

ASIAN-AFRICAN LEGAL CONSULTATIVE ORGANIZATION



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

Prepared by:

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

CONTENTS

I.	Introduction	1-2
	A. Background	1-1
	B. Deliberations at the Forty-Seventh Annual Session of AALCO (2008-New Delhi (HQ), India, 30 June – 4 July 2008)	2-2
	C. Issues for focused consideration at the Forty-Eighth Session of AALCO, 2009	2-3
II.	Israel's Violation of International Law, Particularly International Humanitarian and Human Rights Law	3-29
	A. Violations of Fourth Geneva Conventions in the Occupied Palestinian Territory (OPT)	3-5
	1. Annexation and Illegal Expropriation of Palestinian Land	5-6
	2. Jewish Colonial Settlements	6-7
	3. Deportation of Palestinians	7-8
	4. Construction of the Wall in the Occupied Palestinian Territory	8-9
	B. UN Security Council and General Assembly Resolutions	9-9
	C. Resolutions adopted at the Sixty-Third Session (2008) of the United Nations General Assembly	10-10 10-17
	D. Israeli atrocities (War Crimes) in Gaza and the consequent Human Rights Violations: Responses of the International Community	17-25
	E. Peace in the Middle East: Ongoing Efforts of the International Community	25-29
	F. Other Major developments	
III.	Comments and Observations of AALCO Secretariat	29-32

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

I. INTRODUCTION

A. Background

1. The item “Deportation of Palestinians in Violation of International Law particularly the Fourth Geneva Convention of 1949 and the Massive Immigration and Settlement of Jews in Occupied Territories”, was taken up, at the initiative of the Government of the Islamic Republic of Iran at the AALCO’s Twenty-Seventh Session which was held in Singapore (1988). During that Session the delegation of the Islamic Republic of Iran pointed out that: “The Zionist entity (Israel) had deported a number of Palestinians from Palestine, the deportation of people from occupied territory, both in past and recent times constitutes a violation of the principles of international law, as well as, provisions of international instruments and conventions such as the Hague Conventions of 1899 and 1907, the UN Charter of 1945, and the Geneva Convention Relative to Protection of Civilian Persons in time of War, 1949 all of which prohibit deportation as a form of punishment, in an occupied territory.” The Government of Islamic Republic of Iran, after a preliminary exchange of views had submitted to the AALCO Secretariat a Memorandum, and the Secretariat was called upon to study the legal consequences of the deportation of Palestinians from occupied territories.

2. At the Thirty-Fourth Session held in Doha (1995) the Organization, *inter alia* decided that this item be considered in conjunction with the question of the Status and Treatment of Refugees. At its Thirty Fifth Session (Manila, 1996) after due deliberations the Secretariat was directed to continue to monitor the developments in the occupied territories from the view point of relevant legal aspects.

3. At the subsequent Sessions, the scope of the item was enlarged, *inter-alia*, to include, at the Thirty-Seventh Session, “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-Eight Session (Accra 1999).

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

B. Deliberations at the Forty-Seventh Annual Session of AALCO (New Delhi (HQ), India, 30th June - 4th July 2008)

5. At the Forty-Seventh Session of AALCO, the delegations presented their views on the topic and condemned the continued violation of international law, particularly international humanitarian law and human rights law, by the Government of Israel. The delegations also highlighted illegal actions by Israel, including forceful deportation of Palestinians, illegal settlements in the OPT, and military excesses against the Palestinian people. Several delegations urged that international community must seek and take necessary measures pressurizing Israel to respect relevant international laws and to comply with its obligations towards international community. The delegations emphasized on the right to self determination of the Palestinian people for establishing an independent sovereign State of Palestine. Some delegations condemned the Israeli disregard towards the Advisory Opinion of the International Court of Justice in the case concerning the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*. One delegation was of the view that the Quartet Road Map for peace could bring to an end and also ensure peace in the Middle East. The Delegation of Indonesia informed that the Government of Indonesia, jointly with South Africa would host a ministerial level conference from 14 to 15 July 2008 for Asian and African countries to discuss technical assistance for Palestine and to plan for its future independence.

6. Pursuant to RES/47/S 4 adopted at the Forty-Seventh Session of AALCO on 4th July 2008, the AALCO Secretariat closely followed the developments in the occupied territories from the view point of relevant legal aspects and during the period from July 2008 till March 2009, found out that the situation of human rights in the Occupied Palestinian Territory has seen a significant deterioration in many parts of the Territory, particularly in the Gaza Strip. The developments reported in this brief as well as the efforts of the international community towards the situation in the Occupied Palestinian Territories, are illustrative of the developments during the last one year and are in no way exhaustive.

C. Issues for focused consideration at the Forty-Eighth Session of AALCO (2009)

1. Violations of international law, particularly international human rights law and human rights law, committed by the Government of Israel in the Occupied Palestinian Territory (OPT)

- *Special focus on the Renewed Israeli military excesses in the Occupied Palestine Territories*
- *Fourth Geneva Convention of 1949*
- *United Nations Security Council and General Assembly Resolutions*
- *ICJ Advisory Opinion on Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory – the adverse effect of the wall on the Palestinian people and the economy*

2. *Establishing peace in the Middle East*

- *The role of the international community to pressurize Israel to comply with its international obligations*
- *Highlighting the need for establishing an independent sovereign State of Palestine as a prelude to establishing everlasting peace in the Middle East*

II. ISRAEL'S VIOLATION OF INTERNATIONAL LAW, PARTICULARLY INTERNATIONAL HUMANITARIAN LAW AND HUMAN RIGHTS LAW

7. For almost four decades, Israel has administered a military occupation of the West Bank, the Gaza strip and East Jerusalem in consistent and relentless defiance of the will of the international community.¹ The international consensus has been expressed through widely supported resolutions passed by the UN Security Council (UNSC) and UN General Assembly (UNGA). The Security Council Resolutions 242 and 338 affirmed the legal obligation of Israel to withdraw from Palestinian territories occupied in the 1967 six-day war. This must be the end point of any peace process that can lead to a lasting and just peace. However, every positive step taken towards that end is brought back seven steps by Israel the occupying power, the horrific atrocities perpetrated on the civilian population in the OPT beginning from 27th December 2008 have clearly demonstrated this trend.

A. Violations of Fourth Geneva Conventions in the Occupied Palestinian Territory (OPT)

8. Until such time as Israel respects its obligation under the Fourth Geneva Convention concerning the Protection of Civilian Persons in Time of War, 12 August, 1949, as well as other principles of international law in particular those provisions of the Convention that require an occupying power to protect the status quo, human rights and prospects for self determination of the occupied people, violations of the rights of Palestinian civilians shall continue. The Convention also obliges all State Parties to enforce the Convention in the face of “grave breaches”. Since 1967, Israel has refused to accept this framework of legal obligations. Not only has it failed to withdraw from the occupied territories, but during the occupation, Israel has created heavily armed settlements, bypass roads and security zones in the midst of a future Palestinian State that seriously compromises basic Palestinian rights.

9. Various provisions of the Fourth Geneva Convention dealing with the protection of civilians are applicable to the Occupied Palestinian Territory (OPT). There have been large-scale violations of the Convention obligations by Israel to the utter dismay of the international community. Both parties to the conflict are parties to the Geneva Conventions. Since October 1967, Israel has taken a consistent position that the Geneva Convention is *de jure* not applicable to the West Bank and the Gaza Strip.

¹. Beyond Oslo: The new uprising International law and the al-Aqsa Intifada – Middle East Report 219, Winter 2002

10. Israel claims that it is not in “occupation” of OPT but is in “administration” and therefore, does not come under the purview of the Fourth Geneva Convention and the law of belligerent occupation. To justify its position Israel resorted to legal fiction and attempted to bring forth doctrinal justification developed in vacuum. Accordingly, Missing Reversioner theory was developed to strengthen its arguments for its non-compliance with Fourth Geneva Convention and law of belligerent occupation.² This theory contended that Jordan and Egypt were not the legitimate sovereigns in OPT. Since there was no ousted legitimate sovereign “a missing reversioner” to whom the territory would revert, Israel could make possession of OPT given that Israel has a relatively stronger title to the territories. This is argued on the basis of strange interpretation of common article 2 of the Geneva Conventions. Article 2 reads: “The Convention shall...apply to all cases of partial or total occupation of the territory of a High Contracting Party....” Thus it is argued that the object and purpose of the law of belligerent occupation is to protect the rights of the ousted sovereign holding valid legal title.

11. Therefore, it is argued that because Jordan and Egypt were not the legitimate sovereigns in the OPT prior to 1967 owing to their alleged unlawful aggression against Israel in 1948, that territory can not be said to constitute the ‘territory of a High Contracting Party’. According to this line of thinking, the legal standing of Israel in the Occupied Territory is that of a State which is lawfully in control of territory in respect of which no other States can show better title.

12. It is further argued in this regard that Israel possesses better title over OPT in comparison to Jordan and Egypt based on the concept of “defensive conquest”. Based on this concept it is argued that Israel came into control of the OPT in 1967 through a defensive war against Jordan and Egypt and neither of them held valid legal title to that territory, and therefore it has a perfect legal control over OPT.

13. However, these arguments of Israel were strongly refuted by international law scholars³ as “strained and artificial in character”, and commanded little or no respect among “highly qualified publicists” or within the “organized international community” and also it did not receive any support from the international community. In 1976, the President of the UN Security Council, after consulting all the members and concluding that the majority agreed, stated that, ‘The Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, is applicable to the Arab territories

². The argument was first put forward by Yehuda Blum, ‘The Missing Reversioner: Reflections on the Status of Judea and Samaria’, 3 *Israel Law Review* 279 (1968).

