

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**

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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 AALCO’s Twenty-Seventh Session, held in Singapore (1988), at the initiative of the Government of the Islamic Republic of Iran.¹ 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 and the Organization has examined the violations of international law committed by the State of Israel against the Palestinian People.

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

¹ 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.”

6. In compliance with the above mandate, the AALCO Secretariat has brought out the study entitled “The Statehood of Palestine under International law”. Palestine, as a territorial entity, has experienced a unique history. Until World War I, Palestine was part of the expansive Ottoman Empire. After the war, Palestine came under the administration of Great Britain by an arrangement with the League of Nations. In 1948 Israel established itself in part of Palestine's territory, and Egypt and Jordan assumed administration of the remaining part. By 1967 Israel took control of the parts administered by Egypt and Jordan and by 1988 Palestine reasserted itself as a State. Recent years saw the international community acknowledging Palestinian statehood as it promotes the goal of two independent states, Israel and Palestine, co-existing peacefully. The special study conducted by AALCO draws on evidence from the 1924 League of Nations mandate to suggest that Palestine was constituted as a State at that time. Palestine remained a State after 1948, even as its territory underwent transformation. Further, the study also provides an account of how Palestine has been perceived until the United Nations General Assembly overwhelmingly upgraded the Palestinian Authority's status to that of “Non-Member Observer State” on 29 November 2012 vide resolution 67/19.

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

8. In light of the grave violations of international law by the State of Israel in Gaza in 2014, the issue was once again deliberated at the Fifty-Third Annual Session held in Tehran, Islamic Republic of Iran (15-18 September 2014). The present report prepared for the Fifty-Fourth Annual Session of AALCO, broadly contains an overview of the following developments: Deliberations at the Fifty-Third Annual Session of AALCO (2014 - Tehran, Islamic Republic of Iran, 15 – 18 September 2014); Israel's violations of international law, particularly international humanitarian law and human rights law; UN Security Council and General Assembly Resolutions; The question of the Statehood of Palestine; The role of the International Criminal Court (ICC) in the dispute; Developments at the 69th Session of the United Nations General Assembly; Other Developments and Comments and Observations of the AALCO Secretariat.

B. Deliberations at the Fifty-Third Annual Session of AALCO (2014 - Tehran, Islamic Republic of Iran, 15 - 18 September 2014)

9. **The Secretary-General of AALCO Prof. Dr. Rahmat Mohamad** introduced the subject. He mentioned that even after many decades of Israeli occupation of the Palestinian Territories, all serious bilateral and multilateral attempts at conflict resolution have failed to bring justice for the people of Palestine. While stating that the recent Israeli shelling of Palestinian territories and civilians, especially women and children could not be justified on any account, he also pointed out that the illegal *Israeli blockade of Palestinians in Gaza* has

led to the *economy of Palestine being suffocated to a great extent*. However, despite all legal efforts exerted by the international community to persuade Israel to stop its illegal expansionist settlement activities and declare Palestine as an Independent State, occupation continues till date, without an early solution in sight, he added.

10. Commenting on the legal principles applicable, he stated that the international community has time and again asserted the application of the Fourth Geneva Convention relative to the Protection of Civilian Persons in the Time of War to this conflict and that illegal annexation of Palestinian Land, the creation of Jewish Colonial Settlements and the massive deportation of Palestinians are all actions in violation of international humanitarian law and human rights law. He was of the considered opinion that the denial of water and other essential services to Palestinians and the continuing blockade of Gaza that prevents the Palestinians from exercising their right to seek refuge in other territories are acts in the nature of “collective punishment”, imposed on the people of Palestine, in violation of the Geneva Conventions and customary International Humanitarian Law. As the numerous reports that were discussed in the AALCO Secretariat document demonstrate, the continuing occupation of Palestinian lands and the blockade of Gaza lied at the root of all the human rights violations faced by the Palestinian peoples, he added.

11. Stating that the situation in Palestine is grave and the principal tool to redress this is ensuring compliance with international law, he called for the resolution of the conflict in accordance with the principles of international law including the provisions and principles of the Charter of the United Nations, and the Universal Declaration of Human Rights. He also pointed out the relevance of the Regulations annexed to the Hague Convention of 1907 and the Geneva Conventions, in particular the Fourth Geneva Convention regarding the Protection of Civilian Persons at the time of war in bringing justice to the peoples of Palestine.

12. On the issue concerning the Statehood of Palestine, he mentioned that this issue had been debated by the various United Nations Organs since 1947 and that no amicable solution of the issue had been found yet. Until all the rights accorded to the Palestinian people by virtue of the principles enshrined in international law, are respected by Israel, the Palestinian right of resistance to the occupation, established by a consensus within the UN would continue, he added.

13. In conclusion, he assured that 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.

14. After the presentation by the Secretary-General, the following Member States presented their views, namely **India, Japan, Islamic Republic of Iran, and State of Palestine, Syria, Arab Republic of Egypt, People’s Republic of China, South Africa, Malaysia, DPR Korea, Turkey, and Indonesia.**

15. **The Delegate of India** expressed deep concern at the loss of large number of civilian lives in Gaza. He welcomed the long-term ceasefire, which would bring stability and security to the region and its people. India expressed support for a comprehensive resolution of the Palestine issue, leading to a sovereign, independent, viable and United

State of Palestine living within secure and recognized borders, side by side at peace with Israel, as endorsed in Quartet roadmap and relevant UNSC resolutions. India, the delegate pointed out, had also joined the international call for an end to Israeli settlements in the occupied Palestinian territories and for an early and significant easing of restrictions on the free movement of persons and goods within Palestine. The delegate further recalled the proactive role that India had played to garner support for the Palestinian cause in various multilateral *fora*. India had supported Palestine's bid for full and equal membership of the UN in 2011 and also co-sponsored the UNGA resolution in November 2012 that upgraded the status of Palestine to a 'Non-Member Observer State', he added.

16. The Delegate of Japan firmly supported a two-state solution whereby Israel and a future independent Palestinian state live side by side in peace and security. Japan urged both Israel and the Palestinian Authority to make further efforts to build mutual trust and to advance direct negotiations in order to realize the two state solution at the earliest possible date. Japan also emphasized that the conflict between the Israeli and the Palestinian sides should be resolved only through negotiations, based on the relevant UN Security Council Resolutions, the Madrid Principles, the Roadmap, the agreements previously reached by the parties and the Arab Peace Initiative. The delegate of Japan further reiterated that all violent acts must be firmly rejected.

