

AALCO/61/BALI/2023/SD/S4

For Official Use Only

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)**

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

CONTENTS

I.	Introduction	1
II.	Deliberation at the Sixtieth Annual Session of AALCO [New Delhi (Headquarters), the Republic of India, 26 September- 28 September 2022]	3
III.	Issues for focused deliberation at the Sixty-First Annual Session of AALCO, 2023	5
	A. Report of the Special Rapporteur on the situation of Human Rights in the Palestinian territories occupied since 1967	6
	B. Reports of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel	12
	C. Request for an advisory opinion on legal consequences arising from the policies and practices of Israel in the Occupied Palestinian Territory including East Jerusalem	18
IV.	Observations and Comments of the AALCO Secretariat	21

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 in Manila (1996) 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) the 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 of various UN Security Council (UNSC) and UN General Assembly (UNGA) 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 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 certain 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. 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 UNSC and the UNGA and other UN specialized agencies and institutions.

11. Most recently at the Sixtieth Annual Session held in New Delhi (Headquarters), the Republic of India (2023) the deliberations centred on the recent escalation in the violation of the rights of the Palestinian population. Some of the actions condemned were the expansion of illegal settlements, wide-scale settler violence, illegal application of racist and discriminatory legislation and executive orders, large scale violations of international human rights law and international humanitarian law particularly obligations concerning occupation in the Occupied Palestinian Territories and the Golan Heights. Member States generally expressed their full support for the Palestinian people in the quest for the realization of their right to self-determination and national aspirations, while some States emphasized their consistent position on the need for negotiation towards the Two-State solution.

II. Deliberation at the Sixtieth Annual Session of AALCO [New Delhi (Headquarters), the Republic of India, 26 September- 28 September 2022)]

12. At the Sixtieth Annual Session held in New Delhi (Headquarters), the Republic of India, 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 27 September 2022. The delegations condemned the recent grave violations of international humanitarian and human rights law committed by the occupying power, and re-affirmed their support for the Palestinian people and their rights.

13. **The Deputy Secretary-General of AALCO**, in his introductory statement highlighted AALCO's long-standing engagement with the topic, and stated that it has been the consistent position of the AALCO Member States that the Palestinian people have been denied the fundamental protections of international law over many decades. Over the years the AALCO Member States have deliberated on a number of international law dimensions concerning the historic land of Palestine and her people, since the introduction of the topic on the agenda in 1988. It was also recalled that Special Studies on various aspects of the issue that have been published by the Secretariat have been well received by the Member States of AALCO. It was also underlined that AALCO's efforts in this regard and the Afro-Asian position on the rights of the Palestinian people are taken due note of by the international community and other global institutions.

14. While introducing the report, it was informed that the report focussed on issues concerning the expansion of settlements and settler violence, violation of international humanitarian law and international human rights law, a complete lack of accountability for crimes including grave violations of the Geneva Conventions as well as the enforcement of a policy of "apartheid." It was further explained that these issues have been the focus of much debate in the UN Human Rights Council based on the reports of the Special Rapporteurs and the Commission of Inquiry.

15. Thereafter, the delegates of the **State of Palestine**, the **Syrian Arab Republic**, **Malaysia**, the **Republic of Indonesia**, the **Republic of India**, the **Islamic Republic of Iran**, the **Federal Republic of Somalia**, the **People's Republic of China**, and the **Islamic Republic of Pakistan** delivered statements on the agenda item.

16. The delegation of the **State of Palestine** delivered a detailed report of the brazen and grave crimes committed by the occupying power during the previous year. The topics covered in

the report included issues concerning the treatment of martyrs and the wounded, Israeli crimes against journalists, holding of corpses, house demolition, the crime of preventing residents of the West Bank and Gaza from accessing the holy sites in Jerusalem, expansion of settlements, the plight of prisoners and administrative detainees in Israeli prisons, violations of the rights of civil society organizations and human rights defending and their description as terrorists, withholding funds from the tax revenues of the Palestinian Authority, as well as application of discriminatory and racist laws on the Palestinian people. On the basis of these observations the delegate of the State of Palestine placed before the meeting certain recommendations to the AALCO Member States to achieve their desired goals and find effective solutions. The recommendations have been recorded and form an integral part of the Verbatim Record of the Sixtieth Annual Session of AALCO.¹

