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**ASIAN-AFRICAN LEGAL CONSULTATIVE ORGANIZATION**



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**VIOLATIONS OF INTERNATIONAL LAW IN PALESTINE AND OTHER  
OCCUPIED TERRITORIES BY ISRAEL AND OTHER INTERNATIONAL LEGAL  
ISSUES RELATED TO THE QUESTION OF PALESTINE**

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## **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 introduced at the AALCO’s Twenty-Seventh Annual Session, held in Singapore (1988), at the recommendation of the Government of the Islamic Republic of Iran. The Government of the Islamic Republic of Iran, submitted to the AALCO Secretariat a Memorandum, requesting the Secretariat to study the legal consequences of the deportation of Palestinians from occupied territories.

2. At the Thirty-Fourth Session held in Doha (1995) the Organization, *inter alia* decided that this item be considered along with the question of the Status and Treatment of Refugees. Further at the Thirty-Fifth Session the Secretariat was directed to continue to monitor the developments in the occupied territories from the viewpoint of relevant legal aspects.

3. At the subsequent Sessions, the scope of the item was enlarged, *inter-alia*, to include, at the Thirty-Seventh Session (New Delhi, 1998), “Deportation of Palestinians and other Israeli Practices”, and the item “Deportation of Palestinians and other Israeli Practices among them the Massive Immigration and Settlement of Jews in the Occupied Territories in Violation of International Law Particularly the Fourth Geneva Convention of 1949” was placed on the agenda of the Thirty-Eighth Session (Accra 1999).

4. At the Thirty-Ninth Session (Cairo, 2000) Session, it was decided to further enlarge the scope of the item and the Secretariat was directed to monitor the developments in (all) occupied territories from the viewpoint of relevant legal aspects. The item has since been seriously discussed at the successive Sessions of the Organization as part of its Work Programme and the Organization has examined the violations of international law committed by the State of Israel against the Palestinian People.

5. 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 further consideration of the Member States. In compliance with this mandate, the AALCO Secretariat has brought out the study entitled “The Statehood of Palestine under International law”.

6. More recently, in light of the grave violations of international law by the State of Israel in Gaza, the issue was once again deliberated at the Fifty-Fourth Annual Session held in Beijing, (2015) and AALCO/RES/54/S 4 was passed which changed the title of the agenda item to “Violations of International Law in Palestine and Other Occupied Territories by Israel and other International Legal Issues related to the Question of Palestine.”

7. In 2017, the Secretariat of AALCO prepared a “Special Study” titled “The Legality of Israel’s Prolonged Occupation of Palestinian Territories and its Colonial Practices Therein” in pursuance of the mandate given to it at the Fifty-Fifth Annual Session held in New Delhi in 2016.

8. At the Fifty-Seventh Annual Session of AALCO (Tokyo, 2018), the deliberations focused on the relocation of its Embassy by the United States of America to Jerusalem in contravention to various UN Security Council and General Assembly Resolutions. The discussions also focused upon the continuous violations of International Human Rights Law and the International Humanitarian Law in the Gaza Strip as well as the West Bank and other parts of occupied Palestinian Territory. Further, a mandate was also provided to the AALCO Secretariat to prepare a “Special Study” on the recent US action recognizing Jerusalem as the capital of Israel and the illegality of the shifting of the embassy to Jerusalem in light of the recent application submitted by the State of Palestine against United States of America to the ICJ for violations of the Vienna Convention on Diplomatic Relations, 1969.

9. In 2019 the Secretariat of AALCO presented the Special Study titled ‘The Status of Jerusalem in International Law: A Legal Enquiry into the recent attempts to disrupt the status quo’ which focused on the legal analysis of the relocation of the embassies in Israel to Jerusalem. The statements delivered by the Member States on the agenda item of Palestine focused upon the violations of international humanitarian law in general and the law of occupation in the occupied territories of Palestine. In addition the violation of the right of the refugees to return and compensation was also the subject of deliberation. Member States also

condemned the relocation of the embassies in Israel to Jerusalem as a violation of the Vienna Convention on Diplomatic Relations, 1963 as well as the customary international law relating to recognition.

## **II. Deliberation at the Fifty-Eighth Annual Session of AALCO (Dar es Salaam, the United Republic of Tanzania, 21- 25 October 2019)**

10. At the Fifty-Eighth Annual Session of AALCO held at Dar es Salaam, the United Republic of Tanzania, Agenda Item titled “Violations of International In Law in Palestine and Other Occupied Territories by Israel and other International Legal Issues Related to the Question of Palestine” was discussed at the third general meeting on 22 October 2019. The violations of international humanitarian and human rights law were highlighted to point out the plight of the people of Palestine who bear the brunt of the occupation in their daily lives. The delegations stressed the need to recognize East Jerusalem as the capital of the sovereign State of Palestine condemning all efforts to alter the *status quo*. The delegations condemned all measures to alter the legal status of *Al Quds Al Sharif*, and affirmed that, pursuant to numerous UN resolutions and international conventions those measures had no legal effect.

