup> 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

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<sup>11</sup>. 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.

<sup>12</sup>. 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."

must extradite such suspects to any other High Contracting Party on request if that state has sufficient evidence to commence a prosecution.

## **b. Jewish Colonial Settlements**

22. For more than 35 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 by Palestinians and thereby to preclude the establishment of a viable independent Palestinian State.

23. 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."<sup>13</sup>

24. 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.<sup>14</sup> 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.<sup>15</sup>

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<sup>13</sup>. 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.

<sup>14</sup>. For more details in this regard see; <http://www.fmep.org/>

<sup>15</sup>. 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."

### **c. Deportation of Palestinians**

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

26. 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.

### **B. United Nations Security Council and General Assembly Resolutions**

27. 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 and UN 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.

#### **IV. ISRAEL COMPLETES DISENGAGEMENT FROM GAZA**

28. Israeli disengagement from Gaza and parts of Northern West Bank is a major milestone in the Middle East peace process and the creation of an independent Palestinian State. This is the third major event for the Palestinians in the year 2005, first being the successful conclusion of Palestinian elections and election of Mr. Mahmoud Abbas as the President and second being the Sharm-El Sheikh Summit, where Palestinian Authority President and the Israeli Prime Minister declared a formal end to violence.

29. Israel has successfully completed its disengagement from Gaza and Northern parts of the West Bank. The Disengagement has started on 15 August 2005. The United Nations Secretary General Mr. Kofi Annan on 18 August 2005 commended the Israeli withdrawal from Gaza strip and part of Northern West Bank. Mr. Annan said that "If there is to be peace in the Middle East, it will require leadership, vision and the willingness of leaders on both sides to make sacrifices for the greater good,". Mr. Annan also noted that it is an important opportunity for the Palestinian Authority to demonstrate its commitment to peace and security by establishing the rule of law in Gaza following the withdrawal. He also condemned the shooting death of Palestinian civilians by an Israeli gunman and sent his condolences to their families and to the Palestinian Authority. The Secretary-General believed that a successful disengagement should be the first step towards a resumption of the peace process, in accordance with the Road Map.

30. Mr. Ibrahim Gambari, Under Secretary General for Political Affairs told the Security Council that Israel's disengagement from Gaza and northern parts of the West Bank marked a "watershed", constituting the first removal by Israel of settlements on Occupied Palestinian Territory. He told that despite the dramatic scenes everybody had seen on television and in newspapers, of Israeli military and police personnel removing settlers from their houses in Gaza, the operation had mostly proceeded smoothly and with surprising speed, aided by the restraint generally observed by militant Palestinian factions.

31. Regarding the Quartet activities, he said that its envoys had met last week in Jerusalem to assess the situation and prepare for the Quartet principals' meeting on 20 September at United Nations Headquarters. The meeting would assess the progress of withdrawal and the issues left pending, as outlined by James Wolfensohn, the Quartet Special Envoy for disengagement. The Quartet would also have an opportunity to chart the next steps in pursuance of the vision of two States, Israel and a sovereign, viable, democratic and contiguous Palestine, living side by side in peace and security.

32. Mr. Gambari further reported that during his four trips to the region before the disengagement, Mr. Wolfensohn had continued to focus on these key issues: border crossings and trade corridors; linking Gaza and the West Bank; movement within the West Bank; the Gaza airport and seaport; and the houses and greenhouses in Israeli settlements. On all those issues, coordination between the Israeli and Palestinian sides had intensified in the last month. He told that while substantial progress had been made in addressing those priorities in the framework of disengagement, much work would be required to bring about agreement on them.

33. However, the Israeli government's plan to remove troops and Jewish settlements from the Gaza Strip would not end Israel's occupation of the territory. Israeli forces would keep control over Gaza's borders, coastline and airspace, and would reserve the right to launch incursions at will. Israel would continue to wield overwhelming power over the territory's economy and its access to trade.

## **V. ICJ ADVISORY OPINION ON LEGAL CONSEQUENCES OF A WALL IN THE OCCUPIED PALESTINIAN TERRITORY AND RELATED UN GENERAL ASSEMBLY RESOLUTION**

34. 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)*. On 8 December 2003, the United Nations General Assembly, decided to submit the question set forth in its resolution ES-10/14, adopted at its Tenth Emergency Special Session, for an advisory opinion on the following question:

What are the legal consequences arising from the construction of the wall being built by Israel, the occupying Power, in the Occupied Palestinian Territory, including in and around East Jerusalem, as described in the report of the Secretary-General, considering the rules and principles of international law, including the Fourth Geneva Convention of 1949, and relevant Security Council and General Assembly resolutions?