17. He further pointed out that Japan had been seriously concerned about the situation in Gaza Strip and extended an emergency assistance of 5.5 million US dollars in July. It reiterated the following proposal by the Japanese Government to the international community so that the ceasefire agreement would lead to a lasting ceasefire and stabilization of the Gaza Strip.

- (1) The lasting ceasefire should be achieved on the basis of relevant past agreements including the Ceasefire agreement Proposed by Egypt in 2012, Palestinian National reconciliation Agreement proposed by Egypt in 2009 and Chapter 2 of the Israeli-Palestinian Interim agreement on the West Bank and the Gaza Strip in 1995.
- (2) All parties concerned should discuss their concrete steps without any pre-conditions.
- (3) The ceasefire should lead to the resumption of the Middle East peace talks and the stabilization of the entire Middle East.
- (4) The international community should render its support to the stabilization of Gaza and its people after a lasting ceasefire is achieved.

18. The Japanese delegate reiterated that his government will continue to play an active role based on the above mentioned proposal. He further stated that , for the stabilization of the Gaza Strip and the entire Middle East, support should not only be confined to temporary aid but should also reach out to long-standing, seamless efforts ranging from emergency humanitarian aid to reconstruction.

19. The Delegate of the Islamic Republic of Iran said that the denial of the inalienable right of the Palestinian people to self-determination while depriving them of the most basic necessities of life by the Zionist regime amidst the silence of the international community has almost paralyzed the legal arsenal.. In recent months, he added, brazen commission of war crimes and crimes against humanity against the residents of Gaza has shocked the conscience of humanity. The said atrocities, he pointed out, along with the expansionist policies of the Israeli regime in the West Bank and the isolation of Palestinians in an

exclave for several years in flagrant violation of international humanitarian law and human rights law could not escape justice. The Islamic Republic of Iran, he stated, was of the view that persistent impunity risks moving against the long-awaited goal of achieving a lasting peace in Middle East.

20. He pointed out that the Advisory Opinion delivered by the International Court of Justice (ICJ) in the case concerning the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory described the construction of the wall in the Occupied Palestinian Territory as “contrary to international law”. ICJ’s opinion, he stated, must be endorsed by the international community in that the existence of a Palestinian people is no longer an issue and they do have a right of self-determination.

21. He referred to the numerous calls had been made by the Human Rights Council of the United Nations, regarding gross violations of international human rights law and grave breaches of international humanitarian law during the Israeli occupation and military operations in Gaza. The delegate of the Islamic Republic of Iran called for the formal recognition of the right of the Palestinians to self-determination and full respect for the principles of international law including the provisions and the principles of the Charter of the UN, Universal declaration of Human Rights, the regulations annexed to The Hague Convention of 1907 and the Geneva Conventions in particular the fourth Geneva Convention regarding the protection of civilian persons in time of war.

22. The Delegate of Pakistan was of the view that the title of the agenda item itself indicated two important parts: the first part related to the IVth Geneva Convention. He stated that, in the said Convention there were two Chapters that were relevant to the discussion. The first being “Belligerent Occupation” and the second one “Treatment of Civilians on both sides of the belligerents”.

23. Explaining the concept of “Belligerent Occupation”, he felt that if it is a belligerent occupation then he was not satisfied with the title of the topic which starts with the word “Deportation”. He pointed out that the word deportation, denoted that somebody illegally entered into another’s territory or is allowed to illegally enter into the territory but overstayed and that person is sent out the territory of that State. He questioned whether this was the case in Palestine as they were not being deported rather they were being expelled from their own territory. The delegate thus expressed doubt over the appropriateness of the expression “deportation” in the title of the agenda.

24. The second point, he stated, related to “Belligerent Occupation”. He stated that a belligerent occupation is a temporary phenomenon and that the practice of the occupier or conqueror integrating the occupied or conquered territory is no longer recognized by international law. Belligerent occupation itself, he added, meant that it was a temporary phenomena and once the war ends the territory returned to the original owner. Thus, the delegate pointed out, the fundamental duty of the belligerent occupant is not to change the character of the occupied territory. Therefore, he added, bringing in the Jews, settling them in the occupied territories was a fundamental violation of the law under the IVth Geneva Convention that is changing the demographic character of the area.

25. Thirdly, he pointed out, as far as the protection of the communities \was concerned, the latest situation in Gaza indicated that the “rule of proportionality” had been violently

and gravely disregarded. Thus he called for a general condemnation of this disregard to the rule of law which is a disregard of the IVth Geneva Convention as retaliation had to be proportional to the crime. He recalled the statement of Dr. Charis , the Defense Counsel at the Nuremberg Trials that “to fail is an abominable crime to succeed is a sanctified action”. He then pointed out that it was high time that the world resolved the conflict and ensure that that the rule of law succeeds and prevails.

26. The Minister of Justice of Palestine² supported the views expressed by the delegate of Pakistan and stated that the use of the term “Deportation” was inaccurate as in reality Palestinians were being forcefully expelled from their homeland since 1948. Unfortunately, he stated that this contentious issue had not been resolved despite numerous Security Council and General Assembly resolutions. In fact, he added, Israel was the only country which had been created by a UN resolution but that since the beginning Israel had pursued the policy to evacuate Palestinians from their homeland and lands in utter disregard and violation of the Geneva Conventions and the UN Charter.

27. He stated that the latest aggression on Gaza had targeted the life and property of innocent civilians which had left scores dead, thousands homeless, without either food or shelter. He pointed out that Israel had targeted agricultural fields, killed animals and destroyed the only power station in Gaza. He stated that despite calls from the international community and the Security Council Israel continues with its illegal violations of international law. He pointed out that the need of the hour was to draw lessons from the Report of the UN Secretary-General and devise a mechanism to punish the war criminals either through the International Criminal Court or other international forums and get justice for the people of Palestine, who had been treated unfairly since the time of the League of Nations, when the process of settling Jews commenced in the land of Palestine. He also stated that it had to be acknowledged that the demographic character of the Palestinian State underwent tremendous change due to the policies of settlement adopted by the Israeli Government.