11. Reference was made to various municipal legislations of the occupying power to highlight the point that all efforts were being made to crush the legitimate aspirations of the Palestinian people to their right of self-determination. Many delegations expressed the view that the conflict should be settled only by resorting to peaceful means and all efforts to unilaterally escalate the conflict should be discouraged. Some States placed insistence upon peace talks, stating that they believed international consensus ought to be achieved on the basis of the two-State solution.

12. **The Secretary-General of AALCO**, in his introductory statement highlighted AALCO’s historical engagement with the subject over the years, stating the same to reflect the Organization’s moral compass. He stated that since 1988, when the topic first came on the Agenda of the Organization, AALCO has consistently applied itself to every conceivable international law dimension concerning the historic land of Palestine and its people. Pointing out the mandate received by AALCO during the previous Annual Session to prepare a Special Study on the subject ‘The Status of Jerusalem under International Law’, the Secretary-General noted the Study was one of the first to comprehensively undertake a legal

analysis of the subject in the wake of the US decision to shift the embassy of the country in Israel from Tel Aviv to Jerusalem and expressed satisfaction with this undertaking. He hoped that the Study would bring clarity on the varied legal dimensions and US State practice on the subject and encouraged Member States to actively participate in the deliberations.

13. Thereafter, the delegates of the **State of Palestine, the State of Qatar, the Republic of Indonesia, the People's Republic of China, the Arab Republic of Egypt, and the Islamic Republic of Iran** delivered statements on the agenda item.

14. **The Delegate of the State of Palestine**, raised a number of issues relating to the occupation of Palestinian territories and disregard for the principles of international law in the treatment of Palestinians by Israel. It was recalled that in spite of many years having passed since the two-state solution the State of Palestine has not been granted full membership in the United Nations. The condition and the plight of the Palestinian refugees were also raised while referring to the legal obligations recognized in UNGA Resolution 194 (II) of 11 December 1948.

15. Concern was raised about the continuing international crimes committed by Israel on the Palestinian people and the point was made that the Member States had implored to seek legal and judicial ways in which accountability may be established. The Member States were also requested to enact legal legislation to prosecute and hold accountable those who commit war crimes, genocide and crimes against humanity regardless of territory of the crime or the nationality of the perpetrator in accordance with their obligations under Article 146 of the Fourth Geneva Convention, 1949. It was also reminded that Israel had signed and ratified the Fourth Geneva Convention and that the International Court of Justice had confirmed that UN General Assembly and Security Council resolutions applied to the whole of the occupied territories including East of the Golan.

16. The delegate of the State of Palestine expressed regret that in spite of such affirmation actions have not been taken to prosecute crimes by the International Criminal Court (ICC). The delegate also expressed that three representations have been made to ICC disclosing war crimes, genocide and crimes against humanity. He stated that action needs to be taken in cooperation with the Pre-Trial Chamber of the ICC in order to initiate an investigation and

action to prosecute and hold accountable those who have committed crimes within the jurisdiction of the Court.

17. With respect to the situation of Jerusalem the delegate of the State of Palestine stated that the United States has made the problem worse by siding with an occupying power that violates the Hague Convention of 1954, the resolutions issued by UNESCO, and numerous General Assembly and Security Council resolutions. It was stated from a legal point of view that these grave violations of principles and norms of international law, must be legally protected by the United Nations. It was also stated with regret that the position in the Security Council has been duplicative in nature due to the influence of the United States.

18. To enforce legal protection for the Palestinian people, it was stated that the support and assistance of such organizations as AALCO and all other regional organizations such as the League of Arab States, OIC, Organization of African Unity, organization of Non-Aligned Movement, the European Union and the Organization of American States were crucial.

19. **The Delegate of the State of Qatar**, reaffirmed the unwavering support of the State of Qatar for the rights of the Palestinian people and its condemnation of illegal Israeli practices in respect of the Palestinian People. It was stated that ensuring stability in the Middle East is linked to a just solution to the Palestinian issue in accordance with the principles, resolutions and Charter of the United Nations, which establishes the right of self-determination and the inadmissibility of annexing the territories of others by force.

20. With regard to the barbaric and aggressive acts committed by the Israeli forces in the Gaza Strip, and the continuation of settlement in the West Bank, the State of Qatar was of the view that such acts must be condemned by all States. It was also reiterated that the resolution of the dispute must be through peaceful means based on the principles of the two-State solution and the Arab Peace Initiative.