35. In its Opinion, the Court found unanimously that it has jurisdiction to give the advisory opinion requested by the United Nations General Assembly and decided by 14 votes to 1 to comply with that request.

### **The following are the highlights of the Opinion:**

**A) 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).**

**B) 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).**

**C) Israel is under an obligation to make reparation for all damage caused by the construction of the wall in the Occupied Palestinian Territory, including in and around East Jerusalem (by 14 votes to 1).**

**D) All States are under an obligation not to recognize the illegal situation resulting from the construction of the wall and not to render aid or assistance in maintaining the situation created by such construction; all States Parties to the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949 have in addition the obligation, while respecting the United Nations Charter and international law, to ensure compliance by Israel with international humanitarian law as embodied in that Convention (by 13 votes to 2).**

**E) The United Nations, and especially the General Assembly and the Security Council, should 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 (by 14 votes to 1).**

36. 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.

## **VI. SIXTIETH SESSION OF THE UNITED NATIONS GENERAL ASSEMBLY**

37. The 60<sup>th</sup> Session of the UN General Assembly adopted a number of resolutions related to the Palestinian crisis. These include, Assistance to the Palestinian people<sup>16</sup>; Israeli practices affecting the human rights of the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem<sup>17</sup>; Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and the occupied Syrian Golan<sup>18</sup>; 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 territories<sup>19</sup>; Work of the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied Territories<sup>20</sup>; Palestine refugees' properties and their revenues<sup>21</sup>; Operations of the United Nations Relief and Works Agency for Palestine Refugees in the Near East<sup>22</sup>; Persons displaced as a result of the June 1967 and subsequent hostilities<sup>23</sup>; Assistance to Palestine refugees<sup>24</sup>; Jerusalem<sup>25</sup>; Peaceful settlement of the question of Palestine<sup>26</sup>; Division for Palestinian Rights of the Secretariat<sup>27</sup>; Committee on the Exercise of the Inalienable Rights of the Palestinian People<sup>28</sup>.

## **VII. OTHER MAJOR DEVELOPMENTS**

### **A. Commission on Human Rights adopts texts on racism, Israeli settlements, Israeli practices in occupied territory and Syrian Golan, 18 April 2005.**

38. The Commission on Human Rights adopted four resolutions on practices fuelling contemporary forms of racism, racial discrimination, xenophobia and all forms of discrimination; Israeli settlements in the occupied Palestinian territory and the Syrian Golan; Israeli practices affecting the human rights of Palestinians in the occupied Palestinian territory; and on human rights in the occupied Syrian Golan.

Under its agenda item on the question of the violation of human rights in the occupied Arab territories, including Palestine, the Commission adopted a resolution on Israeli settlements in the occupied Palestinian territory, including East Jerusalem, and the

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<sup>16</sup> A/RES/60/126

<sup>17</sup> A/RES/60/107

<sup>18</sup> A/RES/60/106

<sup>19</sup> A/RES/60/105

<sup>20</sup> A/RES/60/104

<sup>21</sup> A/RES/60/103

<sup>22</sup> A/RES/60/102

<sup>23</sup> A/RES/60/101

<sup>24</sup> A/RES/60/100

<sup>25</sup> A/RES/60/41

<sup>26</sup> A/RES/60/39

<sup>27</sup> A/RES/60/37

<sup>28</sup> A/RES/60/36

occupied Syrian Golan by a roll-call vote of 39 in favour to two opposed, with 12 abstentions.<sup>29</sup> In the text, the Commission expressed grave concern about the continuing construction, by Israel of the wall inside the occupied Palestinian territory, including in and around East Jerusalem, which is contrary to international law, and expressed its concern about the route of the wall in departure from the Armistice Line of 1949. It also expressed grave concern at the continuing Israeli settlements and related activities, in violation of international law, including the expansion of settlements, the expropriation of land, the demolition of houses, the confiscation and destruction of property, the expulsion of Palestinians and the construction of bypass roads; as per the new construction plan by the Government of Israel announced on 21 March 2005 and the planned expansion of two other settlement blocks in the West Bank; and at the continued closures of and within the occupied Palestinian territory and the restriction of the freedom of movement of people and goods.

39. The Commission called upon Israel to take and implement serious measures, including confiscation of arms and enforcement of criminal sanctions, with the aim of preventing acts of violence by Israeli settlers, and other measures to guarantee the safety and protection of the Palestinian civilians and Palestinian properties in the occupied Palestinian territory, including East Jerusalem; and demanded that Israel, the occupying power, comply fully with its legal obligations, as mentioned in the advisory opinion rendered on 9 July 2004 by the International Court of Justice. Moreover, the Commission urged the parties to seize the opportunity offered by the current political context to give renewed impetus to the peace process and to implement fully the Road Map endorsed by the Security Council<sup>30</sup>, with the aim of reaching a comprehensive political settlement in accordance with the resolutions of the Council.