³. See Richard A. Falk & Burns H. Weston, ‘The Relevance of International Law to Israeli and Palestinian Rights in the West Bank and Gaza’, in Emma Playfair, ed., *International Law and the Administration of Occupied Territories: Two Decades of Israeli Occupation of the West Bank and Gaza Strip*, (Oxford: Clarendon Press, 1992). 132. Yoram Dinstein, an Israeli professor of law at Tel Aviv University, has dismissed the theory being “based on dubious legal grounds”. Yoram Dinstein, ‘The International Law of Belligerent Occupation and Human Rights’, 8 *Israeli Yearbook on Human Rights* 104, 107 (1978); W. Thomas Mallison & Sally V. Mallison, *The Palestine Problem in International Law and World Order*, (London: Longman, 1986).

occupied by Israel since 1967.⁴ In 1980, by a vote of 14 to none, with one abstention, the Security Council censured the enactment by Israel of a ‘basic law’ on Jerusalem, which it found to constitute a violation of international law that did not affect the continued application of the Fourth Convention.⁵ It decided not to recognize the ‘basic law’ and other actions seeking to alter the character and status of Jerusalem. Similarly, UN General Assembly also has been reiterating that Israel is bound by the obligations of the Fourth Geneva Convention in OPT. In its 5 December 2001 Declaration, the reconvened International Conference of High Contracting Parties to the Fourth Geneva Convention expressed its deep concern over the deteriorating humanitarian situation, reaffirmed the applicability of the Convention to Occupied Palestinian Territory, including East Jerusalem, and reiterated the need for full respect for the Convention in that Territory.⁶ It is of relevance to quote the International Court of Justice in this regard, which reiterated the paramount importance of the international humanitarian law:

“It is undoubtedly because a great many rules of humanitarian law applicable in armed conflict are so fundamental to the respect of the human person and “elementary considerations of humanity” as the Court put it in its Judgment of 9 April 1949 in the Corfu Channel case (I.C.J. Reports 1949, p. 22), that the Hague and Geneva Conventions have enjoyed a broad accession. Further these fundamental rules are to be observed by all States whether or not they have ratified the conventions that contain them, because they constitute intransgressible principles of international customary law... These rules indicate the normal conduct and behaviour expected of States.”⁷

14. Thus, Israel’s compliance with the Fourth Geneva Convention is not optional based on unilateral interpretations. Therefore, enumeration of Israeli activities in the OPT that violated the Fourth Geneva Convention and other relevant provisions of international law would become an exhaustive list as it has violated almost every provision of the Fourth Geneva Convention. Some of the glaring illegal activities of Israel are mentioned below.

1. Annexation and Illegal Expropriation of Palestinian Land

15. Since 1967, Israel has engaged in a systematic campaign of usurpation of Palestinian land in the OPT for the purpose of establishing exclusively Jewish colonies. This illegal campaign is implemented through two methods: one is annexation in and around occupied East Jerusalem and the second is the policies of expropriation in the remaining OPT. The Israeli government passed a number of Acts that extended its municipal law and jurisdiction to occupied East Jerusalem annexing the city in violations of international law. The law and policy of Israel in respect of other parts of OPT is also

⁴. UN SC Presidential Statement: UN doc. S/PV.1922, 26 May 1976.

⁵. SC res. 478 (1980).

⁶. Conference of High Contracting Parties to the Fourth Geneva Convention: Declaration, Geneva, 5 December 2001.

⁷. *Legality of the Threat of Use of Nuclear Weapons*, Advisory Opinion, ICJ Reports, 1996, 226, 257, paras. 79, 82.

similar to that implemented in occupied Jerusalem with an exception that it has not been formally annexed. Host of military orders are used to implement these policies. For example, Military Order No. 59 (1967), permitting the Israeli government to declare all lands not registered with them as “State lands”, thereby restricting their use to Israeli authorities; Military Order No. 58 (1968), authorizing Israeli authorities to confiscate lands of those “absent” during the 1967 census; Military Order No. 70 (1967), allowing Israeli authorities to arbitrarily declare any locale a “closed military area” transferring all use to the State; Military Order no. 150, enabling the state to expropriate land belonging to “absentee” Palestinian owners, or individuals who were not accounted for in an Israeli census following the 1967 war; Military Order No. 321 (1968), authorizing the State to unilaterally expropriate Palestinian land for “public” purposes, which is always for the exclusive Jewish use; Military Order No. S/1/96, allowing Israeli authorities to unilaterally declare Palestinian land a “closed military area” and Military Order No. T/27/96, permitting Israeli authorities to expropriate Palestinian land for “public” purposes.

16. All these activities are clearly in violation of the Fourth Geneva Convention. Article 47 of the Fourth Geneva Convention makes annexation of the occupied land as an illegal act.⁸ Similarly, article 147 of the Convention declares as a grave breach of any extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully.⁹ Article 146 of the Convention places an obligation on the High Contracting Parties to enact effective penal sanctions for persons who have committed, or ordered to be committed, "grave breaches" of the Convention. In addition, Article 146 requires each High Contracting Party "to search for persons alleged to have committed, or to have ordered to be committed, such grave breaches, and [it] shall bring such persons, regardless of their nationality, before its own courts". If it does not do so, it must extradite such suspects to any other High Contracting Party on request if that state has sufficient evidence to commence a prosecution.

2. Jewish Colonial Settlements

17. For more than 35 years now, the creation of Jewish Settlements has been a central component of Israel's efforts to consolidate control over the Gaza Strip and the West Bank, including East Jerusalem. Israeli settlement construction has served not only to facilitate territorial acquisition and to justify the continuing presence of Israel armed

⁸. Article 47 reads as follows:

Protected persons who are in occupied territory shall not be deprived, in any case or in any manner whatsoever, of the benefits of the present Convention by any change introduced, as the result of the occupation of a territory, into the institutions or government of the said territory, nor by any agreement concluded between the authorities of the occupied territories and the Occupying Power, nor by any annexation by the latter of the whole or part of the occupied territory.

⁹. Article 147 defines "grave breaches" as "wilful killing, torture or inhuman treatment, wilfully causing great suffering or serious injury to body or health, unlawful deportation or transfer or unlawful confinement of a protected person, wilfully depriving a protected person of the rights of fair and regular trial, taking of hostages and extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly."

forces on Palestinian lands, but also to limit the territorial contiguity of areas populated by Palestinians and thereby to preclude the establishment of a viable independent Palestinian State.

18. Israel has been practicing its colonial settlement policy since 1967 which is aimed at settling the Jewish population in the OPT to make the local population a minority community and for other forms of subjugation. According to a plan prepared by Mattiyahu Drobles of the Settlement Department of the World Zionist Organization, in 1980; “the best and most effective way of removing every shadow of doubt about our intention to hold on to Judea and Samaria [i.e., the West Bank] forever is by speeding up the [Jewish colonial] settlement momentum in these territories. The purpose of settling the areas between and around the centers occupied by the minorities [that is, the Palestinian majority in the West Bank] is to reduce to the minimum the danger of an additional Arab state being established in these territories. Being cut off by Jewish settlements, the minority population will find it difficult to form a territorial and political continuity.”¹⁰

19. Thus, the total settlement population reached 213,672, in West Bank and Gaza Strip, 170,400 in East Jerusalem and 17,000 in Golan Heights.¹¹ These acts of settlement of Jewish population in OPT is in clear violation of article 49 of the Fourth Geneva Convention which says that ‘the Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies’. These acts are intended to change the physical character and to bring demographic changes in the OPT. This policy is being continued by Israel despite its condemnation in unequivocal terms by the international community.¹²

3. Deportation of Palestinians

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

¹⁰. Mattiyahu Drobles, master plan for the Development of Settlement in Judea and Samaria (1980), cited by Ardi Imseis, ‘On the Fourth Geneva Convention and the Occupied Palestinian Territory’, *Harvard International Law Journal*, Vol. 44, No. 1, 2003, p. 104.

¹¹. For more details in this regard see; <http://www.fmep.org/>

¹². For e.g., UN Security Council Resolution 465 of 1980 says: “...all measures taken by Israel to change the physical character, demographic composition, institutional structure or status of the Palestinian and other Arab territories occupied since 1967, including Jerusalem, or any part thereof, have no legal validity and that Israel's policy and practices of settling parts of its population and new immigrants in those territories constitute a flagrant violation of the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War and also constitute a serious obstruction to achieving a comprehensive, just and lasting peace in the Middle East.”

Convention also prohibits this act and categorizes it as the “grave breach” of the Convention.

21. Apart from the above-mentioned acts Israel also indulged in the deprivation of the rights of fair trial, torture and inhuman treatment, extra judicial killings and executions. All these acts are in clear violation of the Fourth Geneva Convention and other important human rights instruments.

