

A STUDY ON

**THE STATEHOOD
OF
PALESTINE UNDER
INTERNATIONAL LAW**



ASIAN-AFRICAN LEGAL CONSULTATIVE ORGANIZATION
CENTRE FOR RESEARCH AND TRAINING
AALCO SECRETARIAT
NEW DELHI

Preface

The topic of “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” constitutes an important element of the work programme of the Asian-African Legal Consultative Organization (AALCO). The Organization has been considering this topic, from the international law perspective, at its successive Annual Sessions since 1989, and has examined the violation of international law committed by the State of Israel against the Palestinian People.

The issue relating to the Statehood of Palestine once again gained international momentum in 2012. The Fifty-First Annual Session of AALCO held in Abuja, in June 2012, mandated the Secretariat, vide resolution RES/51/S 4 adopted on 22 June 2012, to *inter alia* conduct a study to examine and establish the legal requirements and principles that would determine the status of Palestine as a State, taking into consideration requirements of international law and existing international norms and standards, and to submit the outcome of the study for the further consideration of Member States.

In compliance with the above mandate, the AALCO Secretariat has brought out the study entitled “The Statehood of Palestine under International law”. Palestine, as a territorial entity, has experienced a unique history. Until World War I, Palestine was part of the expansive Ottoman Empire. After the war, Palestine came under the administration of Great Britain by an arrangement with the League of Nations. In 1948 Israel established itself in part of Palestine's territory, and Egypt and Jordan assumed administration of the remaining part. By 1967 Israel took control of the parts administered by Egypt and Jordan and by 1988 Palestine reasserted itself as a State. Recent years saw the international community acknowledging Palestinian Statehood as it promotes the goal of two independent States, Israel and Palestine, co-existing peacefully. This study draws on evidence from the 1924 League of Nations mandate to suggest that Palestine was constituted as a State at that time. Palestine

remained a State after 1948, even as its territory underwent transformation, and this study provides an account of how Palestine has been perceived until the United Nations General Assembly overwhelmingly upgraded the Palestinian Authority’s status to that of “Non-Member Observer State” on 29 November 2012 vide resolution 67/19.

This study contains the following chapters: Executive Summary; a brief history of the conflict; Israeli practices in the Occupied Palestinian Territories in violation of international law; AALCO’s work on the Israel-Palestine conflict; Israel’s violation of international law, in particular, human rights and humanitarian law; jurisdiction of the International Criminal Court with respect to acts committed by Israel in the Occupied Palestinian Territories; recognition of States; criteria for Statehood in international law and Palestine; right to self-determination of Palestinian people and its impact on statehood and conclusion. In addition, to make the publication more useful for AALCO Member States and interested readers, some documents that have an important bearing on the subject matter have also been compiled and included as “Annexures”.

I wish to place on record my appreciation to my colleagues in the AALCO Secretariat, especially Mrs. Anuradha Bakshi, Principal Legal Officer, for conceptualizing and executing this task. I also acknowledge the research assistance provided by Mr. Mahesh Menon, National Law School of India University, Bangalore, who interned with AALCO in 2012.

1 July 2013
New Delhi

Prof. Dr. Rahmat Mohamad
Secretary-General

I

The Statehood of Palestine Under International Law

Executive Summary

1. Introduction

At the end of the first world war, the Territory that historically belonged to Palestine was placed under the Mandate system of the League of Nations with the United Kingdom as the mandate holder. The *Balfour Declaration* which reflected the position of United Kingdom with respect to Palestine made a commitment that a Jewish National Home shall be established within the territory of Palestine. Shortly after the end of the Second World War, Britain referred the question of Palestine to the United Nations. The General Assembly of the United Nations adopted Resolution 181 (II) in 1948 incorporating a plan for the partition of Palestine into two States (Arab and Jewish), an economic union between them and the internationalization of Jerusalem – which was accepted by the Zionist organization and rejected by the Arabs. This was followed by Israel declaring independence and the United States of America granting it recognition. Shortly afterwards, it was admitted to the United Nations too. Notably, the Security Council took no action to enforce the partition plan envisaged by the General Assembly. There then arose an armed conflict between Israel and the neighboring Arab States and in 1949 the belligerent parties entered into a ceasefire. The territory occupied by Israel at the end of this ceasefire was more than what was provided under the partition plan and there was a further expansion to approximately three times the territory allotted under the plan at the end of the Six days war in 1967. Thus West Bank, Gaza and the Golan Heights came under Israeli occupation. This was followed by extension of Israeli law and administration in these territories, with scant regard to objections from the International

