

ASIAN-AFRICAN LEGAL CONSULTATIVE ORGANIZATION



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

**The AALCO Secretariat
29 C, Rizal Marg,
Diplomatic Enclave, Chanakyapuri,
New Delhi – 110 021
(INDIA)**

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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 Twenty-Seventh Annual Session of AALCO, held in Singapore (1988), at the recommendation of the Government of the Islamic Republic of Iran. The Government of the Islamic Republic of Iran, after a preliminary exchange of views submitted to the AALCO Secretariat a Memorandum calling upon the Secretariat to study the legal consequences of the deportation of Palestinians from the 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 held in 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 held in Accra (1999).

4. At the Thirty-Ninth Session held in Cairo (2000), 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 occupying power 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 held in Abuja (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 had brought out the study entitled “The Statehood of Palestine under International law”.

6. 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 AALCO Secretariat prepared another “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 (2016).

8. At the Fifty-Seventh Annual Session held in 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 (IHRL) and the International Humanitarian Law (IHL) in the Gaza Strip as well as the West Bank and other parts of the Occupied Palestinian Territories (OPT). 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 the United States of America to the International Court of Justice (ICJ) for violations of the Vienna Convention on Diplomatic Relations, 1961.

9. In 2019, the AALCO Secretariat 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 IHL in general and the law of occupation in the OPT. In addition, the violation of the right of the refugees to return and compensation was also the subject of deliberation. Member States also overwhelmingly condemned the relocation of the embassies

in Israel to Jerusalem as a violation of the Vienna Convention on Diplomatic Relations, 1961 as well as the customary international law relating to recognition.

10. Most recently, at the Fifty-Ninth Annual Session held in Hong Kong (SAR), the People's Republic of China (2021), the Session focussed on the recent crucial international developments with respect to the OPT including East Jerusalem. Member States condemned the expansionist policies of the occupying power, and called for the implementation of the various resolutions adopted by the UN Security Council (UNSC) and the UN General Assembly (UNGA) and other UN specialized agencies and institutions.

II. Deliberation at the Fifty-Ninth Annual Session of AALCO (Hong Kong (SAR), the People's Republic of China, 29 November- 1 December 2021)

11. At the Fifty-Ninth Annual Session held in Hong Kong SAR, the People's Republic of China, the Agenda Item titled "Violations of International 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 30 November 2021. The delegations condemned the grave violations of international humanitarian and human rights law committed by the occupying power and called for the implementation of the UN resolutions.

12. **The Secretary-General of AALCO**, in his introductory statement highlighted AALCO's long-standing engagement with the topic, and stated that few issues have arisen in the history of AALCO that strongly represents the moral resolve of the AALCO Member States against impunity as the issue of the rights of the Palestinian people. He stated that AALCO has deliberated numerous aspects of the subject, including but not limited to the "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" starting from 1988. It was also underlined that AALCO has consistently applied itself to every conceivable international law dimension concerning the historic land of Palestine and her people.

13. In his introductory statement, the Secretary-General also recalled that Special Studies on various aspects of the issue that have been published by the Secretariat have been well appreciated by the Member States of AALCO. AALCO's efforts in this regard and the Afro-

Asian position on the rights of the Palestinian people are well appreciated by the global community. It was further mentioned that the said position has been consistently held over the decades that the Palestinian people have been denied the fundamental protections afforded to them by international law.

14. Thereafter, the delegates of the **State of Palestine**, the **People's Republic of China**, **Malaysia**, the **Islamic Republic of Iran**, the **Republic of India**, the **Republic of Indonesia**, the **Republic of the Philippines**, and the **Republic of Türkiye** delivered statements on the agenda item.