4. Construction of the Wall in the Occupied Palestinian Territory

22. The International Court of Justice (ICJ), rendered its Advisory Opinion in the case concerning the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory (Request for advisory opinion)*. Highlights of the Opinion include: The construction of the wall being built by Israel, the occupying Power, in the Occupied Palestinian Territory, including in and around East Jerusalem, and its associated regime, are contrary to international law (14 votes to 1); and Israel is under an obligation to terminate its breaches of international law; it is under an obligation to cease forthwith the works of construction of the wall being built in the Occupied Palestinian Territory, including in and around East Jerusalem, to dismantle forthwith the structure therein situated, and to repeal or render ineffective forthwith all legislative and regulatory acts relating thereto, in accordance with paragraph 151 of this Opinion (by 14 votes to 1). (Details of the Advisory Opinion: See Report on the Item AALCO/44/NAIROBI/2005/SD/S 4, pp.10-15)

23. The United Nations General Assembly Tenth Resumed Emergency Special Session on 20 July 2004, overwhelmingly adopted a resolution demanding Israel to comply with the ICJ Advisory Opinion on *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*. It called upon the Israel to halt construction on its security barrier in the West Bank; tear down the portions built on the Palestinian land; and provide reparations to Palestinians whose lives have been harmed by the wall. 150 countries voted in favor of the resolution and six countries against, with ten abstentions. The resolution also called on both Israel Government and the Palestinian Authority to immediately implement their obligations under the Road Map, which calls for a series of parallel and reciprocal steps by each party leading to two States living side by side in peace by 2005. It called on all UN Member States to comply with their obligations as contained in the finding by the ICJ, which include a duty “not to recognize the illegal situation resulting from the construction of the wall in the Occupied Palestinian Territory, including in and around East Jerusalem”. It also called upon the Member States not to render aid or assistance in maintaining the situation created by such construction. The resolution requested the UN Secretary General to set up a register of all damage caused to all the natural or legal persons in connection with Israel’s construction of the barrier.

24. A resolution to establish a Register of Damage arising from the construction of separation wall by Israel in the Occupied Palestinian Territory was adopted as the General Assembly continued its tenth special emergency session on Israeli actions in the Occupied Palestinian Territory.

25. Introduced by Iraq, on the United Nations Register of Damage calls for the establishment of the Register and an office to serve as a comprehensive record of the damage caused to all natural and legal persons as a result of the building of the wall. The office would be composed of a three-member board, an executive director and a secretariat. As a subsidiary organ of the Assembly, the office would operate under the administrative authority of the Secretary-General.

B. UN Security Council and General Assembly Resolutions

26. The UN consensus is particularly persuasive since majority of UN Member States recognize the Palestinian right of self-determination. This right is also legitimate from the fact that Palestine was a mandated territory, administered as a sacred trust by the United Kingdom. The UN has made clear the legal rights and duties in the OPT in a series of widely supported resolutions, including the following:

(i) UNGA Resolution 181 (ii) concerning the Future Government of Palestine (November 29, 1947) establishes the parity of the two peoples with respect to their respective rights to establish states on the former mandated territory of Palestine, and the duty of both states to respect both minorities and the special juridical status of Jerusalem.

(ii) UNGA Resolution 194 (iii) (December 11, 1948) affirms the right of Palestinians to return to their original homes and lands, and to receive compensation for any losses incurred, as well as the right of resettlement for those Palestinian refugees choosing not to return and compensation for their losses. The UN established the UN Conciliation Commission to uphold the rights of Palestinian refugees.

(iii) UNSC Resolution 242 and 338 (November 22, 1967), and October 22, 1973) require Israeli withdrawal from the territory occupied during the 1967 and 1973 wars, and call for a just settlement of the refugee problem.

(iv) UNGA Resolution 34/70 (December 6, 1979) asserts the need for any solution of the conflict to be in accordance with the right of self-determination, regardless of what the parties might negotiate.

(v) UNGA Resolution 43/177 (December 15, 1988) acknowledges the 1988 Palestinian proclamation of a Palestinian state as consistent with UNGA Resolution 181.

(vi) UNSC Resolutions 476, 480, 1322, 1397, 1402 and 1403 (1980, 1980, 2000, 2002, 2002, 2002) reaffirm the basic principle of International and UN Law that it is inadmissible to acquire territory by force or conquest, as well as the unconditional applicability of the Fourth Geneva Convention to the civilian population of occupied territory. Also Resolutions 1405 (2002) of 19 April 2002, 1435 (2002) of 24 September 2002, 1515 (2003) of 19 November 2003 and 1544 (2004) of 19 May 2004, 1850 (2008) and 1860 (2009) are of great relevance to the Palestinian cause.

C. Resolutions adopted at the Sixty-Third Session (2008) of the United Nations General Assembly

27. The Sixty-Third of the UN General Assembly adopted a number of resolutions related to the question of Palestine. Major resolutions are related to, Permanent Sovereignty over Natural Resources in the OPT,¹³ Right of Palestinian People to Self-Determination¹⁴, Palestinian Refugees¹⁵, 1967 Displaced Persons¹⁶, Work of the Special Committee to investigate Israeli Practices¹⁷, Applicability of the Fourth Geneva Convention¹⁸, Peaceful Settlement of the Palestine Question¹⁹, Israeli Settlements²⁰ and Israeli Practices in the OPT²¹.

D. Israeli atrocities (War Crimes) in Gaza and the consequent Human Rights Violations: Responses of the International Community

28. The lack of protection of civilians and the escalation of violence have been significant factors in the overall human rights situation in the Occupied Palestinian Territory. During this beginning 27 December 2008 when Israel waged a full scale war against the population in Gaza strip, there was an escalation of violence, with an increase in Israeli military attacks and incursions against the Palestinian population in the Territory. The Israeli Defense Forces (IDF) continued to carry out rocket and artillery attacks, air strikes and military incursions into Gaza. The restrictions on the movement of Palestinians between the West Bank, Gaza and East Jerusalem and within the West Bank were tightened further. These measures were severe violations of the human rights of the Palestinian people which severely damaged the social and economic structures of the West Bank and Gaza, contributed to increasing unemployment and poverty, and resulted in increased reliance on humanitarian assistance.

29. The economic strangulation in the Occupied Palestinian Territory further increased because of the Israeli border control regime and other trade-related restrictions and obstacles, resulting in increasing dependency on humanitarian aid with a direct impact on the enjoyment of economic and social rights. Discrimination in access to water has been emphasized as a key concern. Many Israeli practices in the Occupied Palestinian Territory constitute, or have been described as, collective punishment prohibited by article 33 of the Fourth Geneva Convention.

30. All crossings into the Gaza Strip have been essentially closed since June 2007, with only sporadic openings. Despite the ceasefire with Israel, Gaza borders remain largely closed. During the reporting period the severe restrictions on the movement of goods and people entering and leaving Gaza resulted in a significant deterioration of the

¹³ A/RES/63/201

¹⁴ A/RES/63/165

¹⁵ A/RES/63/91

¹⁶ A/RES/63/92

¹⁷ A/RES/63/99

¹⁸ A/RES/63/96

¹⁹ A/RES/63/29

²⁰ A/RES/63/97

²¹ A/RES/63/98

humanitarian and human rights situation in the Gaza Strip, with shortages of food, medical and relief items, spare parts for critical health and water sanitation installations, materials for humanitarian projects and raw materials for commerce and industry in Gaza. Shortages of fuel and electricity translated into electricity cuts of 8 to 10 hours per day, and disruptions in water distribution, sewage treatment and, to a lesser extent, health care.

31. The policy of isolation and collective punishment has led Gaza to the brink of a humanitarian crisis, while the citizens of Gaza continue to be subjected to Israeli military attacks and incursions. It is estimated that 80 per cent of the Gaza population lives below the poverty line and relies on food aid from international organizations.

32. Meanwhile, the route of the separation wall, the steady expansion of settlements, which are illegal under international law, curfews, and the closure regime and associated controls have fragmented communities and seriously infringed on the right to freedom of movement and virtually every other human right of the Palestinian people, including the rights to health, education, an adequate standard of living, and work and family life, in clear violation of international human rights and humanitarian law. The right to freedom of movement continued to be obstructed by more than 607 obstacles, including staffed checkpoints, random, or "flying", checkpoints, earth mounds, trenches, road blocks, road gates and other kind of obstacles.

1. The Human Rights Council resolution 7/18: 27 March 2008

33. In paragraph 120 of its advisory opinion on the *Legal Consequences of the Construction of the Wall in the Occupied Palestinian Territory* (A/ES-10/273 and Corr.1), the International Court of Justice concluded "that Israeli settlements in the Occupied Palestinian Territory (including East Jerusalem) have been established in breach of international law". The transfer of its own population by the occupying Power into the occupied territory is prohibited by article 49, paragraph 6, of the Fourth Geneva Convention. The Supreme Court of Israel has avoided pronouncing itself on the legality of settlements since this policy began in 1977. The Human Rights Council, in its resolution 7/18, deplored Israel's announcement of the construction of new housing units for Israeli settlers in East Jerusalem, as they undermine the peace process and the creation of a contiguous, sovereign and independent Palestinian State, and are in violation of international law and pledges made by Israel at the Annapolis peace conference of 27 November 2007, expressed grave concern at the continuing Israeli settlement and related activities, in violation of the Fourth Geneva Convention, and at the restriction of freedom of movement of people and goods within the Occupied Palestinian Territory, urged the dismantlement of settlements, and called on Israel to take measures to prevent acts of violence by Israeli settlers against Palestinian civilians and properties.

2. Report of the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied Territories: 14 August 2008

34. During the Sixty-third session of the United Nations General Assembly the Fortieth Report of the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied Territories was presented by the Secretary-General pursuant to General Assembly resolution 62/106.²²

35. The Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied Territories was established in 1968 by the General Assembly in its resolution 2443 (XXIII).

36. The mandate of the Special Committee, as set out in General Assembly resolution 2443 (XXIII) and subsequent resolutions, is to investigate Israeli practices affecting the human rights of the population of the occupied territories. The occupied territories are considered to be those remaining under Israeli occupation, namely, the occupied Syrian Arab Golan, the Occupied Palestinian Territory, which comprises the West Bank, including East Jerusalem, and the Gaza Strip. The persons covered by resolution 2443 (XXIII) and therefore the subject of the investigation of the Special Committee are the civilian population residing in the areas occupied as a result of the hostilities of June 1967 and those persons normally resident in the areas that are under occupation but who left those areas because of the hostilities.