28. He appreciated the recent grant of Non-Member State status to the State of Palestine by the General Assembly and the subsequent recognition of Palestine as a State by UNESCO has given a new legal status to Palestine by the International community and that the time was opportune for Palestinian people to demand their rights for fair compensation being granted to them for the sufferings inflicted on them by the war crimes perpetrated by Israel. The Minister requested the AALCO Secretariat to study the proposal as to how could Palestinians be compensated for the many wrongs committed on them by Israel.

29. The Delegate of Syria³ stated that the Palestinian issue was one of the top most priorities on the agenda of the United Nations for the reason that Israel continued to violate the UN Charter, the Geneva Conventions and international law by continuing to deport Palestinian people from their homeland and denying them their right to self-determination.

30. He said that at the heart of the problem lay a continued occupation and deportation of Palestinian people which was in violation of international law and the judgment if the International Court of Justice that categorized these elements as war crimes which need to be brought to justice. He stated that Israel had violated all the agreements it entered with

² This statement was delivered in Arabic. As the translation of the same is not available, this portion has been prepared from the notes taken by the Secretariat personnel.

³ This statement was delivered in Arabic. This is an unofficial translation made by the Secretariat.

Palestine to peacefully settle the issues between them and continues with its settlement policy in addition to stealing Palestinian land and its aggression on Gaza. All these actions of Israel were in contravention of International Humanitarian Law and Human Rights law, he added. Therefore, he requested the AALCO Secretariat to provide a legal framework by which the war criminals could be taken either to the International Criminal Court or the International Court of Justice. In addition, he stated that, the Palestinians should be allowed to their right to self-determination and to have an independent, sovereign state of their own.

31. The Delegate of the Arab Republic of Egypt⁴ maintained that the Palestinian issue was currently the biggest challenge and reason for tension in the Middle East region. He added that the continuous settlement policy of Israel and the occupation of the Palestinian territory defied the principles of international law and International Humanitarian Law. The ICJ in its judgment had clearly stated that the illegal settlement policy violates the IVth Geneva Convention. On several occasions this position has also been reiterated by the United Nations Security Council, but unfortunately Israel has continued with its expansionist policy in Palestine which has changed the demographic character of the Palestinian land. The actions that it had done towards Palestine since 1967 had no legal sanctity and were clearly in violation of the provisions of the IVth Geneva Convention and have severely obstructed a peaceful settlement of the issue. He stated that Israel had refused to comply with all the UNSC and GA resolutions calling upon it to abide by the well established principles of international law, stop the settlement activities, abide by the ICJ judgment and resolve the long standing refugee problem that had been caused due to its actions. Therefore, he stated, the AALCO Member States should call upon Israel to give the refugees the right to return to their homeland and compensate them monetarily as well. In conclusion the delegate recalled some of the measures that the Arab Republic of Egypt had taken towards bringing about a ceasefire in the recent Gaza war, and its efforts towards rebuilding the devastated Gaza territory.

32. The Delegate of People's Republic of China stated that China was a firm supporter and sincere mediator for peace between Palestine and Israel. Since the outbreak of the conflict, he pointed out, China had been using various ways to promote peace and cessation of violence, including putting forward a five point proposal for peacefully resolving the Palestine-Israel conflict. He stated that Chinese government and Red Cross Society of China had respectively provided two tranches of emergency humanitarian assistance to people in Gaza. He stated that China hoped that both Palestine and Israel would resume peace talks as soon as possible, and push for an early, just and reasonable resolution of the Palestinian issue and achieve lasting peace and mutual security.

33. He said that the root cause of incessant Palestine-Israel conflict was that the Palestinian issue had not been resolved in a just and reasonable way for a long time. Without justice, there would be no lasting peace, he pointed out. He added that China had always supported the legitimate demand and the lawful right of the Palestinian people to establish an independent State of Palestine with full sovereignty on the 1967 borders with East Jerusalem as its capital. He recalled that China had supported Palestine's membership in the United Nations and other international organizations.

34. In conclusion the delegate said that China was opposed to the construction of settlements on the occupied Palestinian territories and it called on Israel to respect the

⁴ *Ibid.*

legitimate aspirations of the Palestinian people, and stop expelling Palestinians and demolishing their homes. Meanwhile, China also called on Israel to immediately and fully lift the blockade of Gaza Strip to earnestly ease the humanitarian situation there.

35. The Delegate of Republic of South Africa called on the protagonist to the conflict to observe a ceasefire by resolving all outstanding issues, a process that would form the basis for negotiations on the core issues and find a permanent solution to the conflict. It was recalled by the delegate that as part of the international efforts to resolve the conflict South Africa had sent two official convoys to Israel-Palestine and various countries in the Middle East. The delegate stated that South Africa's efforts to assist in this regard would continue as the countries of the region had requested South Africa to remain engaged. South Africa also called for the resumption of negotiations towards a permanent resolution of this conflict with a two-state solution with a viable Palestine existing side by side and with peace with Israel mutually agreed and internationally recognized borders based on the 4th June 1967 line with East Jerusalem as the capital of Palestine. A mutually constructive coexistence among two viable States could guarantee a lasting and just peace, the delegate added. South Africa was therefore deeply concerned with the latest Israeli plans to further expand in the West Bank and called Israel to ban this decision and all other settlement activities. South Africa was firmly opposed to the blockade on Gaza which is one of the key outstanding issues in the negotiations.

36. The delegate also stated that South Africa had always supported the Palestinian cause in the international fora in 2004 in its oral arguments before the ICJ, where the court found that the construction of the wall was in contravention of the IVth Geneva Convention which is applicable in the occupied Palestinian territories and that international human rights law is equally applicable. Furthermore, the delegate pointed out that the construction of the wall was an unacceptable act on the territory of Palestine contrary to international law as it is a violation of the law to acquire territory by use of force consequently inferring with the Palestinian right to self-determination and that the establishment of settlements in Palestinian occupied territory was contrary to the IVth Geneva Convention. In addition South Africa also supported the application by the Palestinian State for full membership at the 67th session of the United Nations General Assembly session and also its membership at UNESCO.