21. **The Delegate of the Republic of Indonesia** expressed the view that the current issue of Violations of International Law in Palestine and Other Occupied Territories by Israel and Other International Legal Issues Related to the Question of Palestine is of utmost importance. It was stated that Indonesia strongly deplores Prime Minister Netanyahu's statement

declaring Israel's plan to annex parts of the West Bank if he remains in power. It was also emphasized that Indonesia always attaches priority to the issue of Palestine, particularly during Indonesia's Non-Permanent Membership of the United Nations Security Council for the period of 2019-2020.

22. With a view to establish a credible peace process, the delegate of the Republic of Indonesia put forward the following criteria: inclusivity of all parties of the conflict: Palestine and Israel; Comprehensiveness, seeking solutions not only for economic purposes, but also for political reasons; and conformity with internationally agreed parameters, which addresses the core issues of the conflict such as border issues, settlements, return of refugees, East Jerusalem as Palestine's capital, security and access to water.

23. Before concluding, Indonesia called upon all AALCO members and partner countries to refocus attention on the need for addressing the issue of Palestine as the root cause of all conflicts in the Middle East.

24. **The Delegate of the People's Republic of China** stated that the question of Palestine is at the root core of the Middle East issue and is also the root cause of the regional issues. Safeguarding the legitimate rights and interests of the Palestinian people is the shared responsibility of the international community. Foreign occupation and historical grievances are the source of this complex and difficult issue.

25. Further with respect to the recent conflict in the Gaza Strip, the grim situation in Jerusalem, settlement construction and destruction of Palestinian property, increase in the frequency of inflammatory rhetoric and stalling of the Middle East peace process, it was stated that the international community should continue to endeavour to resolve the Palestinian issue peacefully by upholding multilateralism, promoting dialogue and negotiations, and through political consultations based on international law.

26. For the settlement of the Palestinian issue, China expressed the view that three principles should be observed. Firstly, insisting upon peace talks, and promoting Palestinian-Israeli relation return to the right track of resolving differences through equal dialogue and negotiation at an early date. Secondly, adhering to international consensus and principles including the "two-State solution", relevant UN resolutions, the principle of "land for peace"

and the Arab Peace Initiative, upholding establishing a fully sovereign Palestinian State, and promoting peaceful coexistence of Palestine and Israel as two States. Thirdly, ensuring the voice and propositions of the parties concerned, especially Palestine, are heeded and avoiding imposing any solutions.

27. **The Delegate of the Arab Republic of Egypt**, expressed the firm position on the Statehood of Palestine supporting the Palestinian people for establishing their independent state on all the territories occupied since 1967, with Jerusalem as its capital. It was stated that the stand was based on rules of international law with regard to the illegal of accession of land with force and the related UN resolution, especially UNSC resolution No. 242 of 1967, UNSC resolution 338 of 1973 and 2334 of 2016.

28. In connection with the above, Egypt reiterated that Israeli settlements in occupied Palestinian lands, including Jerusalem, are illegal. These illegal settlements are blatant violations of international law and UN resolutions. Similarly, it was stated that Egypt believed that Israel being a occupying force should bear its responsibility in accordance with rules of International humanitarian law, specially the Fourth Geneva Convention of 1949 in all occupied Palestinian territory which includes Gaza strip, West Bank including East Jerusalem.

29. Egypt also extended support to the peaceful settlement of the Palestine issue through negotiations between Israel and Palestine on the basis of the resolutions of international legitimacy and Arab Peace Initiatives.

30. With regard to the issue of legal status of Jerusalem, Egypt stressed on the legal *status quo* of Jerusalem, especially East Jerusalem which is regarded as occupied Palestinian land. Similarly, a belief was expressed that any move that alters the legal status of Jerusalem is a null and void move and must be abolished, and because it confronts with international law and UNSC resolutions. In this regard, it was mentioned that Egypt made an attempt after US president announced accepting Jerusalem as Israeli capital- in order to prepare and present a resolution in UNSC which aimed at of maintaining *status quo* of Jerusalem and preventing other countries from opening their diplomatic mission in Jerusalem, in compliance with UNSC Resolution 478 of 1980. Though the Egyptian draft resolution could not be passed in UNSC due to American veto, however its theme was adopted by the UN General Assembly

(ES-10/L.22) in December 2017 with massive majority which reflects world's supportive stand for Palestinian people's right and need for committing to the output of the peace process.

31. **The Delegate of the Islamic Republic of Iran** commended the AALCO Secretariat for preparing the report on the agenda in light of the recent developments. He also stated that it would have been more useful to elaborate on the measures taken by the State of Palestine concerning the application instituting proceedings against the United States before the ICJ over relocation of the latter's Embassy to *Al-Quds Al-Sharif*. The delegation also thanked the Secretariat for the preparation of the inclusive study on the legal status of *Al-Quds Al-Sharif* that considers the main legal issues on the matter.