17. Delegations of Member States that delivered statements after the State of Palestine overwhelmingly pledged their support to the Palestinian people in their quest for the realization of their rights under international law. They condemned all measures taken to alter the status of the Occupied Palestinian Territories including East Jerusalem and the Golan Heights. It was further affirmed that, pursuant to numerous UN resolutions and international conventions, those measures taken to alter the fundamental character of the occupied territories were patently illegal. Overwhelmingly, the delegations also assured their solidarity with the people of Palestine and touched upon their efforts towards supporting the right to self-determination of the Palestinian people. Support was also expressed for arriving at a negotiated end to the violence in accordance with the Two-State solution and for the international community not to extend recognition, aid, or assistance in the maintenance of the illegal situation.

III. Issues for focused deliberation at the Sixty-First Annual Session of AALCO, 2023

18. The past few years has witnessed a marked increase in violations of international humanitarian law and international human rights law committed by the occupying power with utmost impunity and no accountability. The reports presented to the UN Human Rights Council

¹ AALCO Secretariat, *Verbatim Record of Discussions of the Sixtieth Annual Session, 26-28 September 2022* (2022) <<https://www.aalco.int/Final%20Verbatim%20Record%20of%20the%2060th%20Annual%20Session%20on%2009.032023.pdf>> accessed 11 July 2023

(HRC) at its fifty-first, fifty-second and fifty-third session and proposed for focussed deliberation by the AALCO Member States detailed the abysmal situation in the Occupied Palestinian Territories (OPT), not only comprising of grave violations and gross disregard of international humanitarian law and international human rights law but also a range of other activities that among other rights, violates the right to self-determination. The reports present in great detail the commission of the crime of apartheid, inhumane treatment of prisoners and detainees, attacks against civil society groups and journalists as well as enforcement of discriminatory laws and executive orders in the OPT.

19. At the present Annual Session, this brief focusses on the report presented by the UN Special Rapporteur on the situation of Human Rights in the Palestinian territories occupied since 1967 to the UNGA relating to the denial of the right to self-determination of the Palestinian people. Further, the brief examines and notes the conclusions of the report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem and Israel which examines attacks, restrictions and harassment of civil society actors.

20. Further, the brief reports on the key recent development of the request for an advisory opinion from the International Court of Justice (ICJ) under Article 96 of the UN Charter, 1945 by the UNGA pursuant to resolution 77/247 (9 January 2023) that has been entered in the docket of the ICJ as “Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem.”

A. Report of the Special Rapporteur on the situation of Human Rights in the Palestinian territories occupied since 1967

21. The UN Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Ms. Francesca Albanese, presented her first report addressing a number of concerns pertaining to the situation of human rights in the West Bank, including East Jerusalem and Gaza and in particular presented an in-depth analysis of the right to self-determination of the Palestinian people. The report dated 21 September 2022 presented its findings and recommendations on the right of the Palestinian people to self-determination and its systematic

denial by the occupying power detailing the main factors preventing Palestinian self-determination.²

22. The factors that have been identified to have led to the enabling of the colonial endeavours of the occupying power were as follows: *firstly*, by the occupation of the Palestinian territories during the 1967 invasion of territories controlled by Egypt (Gaza Strip) and Jordan (West Bank) and by targeted and strategic territorial fragmentation of the territory; *secondly* by preventing economic prosperity of the people and illegal exploitation of natural resources; *thirdly*, by attempting to erase Palestinian cultural civil rights and thereby preventing an identity, *fourthly*, by preventing their political existence and *finally*, by preventing statehood.

23. At the outset the report specified that the Special Rapporteur was unable to visit the Occupied Palestinian Territory, including East Jerusalem and the Occupied Palestinian Territory (OPT) before the submission of the present report, despite being invited by the Permanent Observer of the State of Palestine to the United Nations Office and other international organizations in Geneva. It was stated that access to the OPT was a key element of her mandate and that she would pursue the same in the future. As her request to meet with the Permanent Representative of Israel to the United Nations Office and other international organizations in Geneva was declined, it was underscored that the pattern of non-cooperation by Israel with the mandate holder was a serious concern. While reminding Israel that she remained willing to engage, the report expressed her emphasis on open dialogue among all parties as essential for the protection and promotion of human rights. In relation to the geographic and temporal limitation of her mandate, the Special Rapporteur clarified in the report that it covered collective rights of Palestinians who held established rights to return, restitution and compensation and looked back at certain points in history that may have informed and illuminated circumstances present at the time of the preparation of the report.