37. The Delegate of Malaysia believed that AALCO must continue to discuss this important matter as long as the Israeli violation continues. The ground incursion on the Gaza strip in 2014 was one of the latest incidents demonstrating how Israel persistently failed to comply with law and no tangible action had been taken against Israel, who continues to commit war crimes against the Palestinian people. Malaysia observed that many rules of international law continued to be violated daily due to the lack of strong and effective mechanisms for monitoring and promoting compliance. In relation to this Malaysia was of the view that there was a pressing need by the international community to explore ways or methods of strengthening the compliance mechanisms for the purpose of creating better legal protection for the victims in the State of Palestine. Malaysia believed that AALCO could play its role as a legal consultative body with direct access to the legal committee of the United Nations General Assembly to submit its legal views relating to the State of Palestine as had been consistently done by the Secretary-General. The scholarly works published by AALCO on the issue of the State of Palestine including the most recent special study on "The Statehood of Palestine under International Law" and "Unilateral and Secondary Sanctions: An International Law Perspective", should be continued, he stated.

Malaysia called upon the Secretariat to conduct further special studies including on “The Issues of Compensation and Obligations Transferred to the League of Nations”, as just propounded by His Excellency the Minister of the State of Palestine in his intervention.

38. The Delegate of the Democratic People’s Republic of Korea expressed his Government’s consistent support and solidarity to the Palestinian people in their struggle to recover their national rights including the right to return and self determination.

39. The Delegate of Turkey referred to paragraph 112 of the background paper prepared by the Secretariat and informed that this paragraph did not reflect the views of Turkey completely.

40. The Delegate of the Republic of Indonesia drew attention to the United Nations General Assembly resolution A/68/12 of 26 November 2013 which designated 2014 as the International Year of Solidarity with the Palestinian People, this particular resolution was, he pointed out, aimed at boosting international support for the right of Palestinian people to self-determination. However, this year, he stated, the world was taken aback after the events that were marked by extreme violence against the Palestinian people. According to the delegate as long as violence continued the prospect of just and lasting peace between Israel and Palestinian would always be a distant horizon. He recalled that through an open letter the President of the Republic of Indonesia had reaffirmed Indonesia’s position in supporting the right of the Palestinian to independence and statehood and that the President was an ardent supporter of the two-state solution in creation of a peaceful region as a realistic concept. In Indonesia’s view AALCO’s members must continue to assist Palestine in the necessary preparation for their eventual statehood; in this regard, he made an offer that, Indonesia could chair the second conference on the Cooperation among East Asian countries for Palestinian development. He also informed the member states that Indonesia’s former Ambassador to the United Nations was elected as the Special Rapporteur on the Human Rights Situation in the Israeli Occupied Palestinian Territories by the United Nations Human Rights Council.

C. Issues for focused deliberation at the Fifty-Fourth Annual Session of AALCO, 2015

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

- ***Israeli military excesses in the Occupied Palestine Territories in violation of International Humanitarian Law and United Nations Security Council and General Assembly Resolutions***
- ***The lack of proportionality in the responses of Israel***
- ***The change of the title of the agenda item from “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” to “Violations of International Law in Palestine and other Occupied Territories by Israel and other International Legal Issues related to the Question of Palestine”.***

- *War Crimes committed in Gaza by Israeli forces including blockade of Gaza and means and mechanisms to end impunity of violators*
- *Statehood of Palestine; and*
- *The role of the ICC in contributing towards the just resolution of the conflict*

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 LAW⁵

41. For almost forty-seven years now, 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.⁶ The international consensus on this issue 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, Israel the occupying power continues to defy the will of the international community, and the horrific atrocities perpetrated on the civilian population in the OPT beginning from 27th December 2008, which continue in one form or the other till date have clearly demonstrated this trend. These violations disproportionately intensified in 2014. The spiral of violence witnessed in Gaza last year surpasses all earlier atrocities as now the target is children and civilians without discrimination to their age.

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

42. 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.

⁵ This part of the study was also reflected in the brief prepared for the Fifty-First Annual Session, held in Abuja in 2012 (AALCO/51/ABUJA/2012/SD/S 4) as well as the brief prepared for the Fifty-Third Annual Session, 2014. The same is reiterated here as well in order to highlight the illegal activities unabatedly perpetuated by Israel on the Occupied Palestinian territories.

⁶ Beyond Oslo: The new uprising International law and the Al-Aqsa Intifada – Middle East Report 219, Winter 2002

43. Various provisions of the Fourth Geneva Convention dealing with the protection of civilians are applicable to the Occupied Palestinian Territory (OPT), and both parties to the conflict are parties to the Geneva Conventions.

44. 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 attempted to bring forth doctrinal justification developed in vacuum – the theory of “Missing Reversioner”.⁷ 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. However, these justifications of Israel were strongly refuted by international law scholars as “strained and artificial in character”, and commanded little or no respect among “highly qualified publicists” or within the “organized international community”.⁸

45. 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 occupied by Israel since 1967.’⁹ 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.¹⁰ 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.¹¹ It is of relevance to quote the International Court of Justice in this regard, which reiterated the paramount importance of the international humanitarian law:

⁷The 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).

⁸See 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 and an eminent scholar of international law, 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).

⁹UN SC Presidential Statement: UN doc. S/PV.1922, 26 May 1976.

¹⁰SC res. 478 (1980).

¹¹Conference of High Contracting Parties to the Fourth Geneva Convention: Declaration, Geneva, 5 December 2001.

“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.”¹²

46. Thus, Israel’s compliance with the Fourth Geneva Convention is not optional based on unilateral interpretations. An enumeration of Israeli activities in the OPT that violated the Fourth Geneva Convention and other relevant provisions of international law would become a long one 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

47. 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 similar to that implemented in occupied Jerusalem with an exception that it has not been formally annexed. A number 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.

48. 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.¹³ Similarly, article 147 of the Convention declares as a grave breach of any extensive

¹²*Legality of the Threat of Use of Nuclear Weapons*, Advisory Opinion, ICJ Reports, 1996, 226, 257, paras. 79, 82.

¹³.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

destruction and appropriation of property, not justified by military necessity and carried out unlawfully.¹⁴ 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 its request if the requesting state has sufficient evidence to commence a prosecution.

2. Expanding the Settlements

49. For more than four decades 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 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.

50. 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."¹⁵

51. 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.¹⁶ The latest phenomenon being pursued

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.