40. In a resolution on Israeli practices affecting the human rights of the Palestinian people in the occupied Palestinian territory, including East Jerusalem, adopted by a roll-call vote of 29 in favour, to ten opposed, with 14 abstentions, the Commission condemned the use of force by the Israeli occupying forces against Palestinian civilians. The Commission demanded that Israel comply with its legal obligations under international law, and that it cease the construction of the wall in the occupied Palestinian territory.

#### **B. Meeting of the Security Council on the situation in Middle East including the Palestinian question, 21 July 2005.<sup>31</sup>**

41. On 21 July, the Council held an open debate on the situation in the Middle East, including the Palestinian question, in response to a request by the Group of Arab States for an immediate meeting of the Security Council to consider recent developments in the occupied Palestinian territory, including East Jerusalem. The United Nations Special Coordinator for the Middle East Peace Process, Alvaro de Soto, briefed the Council on

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<sup>29</sup> E/CN.4/2005/L.2/Rev.1, 12 April 2005 Commission on Human Rights, Sixty-first session.

<sup>30</sup> S/RES/1515 (2003), Adopted by the Security Council at its 4862nd meeting, on 19 November 2003.

<sup>31</sup> S/PV.5166 Security Council Sixtieth year 5166th meeting Thursday, 21 April 2005, New York



the latest developments in the region. The Council continued to support a comprehensive and just settlement in the Middle East, based on Security Council Resolutions<sup>32</sup>, the foundations of the Madrid Conference, the principle of land for peace, and the initiative of the Crown Prince of Saudi Arabia endorsed at the Beirut summit of the League of Arab States.

**C. The Draft Resolution on the Situation of and Assistance to Palestinian Women was adopted by Economic and Social Council, 26 July 2005<sup>33</sup>.**

42. Economic and Social Council adopts 16 texts on coordination, regional cooperation, Economic questions, human rights, Resolution on Palestinian women. The draft was adopted in a recorded vote of 46 in favour<sup>34</sup>, 2 against<sup>35</sup>, and 4 abstentions<sup>36</sup>. The representative of the United States said that he would vote against the resolution. In explanation of vote before the vote, he said US remained deeply concerned about the impact of the current crisis on Palestinian women and the rest of the Palestinian population and that it was the largest national donor to the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) and also contributed significantly to other United Nations programmes assisting Palestinian women and the Palestinian population. He also grieved for the Israeli women who had suffered and died as a result of the crisis. He remarked that both the parties were at a moment of genuine, and fragile, opportunity and the international community should focus on helping both parties maintain progress and that one-sided resolutions would not serve that purpose.

**D. International Women's Commission to be established to ensure increased representation of women at all decision-making levels, 28 July 2005.**

43. In an effort to work for a genuine negotiation towards a just and sustainable peace based on a two-state solution, 35 Palestinian, Israeli and international women leaders and activists met in Istanbul July 26-28, 2005. The group decided to establish for the first

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<sup>32</sup> S/RES/242 (1967), Resolution 242 (1967) of 22 November 1967

S/RES/338 (1973), Resolution 338 (1973) of 22 October 1973

S/RES/1397 (2002), Resolution 1397 (2002) adopted by the Security Council at its 4489th meeting, on 12 March 2002

S/RES/1515 (2003), Resolution 1515 (2003), adopted by the Security Council at its 4862nd meeting, on 19 November 2003

<sup>33</sup> ECOSOC/6175, Economic and Social Council, 2005 Substantive Session, 39<sup>th</sup> Meeting

<sup>34</sup> Albania, Armenia, Azerbaijan, Bangladesh, Belgium, Belize, Benin, Brazil, China, Colombia, Congo, Cuba, Denmark, Ecuador, France, Germany, Guinea, India, Indonesia, Ireland, Italy, Jamaica, Japan, Kenya, Lithuania, Malaysia, Mauritius, Mexico, Mozambique, Namibia, Nigeria, Pakistan, Panama, Poland, Republic of Korea, Russian Federation, Saudi Arabia, Senegal, South Africa, Spain, Thailand, Tunisia, Turkey, United Arab Emirates, United Kingdom, United Republic of Tanzania.

<sup>35</sup> Australia, United States

<sup>36</sup> Canada, Democratic Republic of the Congo, Iceland, Nicaragua

time an International Women's Commission to ensure the implementation of the UN Security Council Resolution 1325<sup>37</sup> that calls upon all State Parties to ensure increased representation of women at all decision-making levels.