Community and resolutions of the General Assembly. Israel also undertook a campaign to settle its citizens in the occupied territories which continues even to the present date.

Meanwhile, in 1964 the Palestine Liberation Organization (PLO) was created at the first Palestine National Council held at Jerusalem on May 20, 1964. The PLO replaced the government of Palestine at the Arab League and claimed for itself the right to represent the Palestinian people. In 1975 the United Nations General Assembly invited the PLO as the representative of the Palestinian people and granted it the status of an observer. Close to two decades after this Palestine National Council proclaimed the State of Palestine on 15 November 1988. This was immediately followed by the General Assembly resolving to change the designation of 'Palestine Liberation Organization' to 'Palestine' within the UN system. Following the Oslo accords in 1993, both the Israel and Palestine mutually recognized each other and in 1995, after negotiations, an agreement was reached on the West bank and the Gaza Strip. The agreement created the Palestinian Authority (PA) which was vested with the limited governing powers provided for in the agreement. Though the accords were not formally extended, the PA continues to exercise its powers and functions under the agreement. On 23 September 2011, the President of Palestine made an application for full membership at the UN. Majority of the Members of AALCO and a significant number of States forming the majority endorsed the application and expressed support for the application. On 31 October 2011, the General Council of UNESCO voted in favour of admitting Palestine as a member state. On 29th November, 2012, the General Assembly upgraded the status of Palestine within the organization as a "non-member observer State".

With failure to achieve any success at negotiations for decades, a part of the Palestinian people took to arms against the State of Israel. In response to the second such armed uprising in 2000, Israel began constructing a Wall between Israel and West Bank to prevent such attacks and over 90% of it has been completed. The Wall has sealed off West Bank from rest of the territory surrounding it and places it at the mercy of Israel for movements of persons and goods inward or outward. Numerous Human Rights bodies of the UN and specialist bodies

appointed by the General Assembly criticized the construction of the wall in view of the hardships and Human Rights violations it caused to the Palestinian residents of the West Bank, on their family life, occupation, health, water resources and standard of living. The construction of the Wall was held to be illegal by the International Court of Justice in 2004 in its advisory opinion rendered at the request of the General Assembly. Gaza strip continues to be under the authority of the PA and the Israeli forces has withdrawn from the territory, however there are severe restrictions imposed on access to the territory by air, land or water. The Golan Heights continues to be under Israeli occupation with the laws and administration of Israel being extended to such territory. In 2008 Israel unleashed a massive armed attack in Gaza leaving several persons dead and injured. In 2012 once again repeated this. In both these incidents there was immense damage to life and property of Palestinians who were subjected to indiscriminate attacks in violation of International Humanitarian Laws.

2. Israeli Practices in occupied Palestinian Territories in Violation of International Law

Ever since the end of the Six day war in 1967, Israel has been in continuous occupation of territory that belongs to historic Palestine. The occupation, the resultant militarization and the acts committed by Israel in these territories has left the Palestinian peoples deprived of the most basic of Human Rights. Reports from numerous governmental, non-governmental and media agencies brought before the world the sheer barbarity of these practices and how it violates International Human Rights and Humanitarian Laws. To study and report on these acts, the General Assembly established the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied Territories. The committee reports on matters related to Israeli settlements, the applicability of the Fourth Geneva Convention and the right of the Palestinian people to return to their territory. Over its numerous years of existence and working, Israel has continuously refused to co-operate with the committee and has also

hindered its smooth functioning by refusing full access to the occupied territories.