15. The delegation of the **State of Palestine** presented a detailed report which has been reflected in the Verbatim Record of the Fifty-Ninth Annual Session on “the illegalities and violations of international law in Palestine and in the Occupied Syrian Golan by the occupying force along with certain recommendations to the international community”. The report reviewed the grave and prominent crimes committed by the occupying power during the previous year 2021.¹

16. In addition to the history of the occupation of Palestine, the report provided an account of the recent illegal actions of the occupying power taking the form of expansion of settlements, settler violence, gross and systematic violation of the rules of international humanitarian law and human rights law, promulgation of racist laws, etc. Based on the above, the following recommendations were made that merit attention:

- (a) Assigning the Secretariat of AALCO to address the United Nations and urge it through the General Assembly, the Security Council and the Secretary-General of the United Nations, to work on implementing all international legitimacy resolutions related to the Palestinian issue, foremost of which is Resolution 181 on the establishment of a fully sovereign Palestinian state alongside the State of Israel in accordance with Partition Resolution No. 181 of 1947, and Resolution No. 194, which stipulated the right of the Palestinian people to return to their homes from

¹ AALCO, *Verbatim Record of the Fifty-Ninth Annual Session, Hong Kong (SAR), 2021* (AALCO, 2022) <<https://www.aalco.int/Final%20Verbatim%20Record%20of%20the%2059%20Annual%20Session%202021.pdf>> accessed 1 August 2022

which they were displaced in 1948, and to compensate them for damages caused by the forced displacement and confiscation of their property.

- (b) Emphasis on the continuation of the inalienable responsibility of the United Nations towards the question of Palestine until a just and comprehensive solution is found in all its aspects that guarantees the end of the occupation and enables the Palestinian people to exercise their inalienable national rights, including their right to return, self-determination and the establishment of their independent state on their national soil, with Al-Quds Al-Sharif as its capital.
- (c) Emphasizing the continuing responsibility of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) in discharging its duties and mandates towards all the Palestinian people in all their places of residence in accordance with the General Assembly resolution in this regard, and calling on states to provide more support to cover the Agency's budget to enable it to continue to provide its services.
- (d) Submitting a request to the United Nations General Assembly that the Conciliation Committee, in cooperation with the UNRWA and the concerned countries, prepare a comprehensive inventory of Palestinian refugees and their properties and chalk out a comprehensive vision for solving their problems on the basis of their right to return to their homeland Palestine in accordance with Resolution No. 194, and a request from the Conciliation Committee and the committee concerned to the Palestinian people's exercising of their inalienable rights, to establish the position of trustee or custodian of refugee property.
- (e) Submitting a request to the United Nations General Assembly to request an advisory opinion from the International Court of Justice on the interpretation of what was stated in Resolution 194 concerning refugees, especially paragraph (11) which states that "it was decided that the refugees wishing to return to their homes and live at peace with their neighbors should be permitted to do so at the earliest".
- (f) Requesting the United Nations General Assembly to discuss the conditions it has set on the State of Israel for accepting its membership in the United Nations.

- (g) Assigning the Secretary-General of the Organization to send messages to the international community and call for immediate action to stop the crimes of the occupation, and to call upon the eminent contracting countries to the Fourth Geneva Convention to fulfill their obligations mentioned in Article 1 of the Convention, under which they pledge to respect and ensure respect for the Convention in all situations, as well as their obligations mentioned in Article 146 of the Convention that aims to prosecute those accused of committing grave breaches of the Convention, and guarantee the right of protection for Palestinian civilians in the occupied territories.
- (h) Assigning the Secretariat of the Organization to work with the international community to intervene immediately to put an end to the policy of administrative detention and its arbitrary and illegal use by the occupying power against Palestinian detainees, and to stand in solidarity with their just demands for freedom and a decent life.
- (i) Issuing a statement denouncing the continuation of the Israeli occupation authorities' crime of detaining the bodies of Palestinian and Arab martyrs and demanding that these bodies must be returned immediately to their families and empowering these families of their right to their funerals and burials in accordance with their religious rites with human dignity.
- (j) Calling on the international community, especially the Member States of the Asian-African Legal Consultative Organization and the eminent State Parties to the Geneva Conventions, to issue a resolution condemning the Israeli occupying State for targeting Palestinian human rights organizations and accusing them of terrorism and to call on the occupying State to respect international human rights and humanitarian law in the occupied Palestinian territory.
- (k) Calling on all international, regional and national press organizations and institutions to continue to follow up on what journalists are exposed to in the occupied Palestinian territories and to make all efforts at the international level to ensure that pressure is exercised on the Israeli government to stop its crimes against

Palestinian civilians and their property in general, and its crimes against journalists in particular.