44. The International Women's Commission (IWC) will work to guarantee women's full participation in formal and informal Israeli-Palestinian peace negotiations, based upon principles of gender equality, women's human rights, international human rights and humanitarian law in any future resolution of the conflict to bring about an end of the Israeli occupation and a just and sustainable peace. The Commission's work will be guided by a charter of principles that was developed and adopted at the Istanbul meeting. The goal of the IWC is to incorporate diverse women's perspectives, voices, and experiences into the peace process, and make sure that the rights and issues of women affected by the conflict are raised and effectively addressed including issues dealing with women's political, economic, social and cultural rights, and human security. The group expects to formally launch the Commission in September 2005.

#### **E. UN Special Committee calls for new thinking on Israeli-Palestinian relations, 27 October 2005.**

45. The Special Committee opined that, the United Nations General Assembly should be more innovative in its approaches to the question of Palestine, Israel should distinguish between military objectives and civilians and the Palestinian Authority should control Palestinian armed groups so as to stop violence against civilians

46. The three-member Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied Territories recommended that the General Assembly "think of innovative ways to fulfil its responsibility with respect to all aspects of the question of Palestine until this question is resolved in conformity with relevant United Nations resolutions and norms of international law, and until the inalienable rights of the Palestinians are fully realized." The recommendation for actions that the Assembly should take included, to monitor implementation of the advisory opinion of the International Court of Justice (ICJ) asking Israel to comply with its legal obligation to cease building its separation barrier in the Occupied Palestinian Territory (OPT), including in and around East Jerusalem, and to make sure that no other State is helping Israel with the project.

47. The Government of Israel should respect the applicability of the Fourth Geneva Convention governing the protection of civilian populations in wartime to OPT and the occupied Syrian Golan "and distinguish in all circumstances between military objectives and civilian persons and objects." It should also cease extra-judicial killings and stop destroying Palestinian property and confiscating large areas of Palestinian land, it says. The Palestinian Authority should apply the provisions of the Fourth Geneva Convention and "exert control over Palestinian armed groups in such a way that they refrain from any

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<sup>37</sup> S/RES/1325, United Nations Security Council Resolution 1325 on Women, Peace And Security, October 2000. It is the first resolution ever passed by the Security Council that specifically addresses the impact of war on women, and women's contributions to conflict resolution and sustainable peace.

act of violence against civilians." In accordance with international standards, it should also bring to justice those responsible for planning or participating in attacks against Israeli or Palestinian civilians. From 25 June to 9 July, the Committee said, it interviewed 46 witnesses from Palestinian and Israeli non-governmental organizations (NGOs) and individuals from Syria in Egypt, Jordan and Syria.

**F. Amnesty International expresses concern over the government-sponsored law, which would grant security forces the power to hold detainees in isolation for 50 days if they are not classified as residents of Israel, 4 November 2005.**

48. Amnesty International is urging members of the Israeli Knesset to reject a new government-sponsored law which would grant security forces the power to hold detainees in virtually total isolation from the outside world for up to 50 days, if they are not classified as residents of Israel. The government admits that the proposed law<sup>38</sup> is primarily aimed at Palestinians from the Gaza Strip, though it would also apply to other non-Israelis suspected of security offences. Under the proposed law, suspects detained incommunicado for interrogation by the General Security Services (GSS) could be denied access to a lawyer for 50 days. It is during incommunicado detention, when detainees are held completely cut off from the rest of the world that they are most at risk of being subjected to torture and ill treatment to force them to provide confessions or information. The proposed new law bars the detainees from being present when a court considers extending their detention when an appeal against such an extension is heard.

49. Amnesty International considers that the proposed law, if enacted would violate Israel's obligations under international human rights treaties to which it is a party – including the International Covenant on Civil and Political Rights (ICCPR), the International Convention on the Elimination of All Forms of Racial Discrimination (CERD) and the Convention against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture).

50. The prohibition on discrimination is a cornerstone of international human rights law and the status of detainees as non-citizens or non-residents cannot serve to deny them their rights, which are protected under international human rights law.

51. UN Security Council Resolution 1456, of 20 January 2003 states that States must ensure that any measure taken to combat terrorism comply with all their obligations under international law, and should adopt such measures in accordance with international law, in particular international human rights, refugee, and humanitarian law.