37. The human rights of the Palestinian people and other Arabs of the occupied territories are those referred to by the Security Council in its resolution 237 (1967) as "essential and inalienable human rights" and those rights that find their basis in the protection afforded by international law, in particular in circumstances such as military occupation and, in the case of prisoners of war, capture.

38. The "policies" and "practices" affecting human rights that are within the scope of investigation by the Special Committee refer, in the case of policies, to any course of action consciously adopted and pursued by the Government of Israel as part of its declared and undeclared intent; while practices refers to those actions that, irrespective of whether or not they were in implementation of a policy, reflect a pattern of behaviour on the part of the Israeli authorities towards the civilian population in the occupied areas.

39. The Special Committee based its work on the human rights standards and obligations enshrined in the Charter of the United Nations, the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949 (the Fourth Geneva Convention), the Geneva Convention relative to the Treatment of Prisoners of War, of 12 August 1949 (the Third Geneva Convention), the Hague

²² A/63/150 and Corr.1.

Convention of 14 May 1954 for the Protection of Cultural Property in the Event of Armed Conflict, and the Hague Conventions of 1899 and 1907 concerning the Laws and Customs of War on Land. The Special Committee also relied on those resolutions relevant to the situation of civilians in the occupied territories adopted by the General Assembly, the Security Council, the Economic and Social Council and the Human Rights Council.

40. The General Assembly, by its resolution 62/106, requested the Special Committee, pending complete termination of the Israeli occupation, to continue to investigate Israeli policies and practices in the Occupied Palestinian Territory, including East Jerusalem, and other Arab territories occupied by Israel since 1967, especially Israeli violations of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, and to consult, as appropriate, with the International Committee of the Red Cross according to its regulations in order to ensure that the welfare and human rights of the peoples of the occupied territories are safeguarded and to report to the Secretary-General as soon as possible and whenever the need arises thereafter. The Assembly also requested the Special Committee to continue to investigate the treatment of the thousands of prisoners and detainees in the Occupied Palestinian Territory, including East Jerusalem, and other Arab territories occupied by Israel since 1967.

Conclusions and recommendations

A. Conclusions

41. The Special Committee noted the serious deterioration of the human rights situation in the Occupied Palestinian Territory and in the occupied Syrian Golan, all of which arises from the Israeli occupation. The Committee noted the despondency of the population of those areas regarding the situation of human rights.

42. Palestinians have continued to suffer as a result of various types of violations of their basic human rights. They have suffered from various types of Israeli military action that has resulted in considerable loss of life and injuries, and damage to property and infrastructure. They have been subjected to collective punishment and have seen their rights violated with an ever decreasing possibility to seek effective redress. The construction of the separation wall has continued in defiance of the advisory opinion on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* rendered in July 2004 by the International Court of Justice, and the establishment of the Register of Damages Caused by the Construction of the Wall in the Occupied Palestinian Territory has been a lengthy and, considered by many, a disappointing process owing to its lack of presence in the Occupied Palestinian Territory and narrow mandate. Settlements and bypass roads have continued to expand and restrictions on the right to freedom of movement have further intensified, severely affecting the enjoyment of virtually all human rights of the Palestinian population, and further fragmenting the Occupied Palestinian Territory into disconnected "cantons" or "Bantustans". The situation in the Gaza Strip is particularly serious, and, despite the hope resulting from the 19 June ceasefire, the facts on the ground will determine whether the

population can benefit from any real relief. The human rights and welfare of children, a very vulnerable group that makes up half of the population of Gaza, is of utmost concern.

43. In addition to the damages arising from the construction of the separation wall, the Special Committee remained of the view that Israel should, in accordance with the principles of international law, grant compensation for damage in the Occupied Palestinian Territory resulting from all other aspects of the occupation that have affected all facets of Palestinian lives.

44. Although most Palestinians were not very hopeful about the possibility for improvement in the situation of human rights, some voiced hope that the international community would break its silence and act more resolutely to urge Israel to respect international law and comply with its legal obligations both under the international human rights instruments to which it is a party and, as the occupying Power, international humanitarian law, in particular the Fourth Geneva Convention. A number of interlocutors urged the Special Committee to do more to make their plight known to the world and elicit action by those who have the real power to make a difference.

45. The Special Committee also noted that the shift from development to humanitarian assistance had increased even further. The deterioration of the human rights situation could be largely attributable to Israeli practices. Israel and the international community, as Member States of the United Nations and as States parties to core international human rights treaties, have an obligation to ensure the realization of the human rights of the Palestinian people, including the population of Gaza, not as a matter of humanitarian charity, but as a matter of Palestinian rights and corresponding obligations by all concerned.

B. Recommendations

46. The Special Committee reiterated some of the recommendations made in its previous report (A/62/360) as follows:

(a) The General Assembly should:

(i) Urgently consider all means at its disposal to fulfil its responsibilities regarding all aspects of the question of Palestine until it is resolved in conformity with relevant United Nations resolutions and the norms of international law and until the inalienable rights of the Palestinian people are fully realized, and to this end provide the Special Committee with a renewed mandate in line with current realities and taking into account the hopes and aspirations of those living in occupied territories;

(ii) Urge the Security Council to ensure the implementation of the advisory opinion of the International Court of Justice and General Assembly resolution ES-10/15, in which the Assembly requested Israel to comply with its legal obligation to cease the construction of the separation wall in the Occupied Palestinian Territory, including in and around East Jerusalem; to dismantle the segments of the wall already built; to repeal all legislative and regulatory acts adopted in view of the construction of the

wall; and to make reparation for the damage arising from the construction of the wall;

(iii) Urge the Security Council to consider sanctions against Israel if it persists in paying no attention to its international legal obligations;

(iv) Ensure that other States are not taking actions that assist in any way the construction of the separation wall in the Occupied Palestinian Territory, either directly or indirectly, and that bilateral agreements between Israel and other States do not violate their respective obligations under international law;

(v) Encourage the members of the Quartet to fully implement the road map in such a way as to achieve a comprehensive, just and lasting settlement of the conflict, on the basis of relevant United Nations resolutions, including Security Council resolutions, and international humanitarian and human rights law;

(vi) Request the High Contracting Parties to the Fourth Geneva Convention to take concrete measures in respect of their obligations to ensure respect for the Convention by Israel; a meeting of the High Contracting Parties to that effect should be convened urgently;

(b) The Government of Israel should:

(i) Recognize the de jure and de facto applicability of the Fourth Geneva Convention to the Occupied Palestinian Territory and the occupied Syrian Golan and distinguish in all circumstances between military objectives and civilian persons and objects;

(ii) Ensure respect for international law and the principle of appropriate use of means and methods of warfare, and cease its policies of excessive use of force and extrajudicial killings of Palestinians, and the destruction of land, civilian and public property, houses and infrastructure;

(iii) Stop its policy of confiscating Palestinian land, which affects the territorial integrity of the future Palestinian State, and of expanding Jewish settlements in the Occupied Palestinian Territory, which are contrary to international law and which threaten the contiguity of Palestinian lands, and ensure that Israeli forces protect Palestinian civilians and their property against violence by Israeli settlers by instructing them to arrest settlers who commit violent acts against Palestinians or their property, by carrying out prompt and thorough investigations of complaints of settler violence and by bringing to justice those responsible;

(iv) Restore freedom of movement for Palestinians throughout the Occupied Palestinian Territory by lifting closures, checkpoints, roadblocks and other obstacles to movement and stop building roads accessible only to Israeli settlers and preventing access by Palestinians, in particular women and children, to their fields, schools, places of work, hospitals and other health-care facilities, as well as the passage of ambulances;

(v) End the closure and collective punishment of the people of Gaza, and take urgent steps to end the current man-made crisis and suffering of the people of Gaza and deprivation of all their rights;

(vi) Stop building the separation wall in the Occupied Palestinian Territory, which hampers the achievement of a just and sustainable peace between Israel and the future Palestinian State, and comply fully with the provisions of the advisory opinion of the International Court of Justice and all provisions of General Assembly resolution ES-10/15;

(vii) Stop carrying out mass arrests and arbitrary detention and imposing humiliating and cruel treatment on Palestinians and other Arabs detained in Israeli jails; guarantee those arrested a fair trial and detention conditions that are in keeping with the International Covenant on Civil and Political Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and the Fourth Geneva Convention;

(viii) Urgently implement its obligations set forth in the road map and withdraw its military presence in the Occupied Palestinian Territory and its occupation of the Syrian Golan;

(ix) Implement the concluding observations and recommendations of United Nations treaty bodies and special procedures mechanisms. Implement also the recommendations of the Special Representative of the Secretary-General for Children and Armed Conflict regarding Israeli occupation and acts;

(x) Implement the recommendations of the High Commissioner for Human Rights to the Human Rights Council;

(xi) Establish an independent and transparent system of accountability, which ensures prompt and impartial investigations, that perpetrators are brought to justice and that victims enjoy the right to an effective remedy.

(c) The Palestinian Authority should:

(i) Abide by the relevant provisions of human rights law and international humanitarian law;

(ii) Aim to resolve the urgent human rights and humanitarian crisis currently facing the Occupied Palestinian Territory, and to fully restore the rule of law in areas under its control;

(iii) Comply with the requirements of the road map as laid out by the Quartet.