32. The Delegate of the Islamic Republic of Iran stated that for the past seven decades, the question of Palestine has been one of the most complicated political and legal issues at regional and international levels. From the beginning, the Israeli regime has ignored international law and defied from the decisions of international institutions, including many UN resolutions. It has violated other international legal instruments through its actions as it continues to commit numerous war crimes, carry out its apartheid policy, commit massive and systematic violations of human rights, expand settlements and displace an ever-increasing number of Palestinians. The Israeli regime's criminal acts against the Palestinians and other peoples of the region are currently the gravest threat posed to regional and international peace and security.

33. Further with respect to the United States, it was stated that desperate attempts by the President of the United States for expansion of the occupied territories have continued in different directions from Golan Heights to *Al-Quds Al-Sharif*. The delegate stated that in his endless adventures the President of the United States tried to change the legal status of *Al-Quds Al-Sharif* by relocating US Embassy in occupied territories which is not only illegal but also runs counter to numerous UN Security Council and General Assembly resolutions. It was also affirmed that while the Islamic Republic of Iran has clearly and consistently emphasized the Statehood of Palestine and the illegitimacy of any claims of sovereignty or statehood by the occupying regime in the occupied territories, the legal status of *Al-Quds Al-Sharif* has remained unchanged for decades and this has been confirmed by UN Security Council, General Assembly and the International Court of Justice.

34. By way of instance Security Council Resolution 252 of 21 May 1968 was recalled that it asked the Israeli regime to cancel all activities in *Al-Quds Al-Sharif* while condemning the occupation of any land acquired through armed aggression. Likewise it was recalled that Security Council Resolution 478 of 20 August 1980 condemned the enactment of Israeli law proclaiming a change in status of *Al-Quds Al-Sharif* and called on all States “that have established diplomatic missions” there to withdraw them from the city.

35. In the most recent attempt, the meeting was apprised that the UN General Assembly condemned US decision to relocate its embassy to *Al-Quds Al-Sharif* on 21 December 2017 by declaring that “any decisions and actions which purport to have altered, the character, status or demographic composition of the Holy City have no legal effect, are null and void and must be rescinded in compliance with relevant resolutions of the Security Council.”

36. The Delegate of the Islamic Republic of Iran stated that the fact that numerous calls by the UN General Assembly to UN Member States have been made to refrain from recognizing and assisting any changes in the legal status of the al-Quds al-Sharif is just the tip of the iceberg and is indicative of a more abominable disregard for principles of international law by certain States. He referred to the advisory opinion of the International Court of Justice in 2004 on the illegality of the construction of the wall in the occupied territories, which stated that States are under an obligation not to recognize or not to assist situations created as the result of violations of peremptory rules of international law.

37. The Delegate of the Islamic Republic of Iran also took note of the application instituting proceedings, by the State of Palestine; in the International Court of Justice against the United States of America, on 28 September 2018, over the relocation of the embassy of the United States of America in Israel to the Holy City, relying on 1961 Vienna Convention on Diplomatic Relations and the Optional Protocol thereof. In this relation, it was stated that the Islamic Republic of Iran concurred with the Palestine that the relocation of the US embassy in occupied territories is not consistent with the goals and purposes of the Convention. It was also stated that moreover, based on article 21 (1) of the Convention, the sending State can only establish a diplomatic mission on the territory of the receiving State.

38. Further the Delegate of the Islamic Republic of Iran stated that it hoped that the decision by the ICJ on the status of the Occupied Territories could take the issue one-step further in condemnation of the long-held defiance of the Israeli regime and certain States in this regard. In conclusion, the Islamic Republic of Iran took view that any solution to the crisis requires the termination of the occupation, crimes and violations committed by the Israeli regime; the restoration of the inalienable rights of the Palestinian people to self-determination; and the establishment of their independent and viable State of Palestine, with *Al-Quds Al-Sharif* as its capital.

### **III. Issues for focused deliberation at the Fifty-Ninth Annual Session of AALCO, 2021**

#### **A. Right to health in Occupied Palestinian Territories during the pandemic**

39. As of 27 January 2021 there have been more than a hundred million cases of COVID-19 in the world across every continent out of which one hundred and fifty six thousand have been found in Palestine.<sup>1</sup> Due to the pandemic every State is taking measures to protect and secure the right to health of their people taking a range of measures ranging from emergency measures such as lockdowns to curfews to increasing medical facilities and staff as well as concentrating its efforts on vaccination programs. The pandemic has revealed the important role that States play in guaranteeing the right to health of their populations without discrimination and taking all measures to secure the medical attention and care patients.