52. According to the UN Human Rights Committee, aliens are entitled to equal protection by the law, and there must be no discrimination between aliens and citizens in

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<sup>38</sup> Criminal Procedure (Enforcement Powers - Special Provisions for Investigating Security Offenses of Non-Residents) (Temporary Provision) Law, 5765 – 2005

the application of these rights.<sup>39</sup> The UN Committee on the Elimination of Racial Discrimination has called on states to: “Ensure that non-citizens detained or arrested in the fight against terrorism are properly protected by domestic law that complies with international human rights, refugee and humanitarian law”.<sup>40</sup>

53. Such risk is widely recognized by UN human rights bodies and experts, who have consistently urged states to allow detainees prompt access to lawyers. The UN Human Rights Committee, on 21 August 2003, expressed concern that: “...the use of prolonged detention without any access to a lawyer or other persons of the outside world violates articles of the Covenant...”and called on Israel to: ...ensure that no one is held for more than 48 hours without access to a lawyer”. In a letter to members of the Israeli Knesset’s Constitution, Law and Justice Committee and its Foreign Affairs and Security Committee, Amnesty International expressed concern that the law would discriminate against non-residents and also place detainees at greater risk of torture or ill-treatment.<sup>41</sup>

#### **G. UNRWA Emergency Appeal 2006, 8 December 2005**

54. For the sixth consecutive year, UNRWA is appealing to donors to fund an emergency programme for the occupied Palestinian territory. In spite of the disengagement of Israeli settlers and army from the Gaza Strip, and an overall significant decline in levels of violence and destruction of property during 2005, the Agency has yet to see any improvement in key humanitarian indicators. Poverty rates increased in 2005 compared to 2004, and the access regime, in spite of a short-lived improvement in Gaza during the second quarter of the year, remains largely unchanged with the exception of internal movement within the Gaza Strip as a result of disengagement. In some important respects, such as access to health for Palestinian residents of the OPT, conditions may even have worsened lately.

55. As the World Bank and others have repeatedly noted, increased donor spending within this policy environment cannot be expected to achieve long-term results. The maintenance of appropriate levels of humanitarian assistance is therefore crucial to sustain the population until developments in the peace process can hopefully bring about an easing of the closure regime. In this context, UNRWA’s five-year old emergency programme has allowed refugees to concentrate their limited resources on other essential needs. Reducing humanitarian assistance will put extreme stress on these already over-

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<sup>39</sup> Human Rights Committee, General Comment 15, The position of aliens under the Covenant (Twenty-seventh session, 1986), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.1 at 18 (1994).  
Prevention of Discrimination, The rights of non-citizens  
Progress report of the Special Rapporteur, Mr. David Weissbrodt, submitted in accordance with Sub-Commission decisions 2000/103 and 2001/108, as well as Commission decision 2002/107, E/CN.4/Sub.2/2002/25, 5 June 2002

<sup>40</sup> Committee on the Elimination of Racial Discrimination, General Recommendation 30, Discrimination against Non-citizens, Sixty-fourth session, 2004, U.N.Doc.CERD/C/64/Misc.11/rev.3 (2004).

<sup>41</sup> <http://web.amnesty.org/library/Index/ENGMDE150562005>

stretched resources and increase already serious poverty. Likewise, it is hard to see how a reduction in humanitarian aid can have positive consequences for popular support for further steps towards peace and stability, within a climate of law and order.

56. In order to direct fundraising energies on the most basic requirements of sustaining the refugee community in the interim, UNRWA has distilled its Emergency Appeal for 2006 to focus on measures which provide temporary relief to the poverty which the closure regime has wrought. This will be achieved through an emphasis on offering sources of income to refugee households through temporary employment opportunities, limited cash assistance and a programme of emergency food distribution to combat food insecurity.

57. This Appeal document provides a brief overview of developments during 2005 and sets out the humanitarian context to the programme. Project sheets provide an overview of interventions proposed in temporary employment, food assistance, cash assistance, mobile health clinics and operations support.

#### **H. Final Communiqué of the Third Extraordinary Session of the Islamic Summit Conference "Meeting the Challenges of the 21<sup>st</sup> century, Solidarity in Action", Makkah al Mukarramah, 7-8 December 2005**

58. The Conference stressed the importance of the question of Palestine as the central cause of the Muslim Ummah. The ending of the Israeli occupation of the Arab and Palestinian territories occupied since 1967, including East Jerusalem, the Syrian Golan and the remaining occupied Lebanese territories in compliance with Security Council Resolution 425, constitutes a vital request for the entire Muslim Ummah. This question should unify the Muslim position regarding the comprehensive settlement of the question of Palestine in accordance with the United Nations resolutions, the Arab Peace Initiative and the Roadmap. Efforts should be made to regain the city of Al-Quds, safeguard its Islamic and historical character, preserve and protect Al-Aqsa Mosque and other sacred sites, counter the judaization of the Holy City, support the Palestinian institutions in the city, and establish Al-Aqsa University in the city of Al-Quds. The Conference called for support to the Waqf of Al-Quds Fund with each Muslim individual contributing one dollar, besides contributions by Member States in order to preserve the holy sites in the city of Al-Quds, including in particular Al-Aqsa Mosque, safeguard the sacred city's cultural and historic landmarks and Arab-Islamic identity, and strengthen the steadfastness of its population so that it may regain its character as a city of coexistence and tolerance and the capital of the State of Palestine. The Conference reiterated working hand in hand with the international community to cease and dismantle settlements in the occupied territories. It also called for a halt in the building of the Separation Wall and its demolition in accordance with the Opinion of the International Court of Justice.