- (l) Emphasizing that Israel's aggression and occupation of the Syrian Arab Golan constitute a grave violation of the provisions, principles and purposes of the Charter of the United Nations and the principles and rules of international humanitarian law, and the right of the Syrian Arab citizens in the occupied Syrian Arab Golan to reject the occupation, and call on the international community to take action to compel Israel to stop its practices that violate human rights and international humanitarian law in the occupied Syrian Arab Golan, pursuant to the Fourth Geneva Convention of 1949, specifically Article 1.
- (m) Emphasizing the condemnation of the 1981 Israeli Knesset decision to apply Israeli laws to the occupied Syrian Arab Golan, and rejecting all legislative and administrative measures taken or to be taken by the Israeli occupation authorities with the aim of changing the nature and legal status of the occupied Syrian Arab Golan, considering them null and void and having no legal effect, because it constitutes a flagrant violation of international legitimacy and Security Council Resolution No. 497 of 1981 (issued in this regard).
- (n) Calling on the international community to condemn the Israeli measures that deprived the Syrian Arab citizens of the waters of the occupied Syrian Arab Golan and diverted them to Israeli settlements, as they constitute a violation of the provisions of the seventh preambular paragraph and the fifth operative paragraph of Security Council Resolution No. 465 of 1980 and the Fourth Geneva Convention of 1949.

17. The delegations which delivered their statements after the State of Palestine overwhelmingly condemned all measures taken to alter the legal status of the OPT and affirmed that, pursuant to numerous UN resolutions and international conventions those measures had no legal effect. The delegations also assured their solidarity with the people of Palestine and stated that they would continue to provide humanitarian and economic aid to support the Palestinian people.

18. Delegations of the Member States also underlined their efforts in supporting the population in Palestine in their efforts to mitigate the effects of the COVID-19 Pandemic by providing medical supplies and vaccines. They also re-affirmed their commitment to the two-State solution, and the establishment and recognition of fully sovereign and independent State of Palestine based on the 1967 borders with East Jerusalem as its capital.

III. Issues for focused deliberation at the Sixtieth Annual Session of AALCO, 2022

19. The recent years have witnessed an increase in cases of violations of International Humanitarian Law (IHL) and International Human Rights Law (IHRL) committed by the occupying power in furtherance of the sustained illegal occupation of the OPT. The reports presented to the UN Human Rights Council (HRC) at its forty-ninth and fiftieth session held this year present details of a grim situation in the OPT, not only comprising of grave violations and gross disregard of IHL and IHRL, but also a range of other activities that violate the most basic principles of humanity, such as the commission of the crime of apartheid, attacks against human rights organizations as well as a complete lack of accountability for illegal actions.

20. The UN Office of the High Commissioner for Human Rights (UNOHCHR) presented two reports to the UNHRC presenting its findings on a range of issues that are inextricably linked with each other. The first report dated 21 February 2022 presented its findings and recommendations on the expansion of the settlements in the OPT, violence committed by the settlers against the local Palestinian population as well as the excessive use of force. The report focusses on the suppression of the right to freedom of speech, expression and peaceful assembly of Palestinians protesting against issues relating to the expansion of settlements and violence committed by settlers in connivance and in cases with the support of security forces.

21. The second report of the UNOHCHR dated 23 February 2022 presented its findings and recommendations of the lack of accountability and access to justice in the OPT. The report affirms that there has been a complete lack of accountability in relation to the conduct of hostilities in the May 2021 conflict as well as the fact that no recourse exists for the victims of the unlawful use of force and human rights violations. The report also deplores the lack of accountability and mechanisms to punish acts of torture and ill-treatment committed in the OPT as well as restrictions and attacks on individuals and organizations working towards promoting human rights and accountability for violations.

22. The Special Rapporteur on the situation of Human Rights in the Palestinian Territories Occupied since 1967 submitted its report for the consideration of the forty-ninth session of the UNHRC on 21 March 2022. The report focusses on the situation in the OPT which under sustained illegal occupation has been subjected to a policy of apartheid. While tracing the sources of the prohibition of apartheid as violation of a *jus cogens* norm leading to breach of *erga omnes* obligations, the report considers the application of the apartheid test to the OPT. The report concludes, on the basis of evidence and information received from the ground sources, that the occupying power has been undoubtedly following a concerted policy of apartheid through its laws, practices and executive actions in the OPT.