¹⁴Article 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."

¹⁵Mattiyahu 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.

¹⁶For 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."

by Israel is relentlessly expanding these settlements in utter disregard of international condemnation of the same.¹⁷

3. Deportation of Palestinians

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

53. 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

54. 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)

55. 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

¹⁷A detailed Report prepared by the Office of the United Nations High Commissioner for Human Rights features as a part of this Brief under the title, ‘Other Developments’

damage caused to all the natural or legal persons in connection with Israel's construction of the barrier.

56. 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.

57. Introduced by Iraq, the United Nations Register of Damage calls for the establishment of a Register (and an office for the same) which serves 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.

5. The recent situation in Palestine in 2014¹⁸

58. The recent crisis in Gaza took place against a backdrop of decades of instability, poverty and vulnerability resulting from repeated outbreaks of hostilities and an ongoing blockade by land, air and sea. The blockade left only two crossings for limited pedestrian movement and one for the movement of goods. Various restrictions applied to the use of land within the Gaza Strip, and 80 per cent of its fishing waters were totally or partially inaccessible. Around 57 per cent of Gazans were estimated to be food-insecure, and unemployment remained high, at 43 per cent. The economy was moribund.

59. This volatile situation had been exacerbated by 24 days of conflict, wherein more than 1,300 Palestinians had been killed and 6,000 injured. More than 80 per cent of those killed were civilians, including 251 children. Israel had faced rocket fire. Fifty-nine people had been killed, of whom three were civilians and 56 soldiers, with dozens more injured. Up to 440,000 people in the Gaza Strip were now displaced, amounting to almost 24 per cent of the population, and more than 240,000 were being hosted in schools belonging to United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), while others were seeking refuge wherever they could — in Government buildings and hospital grounds or with families and friends. People fled to areas they believed were safe from attack, but those areas were becoming harder to find. Gaza is just 45 kilometres long and between 6 and 14 kilometres wide, and the Israeli military has advised that 44 per cent of Gaza is a buffer zone. With the blockade in place, most people were unable to leave Gaza even to get urgent medical attention.

60. In that situation more than 240,000 Palestinian people came to the United Nations facilities for protection when their homes and neighbourhoods came under fire. But more than 103 of those facilities had come under attack, including an UNRWA school that was hosting more than 3,300 displaced people. Nineteen were killed and more than 100 injured.

¹⁸ On 31st July 2014 in accordance with rule 39 of the Security Council's provisional rules of Procedure, Ms. Valarie Amos, Under-Secretary-General for Humanitarian Affairs and Emergency Relief Coordinator presented her Report at the 69th Session of the Security Council.

The United Nations lost seven staff members, and other humanitarian workers had been killed since the outbreak of hostilities. The reality of Gaza was that no place was safe¹⁹.

61. The Secretary-General and other senior United Nations officials had condemned this and other attacks in the strongest possible terms. The parties to the conflict had an obligation— an absolute obligation — to protect civilians from direct or indiscriminate attacks. Under international law, United Nations operations, personnel and premises must remain inviolable, and parties to the conflict should protect humanitarian workers. There could be no justification for failing to do so.

62. In addition to schools, hospitals and other civilian infrastructure, Gaza's only power plant was struck and its fuel tanks destroyed. Parts of Gaza remained without any electricity while others received it for only two hours a day. Under the best possible circumstances, repairs were expected to take months to complete. The immediate, medium- and longer-term impact on the functioning of water, sanitation and health-care facilities, as well as on food production, could not be overstated. Water and sewage systems were also severely damaged, and there was deep concern about water systems' possible contamination. Hundreds of thousands of people were without access to regular water supplies, and the ongoing violence was preventing urgent repairs. It was feared that if the situation persisted, the number of people without water would significantly increase.

63. The Government of Israel and Hamas and other militant groups comply with their international legal obligations, including international humanitarian and human rights law. Each party must be held accountable to international standards, not the standards of the other party. Under international humanitarian law, the Government of Israel and Hamas and other militant groups must distinguish between military objectives and civilian objects, and between combatants and civilians. They must also avoid harming civilians or civilian objects, and protect them from the effects of military operations.

B. UN Security Council and General Assembly Resolutions

64. The UN consensus is particularly persuasive since majority of UN Member States recognize the Palestinian right of self-determination. This right is also legitimized by 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.

¹⁹ The same concerns were pointed out by the Commissioner General of UNRWA in his Briefing to the United Nations Security Council on 31st July 2014.

(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 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.

III. THE QUESTION OF STATEHOOD OF PALESTINE

65. The question of Palestine was discussed by the General Assembly as a part of the attention that it bestowed on the conflict situation in the Middle East and in the context of the human rights and refugee aspects. It was in 1974 that the question was then again approached by the General Assembly as a national question in the light of the 1967 war and the continuing occupation of its territory. In its resolution 3210 (XXIX) the General Assembly recognized and invited the Palestine Liberation Organization (PLO) as the representative of the Palestinian people to participate in its deliberations at the plenary meetings on the question of Palestine.²⁰ In resolution 3236 (XXIX), the General Assembly reaffirmed and specified the inalienable right of the Palestinian People, which included the right to self-determination, to national independence and sovereignty.²¹ Vide resolution 3237 (XXIX) the Palestine Liberation Organization was granted the observer Status and was invited to participate in the sessions and in the work of the General Assembly in the capacity of an observer. The PLO has established a Permanent Observer mission since 1974 at U.N. headquarters in New York and another one in Geneva.²²

66. Regarding the participation of the PLO in the Security Council, at its 1859th meeting through a decision by a vote, on 4 December 1975, it was decided that an invitation be extended to PLO to participate in the debate on the situation in the Middle East and also that the same rights of participation as those conferred on a Member State when it is invited to participate in a discussion be extended to it. Vide Resolution 43/177 the General Assembly acknowledged the proclamation of the State of Palestine by the Palestine National Council in 1988 and decided that the designation "Palestine" shall be used instead of PLO in the United Nations System.²³ In 1994, the General Assembly without a vote adopted a resolution approving the report of the Preparatory Committee for the Fiftieth Anniversary of the United

²⁰ A/RES/3210 (XXIX) (14 October 1974)

²¹ A/RES/3236 (XXIX) (22 November 1974)