#### **I. Mr. Shimon Peres supports the new political party**

59. Labour Party leader and former Prime Minister of Israel Shimon Peres announced his support to the new political party formed by the Prime Minister Ariel Sharon. Many political analysts believe that the recent political developments came from the realization

that the Zionist State cannot continue to suppress the people of occupied territories. They believe the time has come for Israel to withdraw behind well-defined borders and arrive at a two-State' solution to the long-standing conflict.

#### **J. Israeli Prime Minister Suffered a Massive Stroke, 18 December 2005**

60. Israeli Prime Minister Mr. Ariel Sharon suffered a stroke on 18 December 2005. Following this His deputy, Mr. Ehud Olmert, has taken over as caretaker Prime Minister. Observers feel that the worsening health situation of Mr. Ariel Sharon might have an adverse impact on the ongoing peace process in the Middle East. Chief Palestinian negotiator Saeb Erekat said that the Middle East has weathered what he called two recent "political volcanoes": the formation of Israel's new Kadima political party by Prime Minister Ariel Sharon, and Mr. Sharon's health crisis following a massive stroke. Former Israeli Prime Minister Shimon Peres said he expected Acting Prime Minister Mr. Olmert to continue Ariel Sharon's policies, but he did not rule out the possibility of a breakthrough in the future. "There may emerge a great opportunity to go further after Gaza [resolution] and to try to look for a possible solution in the West Bank in accordance with the Roadmap [for Middle East peace]," he said. It seems clear that Mr. Ariel Sharon's active political days are over, and thus his political legacy would now be widely debated. His new political party, Kadima, represented a consolidation of views broadly revolving around a centrist position, but more importantly it reflected his own acknowledgement that he had to chart a new political direction as leader of all Israelis.

### **VIII. LATEST DEVELOPMENTS**

#### **A. HAMAS GETS MAJORITY IN THE PALESTINIAN ELECTION, 25 JANUARY 2006**

61. Elections to the Palestinian Legislative Council were conducted in a peaceful and fair manner on 25 January 2006. The CEC released the final results of the count on 29 January 2006 which were as follows: The list of Change and Reform obtained 74 seats; the Fatah Movement obtained 45 seats; the list of the Martyr Abu Ali Mustapha obtained 3 seats; the Alternative received 2 seats; Independent Palestine received 2 seats; the Third Way received 2 seats; and the Independents list obtained 4 seats.

62. Mr. Khalid Mish'al, Head of the Political Bureau of Hamas, stated that Hamas is extending a hand of peace to those who are truly interested in a peace based on justice. He stated "While we are keen on having friendly relations with all nations we shall not seek friendships at the expense of our legitimate rights. We have seen how other nations, including the peoples of Vietnam and South Africa, persisted in their struggle until their quest for freedom and justice was accomplished. We are no different, our cause is no less worthy, our determination is no less profound, and our patience is no less abundant." In his message to the Israelis, he stated that, "Our conflict with you is not religious but political. We have no problem with Jews who have not attacked us-our problem is with

those who came to our land, imposed themselves on us by force, destroyed our society, and banished our people”.

63. Reacting to the Result, Acting Prime Minister of Israel, Mr. Ehud Olmert issued a statement that the State of Israel upholds the Roadmap and continues to demand that PA Chairman Abu Mazen carry out the commitment to dismantle all terrorist organizations and their infrastructures; the State of Israel will not conduct any negotiations with any Palestinian administration even part of which is composed of an armed terrorist organization that calls for the destruction of the State of Israel and Israel will continue to act against the terrorist organizations wherever necessary. The Statement also says that the State of Israel will work with the international community so that no dialogue is conducted with Hamas or with the PA before it and its chairman fulfill the following terms: i) The terrorist organizations are disarmed and the path of terrorism is abandoned; ii) The existence of the State of Israel is recognized and the Hamas Covenant, which calls for Israel's destruction, is annulled; and iii) All agreements and understandings that were signed and entered into between Israel and the PA are recognized.