23. The Independent International Commission of Inquiry on the Occupied Palestinian Territory including East Jerusalem and Israel submitted its report dated 9 May 2022 at the fiftieth session of the UNHRC. The report described the activities of the Commission that it has carried out till date and raises the issue of non-compliance and disregard of the recommendations of the previous fact-finding missions and commissions of inquiry. The report finds that the root causes of the violations and recurrent tensions, instability and protraction of the conflict stem from this lack of implementation. The report sheds light on a number of violations ranging from non-application of the laws and customs of war as well as violation of individual and collective human rights compounded by a lack of accountability for those actions. To summarise, the issues raised in these reports that are ripe for deliberation at the Sixtieth Annual Session of AALCO are as follows:

1. Expansions of settlements and settler violence;
2. Non-application of the laws and customs of war and rules of IHL;
3. Widespread violation of human rights including both first generation human rights encompassing civil and political rights as well as second generation human rights including economic, social and cultural rights;
4. A complete lack of accountability for grave violations and international crimes as well as excessive use of force; and
5. Application of policy of apartheid and racial discrimination.

IV. Recent International Reports on the situation in Palestine and other Occupied Territories by Israel and other International Legal Issues related to the Question of Palestine

A. Report of the United Nations High Commissioner for Human Rights on the Human Rights on Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan submitted to the Human Rights Council at its forty-ninth session

24. The report on the Israeli settlements in the Occupied Palestinian Territories (OPT), including East Jerusalem, and in the occupied Syrian Golan² was submitted to the UNHRC pursuant to its resolution 46/26, covering the period from 1 November 2020 to 31 October 2021. Based on the information provided by United Nations entities in the Occupied Palestinian Territories and other non-governmental organizations, the report focuses on the restrictions imposed by Israel, including the use of force on the right to freedom of expression and peaceful assembly of Palestinians protesting against the settlement-related activities and the wider context of the occupation of Palestinian territories. The report confirms that both international humanitarian law and international human rights law apply concurrently to the Occupied Palestinian Territories including Gaza and the West Bank and East Jerusalem and refers to the detailed analysis of this legal framework by the UN Secretary-General in two separate reports to the UNHRC.³

25. The report provides a detailed account of the settlement activities as well as the actions taken by the Israeli government to suppress the protest of the Palestinian people against those settlement activities. In summary, the settlement activities are as follows: (a) Land designation, planning and tenders; (b) consolidation of settlements; (c) settlement related violence; (d) accountability for settler violence; (e) forced displacement through demolitions and evictions; and (f) risk of forcible transfer of communities. The report provides a number of accounts of coordinated efforts by the occupying power to alter the demographics of the territories through the use of force by State and Non-State actors as well as laws and institutions supporting expansion of settlements. The trajectory of events suggests that the war crime of forcible

² OHCHR, 'Report on Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan' UN doc A/HRC/49/85 (21 February 2022)

³ UN doc A/HRC/34/38 (13 April 2017) and UN doc A/HRC/34/39 (13 April 2017)

transfer, a grave breach of the Fourth Geneva Convention, has been committed in the OPT. The methods employed were a range of coercive and legal means such as evictions and confiscations of personal belongings and property leading to families moving to designated relocation sites.

26. As regards suppression of the protests by the Palestinian people against settler activities, the Israeli Security Forces (ISF) have reportedly resorted to indiscriminate use of force including live ammunition against the protesters killing 70 persons including 3 women and 16 minors and injuring 14090 persons during the period of the report. The report describes in detail the suppression of the right to freedom of expression and peaceful assembly as well as the right to security of life in East Jerusalem and in Beita, Nablus Governorate.