24. As access to the OPT was restricted to the Special Rapporteur, the reports states that it is based on legal research and analysis enhanced by consultations and submissions. It further states

² UNGA, 'Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967' UN Doc. A/77/356 (21 September 2022) <<https://daccess-ods.un.org/tmp/6382358.67023468.html>> accessed 30 August 2023.

that while consultations were held with previous Special Rapporteurs, the Independent Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and in Israel, State representatives, academics, and non-governmental organizations, examination of reports submitted by local and international human rights organizations was conducted.

25. The second part of the report sets out the rationale for investigating the right to self-determination in the context of the OPT. The report states that the Israeli occupation of the OPT was addressed predominantly through (a) the humanitarian approach, where violations are largely addressed with the aim of improving aspects of life under occupation, or (b) the political approach that frames the situation as a conflict that can be resolved through negotiations which would resultantly also resolve the humanitarian and economic emergencies, and, (c) the economic development approach that seeks to resolve conflict by promoting business and creating sustainable growth opportunities as opposed to fulfilment of fundamental human rights. In the view of Special Rapporteur as stated in her report these perspectives “conflate root causes and symptoms”³

26. The report also presents certain limitations of the apartheid framework and concludes that dismantling the Israeli apartheid in the OPT in particular, while held to be necessary, would not automatically address the question of Israeli domination over the Palestinians, restore permanent sovereignty over the lands Israel occupies and the natural resources therein, nor, on its own, fulfil Palestinian political aspirations. According to the Special Rapporteur the normative framework of self-determination, especially as affirmed in the context of decolonization processes, would provide the necessary lens to (re-)examine and resolve the legitimate claims to emancipation of the Palestinian people from decades of Israeli occupation.

27. Before applying the framework to the OPT, the report lays down the legal foundations of the right to self-determination and expounds on its political and economic component in the context of the history of its development over the past few decades. It emphasizes that the inviolability of the right to self-determination stems from its *erga omnes* and *jus cogens*

³ Ibid 5

character and recalls that a plethora of international practice suggests that States have utilized the means provided by international law to end illegal occupations and forms of subjugation.

28. In relation to the applicability of the right to self-determination to the people in the OPT, the report recalled that the recognition of the right to self-determination of the Palestinian people predates the UN Charter finding specific mention in the Covenant of the League of Nations. It also states that it was reiterated by a number of UN resolutions in the post-colonial era, including the UNSC and continues to feature regularly on the agenda of the UN and its agencies. However the report states that the right to self-determination continues to be denied for more than a period of fifty-five years since the 1967 conflict expounding on how Palestinians had experienced entrenching, settler-colonialism at a moment in history when the rest of the world was progressing towards decolonization.

29. Proceeding to the various rights that Palestinian were prevented from exercising culminating into the denial of their right to self-determination the report identifies and explains five such situations. *Firstly*, by the occupation of the Palestinian territories during the 1967 invasion of territories controlled by Egypt (Gaza Strip) and Jordan (West Bank) and by targeted and strategic territorial fragmentation of the territory; *secondly* by preventing economic prosperity of the people and illegal exploitation of natural resources; *thirdly*, by attempting to erase Palestinian cultural civil rights and thereby preventing an identity, *fourthly*, by preventing their political existence and *finally*, by preventing Statehood.

30. Based on its observations the report calls for a paradigm shift. It advocates that the only possible way to overcome the situation would be to opt for a solution premised on respect for history and international law. It states that the situation can only be resolved by respecting the cardinal norm of peoples' right to self-determination and the recognition of the absolute illegality of the settler-colonialism and apartheid that has been imposed in the OPT.