40. Since the occupation of Palestinian territories in 1967, the human rights situation has been dire having enormously adverse impact on the health care of the population in those areas. As has been well recognized that Israel is an occupying force therefore it must comply with its obligations under international humanitarian law in general and in particular its obligations under the Fourth Geneva Convention, 1949.<sup>2</sup>

41. Article 55 of the Fourth Geneva Convention (GC IV), 1949 requires the occupying power to guarantee the necessary medical supplies “if the resources of the occupied territory

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<sup>1</sup> Worldometer, ‘Corona Virus Cases’ <<https://www.worldometers.info/coronavirus/#countries>> accessed 26 January 2020.

<sup>2</sup> *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* (Advisory Opinion) [2004] ICJ Rep 136.

are inadequate”. These provisions place an obligation on Israel to take all feasible measures to treat persons afflicted with COVID-19, including through “the distribution of medicines, the organization of medical examinations and disinfection, the establishment of stocks of medical supplies, the dispatch of medical teams to areas where epidemics are raging, the isolation and accommodation in hospital of people suffering from communicable diseases, and the opening of new hospitals and medical centres”.<sup>3</sup> Furthermore, Article 59 GC IV provides that an occupying power is bound to allow relief consignments, including medical supplies, to the civilian population in need, which as a general rule must be accorded rapid and unimpeded passage.

42. While an occupying power must comply with international humanitarian law it must respect the human rights of the population at all times during the occupation. With respect to the right to health, Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), provides that: the States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. It further provides that ‘The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for: the prevention, treatment and control of epidemic, endemic, occupational and other diseases;

43. The UN Committee on Economic, Social and Cultural Rights (ESCR Committee) affirmed that the occupying power’s obligations under Article 12 ICESCR depend on “its level of control and the transfer of authority” relating to the occupied territory.<sup>4</sup> In the context of the OPT, this translates into a graduation of Israel’s obligations in accordance with the level of control exercised in the West Bank, including East Jerusalem, and Gaza. More specifically, in its 2019 concluding observations, the ESCR Committee recommended Israel to take practical measures to allow access to medical treatment and health-care services for Palestinians in Gaza, including to facilitate the entry of essential medical equipment and supplies, and the movement of medical staff from and to Gaza.<sup>5</sup>

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<sup>3</sup> M. Abdallah and V. Todeschini, ‘The Right to Health in the Occupied Palestinian Territory during the COVID-19 Pandemic’ (Opinio Juris, 19 May 2020) <<http://opiniojuris.org/2020/05/19/the-right-to-health-in-the-occupied-palestinian-territory-during-the-covid-19-pandemic/>> accessed 27 January 2021.

<sup>4</sup> CESCR General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12) <<https://www.refworld.org/pdfid/4538838d0.pdf>> accessed 26 January 2021.

<sup>5</sup> Committee on Economic, Social and Cultural Rights, ‘Concluding observations on the fourth periodic report of Israel’ UN Doc. E/C.12/ISR/CO/4 (12 November 2019).

44. Recently it has been reported that Israel is following a policy of discrimination in making the vaccine available to the Palestinian population living under occupation. Mr. Michael Lynk, Special Rapporteur on the situation of human rights in the Palestinian Territory occupied since 1967 and Ms. Tlaleng Mofokeng, Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health have stated that Israel has denied more than 4.5 million Palestinians the access to vaccines.<sup>6</sup> It has been stated that Israel has not ensured that Palestinians under occupation in the West Bank and Gaza will have any near-future access to the available vaccines. The COVID-19 pandemic has been ravaging the West Bank and Gaza in recent months, and has fractured an already badly under-resourced Palestinian health care system.

**B. Decision of the Pre-trial Chamber of the International Criminal Court (ICC) on the ‘Prosecution request pursuant to article 19(3) for a ruling on the Courts’ jurisdiction in Palestine’**

45. The State of Palestine accepted the jurisdiction of the International Criminal Court (hereinafter ‘ICC’) over alleged crimes committed in the occupied territories of Palestine including East Jerusalem since 13 June 2014, through a declaration dated 31 December 2014 lodged under Article 12 paragraph 3 of the Rome Statute of the International Criminal Court, 1998 (hereinafter ‘Rome Statute’).<sup>7</sup> Further, the State of Palestine has also been a member of the International Criminal Court and party to the Rome Statute since 2 January 2015 by depositing its instrument of accession with the Secretary-General of the United Nations in accordance with Article 125(2) of the Rome Statute.

46. Pursuant to Articles 13 (a) and 14 of the Rome Statute, the State of Palestine referred the Situation in the State of Palestine to the Prosecutor to initiate an investigation into the situation. While the Prosecutor of the ICC was convinced that there was reasonable basis under Article 53 of the Rome Statute to investigate the situation, she sought to seek a confirmation of the ICC’s concrete territorial jurisdiction under Article 19 (3) of the Rome Statute from the Pre-trial Chamber.