27. On the basis of the findings presented in the report and in previous reports the High Commissioner made the following recommendations to the Israeli authorities:

- (a) Immediately and completely cease and reverse all settlement development and related activities in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan, in accordance with relevant United Nations resolutions, including Security Council resolutions 497 (1981) and 2334 (2016);
- (b) Rescind all policies and practices contributing to a coercive environment and/or increasing the risk of forcible transfer;
- (c) Review planning laws and policies to ensure that they are compliant with the obligations of Israel under international human rights law and international humanitarian law;
- (d) Refrain from implementing evictions and demolition orders on the basis of discriminatory and unlawful planning policies and practices that may lead to forcible transfer, including in Bedouin and Herder communities;
- (e) Take all steps necessary to protect the Palestinian population and their property from settler violence, and ensure that all incidents of violence by settlers against Palestinians and damage to their property are promptly, effectively, thoroughly and

transparently investigated, that perpetrators are prosecuted and, if convicted, punished with appropriate sanctions, and that victims are provided with effective remedies, including adequate compensation, in accordance with international standards;

- (f) Protect the rights to freedom of expression and peaceful assembly of Palestinians, refrain from all undue restriction, including use of force, and create an enabling environment for peaceful protests.
- (g) End policies and practices within the occupied Syrian Golan that may lead to discrimination against protected persons.

B. Report of the United Nations High Commissioner for Human Rights on the Human Rights situation in the Occupied Palestinian Territory, including East Jerusalem, and the obligation to ensure accountability and justice

28. The Report on the Human Rights situation in the OPT, including East Jerusalem and the obligation to ensure accountability and justice was presented to the UNHRC pursuant to its resolution 46/3⁴ and covers the period from 1 November 2020 to 31st October 2021. The present report draws on human rights monitoring conducted by the Office of the United Nations High Commissioner for Human Rights (UNOHCHR) in the Occupied Palestinian Territory and received information from government sources, other United Nations entities and non-governmental organizations.

29. Further with respect to the collection of information, the UNOHCHR requested Israel and the State of Palestine to provide information, by 15 November 2021, on any accountability measures adopted during the reporting period in relation to alleged violations of international human rights law and international humanitarian law committed in the OPT. The State of Palestine responded on 24 November 2021; however, it was reported that there was no response from Israel. Other UN Member States were also requested by the UNOHCHR to provide information on the steps taken by them as third States to promote compliance with international

⁴ UNHRC, 'Human Rights situation in the Occupied Palestinian Territory, including East Jerusalem, and the obligation to ensure accountability and justice' UN doc A/HRC/RES/46/3 (23 March 2021)

law and implement the recommendations addressed to them. Responses were received by the UNOHCHR from Cuba, Spain and Tunisia.

30. The report provided a detailed account of the human rights situation during the reporting period focussing on the accountability for the escalation of hostilities in Gaza in May 2021 and previous escalation of hostilities; accountability for unlawful use of force and violations of international human rights law; and accountability for violations relating to torture and ill-treatment. The report also presented its findings on restrictions and attacks on individuals and organizations promoting human rights and accountability through the use of legislation and executive action as well as physical violence.

31. With respect to the escalation of hostilities in Gaza in May 2021, as at 31 October 2021 the UNOHCHR was not aware of any criminal investigation opened against any members of the Israeli Security Forces. In this regard, it has been reported that the Palestinian Centre for Human Rights had submitted 57 criminal complaints to the Military Advocate General of Israel and 295 civil complaints to the compensation office of the Ministry of Defense of Israel in relation to incidents involving the killing of 101 Palestinians and the injury of another 100 during the hostilities in May 2021. However, as indicated by the Military Advocate General of Israel 11 of those complaints had been referred for further examination to the General Staff Mechanism for Fact-Finding Assessments, established in 2014.

32. Based on the examination of the facts on the grounds and information received the UNOHCHR made the following recommendations:

- (a) Calls upon Israel to fully comply with its obligations under international human rights law and international humanitarian law in the OPT; urges it to conduct prompt, independent, impartial, thorough, effective and transparent investigations into all alleged violations and abuses of international human rights law and international humanitarian law, including into allegations of international crimes; and also calls upon Israel to ensure that all victims and their families have access to effective remedies, gender-responsive reparation and truth;
- (b) Calls upon Israel to revoke the designations against Palestinian human rights and humanitarian organizations as terrorist or unlawful organizations, absent sufficient

evidentiary basis for them. Israel must also ensure that human rights defenders are not detained, charged and convicted in relation to their legitimate work to protect and promote human rights and accountability;