The reports of the committee present a story of massive violations of Human Rights and humanitarian laws over the years. The blockade enforced by Israel has been noted to be in the nature of collective punishment to the whole of the population. The freedom of movement impairs economic activities of the population and subjects them to poverty and deprivation. Israel also diverts the natural resources of the occupied territory such as water and prevents the Palestinian people from accessing the same. The most prominent concern according to the committee was the continuing confiscation of Palestinian lands, the demolition of homes and other infrastructure and the consequential displacement of families, the continuing expansion of settlements and the continuing acts of violence against the citizens and their property. The reports also bring out discriminatory practices adopted by Israel in the allocation of natural resources. The reports noted that the committee was informed that nearly 500,000 Israeli settlers occupied over 40 per cent of the land in the West Bank and that 30 per cent of the Israeli settlements has been built on privately owned Palestinian land. The escalation of incidents of violence perpetrated by the settlers on the civilians of Palestine was also noted. The direct and extensive cooperation between the settlement organizations of Israel and its authorities has also been noted. Such cooperation extended to surveying and confiscation of Palestinian Lands and demolition of Palestinian structures. The protection granted by the authorities to Israeli settlers who attack Palestinian civilians and their properties and several incidents of such nature have also been brought forth. The overtly discriminatory nature of the practices of law enforcement vis-à-vis the settlers and the Palestinians were highlighted by the reports. The reports also bring out the indiscriminate nature of practices against women and children – such as arrests, administrative detentions without trial and separation from family. The reports pay special attention on the detention of persons, restrictions on the freedom of movement, the use of landmines and restrictions on access to water for agricultural uses.

In 2008, Israel launched a massive attack on Gaza strip, codenamed operation Cast Lead. In this process Israel, along with military targets, attacked numerous other non-military targets such as police stations political and administrative institutions and also the densely populated cities of Gaza, Khan Yunis and Rafah. In 2009, A United Nations Special Fact finding mission, headed by the South African Judge, Richard Goldstone submitted a report accusing the Israel Defense forces of having committed war crimes and crimes against humanity and recommended that they be brought before justice. The report alleged that Israeli military operation was directed at the people of Gaza as a whole, in furtherance of an overall and continuing policy aimed at punishing the Gaza population, and in a deliberate policy of disproportionate force aimed at the civilian population. It has also been determined that the Israeli army had used children and Palestinian civilians as human Shields and that the Israeli military had used white phosphorous often against Palestinian Civilians. In 2012, such acts were repeated once again, with the military offensive that lasted from 4 to 21 November 2012, Codenamed Operation Pillar of Defense, Israel claimed that the attacks were to counter and target the Hamaz rocket firing and weapon stations. The attacks left close to 200 Palestinian dead and more than 2000 of them injured. Further, attacks were also launched against media houses, which left Palestinian journalists dead and injured. The other targets included homes, police stations, media centres, banks, a football stadium, as well as the buildings of the ministry of culture and education. It is clear from these incidents that Israel pays scant attention to the principles of distinction and of proportionality and has been raising indiscriminate attacks on targets in Palestine over the last several years.

3. AALCO's work on the Israel-Palestine Conflict

The topic "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 Committee's 27th Session which was held in Singapore (1988). At the 37th (New Delhi 1998) Session, the scope of the topic was expanded

to "Deportation of Palestinians and other Israeli Practices" and placed 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" on the agenda of the next session. Ever Since then, the topic has continued to be a deliberated item at every annual session of the organization. Over the years, the Organization has taken a firm position that Israel has been committing numerous illegalities in the occupied territories including : i) The willful killing of Palestinian civilians, using different methods, including by use of sharpshooters, even when soldiers of the occupying power were not in any way subject to life threatening situations; (ii) Bombing and shelling of populated Palestinian areas of buildings belonging to the Palestinian Authority using helicopter gunships, tanks and other heavy weaponry; (iii) Ruining agricultural fields and orchards and destroying industrial and economic facilities; (iv) Imposing severe restrictions on the movement of persons and goods with the outside world and within the occupied Palestinian territory, sometimes even to the level of restrictions on cities and villages. (v) A vast number of other forms of collective punishment and harassment of Palestinian civilians, such as unlawful confinement on the Palestinian inhabitants of Al-Khalil.