E. Peace in the Middle East: Ongoing Efforts of the International Community

1. Statement by the President of the 63rd Session of the United Nations General Assembly: 27 December 2008

47. H.E. Mr. Miguel d' Escoto Brockmann, the President of the UNGA said that he behavior by Israel in bombarding Gaza was simply the commission of wanton aggression by a very powerful state against a territory that illegally occupies. He said that the time had come to take firm action if the United Nations does not want to be rightly accused of complicity by omission. The Israeli air strikes on the Gaza Strip represented severe and massive violations of international humanitarian law as defined in the Geneva Conventions, both in regard to the obligations of an Occupying Power and in the requirements of the laws of war.

Those violations include:

Collective punishment – the entire 1.5 million people who live in the crowded Gaza Strip are being punished for the actions of a few militants.

Targeting civilians – the air strikes were aimed at civilian areas in one of the most crowded stretches of land in the world, certainly the most densely populated area of the Middle East.

Disproportionate military response – the air strikes have not only destroyed every police and security office of Gaza's elected government, but have killed and injured hundreds of civilians; at least one strike reportedly hit groups of students attempting to find transportation home from the university.

48. The President reminded all Member States of the United Nations that the UN continues to be bound to an independent obligation to protect any civilian population facing massive violations of international humanitarian law – regardless of what country may be responsible for those violations. The President called on all Member States, as well as officials and every relevant organ of the United Nations system, to move expeditiously not only to condemn Israel's serious violations, but to develop new approaches to providing real protection for the Palestinian people.

2. The NAM, OIC, and the Arab Group in Geneva urge the IFRC, ICRC, and WHO to pressure Israel to end strikes and blockade on Gaza: 1 January 2009

49. Pursuant to the decisions made by the OIC Group in its most recent meeting concerning the Gaza tragedy, a delegation of the Non-Aligned Movement (NAM) the Organization of the Islamic Conference (OIC), the Arab Group and Palestine met in Geneva on 30 December 2008, the Secretary General of the International Federation of Red Cross and Red Crescent Societies (IFRC), Mr. Bekele Geleta, the President of the international Red Cross and Red Crescent, Mr. Jakob Kellenberger and a representative

of the Director General of the World Health Organization in the absence of the Director General were present at the meeting

50. The delegation impressed upon the heads of these three humanitarian organizations to pressure Israel to stop the military action, end the violation of human rights standards and international humanitarian law and allow humanitarian assistance into Gaza.

51. NAM, OIC, the Arab Group and Palestinian representatives impressed upon the heads of the IFRC, ICRC and WHO of the important role of these organizations in ending Israeli military attacks, by especially highlighting the humanitarian disaster that was unfolding and had the potential of becoming worse if Israel persisted in its military strikes and in undertaking ground military incursion into Gaza.

52. It was stressed that it was the responsibility of the humanitarian agencies to use all their moral authority to end the military operations, stop the massacre of civilians, including women and children, provide medical assistance to the wounded and sick inside Gaza, allow the free passage of the wounded and sick to outside Gaza, pressure the occupying power to end the economic blockade of Gaza, and to end the occupation.

53. The Secretary General of the IFRC, the President of the ICRC and the representative of the WHO Director General, informed the delegation of the actions they were taking to respond to the humanitarian impact of Israeli military operations.

3. United Nations Secretary-General condemns ‘unacceptable’ Israeli strikes on UN schools in Gaza: 6 January 2009

54. The UN Secretary-General H.E. Mr. Ban Ki-moon spoke out against Israel’s “totally unacceptable” attacks against three clearly-marked United Nations schools, where civilians were seeking refuge from the ongoing conflict in Gaza, with a senior official calling for an independent inquiry into the incidents which claimed dozens of lives. More than two dozen schools run by the UN Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) were serving as temporary shelters to more than 15,000 Palestinians whose homes have been destroyed or who were fleeing the violence. The agency’s education programmes had been suspended since the start of Israeli air attacks on Gaza, which Israel says it launched in response to rocket attacks by Hamas militants, on 27 December 2008. Mr. Ban Ki Moon said that Civilians “are seeking sanctuary in UNRWA schools because they have no other place to go and are not able to flee the Gaza Strip.”

55. These attacks reinforced the urgent need for a ceasefire to end the mounting casualties, he said, demanding an independent investigation into these attacks. “I sincerely hope that for the sake of those that have died, that it would not have been in vain.” In a separate incident, seven UN staff were injured, three seriously, along with three patients, when a strike on a nearby building caused significant collateral damage to a UNRWA health centre. The Secretary-General also said that “The location of all UN

facilities have been communicated to the Israeli authorities and are known to the Israeli army.”

4. The Non-Aligned Movement condemns Israeli Military Aggression in Gaza Strip: 7 January 2009

56. The Non-Aligned Movement (NAM) voiced its strong condemnation of the escalation of the Israeli military aggression in the Gaza Strip and called upon Israel to end the collective punishment of the Palestinian people. The NAM statement came as Mr. Abelardo Moreno, the Cuban UN ambassador, was speaking at an open meeting of the UN Security Council on the Gaza conflict in his capacity as chairman of the Coordinating Bureau of the NAM. Mr Moreno said that NAM "strongly condemns the escalation of the military aggression being carried out by Israel, the occupying power, in the Gaza Strip, NAM is gravely concerned by and condemns in particular the launching of the Israeli ground operation in Gaza in flagrant defiance of the calls by the international community for a cessation of military activities and of the regional and international diplomatic efforts to resolve the current crisis." "NAM expresses its deep regret at the loss of innocent life" as a result of the ongoing Israeli military attacks against the Strip, which killed more than 600 Palestinians and injured 3,000 others, he said.

57. "The movement reiterates that this unacceptable Israeli military aggression against the Palestinian civilian population in the Gaza Strip constitutes a grave breach of international law, including humanitarian and human rights law, fuels the cycle of violence and threatens international peace and security as well as the fragile peace process between the two sides," he said. "The movement expresses grave concern about the deepening humanitarian crisis being faced by the Palestinian civilian population in Gaza as a result of the current military actions, the continued closure of border crossings and the obstruction of access to humanitarian aid, including food and medicines, and the reduction of fuel and electricity supplies to the Gaza Strip by Israel," he said.

5. United Nations Security Council adopts Resolution 1860: 8 January 2009

58. Gravely concerned by the deepening humanitarian crisis in the Gaza Strip and the resulting heavy civilian casualties "since the refusal to extend the period of calm" between Israel and Hamas, the Security Council stressed the urgency of and called for an "immediate, durable and fully respected ceasefire, leading to the full withdrawal of Israeli forces from Gaza".

59. Adopting resolution 1860 (2009) by a vote of 14 in favour with the United States abstaining, the Council also expressed its grave concern at the escalation of violence and emphasized that Palestinian and Israeli civilian populations must be protected in the densely packed territory that has been the theatre of a deadly 13-day conflict between Israel Defence Forces and armed Hamas militants.

60. The measure, which recalled that "a lasting solution to the Israeli-Palestinian conflict can only be achieved by peaceful means", capped days of intense ministerial-level negotiations at United Nations Headquarters after Arab leaders and Palestinian Authority President Mahmoud Abbas flew to New York for urgent meetings with United Nations Secretary-General Ban Ki-moon and Security Council diplomats to craft a binding resolution to end the fighting, which began on 27 December, when Israel launched a major offensive in Gaza in response to Hamas rocket attacks.

61. Immediately following the vote, Secretary-General Mr. Ban Ki Moon said, after two weeks of escalating violence and suffering in Gaza and southern Israel, he was heartened and relieved at the adoption of a resolution to end the tragic situation. The Council's action signalled the will of the international community and must be fully respected by the parties. He stressed, however, that more would be needed, and a political way forward was required to deliver long-term security and peace. "My visit to the region next week will focus on helping to ensure that the ceasefire is implemented, that urgent humanitarian assistance reaches those in need and encouraging the diplomatic efforts currently under way," he added.

62. The resolution sets out urgent tasks for the international community and calls on United Nations Member States to intensify their efforts to provide arrangements and guarantees in Gaza to sustain a durable ceasefire and calm, including to prevent illicit trafficking in arms and ammunition, and to ensure the sustained reopening of crossing points on the basis of the 2005 Agreement on Movement and Access between Israel and the Palestinian Authority.

63. Calling for the unimpeded provision and distribution throughout Gaza of humanitarian assistance within Gaza, including food, fuel and medical treatment, the resolution recognizes the role of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) in providing such assistance, and emphasizes the need to ensure "sustained and regular flow of goods and people through Gaza crossings".

64. The resolution welcomed the regional and international efforts under way to end the crisis, including the Egyptian initiative crafted by President Hosni Mubarak and his French counterpart Nicolas Sarkozy, which, among other things, calls for a temporary ceasefire followed by talks on how to control the border crossings, as well as how to achieve reconciliation among Palestinian factions.

6. Tenth Emergency Special Session of the United Nations General Assembly: 16 January 2009

65. The General Assembly, gravely concerned about the intensified military operations in the Gaza Strip and heavy civilian casualties since the adoption of resolution 1860 by the Security Council, demanded full respect for that text, including its urgent call for an immediate, durable and fully respected ceasefire, leading to the full withdrawal of Israeli forces and unimpeded provision of humanitarian assistance.

66. Following a two-day emergency special session convened to address the three-week old crisis, the Assembly adopted its own resolution on the issue by a vote of 142 in favour to 4 against (United States, Israel, Venezuela, Nauru), with 8 abstentions (Australia, Canada, Côte d'Ivoire, Ecuador, Indonesia, Iran, Nigeria, Syria).

67. The Assembly called on all parties to exert all efforts to ensure, in cooperation with the Council, full and urgent compliance with resolution 1860. It also expressed support for the Secretary-General's mission, among other international and regional efforts under way, and called on States to extend support to measures aimed at alleviating the humanitarian and economic situation. Finally, the Assembly held out the possibility of resuming its special session if requested by Member States.