31. Before concluding the report offers the following concluding observations and recommendations:

32. **Concluding observations:**

The violations described in the present report expose the nature of the Israeli occupation: that of an intentionally acquisitive, segregationist and repressive regime designed to prevent the realization of the Palestinian people's right to self-determination.

Realizing the inalienable right of the Palestinian people to self-determination requires dismantling once and for all the Israeli settler-colonial occupation and its apartheid practices.

The Middle East "peace process" and subsequent bilateral peace-making attempts have proven ineffective; they have not focused their approaches on human rights, particularly the right to self-determination, and have overlooked the settler-colonial underpinnings of the Israeli occupation.

As a peremptory norm of international law, the right to self-determination cannot be derogated from under any circumstances and gives rise to obligations *erga omnes*.⁴

33. **Recommendations:**

The Special Rapporteur recommends that the Government of Israel comply with its obligations under international law and cease to impede the realization of the right to self-determination of the Palestinian people, ending its settler-colonial occupation of the Palestinian territory immediately and unconditionally and making reparations for its wrongful acts.

The Special Rapporteur recommends that all States:

- (a) Condemn the intentional violations by Israel of the Palestinian right to self-determination including through settler-colonial practices. This requires that:
 - (i) States demand an immediate end to the illegal Israeli occupation, return of all land and resources from which the Palestinian people have been displaced and dispossessed while refraining from making withdrawal subject to negotiation between Israel and Palestine;

⁴ Ibid, 22

- (ii) The General Assembly develops a plan to end the Israeli settler-colonial occupation and apartheid regime;
- (iii) States stand ready to resort to the diplomatic, economic and political measures afforded by the Charter of the United Nations in case of non-compliance by Israel;
- (b) Deploy an international protective presence to constrain the violence routinely used in the Occupied Palestinian Territory and protect the Palestinian population, in line with the report of the Secretary-General on the protection of the Palestinian civilian population (A/ES-10/794);
- (c) Act to ensure a thorough, independent and transparent investigation of all violations of international human rights law and international humanitarian law, including those amounting to potential war crimes, crimes against humanity and the crime of aggression, committed in the Occupied Palestinian Territory. The Special Rapporteur further recommends that the international community pursue accountability for perpetrators through both ICC in its on-going investigation into the situation in Palestine, and universal jurisdiction mechanisms;
- (d) Take appropriate steps to prevent, investigate and redress human rights abuses by all business enterprises domiciled in their territory and/or under their jurisdiction by adopting the necessary policies to regulate business conduct in the Occupied Palestinian Territory, including disengaging from the colonies and providing effective remedy for victims.
- (e) The Special Rapporteur recommends that the High Commissioner for Human Rights release, without delay, the updated database of businesses involved in settlements (Human Rights Council resolution 31/36).
- (f) The Special Rapporteur fully supports the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and in Israel,

and encourages it to investigate the status of the right to self-determination and Israeli settler-colonial endeavours in more depth than the territorial and geographic limitations of her mandate allow.

B. Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel

34. In this report, submitted pursuant to Human Rights Council resolution S-30/1, the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel presents its findings on attacks, restrictions and harassment of civil society actors, by all duty bearers.⁵

35. The Commission relied on 127 interviews, testimonies given during two rounds of hearings, research, discussions with stakeholders and experts, and 21 submissions received following a call for submissions issued on 2 November 2022. The information reflected in the report primarily covers the period 2020–2023.⁶

36. The Commission primarily acknowledges that the territory over which the Government of the State of Palestine can exert its authority as a duty bearer has been under occupation by Israel since 1967, which poses severe challenges to its ability to fulfil its obligations as a duty bearer. Nonetheless, the accession of the State of Palestine to international human rights treaties engages its responsibility, to the extent of its jurisdiction and effective control. The Commission also reiterates that, within the Gaza Strip, to the extent of the effective control of Hamas, the de facto authorities bear human rights obligations arising from their exercise of government-like functions.

⁵ UNHRC, ‘Report of the International Independent Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem and Israel’ (9 May 2023) UN Doc. A/HRC/53/22 <<https://documents-ddsny.un.org/doc/UNDOC/GEN/G23/089/77/PDF/G2308977.pdf?OpenElement>> accessed 31 August 2023

⁶ UNHRC, ‘Public Hearings by the UN Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and in Israel’ video recordings of hearings from 7 to 11 November 2022 and 20 -24 March 2023 held in Geneva <<https://www.ohchr.org/en/hr-bodies/hrc/co-israel/public-hearings>> accessed 30 August 2023.