- (c) Calls upon Israel to resume its cooperation with UNOHCHR and make full use of UNOHCHR technical assistance;
- (d) Urges the State of Palestine to conduct prompt, independent, impartial, thorough, effective and transparent investigations into all alleged violations and abuses of international human rights law and international humanitarian law, in particular into allegations of international crimes; and calls upon the State of Palestine to ensure that all victims and their families have access to effective remedies, gender-responsive reparation and truth;
- (e) Recommends that all parties ensure full respect for international law, including international humanitarian law, in particular the principles of distinction, proportionality and precaution, and that they ensure accountability for grave violations;
- (f) Calls upon all States to take all measures necessary to effectively ensure respect for the Geneva Conventions of 12 August 1949 by all parties to the conflict, taking into account the means reasonably available to them and their level of influence on the parties, and reminds States, in particular those with close ties to the parties, that they should exert their influence to ensure respect for the law;
- (g) Reiterates the calls upon all States and relevant United Nations bodies to take the measures necessary to ensure full respect and compliance with the relevant resolutions of the Security Council, the General Assembly and the Human Rights Council.

C. Report of the Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied since 1967 submitted to the Human Rights Council at its Forty-Ninth session

33. The present report was submitted to the UNHRC by the Special Rapporteur on the situation of Human Rights in the Palestinian territories occupied since 1967 pursuant to its resolution 1993/2 and 5/1. The report examines the current human rights situation in the OPT with a particular emphasis on the question whether Israeli rule over the OPT may be called as ‘apartheid’.

34. In the report, the Special Rapporteur Mr. Micheal Lynk notes that he had not been granted access to the OPT, and neither has his request to meet the Permanent Representative of Israel to the UN been accepted. Further it is noted that while access to the OPT was a key element in the development of a comprehensive understanding of the human rights situation on the ground, the Special Rapporteur could not travel to the region due to the restrictions in place owing to the COVID-19 Pandemic.

35. Therefore, the report was primarily based on written submissions and the Special Rapporteur acknowledges the work of civil society organizations and human rights defenders to create an environment in which human rights are respected and violations of human rights and international humanitarian law are not committed with impunity in the absence of any witnesses.

36. As regards the current human rights situation in the OPT, the report states that it was marked by a significant deterioration and increase in the amount of violence that Israel is employing to sustain the occupation. The violent measures employed include direct state violence with a vast prevalence of arbitrary use of force, physical and administrative in nature resulting in daily harassment and abuse for no apparent reasons or for a weak security ground. While the period under consideration is from the time of the previous report submitted on 22 October 2021 to the UNHRC at its forty-seventh session, the report only highlights concerns over settler violence and actions against civil society as it was not possible to provide a comprehensive review of all human rights violations during the period.

37. As regards the settler violence, the report states that not only has the number of incidents increased but so has the severity of the violence. With the support of the Israeli Security Forces settler violence has taken several forms such as physical violence, shooting with live ammunition, destruction of property, as well as stone throwing and intimidation.

38. In relation to attacks on civil society, the actions reported include the use of counter-terrorism legislation and military order to restrict and criminalise human rights and humanitarian work, the denial of visas of staff with the United Nations and international non-governmental organizations, the use of Pegasus spyware of Israeli NSO group on mobile phones of Palestinian human rights workers, arbitrary arrests and criminal prosecution of human rights defenders.

39. According to the report on 19 October 2021 the Israeli Minister of Defense announced the designation of six Palestinian human rights and humanitarian organizations⁵ as “terrorist organizations” under Israel’s Counter-Terrorism Law of 2016. The designation decisions were based on unsubstantiated links between these organizations and the Popular Front for the Liberation of Palestine, including alleged diversion of funds. No evidence proving these allegations has been presented by Israeli authorities despite several requests by the international community and concerned organizations.

40. With respect to the crime of apartheid, the report provides a description of what constitutes the crime of apartheid both under conventional international law and customary international law. In conventional international law the source for the prohibition of and punishment of apartheid is provided for in the International Convention for the Elimination of All Forms of Racial Discrimination (ICERD), 1965; the Additional Protocol 1 to the Geneva Conventions of 1949, the UN Convention on the Suppression and Punishment of the Crime of Apartheid, 1974 as well as the Rome Statute of the ICC, 1998. The report also outlines the punishment of the crime of apartheid in customary international law based on various resolutions of the UNGA, decisions of the ICJ as well as the opinions of scholars. The report relies on the Fourth Report of the Special Rapporteur on *Jus Cogens* of UN International Law

⁵ Addameer Prisoner Support and Human Rights Association; Al Haq; Defense for Children International – Palestine; Union of Agricultural Work Committees (UAWC); Bisan Center for Research and Development; and the Union of Palestinian Women's Committees.