Over the years, the Organization has adopted resolutions every year condemning Israel's continued acts of violence, use of force against Palestinians resulting in injury, loss of life and destruction, coercive migration and their deportation in violation of Human Rights and the Fourth Geneva Convention of 1949. The Organization has also affirmed the right of Palestinian People to self-determination and has also demanded that "Israel, the Occupying Power, comply fully with the provisions and principles of the Universal Declaration of Human Rights, the Regulations annexed to the Hague Convention of 1907 and Geneva Convention relative to the Protection of Civilian Persons in Times of War of 12 August 1949, in order to protect the rights of Palestinians". The Organization has also resolved expressing support for the advisory opinion of the ICJ in *Legal Consequences of the Construction of a wall in the Occupied Palestinian Territory* and called for compliance with the

same by Israel. Perhaps, most importantly, the Organization has continuously resolved and stated that the Geneva Conventions and other laws of War apply to the occupied territories of Palestine and that the State of Israel is bound by the same.

Every year, the Secretariat has prepared reports monitoring the developments at the United Nations and its Organs and at various other political forums, including the Non-Aligned Movement, The Quartet, United Nations initiatives and the Arab League. The Organizational reports have recorded and approved the observations of numerous United Nations fact finding missions and human rights bodies and have endorsed the same. Every year, the Organization has adopted resolutions reiterating the illegal nature of Israel's acts in the occupied territories and has affirmed the application of the laws of war to the Occupied Palestinian Territories and that Israel was acting in breach of them. Apart from the symbolic significance that these carry, the resolutions are also indicative of the legal positions taken by the Member States with respect to the applicability of the Fourth Geneva Convention to the Occupied Territories of Palestine and that Israel has been in continuous breach of the same.

4. Israel's Violations of International Law, in particular International Humanitarian and Human Rights Law

For well over four decades, Israel has administered a military occupation of the West Bank, the Gaza strip and East Jerusalem in consistent and relentless defiance of the will of the international community. The international consensus has been expressed through widely supported resolutions passed by the UN Security Council (UNSC) and UN General Assembly (UNGA). The Security Council Resolutions 242 and 338 affirmed the legal obligation of Israel to withdraw from Palestinian territories occupied in the 1967 six-day war. However, Israel the occupying power continues to defy the will of the international community, and the horrific atrocities perpetrated on the civilian population in the OPT which continue in one form or the other till date have clearly demonstrated this trend. Until such time as Israel respects its obligation under the Fourth Geneva Convention concerning the

Protection of Civilian Persons in Time of War, 12 August, 1949, as well as other principles of international law in particular those provisions of the Convention that require an occupying power to protect the status quo, human rights and prospects for self determination of the occupied people, violations of the rights of Palestinian civilians shall continue. Since 1967, Israel has refused to accept this framework of legal obligations. Not only has it failed to withdraw from the occupied territories, but during the occupation, Israel has created heavily armed settlements, bypass roads and security zones in the midst of a future Palestinian State that seriously compromises basic Palestinian rights.

Israel's contention that it is not in "occupation" of Palestinian Territory but is in "administration" and therefore, does not come under the purview of the Fourth Geneva Convention and the law of belligerent occupation and the use of the theory of "Missing Reversioner" to justify this position has been rejected by the majority of the members of International Community and also publicists and scholars of international law. AALCO, The General Assembly, the Security Council, the reconvened International Conference of High Contracting Parties to the Fourth Geneva Convention and the International Court of Justice has affirmed the application of the Fourth Geneva Convention on the laws of war to Occupied Palestinian Territories.

Over the years, the state of Israel has also violated numerous binding resolutions of the United Nations bodies concerning the partition plan approved by the UN, the right of Palestinians to return to their homeland, Israel withdrawal from the occupied territories of Palestine, the need to settle the conflict in accordance with the right of self-determination of Palestinian people, and the basic principle of International Law that it is inadmissible to acquire territory by force or conquest.