²² A/RES/3236 (XXIX) (22 November 1974)

²³ A/RES/43/177 (15 December 1988)

Nations in which the Committee had authorized its Chairman to issue a letter to the Permanent Observer of Palestine confirming that the arrangements decided for the Special Commemorative Meeting of the General Assembly on the occasion of the Fiftieth Anniversary of the U.N. shall apply also to Palestine in addition to all the member and observer States.²⁴

67. On 23 September 2011, H.E. the President of Palestine delivered to the UN secretary General the official application for recognition of a Palestinian State by the UN and a membership in the same organization. On 31 October 2011, the General Council of UNESCO voted in favour of admitting Palestine as a member state. This membership became effective on November 23, 2011. On 29 November 2012, by an overwhelming majority, the General Assembly of the United Nations resolved to upgrade the status of Palestine as a “non-member observer state” at the United Nations.²⁵ One hundred and thirty member states voted in favour of the resolution, while only 9 members specifically voted against the resolution and 41 of them abstained from voting. The said resolution equates Palestine with the status of the Holy See.

68. The State of Palestine maintains a network of diplomatic missions to countries that have recognized or has partially recognized the State. These are predominantly in Africa, Asia and Eastern Europe. In addition to this, Palestine also maintains delegations and other representative offices that represent the Palestinian Authority to other states and multilateral organizations, of which their agents may be accorded some degree of recognition similar to that of other diplomats. According to the Palestine Liberation Organization Negotiations Affairs Department, more than 135 States Members of the United Nations (i.e. close to seventy percent of the total membership of the United Nations) recognize Palestine to date. A list of AALCO members with whom Palestine maintains diplomatic relations was annexed to the last year’s brief on this topic. Recently the State of Sweden recognized the Statehood of Palestine.²⁶ In December 2014 the European Parliament voted in favour of a non-binding resolution calling for the recognition of Palestinian statehood as part of a two-state solution and alongside the development of the peace process with 498 votes in favour, 88 against and 111 abstentions²⁷

IV. THE ROLE OF THE ICC IN THE PRESENT SITUATION

69. The history of the establishment of the International Criminal Court (ICC) spans over more than a century. The “road to Rome” was a long and often contentious one. While efforts to create a global criminal court can be traced back to the early 19th century, the story began in earnest in 1872 with Gustav Moynier – one of the founders of the International Committee of the Red Cross – who proposed a permanent court in response to the crimes of the Franco-Prussian War. The International Criminal Court (ICC), governed by the Rome Statute, is the

²⁴ A/RES/49/12 (24 May 1995)

²⁵ A/RES/67/19 (29 November 2014)

²⁶ “Sweden has today recognised the State of Palestine. The Government considers that the international law criteria for the recognition of Palestine have been satisfied. Sweden hopes that its decision will facilitate a peace agreement by making the parties less unequal, supporting the moderate Palestinian forces and contributing to hope at a time when tensions are increasing and no peace talks are taking place”. For more information see, <http://unispal.un.org/unispal.nsf/9a798adbf322aff38525617b006d88d7/f3b88383b12cc1af85257d8100534c55?OpenDocument>

²⁷ Peter Beaumont, 'EU Parliament Backs Palestinian State 'In Principle'' (*the Guardian*, 2014) <<http://www.theguardian.com/world/2014/dec/17/eu-parliament-backs-palestine-state>> accessed 9 February 2015.

first permanent, treaty based, international criminal court established to help end impunity for the perpetrators of the most serious crimes of concern to the international community.

70. The international community has long aspired to the creation of a permanent international court, and, in the 20th century, it reached consensus on definitions of genocide, crimes against humanity and war crimes. The Nuremberg and Tokyo trials addressed war crimes, crimes against peace, and crimes against humanity committed during the Second World War.

71. On 17 July 1998, the international community reached an historic milestone when 120 States adopted the Rome Statute, the legal basis for establishing the permanent International Criminal Court. The Rome Statute entered into force on 1 July 2002 after ratification by 60 countries.

72. On 7 January 2015, the President of the Assembly of States Parties to the Rome Statute ("the Assembly"), Minister Sidiki Kaba welcomed the deposit by the State of Palestine of the instruments of accession to the Rome Statute of the International Criminal Court and to the Agreement on the Privileges and Immunities of the International Criminal Court (APIC), which were notified on 6 January 2015 by the Secretary-General of the United Nations acting in his capacity as depositary.

73. The deposit of the instruments of accession by the State of Palestine, effected on 2 January 2015, brings to one hundred twenty-three (123) the number of States Parties to the Rome Statute, and to seventy-four (74) the number of States Parties to the APIC.

74. It may be recalled that the Office of the Prosecutor previously conducted a preliminary examination of the situation in Palestine upon receipt of a purported article 12(3) declaration lodged by the Palestinian National Authority on 22 January 2009. The Office considered all legal arguments submitted to it and, after thorough analysis and public consultations, concluded in April 2012 that Palestine's status at the United Nations (UN) as an "observer entity" was determinative, since entry into the Rome Statute system is through the UN Secretary-General (UNSG), who acts as treaty depositary. The Palestinian Authority's "observer entity", as opposed to "non-member State" status at the UN, at the time meant that it could not sign or ratify the Statute. As Palestine could not join the Rome Statute at that time, the Office concluded that it could also not lodge an article 12(3) declaration bringing itself within the ambit of the treaty either, as it had sought to do.

75. On 29 November 2012, the UN General Assembly (UNGA) adopted Resolution 67/19 granting Palestine "non-member observer State" status in the UN with a majority of 138 votes in favour, 9 votes against and 41 abstentions. The Office examined the legal implications of this development for its own purposes and concluded, on the basis of its previous extensive analysis of and consultations on the issues, that, while the change in status did not retroactively validate the previously invalid 2009 declaration lodged without the necessary standing, Palestine would be able to accept the jurisdiction of the Court from 29 November 2012 onward, pursuant to articles 12 and 125 of the Rome Statute..