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<sup>6</sup> OCHR, ‘Israel/OPT: UN experts call on Israel to ensure equal access to COVID-19 vaccines for Palestinians’ <<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26655>> accessed 26 January 2020

<sup>7</sup> Declaration Accepting the Jurisdiction of the International Criminal Court <[https://www.icc-cpi.int/iccdocs/PI DS/press/Palestine\\_A\\_12-3.pdf](https://www.icc-cpi.int/iccdocs/PI DS/press/Palestine_A_12-3.pdf)> accessed 3 March 2021.

47. Subsequently the Pre-trial Chamber received the prosecution's request pursuant to Article 19(3) for a ruling on the Court's territorial jurisdiction in Palestine advancing arguments that the jurisdiction of the ICC extends to the whole of the Occupied Palestinian Territories including East Jerusalem as delineated by the pre-1967 borders.<sup>8</sup> A number of entities including scholars, NGOs, International Organizations and Member States submitted amici curiae briefs either supporting the prosecution's request or opposing it. Among the amici curiae briefs the following States and International Organizations supported the prosecution's request, namely, the Organization for Islamic Cooperation and the League of Arab States. On the other hand, the Czech Republic, the Republic of Austria, Australia, Hungary, the Federal Republic of Germany, the Federative Republic of Brazil, and the Republic of Uganda took the view that the ICC did not have jurisdiction over the Situation in Palestine.

48. Under the Prosecution's request, the Prosecutor considers that there is reasonable basis to believe that members of the Israeli Defense Forces, Israeli authorities, Hamas and Palestinian armed groups have committed a number of crimes falling within the jurisdiction of the Court. Therefore with a view to place the investigation proceedings on a sound jurisdictional footing as early as possible, the Prosecutor referred the request under Article 19(3) of the Rome Statute.

49. In her request, the Prosecutor sought to establish by way of primary argument that the State of Palestine is a State for the purpose of Article 12(2)(a) because of its status of a ICC State Party, and duty of the ICC to treat all State parties equally. It was further argued that the Rome Statute follows all States formula and hence the membership of the Rome Statute should be open to Palestine. The Court accepted this argument and placed reliance on the practice of the UN Secretary-General who follows the determination of the Statehood by the UN General Assembly which in Resolution 67/19 dated 4 December 2012 resolved that Palestine would be a Non-Member Observer State in the United Nations and would be able to become party to any treaties that are open to 'any State' or 'all States' deposited with the UN Secretary-General.<sup>9</sup> The Court also went on to hold that the Chamber had no jurisdiction to

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<sup>8</sup> ICC, 'Prosecution request pursuant to article 19(3) for a ruling on the Court's territorial jurisdiction in Palestine' <[https://www.icc-cpi.int/CourtRecords/CR2020\\_00161.PDF](https://www.icc-cpi.int/CourtRecords/CR2020_00161.PDF)> accessed 3 March 2020.

<sup>9</sup> ICC, 'Decision on the Prosecution request pursuant to article 19(3) for a ruling on the Court's territorial jurisdiction in Palestine' para. 100 (5 February 2021) <[https://www.icc-cpi.int/CourtRecords/CR2021\\_01165.PDF](https://www.icc-cpi.int/CourtRecords/CR2021_01165.PDF)> accessed 3 March 2021.

review the procedure and validity of the accession of a particular State party, and all provisions of the Rome Statute became immediately applicable to the State of Palestine in the same manner as any other State based on the principle of effectiveness.<sup>10</sup>

50. In addition to this first issue of Membership there was also another issue concerning the exact boundaries of the territorial jurisdiction to be exercised in the present case. The Court while answering this question also relied upon the UNGA Resolution 67/19 dated 4 December 2012 which clearly stated that territory occupied since 1967 including East Jerusalem remains under military occupation and recognized Palestinian sovereignty as well as the right to self-determination of the Palestinian People. The Court also recalled article 21(3) of the Rome Statute which provides that “the application and interpretation of law pursuant to this article must be consistent with internationally recognized human rights” and therefore considered the right to self-determination of the Palestinian people to have strong bearing on the final interpretation arrived at by the court.

51. Thus, in consonance with the view expressed by the various UN bodies as well as the ICJ on different occasions, the Pre-trial Chamber of the ICC held that the Court’s territorial jurisdiction extends to the territories occupied by Israel since 1967. While the Court briefly assessed the relevance of the Oslo Accords on the problems with respect to the exercise of the jurisdiction, it categorically stated that the argument was not pertinent to the question of jurisdiction of the Court but could be relevant for matters relating to cooperation and enforcement which were beyond the scope of the proceedings. In this matter the Court placed reliance upon the Judgment of the Appeals Chamber in the Situation in Afghanistan, where similar agreements were discussed which could have a bearing on the exercise of territorial jurisdiction of the Court.