64. Professor Ekmeleddin Ihsanoglu, Secretary-General of the Organization of the Islamic Conference (OIC), expressed his sincere congratulations to the Palestinian people and the leadership of the Palestinian National Authority (PNA) on the success of their elections for the Palestinian Legislative Council (PLC), which have been conducted in a democratic, civilized, and calm climate. The Secretary-General urged the Palestinian people and Palestinian factions to complete the transfer of power with the same political maturity and civilized, peaceful spirit. For the sake of protecting the interests of the Palestinian people, he urged them to respect political pluralism and called on Hamas to adopt a realistic approach in dealing with international political variables in order to safeguard the Palestinian people's rights and acquired gains.

65. The Secretary-General of the OIC exhorted the international community to respect the results of the elections, which reflect the democratic choice of the Palestinian people, without preconceived ideas and to continue to support the peace process in order to enable them to gain liberation and establish their independent Palestinian State with Al-Quds Al-Sharif as its capital, in accordance with the resolutions of international legitimacy.

66. The Middle East Quartet (United Nations, European Union, Russian Federation, United States) met on 30 January 2006 in London and congratulated the Palestinian people on an electoral process that was free, fair and secure. Representatives of the Quartet include United Nations Secretary-General Kofi Annan, Russian Foreign Minister Sergei Lavrov, Austrian Foreign Minister Ursula Plassnik, United States Secretary of State Condoleezza Rice, High Representative for European Common Foreign and Security Policy Javier Solana, and European Commissioner for External Relations Benita Ferrero-Waldner.

67. The Statement issued by the Quartet stated that it believed that the Palestinian people have the right to expect that a new Government will address their aspirations for

peace and Statehood, and it welcomed President Abbas' affirmation that the Palestinian Authority is committed to the Road Map, previous agreements and obligations between the parties, and a negotiated two-State solution to the Israeli-Palestinian conflict. It was of the view that all members of a future Palestinian Government must be committed to non-violence, recognition of Israel, and acceptance of previous agreements and obligations, including the Road Map. The Quartet urged both parties to respect their existing agreements, including on movement and access.

68. The Quartet expressed its concern over the fiscal situation of the Palestinian Authority, and urged measures to facilitate the work of the caretaker Government to stabilize public finances, taking into consideration established fiscal accountability and reform benchmarks. The Quartet also concluded that it was inevitable that future assistance to any new Government would be reviewed by donors against that Government's commitment to the principles of non-violence, recognition of Israel, and acceptance of previous agreements and obligations, including the Road Map. The Quartet called upon the newly elected Palestinian Legislative Council (PLC) to support the formation of a Government committed to these principles, as well as the rule of law, tolerance, reform and sound fiscal management. Both parties were reminded of their obligations under the Road Map to avoid unilateral actions which prejudice final status issues. The Quartet reiterated its view that settlement expansion must stop, reiterated its concern regarding the route of the barrier, and noted Acting Prime Minister Olmert's recent statements that Israel will continue the process of removing unauthorized outposts.

## **IX. GENERAL COMMENTS**

1. By holding successful, fair and peaceful election to the Palestinian Legislative Council, Palestinians have once again proved their commitment to democracy and peace. Hamas has got a clear majority to form the government. The problem lies in the fact that the Israel, the USA and the EU do not want to recognize Hamas. These countries have reservations to the Hamas opposition to the recognition of Israel. They are clearly planning to use financial aid as a lever to force Hamas to soften its stance on Israel. However, there can be no justification for not recognizing the government headed by the Hamas. Palestinian's democratic choice should be respected.

2. Uncertainty on the fate of the Middle East Peace process is aggravated by two major developments in the Middle East: the worsening health condition of Israeli Prime Minister Mr. Ariel Sharon; and Victory of Hamas in the Palestinian Parliamentary elections. 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 a peaceful coexistence with its neighbours and in consonance with the Resolutions of the UN General Assembly and Security Council. Israel must recognize that peace between Palestinians and Israelis cannot be piecemeal. It will have to be peace between all Israelis and all Palestinians in the area. There is the bitter reality of 39 years of a non-stop Israeli military occupation that has battered the Palestinians



beyond recognition, but failed to break the Palestinians' will and determination to ascertain the basic human and national rights that are justly due to every indigenous people.

3. It is a positive development that Israel had completed its disengagement from Gaza and parts of Northern West Bank. This is the first time since the Sinai pullout of 1982 that Israel is vacating territory that it has forcibly occupied. However, Gaza is only a small fraction of the land it occupied in the 1967 war. Moreover, Israeli forces will control the movement of Palestinians from Gaza to the West Bank. Unless Israel can guarantee a withdrawal from other occupied territories, the Gaza pullout, with all its conditionalities, will remain meaningless for Palestinians, and may even sow the seeds of more violent discontent in the region. For the Palestinians, Gaza is nothing without Israeli withdrawal from the West Bank and Jerusalem — the proposed capital of the State of Palestine — and without the right of Palestinian refugees to return to their homes in Israel.