Commission to state that the punishment of the crime of apartheid is a *jus cogens* norm giving rise to an obligation *erga omnes*.

41. As regards the crime of apartheid committed by Israel in the OPT, the report identifies two core features namely the creation and enlargement of settlements and the development of an oppressive system of discriminatory and oppressive laws over the Palestinian people. On the whole the report states that at the heart of Israel's settler-colonial project is a comprehensive dual legal and political system which provides comprehensive rights and living conditions for the Jewish Israeli settlers while imposing upon the Palestinians military rule and control without any of the basic protections of international humanitarian and human rights law.

42. The report also cites the observations of other observers such as Ban Ki-Moon, the former Secretary-General of the United Nations, who wrote in 2021 that Israel's "structural domination and oppression of the Palestinian people through indefinite occupation...arguably constitutes apartheid." Nobel Laureate Desmond Tutu stated in 2014 that: "I know first-hand that Israel has created an apartheid reality within its borders and through its occupation." South African Foreign Minister Naledi Pandor spoke in 2022 about her country's: "...significant dismay at the continued apartheid practices of Israel against the long-suffering people of Palestine." Michael Ben-Yair, a former Attorney-General of Israel, said in 2022 that Israel has become: "...an apartheid regime... a one state reality, with two different peoples living with unequal rights." Ami Ayalon, the former Director of Shin Bet, wrote in his memoir that: "We've already created an apartheid situation in Judea and Samaria, where we control the Palestinians by force, denying them self-determination." And two former Israeli ambassadors to South Africa – Ilan Baruch and Alon Liel – stated in 2021 that Israel's systematic discrimination: "...on the basis of nationality and ethnicity" constitutes apartheid.

43. The report concludes that the situation is undoubtedly apartheid which does not have some of the same features as practiced in southern Africa however there were pitiless features of Israel's 'apartness' rule in the occupied Palestinian territory that were not practiced in southern Africa, such as segregated highways, high walls and extensive checkpoints, a barricaded population, missile strikes and tank shelling of a civilian population, and the abandonment of the Palestinians' social welfare to the international community.

44. The Special Rapporteur recommends that the Government of Israel fully comply with its obligations under international law and completely and unconditionally end the occupation of the Palestinian territory, with all deliberate speed. Based on the findings in the report the Special Rapporteur makes the following recommendations:

- (i) Throughout this process, it must end all discriminatory and apartheid laws, practices and policies which privilege Jewish Israelis living in the occupied territory and subjugate Palestinian Arabs.
- (ii) Throughout this process and thereafter, it must fully respect the national rights and human rights of the Palestinians, it must enable them to exercise their freedom of movement, assembly, expression and association, and it must remove all arbitrary and inequitable restrictions on family life, property, employment, access and enjoyment of resources, education and daily life.

45. The Special Rapporteur recommends that the international community accept and adopt the findings by Palestinian, Israeli and international human rights organizations that apartheid is being practised by Israel in the occupied Palestinian territory and beyond.

- (i) The international community should assemble a diplomatic menu of accountability measures to bring the Israeli occupation and its practice of apartheid in the Palestinian territory to a complete end.
- (ii) The international community should support any references or applications to the ICC and/or the IC J with respect to the legal consequences of the practice of apartheid in the occupied Palestinian territory.

46. The Special Rapporteur recommends that the United Nations re-establish the Special Committee against Apartheid to investigate any and all practices of systematic discrimination and oppression purportedly amounting to apartheid anywhere in the world, including the occupied Palestinian territory.

D. Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel submitted to the Human Rights Council at its Fiftieth session

47. At the request of the Islamic Republic of Pakistan, the Organization of Islamic Cooperation (OIC) convened a special session on the grave human rights situation in the OPT, in relation to the indiscriminate attacks carried out by Israeli forces against the Palestinian civilian population.