5. Jurisdiction of the International Criminal Court with respect to Acts Committed by Israel over Occupied Palestinian Territories

On 21 January 2009, the Minister of Justice of the Palestinian National Authority (PNA) lodged with the Court a declaration pursuant to article 12(3) of the Statute, which enables a State not party to the Statute

to accept the exercise of jurisdiction by the Court. The jurisdiction was accepted for the purpose of identifying and prosecuting the authors and accomplices of the acts committed in Occupied Palestine Territory since July 2002. On this question, the OTP sought an open invitation of opinions and it received over 400 communications on crimes allegedly committed in Palestine. The OTP on holding deliberations and seeking opinions published on 3 May 2010 a 'Summary of submissions on whether the declaration lodged by the Palestinian National Authority meets statutory requirements. The OTP studied the issue for over three years and on 3 April 2012 it finally made a determination on the application submitted by Palestine. The Prosecutor determined that it lacked the competence to decide on the issue. It noted that where there was controversy or lack of clarity over whether an applicant constituted to be a state, the practice of the Secretary General was to follow or seek the directive of the General Assembly on the matter. Accordingly, the OTP reached a conclusion that the competence for determining whether Palestine was a "State" for this purpose was with the Secretary General. The OTP thus concluded that it has no authority to make a determination on the competence of Palestine to accept the jurisdiction of the Court and that it is for the relevant organs of the United Nations to make such a determination.

However, the said determination is not good in law. The Prosecutor effectively avoided deciding the question and passing it on to the Secretary General or the Assembly of the States Parties. The Prosecutor in his determination has conflated membership in the United Nations with statehood and has omitted to take note that Article 12 (3) has been drafted precisely to accommodate States that are not members of the United Nations or States Parties to the Conference. Further, the position that Palestine has been admitted as an "Observer" and not as a "Non-Member State" is too technical a distinction for the purposes of Article 12 (3).

The practice of the Secretary General also indicates that that admission for membership in a specialized agency of the United Nations may be taken as appropriate guidance to be followed, as this would be analogous to the guidance that would have been received from the

General Assembly. Notably, in late 2011, Palestine was admitted as a member State of the UNESCO. Its membership is 'fully representative of the international community' and any guidance from the General Assembly would be 'substantially identical' to the position taken by UNESCO.

A number of submissions before the Prosecutor emphasized on the requirement of taking a teleological (or functional) approach to the interpretation of the Rome Statute. It is pointed out that the expression "State" has no uniform meaning in International law and the expression as it occurs in Article 12(3) of the Rome Statute must be understood in the light of the Object and purpose of the Statute. The Rome Statute aims to ensure that "the most serious crimes of concern to the international community as a whole must not go unpunished." Thus, the meaning of the expression "State" for the purpose of the Rome Statute would differ from the interpretation of Statehood generally under Public International law and the Prosecutor can limit to examining the fulfillment by the PA of the requirements of Article 12(3) without embarking on the larger issue of Palestinian Statehood. Several submissions before the OTP pointed out that the preconditions for the exercise of jurisdiction by the Court, which are based on the consent of the State that has territorial and/or active personality jurisdiction, are met in the case of Palestine since it enjoys exclusive territorial title. It was further pointed out that the expression "State" must be interpreted in the light of the Statute as a whole, including Article 21(3).

6. Recognition of States

"Recognition" is a generic term in international law which refers to a unilateral and discretionary act by a State that takes cognizance of a given situation or claim. The most important consequence or fall out of recognition is that the recognizing state cannot subsequently deny or act to the prejudice of the situation so established. It is often suggested that while there may be some criteria prescribed by international law to satisfy the requirements of statehood, whether there exists a duty to recognize an entity satisfying these criteria appears to be lesser the realm of law than politics as there appears to be very little consistent state practice in

this regard. However, it is settled that even without recognition, an entity possessing the characteristics of a State would be entitled to the rights of a State guaranteed by international law. It has been observed that “State practice has also not worried unduly about the somewhat formal point whether before recognition, existing subjects of international law can expect compliance with international law from a non-recognised community” and that “in this situation it would not be easy to subscribe to any of the doctrines that international law requires compliance with the declaratory, constitutive or declaratory and constitutive dogmas of recognition.