76. On 2 January 2015, Palestine deposited its instrument of accession to the Rome Statute with the UNSG. As outlined in the Summary of Practice of the Secretary-General as Depositary of Multilateral Treaties, "the Secretary-General, in discharging his functions as a depositary of a convention with an 'all States' clause, will follow the practice of the [General]

Assembly in implementing such a clause [...]." The practice of the UNGA "is to be found in unequivocal indications from the Assembly that it considers a particular entity to be a State." In accordance with this practice and specifically UNGA Resolution 67/19, on 6 January 2015, the UNSG, acting in his capacity as depositary, accepted Palestine's accession to the Rome Statute, and Palestine became the 123rd State Party to the ICC. It was welcomed as such by the President of the Assembly of States Parties to the Rome Statute. Likewise, on 7 January 2015, the Registrar of the ICC informed President Abbas of his acceptance of the article 12(3) declaration lodged by the Government of Palestine on 1 January 2015 and that the declaration had been transmitted to the Prosecutor for her consideration. The Office considers that, since Palestine was granted observer State status in the UN by the UNGA, it must be considered a "State" for the purposes of accession to the Rome Statute (in accordance with the "all States" formula). Additionally, as the Office has previously stated publicly, the term "State" employed in article 12(3) of the Rome Statute should be interpreted in the same manner as the term "State" used in article 12(1). Thus, a State that may accede to the Rome Statute may also lodge a declaration validly under article 12(3). For the Office, the focus of the inquiry into Palestine's ability to accede to the Rome Statute has consistently been the question of Palestine's status in the UN, given the UNSG's role as treaty depositary of the Statute. The UNGA Resolution 67/19 is therefore determinative of Palestine's ability to accede to the Statute pursuant to article 125, and equally, its ability to lodge an article 12(3) declaration.

77. On 16 January 2015, the Prosecutor of the International Criminal Court (ICC), Mrs. Fatou Bensouda, opened a preliminary examination into the situation in Palestine. The Prosecutor's decision follows the Government of Palestine's accession to the Rome Statute on 2 January 2015 and its declaration of 1 January 2015, lodged under article 12(3) of the Rome Statute – the Court's founding treaty – accepting the jurisdiction of the ICC over alleged crimes committed "in the occupied Palestinian territory, including East Jerusalem, since June 13, 2014." Upon receipt of a referral or a valid declaration made pursuant to article 12(3) of the Statute, the Prosecutor, in accordance with Regulation 25(1)(c) of the Regulations of the Office of the Prosecutor, and as a matter of policy and practice, opens a preliminary examination of the situation at hand. Accordingly, the Prosecutor has opened a preliminary examination into the situation in Palestine.

78. A preliminary examination is not an investigation but a process of examining the information available in order to reach a fully informed determination on whether there is a reasonable basis to proceed with an investigation pursuant to the criteria established by the Rome Statute. Specifically, under article 53(1) of the Rome Statute, the Prosecutor must consider issues of jurisdiction, admissibility and the interests of justice in making this determination.

79. The Office gives due consideration to all submissions and views conveyed to the Office during the course of a preliminary examination, strictly guided by the requirements of the Rome Statute in the independent and impartial exercise of its mandate. There are no timelines provided in the Rome Statute for a decision on a preliminary examination. Depending on the facts and circumstances of each situation, the Office will decide whether to continue to collect information to establish a sufficient factual and legal basis to render a

determination; initiate an investigation, subject to judicial review as appropriate; or decline to initiate an investigation²⁸.

V. DEVELOPMENTS AT THE SIXTY-NINTH SESSION OF THE UNITED NATIONS GENERAL ASSEMBLY (2014)

A. Statement by H.E. Mr. Mahmoud Abbas, President of the State of Palestine²⁹

80. The President addressed the General Assembly on similar days in 2012³⁰, when he cautioned that the colonial occupying Power was preparing a new Nakba against the Palestinian people. The President appealed to the Assembly then to prevent a new Nakba and to support the establishment of a free and independent State of Palestine. The President returned to the Assembly Hall two months later³¹ as Palestine was healing its wounds and its people were burying their beloved martyred children, women and men after yet another war waged then against the Gaza Strip. On that day, he stated that there was certainly not a single person in the world who needed the loss of the lives of thousands of Palestinian children in order to confirm that Israel insisted on occupation. The international community also did not need thousands of deadly raids and tons of explosives to remind it that there was an occupation that must end and a people who must be freed.

81. The latest war against Gaza constituted a series of absolute war crimes. It is inconceivable that anyone today could claim not to grasp the magnitude and horror of the crimes. However, as usual, the Israeli Government missed no opportunity to undermine the chances for peace. Throughout the months of negotiations, settlement construction, land confiscation, home demolition, killing and arrest campaigns and large-scale forced displacement in the West Bank continued unabated. The unjust blockade of the Gaza Strip was tightened. The occupation's campaign specifically targeted the city of Jerusalem and its inhabitants, attempting to artificially alter the spirit, identity and character of the Holy City and focusing on Al-Aqsa Mosque while threatening grave consequences. At the same time, armed gangs of racist settlers persisted in their crimes against the Palestinian people and their land, mosques, churches, property and olive trees.

82. Israel confirmed during the negotiations that it rejects making peace with its victims, the Palestinian people. All of this has been carried out along with an attempt to brand the conflict as a religious one against a background of increasingly rampant racism in Israel's political and media discourse, as well as its entrenchment in the school curriculum and a series of laws and practices in favour of the occupation and its settlers. This culture of racism, incitement and hatred was glaringly apparent some months ago in an appallingly despicable crime committed by fascist settlers, who abducted Mohammed Abu Khdeir, a young boy from Jerusalem, burned him alive and killed him.

²⁸<http://unispal.un.org/unispal.nsf/eed216406b50bf6485256ce10072f637/a586a025b963a81b85257dcf0069010c?OpenDocument> last assessed on 8 February 2015.

²⁹<http://unispal.un.org/unispal.nsf/9a798adb322aff38525617b006d88d7/4b3d0713015a2e2485257d80005240c6?OpenDocument>. Assessed on 8th February 2015.