48. Two meetings were convened by the UNHRC with the support of more than one third of the Members, and a resolution was adopted deciding 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 OPT violations of international humanitarian and human rights law leading up to and since 13 April 2021.⁶

49. Accordingly, on 22 July 2021, the President of the UNHRC appointed Navi Pillay (South Africa), Miloon Kothari (India), and Chris Sidoti (Australia) to serve as the members of the Independent Commission of Inquiry.⁷

50. The Report of Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel was distributed on 9 May 2022 and submitted to the UNHRC at its Fiftieth session for its consideration. The focus of the report was to review the findings and status of implementation of recommendations of previous United Nations fact-finding missions and commissions of inquiry on the situation and of other United Nations human rights bodies. While the report is comprehensive given the large number of issues covered by the various bodies, it offers primarily an overview of the wide range of violations and abuses at the heart of the conflict. The report notes that the findings and recommendations, relevant to the root causes, were overwhelmingly directed towards Israel which indicates the asymmetrical nature of the conflict and the reality of the Occupation.

⁶ 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)

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51. As regards the applicable law, the report notes that it confirms the application of international humanitarian law and international human rights law as well as where applicable those rules of international criminal law that comprise of customary international law.

52. The report explains in great detail the disregard of the recommendations of the previous commission of enquiry and how the same pattern of violations including heinous acts such as the indiscriminate attacks in scant regard for the principles of distinction and proportionality, transfer of civilians populations, discrimination against Palestinians, increase in number of settlements and settler violence, violence against women and above all a culture of impunity with no accountability for the aforesaid actions.

53. In its assessment, the Commission records that ending the occupation remains essential in ending the persistent cycle of violence, which is also the root cause of recurrent tensions, instability and protraction of conflict in the OPT. It also repeats with stark warning that the persistent discrimination against Palestinians throughout the West Bank and East Jerusalem, threats of forced displacement, forced displacement, demolitions, settlement expansion and settler violence and the blockade of Gaza have all contributed to and will continue to contribute to cycles of violence. The report also calls for the fulfillment of the obligations in the Convention on Elimination of All forms of Discrimination against Women, 1979 (CEDAW).

54. As regards the future work of the Commission of Inquiry, the report notes that it will conduct its own investigations and legal analysis into alleged violations and abuses, and in so doing will carefully review all available evidence and material. It will reach its own findings and, in accordance with its mandate, will make recommendations, in particular on accountability measures. It will preserve and analyse information and evidence on international crimes with a view to identifying those bearing individual criminal responsibility. It will also seek to work with judicial accountability mechanisms that adhere to internationally accepted due process and fair trial standards towards ensuring individual, State and corporate accountability. In parallel, the Commission will seek to identify ways of addressing the underlying root causes of the recurrent tensions, instability and protraction of conflict, and will work with relevant stakeholders to identify tangible steps aimed at contributing to ending the violence and fostering peaceful coexistence.

55. The report also notes that the Commission will carefully assess the responsibilities of third States along with those of private actors in the continued policies of occupation, in accordance with its mandate established by the UNHRC. It will also consider the role of third States in ensuring respect for, and full compliance with, international humanitarian law and human rights law in the OPT, including East Jerusalem, in Israel and in the occupied Syrian Golan.

IV. Observations and comments of the AALCO Secretariat

56. The reports submitted to the UNHRC present a bleak picture of the situation in the OPT that involve wide-spread violation of international humanitarian law and human rights law. With the occupation of the OPT continuing since 1967, many of the occupied lands have been converted into settlements driving the local Palestinian population out from their lands and changing the demographics of the territories. Widespread discrimination and illegal use of force against the civilian population, as well as indiscriminate attacks, are only some of the illegalities committed during the previous years by the Israeli forces. The UNHRC has taken note of the various reports and recommended Israel to immediately cease its activities in the OPT, however without any compliance.

57. In addition to the continuation of the perpetual illegal occupation as well as scant regard for the obligations assumed under IHL and IHRL, the previous year as reported in the various reports was marked by an increase in the expansion of settlements, wide-scale settler violence, promulgation of discriminatory laws and executive orders as well as a complete lack of accountability. With the attention of the international community focussing on the situation in the OPT, and the necessity to bring an end to the occupation in order to bring long-lasting peace to the region, it is hoped that concerted action on behalf of the international community as a whole will enable respect for international law and human rights in the OPT in accordance with the consistent recommendation of the fact-finding bodies and inquiry commissions.