Attempts to declare rules about recognition within the framework of international codification have always been rejected. The Committee of Experts for the Progressive Codification of International Law of the League of Nations rejected a proposal of Suarez to formulate ‘a test by which the form of recognition of a Government could be regulated’. The members of the committee opposed any such formulation pointing out that the regulation of this by way of international convention was neither realisable nor desirable.

The topic recognition of States and government has remained on the ILC work programme since 1949 however little interest has been shown in pursuing the matter. In 1973 the consensus was that “the question. Should be set aside for the time being, for although it had legal consequences, it raised many political problems which did not lend themselves to regulation by law. The matter was once again raised in 1996, but no action was taken.

The State of Palestine has been recognized as of November 2012 by 131 of the 193 member States of the United Nations. The State of Palestine maintains a network of diplomatic missions to countries that have recognized or has partially recognized the State. These are predominantly in Africa, Asia and Eastern Europe. In addition to this, Palestine also maintains delegations and other representative offices that represent the Palestinian Authority to other states and multilateral organizations, of which their agents may be accorded some degree of recognition similar to that of other diplomats. The Majority of the

members of AALCO has recognized the State of Palestine and maintains diplomatic relations with the Organization.

7. The Criteria for Statehood in International Law

The problem of Statehood has and what constitutes state has been extensively discussed in a number of forums. The attention has centered on satisfaction of what criterion satisfies the idea of Statehood. Traditional international law has found some answers to this question and has found that four criteria need to be met before an entity can be called a State. In the words of the Montevideo Convention on the Rights and Duties of States "State as a person of international law should possess the following characteristics: (1) A Defined Territory; (2) A Permanent Population; (3) Government; and (4) Capacity to enter into relations with other States.

There is sufficient Practice to indicate that the boundaries need to be fixed and can be the subject matter of dispute and yet the entity may be recognized as a State. The territorial extent of Palestinian State should be established constitutes the West Bank (including East Jerusalem) and the Gaza strip. The 1948-49 armistice lines that delineate West and Gaza (i.e. Israel's pre-1969 borders) would be the international boundaries between Israel and the Palestinian State.

According to the Palestinian Central Bureau of Statistics, the estimated population on Palestinian territory in 2012 was a little over 4.2 million of which over 2.6 million lived in West Bank and over 1.6 in the Gaza Strip. The United Nations Estimates that the number of people living in the Occupied Palestinian Territory would come to about 4.03 million. This satisfies the requirement for a permanent population.

Though more than a 100 States did recognize Palestine following the declaration of Independence in 1988, the Palestine Liberation Organization did not in fact exercise effective governmental control over the Occupied Territories. These acts of recognition had thus effectively ignored the requirement of effective government and hence would have to be regarded as premature. With the creation of the Palestinian Interim Self-Government Authority in the West Bank and in Gaza, Israel has

transferred to the Palestinian National Authority certain governmental powers and responsibilities. According to the Israel-PLO Interim agreement on the West Bank and the Gaza strip, some of the functions of a government has been transferred to the PA which it continues to perform in these territories. Numerous international organizations including expert bodies of the United Nations have attested to the capabilities of PA to govern and has endorsed its functioning and effectiveness. Even as one concedes that the strict application of the criterion of effective government in the context of Palestine raises difficult questions, particularly in view of the ongoing and continuing occupation of its territories by Israel and the division of governmental powers and functions, especially in the Gaza strip, it needs to be noted that there is indeed effective Palestinian government in the Areas A and B of the West Bank. It needs to be then concluded that the effective government criterion has been largely met in part of the defined territory of Palestine.