4. The drastic turn created by the death of President Yasser Arafat has been mitigated to a certain extent by the successful conclusion of the Palestinian Presidential election. Palestinians have supported the democratic process in a big way and has proved the resolute of Palestinian people to strive for their genuine cause. The need of the hour is to end all forms of violence and initiate a constructive process that would hasten the creation of an independent Palestinian State. It is a welcome development that Israel and the Palestinian Authority had their highest-level contact in Sharm-el-Sheikh. Their statements to end violence would be a significant breakthrough in the peace process and for achieving a just, lasting and comprehensive peace.

5. The actual dangerous problem in this process is the construction of the wall by Israel in Palestinian Occupied Territory. In a landmark advisory opinion rendered by the International Court of Justice in July 2004 found that 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, were contrary to international law. Court also opined that Israel was under an obligation to terminate its breaches of international law; it was 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, it was under an obligation to make reparation for all damage caused by the construction of the wall in the occupied Palestinian territory, including in and around East Jerusalem. The Court also wanted the United Nations, and especially the General Assembly and the Security Council, should 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.

6. Despite the overwhelming unanimity, legally, in the form of the Advisory Opinion of the highest judicial power of the United Nations and politically by different tendencies statements against the construction of the wall, Israel is still defying world opinion and is continuing its flagrant violation to International Law International

Humanitarian Law (Geneva Conventions) and UN Resolutions regardless all dangerous consequences which might hinder all the efforts towards achieving the Road Map Vision and loosing the new era of non violence which was brought to the area by the Democratic new Palestinian Authority invigored by all the world wide support to it.

7. It may be recalled that the tension in the Middle East, ever since the founding of the State of Israel in 1948, has been a constant source of threat to the maintenance of international peace and security. At Camp David in 1978 and in Oslo in 1993, Israelis, Egyptians and Palestinians have endorsed the only reasonable prescription for peace: United Nations Resolution 242, it condemns the acquisition of territory by force, calls for withdrawal of Israel from the occupied territories, and provides for Israelis to live securely and in harmony with their neighbors. There is no other mandate whose implementation could more profoundly improve international relations in this troubled area.

8. Over the years, Israel as the occupying power has continued to use excessive and indiscriminate force against the civilian population under its occupation, committing war crimes, state terrorism and systematic human rights violations against the Palestinian people on a daily basis. The world has witnessed, with consternation, powerlessness or resignation, a disconcerting deterioration in the situation on the ground, resulting in an undoubted setback to the Palestinian-Israeli peace process. Now countless months of confrontations, acts of violence and tragedies have brought about the death of thousands of people including children and the elderly, and have left as many injured. Since 28 September 2000 and with the Al-Aqsa Intifada Israel is imposing its own law and committing atrocities in gross violation of all international law principles. Though the Israeli Government persists in describing the second Intifada as a security crisis or a disruption to the “peace process”, in international law Palestinian resistance to occupation is a legally protected right.

9. For more than 38 years, 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. 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.

10. More important and considered by all International Community as a “historic turning point” was the Beirut Initiative of Peace adopted by Arab Summit which remains till today the prominent Pan Arab initiative which opens a new era of Peace and normalization between “All Arab States and Israel and transcend in force the principle of land for, not only peace, but peace, security, good neighborliness and normalization.

11. There has been a growing demand from the international community that the rights of the Palestinian women and children in the Occupied Palestinian Territories should be protected. Commission on Human Rights, International Women's Commission and the Amnesty International has emphasized the need to protect the rights of Palestinian women and children in the OPT.

12. Until such time as Israel respects its obligations and works for the real will for peace and security in the benefit of its present people and future generations, it is obliged to, 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 Israel has created heavily armed settlements, bypass roads and security zones in the midst of a future Palestinian state that seriously compromise basic Palestinian rights.

13. Till these rights are respected and given, the Palestinian right of resistance to the occupation, due to Israeli refusal to implement the underlying directives established by a consensus within the UN. 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 Summit Beirut Peace Initiative.

14. AALCO as a legal body once again reiterates the urgent need for the international community to take action to address all of the above mentioned serious violations and grave breaches of international law including international humanitarian law being committed by the occupying power against the Palestinian people and urge the Occupying Power "Israel" to seize all the offered opportunities if it wants real peace, security and good neighbouring now and for future generations of her people who endures also from 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.