68. Speaking after the vote on resolution A/ES-10/L.21/Rev.1, the Observer of Palestine said the Assembly had sent a very strong message to Israel to end its aggression. He thanked the General Assembly and its President for achieving a nearly unanimous vote calling for an immediate ceasefire, to be followed shortly by Israel's immediate withdrawal from the Gaza Strip. He thanked all delegations for applying pressure on Israel, isolating that country and compelling it to comply with resolution 1860. If Israel did not comply, his delegation would "go knocking on the door of the Security Council with a Chapter VII draft resolution". He expected the Assembly to be with the Palestinian people until the gunfire stopped, the siege was lifted and the borders were opened.

69. The representatives of Brunei, Jamaica, Switzerland, Venezuela, Libya, Jordan, Sri Lanka, Russian Federation, Nicaragua, Iceland, Kuwait, Oman, Tunisia, China, Mexico, Ecuador, Bolivia, Liechtenstein, Pakistan, Australia, Cape Verde, Chile, Maldives, Norway, Rwanda (on behalf of the African Group), United Kingdom, Japan, Benin, Mauritania, Burkina Faso, Republic of Korea, Panama, Grenada (on behalf of the Caribbean Community), Comoros, Finland Ireland, Greece, Luxembourg, Netherlands, Germany, Denmark, Cyprus, United Republic of Tanzania, New Zealand, Sweden, Belgium, Malta, Lebanon, France, Czech Republic (on behalf of the European Union), Costa Rica, Djibouti, Gambia, Cuba, Iran, Federated States of Micronesia, Canada, Syria, Indonesia and Bolivia , Italy, Portugal, Afghanistan, Spain, Slovenia, also presented their views.

7. UN Secretary-General calls for full withdrawal of Israeli troops from Gaza: 20 January 2009

70. In UN Secretary-General Ban Ki-moon's, meeting with the Prime Minister of Israel Mr. Ehud Olmert ahead of a visit to Gaza and southern Israel, stressed the importance of the full withdrawal of Israeli troops from the Strip and the need to ensure humanitarian aid for the 1.5 million people who had suffered during three weeks of hostilities.

71. Mr. Ban told the Prime Minister that he was going to Gaza that day in solidarity with UN staff who had worked heroically during the past weeks, and to demonstrate his

respect and concern for all Gazans who lost friends and families, according to a statement issued by his spokesperson.

72. Mr. Ban said that the UN would dispatch a humanitarian needs assessment team early in January to Gaza, where three weeks of violence had claimed over 1,000 lives and wounded more than 5,000, in addition to causing widespread destruction and suffering.

73. In his meeting with Prime Minister Mr. Olmert, Mr. Ban expressed relief that Israel had declared a unilateral ceasefire. He also stressed the importance of the full withdrawal of Israeli troops from Gaza and of putting a framework in place to ensure a durable and sustainable end to the violence.

74. "The Secretary-General firmly believes that a true end to violence, and true security for both Israelis and Palestinians, will only come through a just and comprehensive settlement to the long-festered Arab-Israeli conflict, including the creation of the State of Palestine living side by side with the State of Israel, in peace and security, consistent with relevant Security Council resolutions."

8. International Donors' Conference for the Palestinian State: 22 January 2009

75. In accordance with the commitment they made at the International Donors' Conference for the Palestinian State, the Chair and co-Chairs met in Paris to launch the in-depth follow up of contributions announced at the Conference, of the Palestinian Programme (PRDP) and of all relevant elements concerning its implementation. The total amount of aids pledged in Paris has reached US\$7.7 billion. The Paris Conference demonstrated the high degree of confidence on the part of the international community in the plan prepared and to be implemented by the Palestinian Authority. While recognizing there had been some improvement in the Palestinian economy following the Paris Conference, it was noted that further efforts by all parties were required. The situation in Gaza was a source of great economic and humanitarian preoccupation. Efforts by all parties were required for the economic situation to improve: by donors to fulfill rapidly their commitments, by the Palestinian Authority to ensure prompt and full implementation of the PRDP and by Israel to encourage improved movement of goods and persons, which, as highlighted by the IMF and the World Bank, is a prerequisite to a full economic recovery. The Co-Chairs encouraged participants in the Paris Conference to maintain the present economic momentum by swiftly providing their contributions and ensuring that recurrent expenditures will receive adequate funding.

9. UN Special Representative for Children in Armed Conflict visits Gaza: 6 February 2009

76. Ms. Radhika Coomaraswamy, Special Representative for Children in Armed Conflict after her four-day visit to the occupied Palestinian territory and southern Israel stated that "despite the Gaza ceasefires, children continued to suffer and remained in a precarious state of insecurity", she was in the region to assess first hand the situation of children.

77. In Gaza, where 56% of the population is below 18 years old, grave violations against children were committed such as killing and maiming, and denial of humanitarian access. During the recent hostilities, there were no safe spaces for children and the crossings out of Gaza were, and remain, virtually sealed.

78. One third of Palestinian casualties are reported to be children. Many children have witnessed unspeakable violence against their family members and are severely distressed. The extensive destruction to homes, hospitals, schools and power, water and sanitation networks also has a devastating impact on children. The damage or destruction of hospitals and schools including the American International School, Palestinian Authority-administered, and UNRWA schools - considered protected spaces -- was particularly shocking. She said that reconstructing the schools and ensuring that children could go back to their classrooms and feel secure again was essential to their recovery.

79. In both Gaza and southern Israel, children expressed anger and despair as a manifestation of their desire for accountability. It was imperative that independent and impartial investigations were conducted and justice done. The lack of accountability only contributed to a sense of impunity. The Special Representative declared that "the children want answers and the international community must deliver".

80. Ms. Coomaraswamy reiterated calls by the international community for Israel to open all crossings for regular, sufficient and facilitated humanitarian access and said the amount and kinds of supplies allowed into Gaza must be significantly expanded for any real improvement to occur. The Special Representative emphasized that humanitarian agencies must not be hampered in assisting the population and their workers authorized easy access into Gaza.

81. "Even though they bear the brunt of the conflict, children remain strong advocates for peace," said Ms. Coomaraswamy. "Every child has the right to live in safety and security. Children from the region have suffered enough. They deserve a better future," she concluded.

10. The International Conference in Support of the Palestinian Economy for the Reconstruction of Gaza: Sharm El-Sheikh: 2 March 2009

82. At the initiative of the Arab Republic of Egypt, The International Conference in Support of the Palestinian Economy for the Reconstruction of Gaza was convened in Sharm El-Sheikh on 2nd March 2009, chaired by Egypt and co-chaired by Norway, in order to respond to the early recovery and reconstruction needs of the Palestinian people in the Gaza Strip in the aftermath of Israel's military offensive.

83. Participants expressed their concern that an understanding on a prolonged period of calm in Gaza could not be reached till present. They expressed their support for the ongoing efforts by Egypt to consolidate the current fragile ceasefire and to establish the necessary prolonged calm. Participants underscored the importance of achieving Palestinian national reconciliation consistent with Arab League resolutions and voiced

their support for the efforts exerted by Egypt to this end. They considered the achievement of both the calm and the reconciliation as necessary requisites for any successful reconstruction effort undertaken by the donor community.

84. While participants stressed that the Gaza Strip constitutes an integral part of the Palestinian Territory occupied in 1967 on which the future Palestinian State shall be established, they reiterated that the establishment of a viable Palestinian State will require, inter alia, the sustained support of the international community and called for increased financial and economic assistance for the Palestinian Authority.

85. Many participants emphasized the importance of access for the success of recovery and reconstruction efforts. In this context, they called for the immediate, unconditional and sustained re-opening of Israel's crossings with the Gaza Strip to allow for the movement of people and goods into Gaza in a manner that enables the Palestinians to effectively regain normalcy in their daily lives and rebuild what had been destroyed. Participants stressed the crucial need to break the cycle of construction and destruction in Gaza, and demanded that Israel fully respect its obligations under international law and international humanitarian law and desist from targeting or damaging the civilian and economic infrastructure of Gaza or taking any action that negatively impacts the collective livelihood of the Palestinian people in Gaza.

86. Participants welcomed the concerted response of the international community to the immediate humanitarian needs of the Palestinian population in Gaza that arose as a result of the military hostilities, and urged donors to continue to provide funding for these urgent priority needs, including through the United Nations' Consolidated Appeals Process (CAP). They underlined the need for this assistance to be delivered in line with the core humanitarian, neutrality, impartiality and operational independence.

87. Participants welcomed the Palestinian National Early Recovery and Reconstruction Plan for Gaza, which represented the coordinated response of the Palestinian National Authority and its local and international partners to the destruction sustained by the Palestinians in Gaza. They recognized that the Plan would be explicitly linked to the priorities outlined in the Palestinian Reform and Development Plan (PRDP) which was launched at the December 2007 Paris donors conference. They stressed that it would form the basis for mobilizing the resources and efforts of the international community and donors in response to the needs presented by the Palestinian National Authority for 2009 and 2010.

88. To this end, participants pledged an approximate total of 4,481 US billion dollars covering the next two years. They committed themselves to start disbursing these pledges as quickly as possible in order to rapidly impact the daily lives of the Palestinians.

89. Participants expressed their intention to channel their assistance for the Plan through the single Treasury Account (STA) as well as through existing international and regional mechanisms and funds namely the European Commission PEGASE, the World Bank Palestinian Reform and Development Plan (PRDP) trust Fund, the Islamic

Development Fund and the UN CAP. They welcomed the EU readiness to put the PEGASE mechanism, which provides targeted support for specific recurrent costs of the Palestinian Authority, for private sector recovery and development of public investment, at the disposal of the international donor community.