The Palestinian Authority exercises its capacity to enter into relations with other states through the Palestine Liberation Organization. An overwhelming majority of States has formally recognized the PLO as the representative of the people of Palestine and maintains bilateral relations with it, often to the level of full range of diplomatic relations. The PLO maintains permanent representative offices in more than 70 States and more than 130 countries have accorded it recognition, following its declaration of Independence in the year 1988. Palestine has observer status in a number of International Organizations such as the World Health Organization and full membership in UNESCO and the Movement of Non-Aligned Countries, the Islamic Conference, the Group of 77 and China, and the League of Arab States.

8. The Right to Self-Determination of the Palestinian People and its Impact on Statehood

The Consequence of the principle of territorial integrity would be that *prima facie* self-determination units must be granted self-determination as a whole. Only if the continued unity of the territory is clearly contrary to the wishes of the people or to international peace and security will schemes for partition meet with approval of United Nations

Organs. Attempts made to disrupt the territorial integrity of a self determination unit so as to evade the principle is also excluded.

In the year 1970, the General Assembly of the United Nations declared that the Palestinian People were entitled to the right of self determination in accordance with the Charter of the United Nations. Following this, in the year 1974, the General Assembly recognized the Palestinian Liberation Organization (PLO) to be the representative of the Palestinian people and subsequently granted it the status of an "Observer" at the UN. This was then followed by a recognition of the Proclamation of the State of Palestine at the Algiers Declaration of Independence by the Palestine Liberation Organization. It was also decided that the designation "Palestine" shall be used in the UN system in place of "Palestine Liberation Organization". This was then followed by an affirmation of "the need to enable the Palestinian people to exercise their sovereignty over their territory occupied [by Israel] since 1967." In the year 2004, in its advisory opinion on the *Legal Consequences Constructions of a Wall* the International Court of justice held that " the existence of a 'Palestinian people' is no longer in issue and affirmed their right to self-determination. The Court also emphasized on the need to achieve this as soon as possible on the basis of international law by way of a negotiated settlement to the Palestinian – Israeli conflict and the "establishment of a Palestinian State existing side by side with Israel...with peace and security for all in the region".

It is thus an undeniable fact that the people of Palestine has an undeniable right under International law for Self Determination and out of which and for the fulfillment of which there arises a right to establish a sovereign and independent State.

9. Conclusions

More than four decades have passed since Israel first illegally occupied territories belonging to Palestine. Despite a mix of legal and political solutions being attempted by the International community to curtail Israel's expansionist policies, the settlements activities have continued unabated. The reports of the Charter based Human Rights bodies of the UN and in particular the numerous reports of The Special

Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied Territories testify to the nature of human rights violations committed by Israel in the occupied territories and how it makes life for Palestinians a miserable one. The reports also provide enough instances of violations of the Laws of War and in particular the Geneva Conventions on the Laws of War. The International Community and members of AALCO has time and again affirmed that these acts are violations of the Fourth Geneva Convention on the Laws of War and that Israel is responsible for the same. The stand taken by the Prosecutor of the ICC that he is unable to determine whether Palestine is a “State” is an untenable one. It needs to be observed here that the approach taken by the OPT should have been to determine whether Palestine is “State” for the purposes of the Rome Statute. Further, it may also be observed that Palestine qualifies to be a “State” under international law as: a) the Palestinian people has a right to self determination, which needs to be fulfilled in the form of a sovereign and independent State. This vision of a two State solution is shared by the International Community, including Israel, b) Palestine fulfills the legal criteria for Statehood as Palestine defined territory is the territory occupied by Israel in 1967, The Palestine Authority exercises stable and substantial control over territory, there is a population for the State of Palestine and there is maintenance of diplomatic relations with a vast majority of the members of International Community.

The issues that rage Palestine, apart from those caused by Israel are the internal divisions within the State of Palestine. The cleavage of authority and control between Hamas and the Palestinian Authority substantially affects the capacity for Palestine to present itself as a unified and working entity before the International community. A unified movement would enable centralization of authority and coherence in the working of the existing authorities, making the case for Statehood a stronger one before the International Community. 2012 has witnessed unprecedented political support for the cause of the Palestinian people following Israel’s latest offensive against Gaza and plans for expanding its settlements. In such times a unified and coordinated action from within the people of Palestine would make their case a stronger one.