37. The Commission has noted that the OPT, including East Jerusalem and Gaza, and the occupied Syrian Golan are currently under belligerent occupation by Israel, to which international humanitarian law applies concurrently with international human rights law.

38. In its assessment, the Commission records that that the human rights to freedom of association, expression and opinion, and the right to peaceful assembly, are being violated by the Government of Israel, the Government of the State of Palestine and the *de facto* authorities in Gaza. The Commission finds that a number of economic, social and cultural rights are also being violated, including the human rights to take part or participate in cultural life, to adequate housing, to health and to work. These rights are being violated by various means, including harassment, threats, arrests, interrogations, detention, torture and inhuman and degrading treatment. The Commission finds that legislation is a key method used by all duty bearers to impose restrictions on the operational space of the actors of civil society.

39. The Commission finds that the silencing the voices of civil society that challenge government policies and narrative by the Israeli authorities is done to further the objective of setting the permanent occupation at the expense of the rights of the Palestinian people.

40. The use of anti-terror legislation by Israeli authorities to categorize civil society organizations as terrorist organizations aims to delegitimize and isolate them and undermine their activity, and to harm their international funding and support.

41. The use of spyware by the Israeli authorities against human rights defenders violates freedom of association, freedom of expression and the right to privacy.⁷

42. The Commission finds that the Israeli authorities, the Palestinian Authority and the *de facto* authorities in Gaza have subjected Palestinian human rights defenders, including journalists, to ill-treatment while in detention, some of which may amount to torture or cruel,

⁷ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR) art 14, 17; Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A(III) (UDHR) art 12.

inhuman or degrading treatment or punishment, in violation of international law.⁸ Palestinian journalists are particularly targeted and subjected to frequent harassment, attacks, arrests, detention and accusations of incitement to violence. Consequently, Palestinian journalists are increasingly fearful and therefore self-censor.

43. Women human rights defenders have been specifically targeted by State actors and anti-gender rights groups because they are perceived as challenging religious and cultural norms and the status quo, and as a warning to other women. The Commission finds that the lack of accountability for gender-based violence, including sexual violence, permits and encourages the targeting of women human rights defenders.

44. The Commission concludes that attacks and arrests of civil society members have had significant impact on children. In particular, the arrest and detention of human rights defenders, as well as the constant threats and attacks by Israeli security forces or settlers, were found to contribute to family fragmentation and to increasing psychological trauma and fear felt by children.

45. The Commission finds that actions by Israeli and Palestinian authorities that diminish cultural space, affecting artists and cultural activists in Israel and the OPT, constitute violations of cultural rights enshrined in Article 15(1) of the International Covenant on Economic, Social and Cultural Rights. The Commission notes the shocking nature of the reported attempts by Israeli authorities and non-State actors to interfere with events focused on Palestinian culture, arts, history and heritage, as well as statements made by members of the Government of Israel, aimed at erasing elements of Palestinian identity.

46. The Commission finds that several Israeli actions undertaken against civil society organizations may amount to violations of international humanitarian law and may constitute crimes under international law. These actions include the detention of civil society organization members and their transfer from the OPT to Israel, in violation of the Geneva Convention relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention). The

⁸ Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A(III) (UDHR) art 19

Commission finds that the revocation of East Jerusalem residency permits based on the 2018 amendment of the law on entry into Israel, involving a breach of allegiance, constitutes a war crime since it is applied against the protected population in an occupied territory.⁹ The Commission underscores that demanding allegiance from protected people in occupied territory is contrary to international law and violates international humanitarian law.¹⁰

47. Furthermore, the Commission finds that the forcible deportation of Salah Hammouri from East Jerusalem to France constitutes a grave breach of international humanitarian law, namely the deportation of a protected person from the occupied territory. The Commission has preserved, on a list of possible perpetrators, information about the individuals who may bear criminal responsibility for what may amount to the war crime of unlawful deportation. The Commission intends to explore further the criminal responsibility of all those involved in the forcible deportation.