52. Whilst the Court did not pronounce upon the question of Statehood for Palestine in general international law it clearly provided a positive answer to the question that the State of Palestine would be considered to be a ‘State party’ for the purposes of the Rome Statute.

**C. Thirtieth special session of the UN Human Rights Council on the grave human rights situation in the Occupied Palestinian Territory, including East Jerusalem**

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<sup>10</sup> Para. 102, Ibid.

53. In anticipation of a decision of the Supreme Court of Israel concerning the Sheikh Jarrah region of East Jerusalem, protests erupted in East Jerusalem and Gaza which were violently suppressed by the Israeli police force, leading to it forcibly entering the Al-Aqsa Mosque in April 2021.<sup>11</sup> The Israeli Airforce carried out repeated airstrikes killing hundreds of Palestinian civilians including children. Scant regard for the principles of distinction was visible as civilian buildings were often made the target of air, land and sea strikes.<sup>12</sup>

54. In the wake of this violence, a cease-fire was agreed upon on 11 May 2021, after which the UN Human Rights Council on the request by the Islamic Republic of Pakistan on behalf of the Islamic Organisation of Cooperation (OIC) convened a special session on the grave human rights situation in the Occupied Palestinian Territory, including East Jerusalem.<sup>13</sup>

55. In his address, the Special Rapporteur on the situation of human rights in the Palestinian Territory occupied since 1967 reported that approximately 240 Palestinians were killed, the majority of whom being civilians, among them, at least 63 children. Almost 2,000 were also injured and there has been massive property destruction. He stated that he joined other Special Rapporteurs in their call for an investigation by the International Criminal Court.<sup>14</sup>

56. With the support of more than one third of the Member States, the UN Human Rights Committee convened the special session on the grave human rights situation in the Occupied Palestinian Territory with two meetings on 27 May 2021.

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<sup>11</sup> Stephen Farrell and Rami Ayyub, 'Israeli police, Palestinians clash at Jerusalem's Al-Aqsa, scores injured' (Reuters, 7 May 2021) < <https://www.reuters.com/world/middle-east/thousands-pack-al-aqsa-mosque-protest-palestinian-evictions-jerusalem-2021-05-07/>> accessed 1 September 2021.

<sup>12</sup> Amnesty International, 'Israel/ OPT: Pattern of Israeli attacks on residential homes in Gaza must be investigated as war crimes' (Amnesty International, 17 May 2021) <<https://www.amnesty.org/en/latest/press-release/2021/05/israelopt-pattern-of-israeli-attacks-on-residential-homes-in-gaza-must-be-investigated-as-war-crimes/>> accessed 1 September 2021.

<sup>13</sup> UNHRC, 'Letter dated 19 May 2021 from the Permanent Representative of Pakistan and the Permanent Observer of the State of Palestine to the United Nations Office at Geneva addressed to the President of the Human Rights Council' UN Doc. A/HRC/S-30/1 (27 May 2021).

<sup>14</sup> Micheal Lynk, 'Statement delivered by the Special Rapporteur on the situation of human rights in the Palestinian Territory occupied since 1967 at the thirtieth special session of the UNHRC' (27 May 2021) <[https://www.ohchr.org/Documents/Countries/PS/SS\\_OPT\\_Statement\\_SR\\_OPT\\_27May2021.pdf](https://www.ohchr.org/Documents/Countries/PS/SS_OPT_Statement_SR_OPT_27May2021.pdf)> accessed 1 September 2021.

57. While recalling that the effort on the part of the international community has failed to impose a meaningful cost on Israel for acting as an acquisitive and defiant occupying power, the Special Rapporteur urged that the work of the Council be guided by the following principles:

- (a) The diplomatic framework for fully ending the occupation is to be found within the framework of international law and human rights, not in Realpolitik;
- (b) Israel has been a bad-faith occupier, and it is magical thinking to believe that its occupation will end unless and until meaningful accountability measures have been imposed; and
- (c) Because of the vastly asymmetrical differences in power between Israel and the Palestinians, active international intervention is indispensable.<sup>15</sup>

58. At the second meeting, the representative of Pakistan, on behalf of the Organization of Islamic Cooperation introduced draft resolution A/HRC/S-30/L.1 as orally revised, sponsored by Pakistan on behalf of the Organization of Islamic Cooperation, with the exception of Cameroon and Togo, which had withdrawn their original co-sponsorship. Subsequently, Namibia, South Africa and Venezuela (Bolivarian Republic of) joined the sponsors. Venezuela subsequently withdrew its co-sponsorship. The draft resolution was adopted as orally revised by 24 votes to 9, with 14 abstentions.<sup>16</sup>