90. Participants emphasized the importance of the overall coordination of the reconstruction process in order to maximize the use of pledged and existing resources and avoid the employment of assistance or duplication of efforts that do not conform to the priorities outlined by the PNA. In this context they noted the important role played by the AHLC and highlighted the task of its upcoming meeting which will afford major donors the opportunity to further coordinate and align their policies with the Palestinian needs.

91. Participants expressed their hope for and encouraged Palestinians and Israelis to an early resumption of serious peace talks between them with the aim of ending the occupation of the Palestinian Territory and implementing the two-state solution.

92. They agreed on the need to follow up on the commitments announced during the Conference.

11. The State of Qatar pledges \$40 million to the UN for Humanitarian Aid: 11 March 2009

93. The State of Qatar announced a donation of \$40 million to the United Nations for its humanitarian programmes worldwide. Thirty million dollars has been pledged for emergency operations in Gaza while \$10 million will go to CERF, making it the ninth-largest contributor to the Fund for 2009.

94. Of the \$30 million, \$10 million had been allocated to the United Nations Relief and Works Agency (UNRWA) for lifesaving activities, and \$10 million for the World Food Programme's (WFP) emergency food assistance for more than one million Gazans. Five million dollars has been allocated for humanitarian programmes of the United Nations Children's Fund (UNICEF), and \$2.25 million for the Food and Agriculture Organisation's (FAO) activities in support of the damaged agricultural sector. The remaining \$2.75 million will go to the Office for the Coordination of Humanitarian Affairs (OCHA) for coordination and advocacy activities.

F. Other Major Developments

1. Statement of Special Rapporteur for the Palestinian Territories Occupied Since 1967 for Presentation to the Special Session of the Human Rights Council on the Situation in the Gaza Strip: 9 January 2009

95. The statement of Mr. Richard Falk, the Special Rapporteur focused on the impact of Israel's continuing Gaza military campaign, initiated on 27 December 2008, on the humanitarian situation confronting the 1.5 million Palestinians confined to the Gaza

Strip. In accordance with the undertaking of the mandate, it confines its comments to issues associated with Israel's obligations as occupying power to respect international humanitarian law (IHL), which refers mainly to the legal obligations contained in the Fourth Geneva Convention of 1949, which sets forth in some detail the legal duties of Israel as the occupying power. The essential obligations of IHL are also considered to be binding legal duties embedded in customary international law. This statement touches on issues of international human rights law (IHR), as well as the implications of severe and sustained violations of either IHL or IHR as raising issues of international criminal law (ICL). It is also necessary to assess the underlying Israeli security claims that the military incursion into Gaza was a 'defensive' operation consistent with international law and the United Nations Charter, and that no 'humanitarian crisis' existed making the scale and nature of the military force used allegedly 'excessive' and 'disproportionate.'

96. Although Israel had contended that it is no longer an occupying power, due to its withdrawal of its forces from within Gaza, it is widely agreed by international law experts that the continued Israeli control of borders, air space, and territorial waters is of a character as to retain Israel status legally as occupying power.

97. The quality of the report was diminished by the absence of first-hand observations of the pre-existing humanitarian situation existing in Gaza, which was to be the objective of a mission undertaken by the Special Rapporteur to gather information for use in making a report to the regular session of the Human Rights Council (HRC) scheduled for March, 2009. This mission was aborted when the Special Rapporteur was denied entry to Israel on 14 December 2008, detained for some 15 hours in a holding cell at Ben Gurion Airport, and expelled on the next day. Such treatment of a UN expert on mission would seem to raise serious issues for the Organization as a whole, bearing on the duties of a member state to cooperate, and to deal with those carrying out UN work with appropriate dignity. It is to be hoped that the government of Israel can be persuaded to reconsider its policy of exclusion that has hampered the work of this mandate.

98. The rationale for the Special Session was the existence of a humanitarian emergency in Gaza, a set of conditions that has been questioned in many public settings by the Israeli Foreign Minister, Ms. Tzipi Livni. Ms. Livni contended there is no need for a 'humanitarian truce' because there is no humanitarian crisis. She asserted that Israel has allowed shipments of food and medicine to cross the border, but as UNRWA and other UN officials have observed, these shipments would not alleviate hunger and nutritional difficulties unless distribution becomes possible, which is not the case given the war conditions prevailing in most of the Gaza Strip. This set of conditions certainly led impartial international observers and civil servants to an uncontested conclusion that the population of Gaza was already experiencing a humanitarian crisis of grave magnitude *prior* to 27 December 2008.

99. The use of force by an occupying power against the security threats emanating from a population under occupation is permissible within the constraints set by international law. Israel claims that its current military campaign is reasonable and necessary given the scale and severity of the rocket attacks directed at Israeli civilian

populations living in the South Israel towns of Sderot and Ashdod, and attributed to Hamas.

100. It was pointed out unambiguously that there was no legal (or moral) justification for firing rockets at civilian targets, and that such behavior is a violation of IHR, associated with the right to life, as well as constitutes a war crime. At the same time, the nature of the offense must be evaluated with the context of its occurrence, including the relevance of the temporary ceasefire that had held since June 2008 until seriously disrupted by a lethal Israeli attack on Palestinian militants in Gaza on 4 November 2008.

101. The blockade in effect for a period of 18 months was unlawful, a massive form of collective punishment, and as such in violation of Article 33 of the Fourth Geneva Convention, and also a violation of Article 55, which requires that the occupying power ensure that the civilian population has sufficient food and that its health needs are addressed. Such blockade does not alter the unjustifiable character of the rocket attacks, but it does suggest two important conclusions from a legal perspective: first, that the scale of civilian harm resulting from Israeli unlawful conduct was far greater than that of Palestinian unlawful conduct; secondly, that any effort to produce a sustainable ceasefire should ensure that Israel as well as Hamas respect IHL, which most concretely means that interferences with the access of goods for the maintenance of normal civilian life must end, and cannot be reestablished as a retaliatory measure if some sort of rocket attack occurs in the future.

102. It was also important under international law to determine the extent to which the reliance on force is proportionate to the provocation and necessary for safeguarding security. Here, too, the Israeli arguments seemed unpersuasive. To mount a major military campaign against an essentially defenseless society already gravely weakened by the blockade accentuates the disproportion of reliance on modern weaponry in combat situations where military dominance was largely uncontested. The one-sidedness of casualty figures is one measure of disproportion. Another is the scale of devastation and the magnitude of the attacks. It is obvious that the destruction of police facilities, as well as many public buildings, in crowded urban settings represents an excessive use of force even if Israeli allegations are accepted at face value. As discrediting as is the reliance on disproportionate force, is the lack of connection between the alleged threat associated with Gaza rockets and the targets of the Israeli attacks, giving added weight to the claims that the Israeli use of force is a form of 'aggression' prohibited by international law, and certainly excessive in relation to criteria of 'proportionality' and 'necessity.'

103. There had also been a variety of allegations made by qualified observers of Israeli reliance on legally unacceptable targets and on legally dubious weaponry that violate the customary international law prohibition on weapons and tactics that are 'cruel' or cause 'unnecessary suffering.' Among the targets viewed as unlawful under IHL: Islamic University, schools, mosques, medical facilities and personnel (including ambulances). Among weapons that are legally dubious under IHL: phosphorous gas in shells and missiles that burn flesh to the bone; dense insert metal explosives (so-called DIME) that cut victims to pieces, and raise risk of cancer for survivors; depleted uranium associated

with deep-penetrating, so-called 'bunker buster' bombs used against Gaza tunnels, possibly causing radiation sickness for anyone exposed over a period of centuries.

104. This dimension of 'unnecessary suffering' associated with the Israeli campaign has an important feature that has not been given attention. In many contemporary situations of warfare large number of civilians sought to escape from harm by moving away from immediate danger, becoming 'internally displaced persons' or 'refugees.' But Israel through its rigid control of exit, directly and indirectly, has denied the civilian population of Gaza the option of becoming 'refugees,' never an option of choice, but reflective of desperation. Its denial tends to lend credibility that the population of Gaza is essentially imprisoned by Israeli occupation policy. From the perspective of IHL this foreclosure of a refugee option for Gazans is a serious aggravation of the dangers posed for a civilian population, and underscores the gravity of the humanitarian crisis that has existed in Gaza since 27 December. Since the military campaign this situation has dramatically worsened. The comment by a Red Cross spokesperson in Gaza City is expressive of the general understanding: "The size of the operations and the size of the misery on the ground is just overwhelming..."

105. From the perspective of the Mandate for OPT the following recommendations seemed worthy of the attention at the Special Session:

- (1) To request restoring access for Special Rapporteur to the occupied Palestinian territories as an essential feature of UN monitoring role;
- (2) To seek General Assembly initiatives with respect to investigating allegations of war crimes;
- (3) To propose long-term truce based on cessation of rocket launchings from Gaza and unconditional lifting of blockade; and
- (4) To request an Advisory Opinion from the International Court of Justice to assess the legal status of Israeli control in Gaza subsequent to Israeli 'disengagement' in 2005.

2. Minister of Justice of the Palestinian National Authority, Mr. Ali Khashan, visits the ICC: 22 January 2009

106. In accordance with the Rome Statute of the ICC (Statute), the Court's jurisdiction extends to war crimes, crimes against humanity and genocide committed on the territory of a State Party, or by a national of a State Party. In addition, alleged crimes can come under investigation and prosecution before the ICC if a relevant non-State Party or Parties voluntarily accept(s) the jurisdiction of the Court on an *ad hoc* basis (Article 12(3) of the Statute) or if the Security Council refers the situation to the Prosecutor (Article 13(b)).