48. The Commission notes the arbitrary arrest and detention of activists by both the Israeli authorities and the Palestinian Authority. The Commission notes the “revolving door” of arrests and detentions experienced by activists, which warrants further investigation. While the Commission recognizes the constraints facing the State of Palestine due to the realities of the occupation, it considers that the documented violations directed at civil society actors must be examined independently from these circumstances and conclusions drawn as to the responsibility of the Palestinian Authority and the *de facto* authorities in Gaza.

49. The Commission concludes that officials of the Palestinian security forces have resorted to sexual and gender-based violence to silence women human rights defenders in the West Bank. The Commission underlines the obligation of the State of Palestine to take concrete actions to condemn, prevent, investigate, prosecute and provide remedies for violent acts against women human rights defenders perpetrated by State and non-State actors.

⁹ Geneva Convention relative to the Protection of Civilian Persons in time of war (adopted 12 August 1949, entered into force 21 October 1950) 75 UNTS 31 (Fourth Geneva Convention) arts. 49 and 147

¹⁰ Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land (adopted 18 October 1907, entered into force 26 January 1910) 205 CTS 277 (1907 Hague Convention IV) art 45; Geneva Convention relative to the Protection of Civilian Persons in time of war (adopted 12 August 1949, entered into force 21 October 1950) 75 UNTS 31 (Fourth Geneva Convention) art 68.

50. The Commission finds that the State of Palestine failed in its obligation to ensure that individual rights are protected against acts committed by private persons, by failing to prevent and investigate human rights abuses by anti-gender rights groups against women human rights defenders advocating for gender equality. This constitutes a violation of obligations under the Convention on the Elimination of All Forms of Discrimination against Women (arts. 2 and 7 (c)), the International Covenant on Civil and Political Rights (arts. 3, 25 and 26) and the International Covenant on Economic, Social and Cultural Rights (art. 3) to take all appropriate measures to eliminate discrimination against women in public life and ensure the equal right of women and men to the enjoyment of all human rights.

51. Recommendations

The Commission recommends that all duty bearers:

- (a) Ensure that the rights to freedom of association, expression and opinion and the right to peaceful assembly and wider economic, social and cultural rights are respected and protected and that civil society actors are able to conduct their activities safely, freely and without harassment or retribution;
- (b) Ensure effective remedies for all civil society actors who experience violations or abuses of human rights or violations of international humanitarian law because of their social, political, economic or cultural activities.

The Commission recommends that the Government of Israel:

- (a) Immediately cease, without undue delay, actions that may amount to war crimes, including the unlawful deportation or transfer of protected persons from occupied territory, and permit such persons to return to their lawful residence;

- (b) Immediately cease systematic practices, such as arbitrary arrest and detention, harassment and smear campaigns, that punish and silence human rights defenders and journalists, in particular Palestinians;
- (c) Immediately cease practices that may amount to torture or ill-treatment; and ensure that all allegations of such violations are promptly, impartially and independently investigated and perpetrators are brought to justice;
- (d) Urgently act to hold non-State actors, including settlers, accountable for human rights abuses committed against civil society;
- (e) Repeal laws and provisions that obstruct the work of civil society, including laws imposing unreasonable financial, procedural and technical barriers; and stop any draft legislation that may have an adverse effect on civil society;
- (f) Urgently revoke the designation of Palestinian human rights and humanitarian organizations as terrorist or unlawful organizations.

The Commission recommends that the Government of the State of Palestine and the de facto authorities in Gaza:

- (a) Immediately cease practices aimed at intimidating and silencing human rights defenders, and ensure that all allegations of such violations are promptly, impartially and independently investigated and perpetrators are brought to justice;
- (b) Take all measures necessary to immediately cease gender-specific targeting of women human rights defenders and promptly investigate all forms of gender-based violence.
- (c) Hold perpetrators accountable for human rights violations committed by State and non-State actors against civil society.