59. The resolution reaffirming the application of international humanitarian law and international human rights law and stressing that long-standing and systemic impunity for international law violations has thwarted justice decided to establish an independent international commission of enquiry.<sup>17</sup>

60. The resolution decided to urgently establish an ongoing independent, international commission of inquiry, to be appointed by the President of the Human Rights Council, to investigate in the Occupied Palestinian Territory, including East Jerusalem, and in Israel all alleged violations of international humanitarian law and all alleged violations and abuses of

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<sup>15</sup> Ibid.

<sup>16</sup> UNHRC, 'Report of the Human Rights Council on its thirtieth special session' UN Doc. A/HRC/S-30/2 (27 May 2021).

<sup>17</sup> UNHRC, 'Ensuring respect for international human rights law and international humanitarian law in the Occupied Palestinian Territory, including East Jerusalem, and in Israel' UN Doc. A/HRC/RES/S-30/1 (27 May 2021).

international human rights law leading up to and since 13 April 2021, and all underlying root causes of recurrent tensions, instability and protraction of conflict, including systematic discrimination and repression based on national, ethnic, racial or religious identity.<sup>18</sup>

61. On 22 July 2021, the President of the Human Rights Council appointed Navi Pillay (South Africa), Miloon Kothari (India) and Chris Sidoti (Australia) to serve as the three members of the Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel. Ms Pillay will serve as Chair of the three-person Commission.<sup>19</sup>

62. While the Office of the High Commissioner for Human Rights has been mandated by the Resolution to provide an update on the implementation of the resolution at the forty-eighth session of the UNHRC, it remains to be seen what the findings of the commission of enquiry will be.

#### **IV. Observations and comments of the AALCO Secretariat**

63. The grave breaches of international humanitarian law and international human rights law have been continuing in Palestine since the occupation in 1967. The bleak human rights situation and the actions taken by Israel in defiance of its obligations under the Fourth Geneva Convention 1949 have had a disastrous effect on the right to health of the Palestinian people living under occupation. Moreover instead of ceasing and desisting from such illegal activities, Israel has brazenly continued with its illegal policy of building settlements in the occupied territories taking measures to change the demographics of the territory and illegally usurping land from the population. In a recent statement<sup>20</sup> the Secretary-General of the United Nations expressed deep concern about the decision of the Israeli authorities to advance plans for some 800 settlement units, most of which are located deep inside the occupied West Bank. He reiterated that Settlement expansion increases the risk of confrontation, further undermines the right of the Palestinian people to self-determination,

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<sup>18</sup> Ibid, para. 1.

<sup>19</sup> UNHRC, 'Press release: President of Human Rights Council appoints Members of Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel' (22 July 2021) <<https://www.ohchr.org/EN/HRBodies/HRC/Pages/NewsDetail.aspx?NewsID=27331&LangID=E>> accessed 1 September 2021.

<sup>20</sup> UN, 'Statement attributable to the Spokesperson for the Secretary-General -on new settlements announcement by Israel' (18 January 2021) <<https://www.un.org/sg/en/content/sg/statement/2021-01-18/statement-attributable-the-spokesperson-for-the-secretary-general-new-settlements-announcement-israel>> accessed 3 March 2021.

and further erodes the possibility of ending the occupation and establishing a contiguous and viable sovereign Palestinian State, based on the pre-1967 lines.

64. Israel is clearly under an obligation under the law of occupation as well as the Fourth Geneva Convention, 1949 to ensure the health of the population living under occupation. The International Covenant on Economic, Social and Cultural Rights also prescribes for the obligation to respect the health of the Palestinian population in the occupied territories. While it was known that health facilities are under severe stress in the occupied territories due to the discriminatory policies of Israel the recent development of the denial of vaccines raises much larger concerns of further grave violations of basic human rights.

65. In light of the deplorable human rights situation in Palestine and wide scale impunity with which international crimes are being perpetrated in the Occupied Palestinian Territory it is undoubtedly a welcome move that the ICC has received authorization from its Pre-trial Chamber to commence its investigation into the crimes committed on the occupied territory. In the wake of the decision of the ICC to order investigation into the situation in the Occupied Territories of Palestine fresh instances of violence in the form of police repression, air strikes and continuous targeting of civilian infrastructure were witnessed. How far the decision serves as a deterrent for immediate cessation of international law violations remains moot, however it is clear that the recent decision will not only go a long way in the universal recognition of the Statehood of Palestine, but will be a solemn step towards securing an end to impunity for international crimes and providing justice to the victims.