107. On 22 January 2009, the Prosecutor of the ICC received Dr. Ali Khashan, Minister of Justice of the Palestinian National Authority, who briefed the Prosecutor on the current situation. The same day, Dr. Khashan, on behalf of the Palestinian National Authority, lodged a declaration pursuant to Article 12(3) of the Statute with the Registrar of the Court.

108. Since 27 December 2008, the OTP has also received 213 communications under Article 15 by individuals and NGOs, related to the situation context of Israel and the Palestinian Territories; some of them were made public by the senders. As per normal practice, the Office was considering all information, including open sources. It would carefully examine all relevant issues related to the jurisdiction of the Court, including whether the declaration by the Palestinian National Authority accepting the exercise of jurisdiction by the ICC meets statutory requirements; whether the alleged crimes fall within the category of crimes defined in the Statute, and whether there are national proceedings in relation to those crimes.

109. This was a process the Office followed for each situation, as was done for the Central African Republic, Venezuela, and Iraq, and as is underway for Georgia, Colombia, Afghanistan and Côte D'Ivoire. Even when the Office received a referral from the UN Security Council concerning Darfur, issues of jurisdiction had to be independently assessed in order to determine whether or not to open an investigation. These are complex legal issues to assess. This independent judicial process is guided by the Rome Statute; the Prosecutor applies the same standard to all situations.

III. COMMENTS AND OBSERVATIONS OF AALCO SECRETARIAT

110. The murderous 21 day long Israeli offensive which began on 27 December 2008 against the defenseless men, women and children of Gaza will continue to be remembered as one of the “Black letter days” in the historical conflict that began in 1967. More than 1,300 Palestinians were killed, over 5,300 injured, and over 25,000 buildings were destroyed or damaged by the Israeli ground and air assaults, and damage estimated at over US \$ 2 billion. Gaza strip itself is a very small, area of 365 sq km and it is one of the most crowded areas in the world, with 1.5 million people living there, most of them refugees who came from their cities, towns villages and farms in historical Palestine.

111. During the fighting in and around Gaza between 27 December 2008 and 18 January 2009 it was the civilian population of Gaza that bore the brunt of the violence, destruction and widespread suffering. As a result the people of Gaza who had already endured much hardship for many years have been subjected to even greater misery, facing an uncertain future with anxiety and despair. The cycle of death, destruction and dislocation came on top of the harmful effects of occupation, blockade, civil war and economic collapse. This latest offensive has been termed as a “war crime”, by Qatar’s Emir, Sheikh Hamad bin Khalifa al-Thani who said on 4 January 2009 that “The Israeli aggression against our people in Gaza strip is a war crime”. This sentiment has been echoed at many other fora and has been increasingly condemned by the United Nations and its agencies resulting in a cumulative call for war crimes investigations against Israel.

112. In view of Mr. Richard Falk, the Special Rapporteur for the Palestinian Territories Occupied Since 1967 the attacks on Gaza with the closure of all its borders, had in fact taken away from the Palestinian civilians their “right to seek refuge in other territories”, and this new situation had the potential of acquiring yet another violation of human rights of Palestinian people. Many of the concerns raised by the Special Rapporteur merit

serious consideration and he has very eloquently elaborated the violations and non-compliance with established principles of international law by the State of Israel on the civilians in the Occupied Palestinian Territory. The latest Gaza offensive defied all the principles enshrined in International Humanitarian Law as Israel launched the most disproportionate attack against innocent civilians.

113. The deliberate destruction of the Gaza Strip's electricity power station, water networks, bridges, roads and other infrastructure is a clear violation of the Fourth Geneva Convention of 1949 and has major and long-term humanitarian consequences for the inhabitants of the Gaza Strip. As the occupying power, Israel is bound under international law to protect and safeguard the basic human rights of the Palestinian population.

114. The three weeks of intense fighting ended with unilateral ceasefire. Despite this, however the situation has remained delicate since, with further violence and continued closure. This underscores the need for durable, sustainable and fully respected ceasefire, as called for by the Security Council 1860. Besides the ceasefire several other issues need to be addressed: the full reopening of the crossings into Gaza, the release of Palestinian prisoners and the reunification of Palestinians. The economic needs of the Palestinians, particularly the recovery and reconstruction needs in Gaza need to be addressed.

115. It needs to be noted that people were not the only victims of the hostilities, also affected has been the peace process that had been underway since the Annapolis Conference that was held in November 2007. At this juncture the international community is faced with the twofold challenge of providing humanitarian assistance and engage in early recovery and reconstruction but also the need to recover and reconstruct the political processes: among Palestinians, between Palestinians and Israelis, and between Israel and the Arab world.

116. The developments in both Israel and Palestine have direct effect on the peace process. Creating an atmosphere conducive for peace should be the priority of both Israelis and Palestinians. The urgency of the international community should be to establish an independent and sovereign Palestinian State, which is democratic in character and could have peaceful coexistence with its neighbours and in consonance with the Resolutions of the UN General Assembly and Security Council. As noted by an eminent scholar the past 60 years had been “long on resolutions, but short on resolve”.

117. The objective of the international community at this juncture should not be merely to return to the situation that prevailed before 27 December in Gaza, or in the peace process. As the UN Secretary-General Mr. Ban Ki Moon said “now more than ever is the time for a full and comprehensive peace between Israel and its Arab neighbours. As we strive to provide urgently required assistance and to reconstruct Gaza, we must also tirelessly pursue the goal that has long united but evaded us; the end of the occupation that began in 1967, the establishment of the State of Palestine in Gaza and in West Bank, including East Jerusalem, to co-exist alongside Israel in peace and security, and a comprehensive, just and lasting peace between Israel and all its Arab neighbours”.

118. To arrive at any tangible solution another aspect that must get duly resolved is the question of Palestinian refugees, a central aspect of the Arab-Israeli conflict, which seems to have moved somewhat to the periphery of the attention span of the international community, this issue should not be deferred indefinitely and must be resolved in accordance with General Assembly resolution 194 (1948).

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

120. For over four decades, Israel has administered a military occupation of the West Bank, the Gaza Strip and East Jerusalem which has been unanimously deplored by the international community. The international consensus has been expressed through widely supported resolutions passed by the UN Security Council (UNSC) and UN General Assembly (UNGA). The UN Security Council Resolutions 242, 338, and 1515 affirmed the legal obligation of Israel to withdraw from Palestinian territories obtained in the 1967 six-day war. The principle of land for peace laid down in these resolutions must be the end point of any peace process that can bring lasting peace, since all Israeli measures are for so called security reasons.

121. Another major obstacle in the peace process is the dangerous problem of the construction of the wall by Israel in Palestinian Occupied Territory. In a landmark Advisory Opinion rendered by the International Court of Justice in July 2004, the Court found that the construction of the wall being built by Israel, were contrary to international law, and that Israel was under an obligation to comply with its obligations under international law; to dismantle it and make reparation for all damage caused by the construction of the wall. The Court also wanted the United Nations, and especially the General Assembly and the Security Council, to consider what further action is required to bring to an end the illegal situation resulting from the construction of the wall and the associated regime, taking due account of the present Advisory Opinion.

122. While arriving at any possible solution to the problem various initiatives taken by the international community, for example the Beirut Initiative of Peace adopted by Arab Summit also need to be considered. That prominent Pan Arab initiative opened a new era of peace and normalization between “All Arab States and Israel transcend in force the principle of land for, not only peace, but peace, security, good neighborliness and normalization”.

123. There has been a growing demand from the international community that the rights of the Palestinian women and children in the Occupied Palestinian Territories

should be protected. Commission on Human Rights, International Women's Commission and the Amnesty International has emphasized the need to protect the rights of Palestinian women and children in the OPT. To attain this goal the international community must assume its responsibilities to facilitate progress and, where necessary, insist on it. In the aftermath of the tragic conflict in Gaza it is more urgent than ever.

124. Israel is obliged to respect and be bound by the relevant principles of international law contained in the Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War, 12 August, 1949, in particular those provisions of the Convention that require an occupying power to protect the status quo, human rights and prospects for self-determination of the occupied people. Since 1967, Israel has refused to accept this framework of legal obligations. Not only has Israel failed to withdraw from the occupied territories, during the occupation, it has created heavily armed settlements, bypass roads and security zones in the midst of a future Palestinian state that seriously compromise basic Palestinian rights.

125. Until all the rights accorded to the Palestinian people by virtue of the principles enshrined in international law are respected by Israel and given to the Palestinian people, the Palestinian right of resistance to the occupation, due to Israeli refusal to implement the underlying directives, established by a consensus within the UN would continue. The UN consensus is particularly persuasive because the Palestinian right of self-determination is recognized by a majority of States, the UN has made clear the legal rights and duties in the Israeli-Palestinian conflict in a series of widely supported resolutions, as well as in the Road Map and Arab Summit Beirut Peace Initiative.

126. AALCO as the only inter-governmental legal Organization in the Asian and African region would continue to reiterate the urgent need on the part of the international community to seriously address all of the above mentioned grave violations and severe breaches of international law including international humanitarian law being committed by the occupying power against the Palestinian people. In the resolutions adopted at the successive Annual Sessions, AALCO has demanded that the Occupying Power "Israel" should seize all the opportunities provided by the international community if it wants real peace, security and good neighbourly relations with the Palestinian people now and for future generations, as well as for its own people, who also endure this traumatic situation. In this hour of crisis, it is the duty of the Asian-African countries to support and to declare solidarity for the Palestinian struggle for an independent nation.