The Commission recommends that States Members of the United Nations:

(a) Call on the Government of Israel to rescind the designation of Palestinian civil society organizations as terrorist and unlawful organizations; to end the application of the 2016 Counter-Terrorism Law to civil society organizations in the Occupied Palestinian Territory; and to publicly denounce campaigns by State or non-State actors against civil society organizations in Israel, the Occupied Palestinian Territory and worldwide that criticize Israeli policy and action or support Palestinian rights;

(b) Call on the State of Palestine to hold general elections.

(c) The Commission recommends that the Office of the Prosecutor of the International Criminal Court (ICC) prioritize the investigation into the situation in the OPT, including the identification of direct perpetrators, those exercising command responsibility and individuals who aid or abet the commission of crimes under the Court's jurisdiction.

C. Request for an advisory opinion on legal consequences arising from the policies and practices of Israel in the Occupied Palestinian Territory including East Jerusalem

52. On 30 December 2022 at its fifty-sixth plenary meeting of the UNGA adopted resolution 77/237¹¹ entitled "Israeli practices affecting the human rights of the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem" decided, in accordance with Article 96 of the Charter of the United Nations, to request the IC J to render an advisory opinion pursuant to Article 65 of the Statute of the Court, on the following questions:

"considering the rules and principles of international law, including the Charter of the United Nations, international humanitarian law, international human rights law, relevant resolutions of the Security Council, the General Assembly and the Human Rights Council, and the advisory opinion of the Court of 9 July 2004:

¹¹ UNGA, 'Israeli practices affecting the human rights of the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem' UN Doc. A/77/400 (30 December 2022)

(a) What are the legal consequences arising from the ongoing violation by Israel of the right of the Palestinian people to self-determination, from its prolonged occupation, settlement and annexation of the Palestinian territory occupied since 1967, including measures aimed at altering the demographic composition, character and status of the Holy City of Jerusalem, and from its adoption of related discriminatory legislation and measures?

(b) How do the policies and practices of Israel referred to in paragraph 18 (a) above affect the legal status of the occupation, and what are the legal consequences that arise for all States and the United Nations from this status?”

53. The request for an advisory opinion was transmitted to the Court by the Secretary-General of the United Nations in a letter dated 17 January 2023, which was received in the Registry of the Court on 19 January 2023.¹² The letter also informed the Court that the Secretariat would start to prepare a dossier containing a collection of all relevant documents that are likely to throw light upon the questions.¹³

54. Further by letters dated 19 January 2023, the Registrar gave notice of the request for an advisory opinion to all States entitled to appear before the Court, pursuant to Article 66, paragraph 1, of the Statute of the IC J (hereinafter the Statute).¹⁴

55. In its Order dated 3 February 2023, the Court decided that “the United Nations and its Member States, as well as the observer State of Palestine, are considered likely to be able to furnish information on the questions submitted to the Court for an advisory opinion”. Pursuant to Article 66, paragraph 2, of its Statute, it fixed 25 July 2023 as the time-limit within which written statements on the questions may be presented to the Court, and 25 October 2023 as the time-limit within which States and organizations having presented written statements may submit written

¹² Press release (unofficial) dated 20 January 2023 <<https://www.icj-cij.org/sites/default/files/case-related/186/186-20230120-pre-01-00-en.pdf>> accessed 30 August 2023

¹³ Letter dated 17 January 2023 from the UN Secretary-General to the President of the Court <<https://www.icj-cij.org/sites/default/files/case-related/186/186-20230117-REQ-01-00-EN.pdf>> accessed 30 August 2023

¹⁴ See, Order dated 3 February 2023, <<https://www.icj-cij.org/sites/default/files/case-related/186/186-20230203-ORD-01-00-EN.pdf>> accessed 30 August 2023

comments on the written statements made by other States or organizations, in accordance with Article 66, paragraph 4, of the Statute of the IC J.¹⁵

56. Further the pursuant to Article 66 of the Statute, the court decided that the League of Arab States, the Organization of Islamic Cooperation and the African Union at their requests would be authorized to participate in the advisory proceedings on the case.¹⁶

57. By 7 August 2023 which was the time limit for the presentation of written statements as recorded in order dated 3 February 2023, the following 55 States and 2 International Organizations submitted written statements:

Türkiye, the Republic of Namibia, Luxembourg, Canada, Bangladesh, Jordan, Chile, Liechtenstein, Lebanon, Norway, Israel, Algeria, League of Arab States, Syrian Arab Republic, Palestine, Organisation of Islamic Cooperation, Egypt, Guyana, Japan, Saudi Arabia, Qatar, Switzerland, Spain, Russian Federation, Italy, Yemen, Maldives, United Arab Emirates, Oman, African Union, Pakistan, South Africa, United Kingdom of Great Britain and Northern Ireland, Hungary, Brazil, France, Kuwait, United States of America, China, The Gambia, Ireland, Belize, Bolivia, Cuba, Mauritius, Morocco, Czechia, Malaysia, Colombia, Indonesia, Guatemala, Nauru, Djibouti, Togo and Fiji.

58. Further, the President of the Court decided, on an exceptional basis, to authorize the late filing of the written statement of Senegal, on 28 July 2023 and Zambia on 3 August 2023. Pursuant to Article 66 of the Statute the written statements have not been made public before the oral hearings however the dossier submitted by the Secretariat has been made public.

¹⁵ Press release (unofficial) 8 February 2023 <<https://www.icj-cij.org/sites/default/files/case-related/186/186-202302-08-PRE-01-00-EN.pdf>> accessed 30 August 2023

¹⁶ See press releases (unofficial) of the International Court of Justice, (10 March 2023, 31 March 2023, 13 April 2023) <<https://www.icj-cij.org/press-releases>> accessed 30 August 2023

IV. Observations and Comments of the AALCO Secretariat

59. The reports presented by the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967 and the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem and Israel provide an insight into the abysmal situation of the rights of the Palestinian people. While the report presented by the Special Rapporteur Ms. Francesca Albanese deals with the fundamental issues of the right of peoples' to self-determination the report of the independent commission focusses on the attacks on civil society members, fighting for the rights of the Palestinian people.

60. As reflected in the report of the Special Rapporteur the people of Palestine have been denied their right to self-determination for more than fifty-five years through a number of steps and colonial practices taken to undermine their ability to assert their right. In numerous UN General Assembly and UN Security Council resolutions, the international community has been mandated to cooperate and to bring an end to the illegal occupation, as well as not to recognize as lawful the illegal situation created by the internationally wrongful acts. The report of the Special Rapporteur in addition to other measures also recommends that the international community pursue accountability for perpetrators through the I CC and universal jurisdiction mechanisms. With the attacks on the members of civil society members being well documented in the report of the independent commission adding to number of violations of human rights that are being committed with impunity, it is time that the international community took collective steps to bring an end to the decades old occupation and ensure respect for the right to self-determination of the Palestinian people.

61. With a view to further cooperative action in this regard, the request for the advisory opinion of the ICJ by the UNGA is a welcome step towards taking efforts for the realization of the rights of the Palestinian people. It emerges from the questions presented to the Court that the advisory opinion shall be concerned with the question of the right to self-determination of people's and its systematic denial through the commission of brazen acts which are illegal under the customary and conventional law of occupation. While questions of the collective human rights to self-determination and Statehood are expected be in focus during the proceedings, acts

impermissible during occupation as provided for in customary international law and the Fourth Geneva Convention shall also be in focus. Further, the status of the Holy City of Jerusalem is also relevant in this analysis as it comprises of the territory under occupation being subjected to demographic change and ultimate annexation as recognized by numerous UN GA resolutions.

62. It is a matter of great significance that the Court has been presented with an opportunity not only to clarify once and for all the content of the firmly established right to self-determination and the conditions for its applications, but also delineate the obligations *erga omnes* which are incumbent on the international community with respect to the situation. There is no doubt the international community needs to particular attention to the advisory proceedings which is bound to provide an impetus for it to take collective action.

63. The AALCO Member States have a long history of supporting decolonization over the many years since the creation of the UN, and have striven for its firm grounding in international law not only as a customary rule but as a fundamental norm of peremptory character or *jus cogens*. Therefore, it is evident that the topic holds great importance for the AALCO Member States, which is reflected in the number of written submissions made by them before the Court in the advisory proceedings. AALCO Member States are urged to present their views on the international developments on the situation in Palestine and the cooperative measures that AALCO Member States and the international community can take to bring an end to the prolonged grave illegal situation.