³⁰ (see A/67/PV.12)

³¹ (see A/67/PV.44)

83. The President emphasized that it was impossible— to return to the cycle of negotiations that failed to deal with the core of the Palestinian question. There was neither credibility nor seriousness in negotiations in which Israel predetermines the results via its settlement activities and the occupation's brutality. Nor was there meaning or value in negotiations in which the agreed objective was not ending the Israeli occupation and achieving the independence of the State of Palestine, with East Jerusalem as its capital, on the entire Palestinian territory occupied in the 1967 war. Moreover, negotiations that were not linked to a firm timetable for the implementation of this goal have no value. The time had come to end this colonial occupation. Those who were uprooted from their warm homes, good land and beautiful country in Al-Nakba 66 years ago, who were pushed into the misery of exile to live as refugees, and were now being forced into new waves of expulsion or onto ships of death on the world's seas, needed assurances. They needed to be assured that they would not be displaced from their homes again, that their homes would not be destroyed again, and that they would not spend their lives waiting for the outbreak of a new war.

84. At a time when Palestinians were still suffering from the horrors of war, they faced a formidable challenge to reconstruct what had been destroyed by occupation. This is the third time Palestinians were attempting to rebuild after the destruction inflicted on them by the occupation. Palestine greatly appreciated the fact that in October 2014, at the invitation of the Arab Republic of Egypt and the Kingdom of Norway, the city of Cairo would host an international conference on relief and reconstruction for the Gaza Strip. Palestine's Government would present comprehensive reports to the conference on the losses the acts of aggression that had been inflicted on various sectors of society, and it would provide details of plans and programmes to be rapidly implemented in the Gaza Strip, aimed at meeting immediate relief needs and the requirements for reconstruction, in full coordination with and under the supervision of the relevant United Nations agencies and bodies.

B. The Response of the AALCO Member States to the Statement³²

85. **H.E. Mr. Nicos Anastasiades**, President of the Republic of Cyprus, in his statement, while referring to the Palestinian question said that, one should not ignore that deep-rooted and long-standing conflicts possess the ability to instantly ignite regional instability, cause bloodshed and endanger the lives of thousands of innocent civilians, including children. Regrettably, he pointed out, such events sow the seeds of animosity and of further violence that render dialogue and negotiations more difficult to conduct and to eventually bring to success. Specifically with regard to the Middle East peace process, he stated that the right of the Palestinian people to statehood should not be called into question. The delegate further commended the positive role of the Egyptian Government in mediating between the two sides, and strongly urged all interested stakeholders to discourage the activities of terrorist groups that oppose the Middle East peace process.

86. **H.E. the President of the Republic of Iraq** stated that it hurts to see the recent suffering of the fraternal Palestinian people in Gaza and other Palestinian territories. The

³²<http://unispal.un.org/unispal.nsf/9a798adbf322aff38525617b006d88d7/4b3d0713015a2e2485257d80005240c6?OpenDocument> assessed on 9 February 2015

President renewed the call to the international community to honour its commitment to the Palestinian people and exert concerted efforts to restore peace and return to the negotiations table in order to end the conflict and achieve lasting peace and security.

87. **H.E. Mr. Muhammad Nawaz Sharif**, Prime Minister of the Islamic Republic of Pakistan lamented that in the summer of 2014, the people of Gaza were subjected to mass atrocities by Israel. He condemned the indiscriminate killings of civilians — which amounted to genocide. He once again conveyed Pakistan's condolences and sympathies to the people of Palestine over their continuing plight. Although he welcomed the ceasefire between Gaza and Israel, yet he wanted the next steps to be taken, which included lifting of the blockade of Gaza, freedom of Palestinian prisoners and a halt to illegal settlements. He urged the United Nations to facilitate a just and lasting solution to the Palestinian issue, based on the relevant United Nations resolutions.

88. **H.E. Mr. Tammam Salam**, President of the Council of Ministers of the Lebanese Republic said that Gaza Strip was subjected to a new Israeli aggression, which killed hundreds of civilians, displaced more than a quarter of the population and destroyed homes, hospitals and infrastructure. Lebanon, which had paid dearly as a result of the repeated Israeli attacks, called for legal accountability for the war crimes committed by Israel and for that country to be held accountable for its actions in order to prevent impunity. He added that Lebanon believed that Israel was responsible for frustrating all efforts to reach a peaceful settlement based on the two-State solution. It stressed the need for a just, comprehensive and lasting solution to the conflict in the Middle East, based on Security Council resolutions [242](#) (1967) and [338](#) (1973), the Madrid terms of reference for peace and the Arab Peace Initiative, adopted at the Beirut summit in 2002.

89. **H.E. Dato' Sri Mohd Najib bin Tun Haji Abdul Razak**, Prime Minister of Malaysia stated that Malaysia, like so many countries around the world, was appalled by the brutal violence against Palestinian civilians in Gaza. He strongly condemned Israel's disproportionate and indiscriminate attacks on Gaza and its continuing violations of international and human rights law. The use of heavy weapons in civilian areas and the obliteration of houses, mosques and schools were an affront to common decency. Malaysia condemned such acts not just for the innocent lives taken but for the message that they send, namely, that religions could not coexist and that the international community could not enforce international law and protect the rights of Palestinians. Their plight was one of the most effective rallying calls for those who claimed that the international system is broken. He appealed for unity and for finding a peaceful, just and lasting outcome that brings dignity and security to the people of Palestine. That should be predicated on a two-State solution based on the 1967 borders, with East Jerusalem as its capital. That would bring dignity and security for the people of Palestine, who had suffered so much, and would allow the international community to redouble its efforts to bring peace to other parts of the world where conflict fuels extremism.

90. **H.E. Mr. John Dramani Mahama**, President of the Republic of Ghana called for a halt to the establishment of settlements in the Palestinian territories. He added that Ghana had consistently expressed its support for a two-State solution to the Israeli-Palestinian question, with the two nations coexisting peacefully.

91. **H.E. Mr. Hassan Rouhani**, President of the Islamic Republic of Iran stated that had there been greater cooperation and coordination in the Middle East, thousands of innocent Palestinians in Gaza would not have fallen victim to the aggressions of the Zionist regime.

92. **H.E. Mr. Shinzo Abe**, Prime Minister of Japan first of all stated and pledged that Japan is a nation that has worked to eliminate the war culture from people's hearts, and it would spare no effort in continuing to do so. As early as the mid-1980s, Japan launched cooperation in Gaza to foster human resources. A total of more than 400 administrative officials and technical experts had come to Japan to receive intensive training. One of them was Mr. Najjar Osama, a young man serving as an official with the Palestinian Energy and Natural Resources Authority. He said:

93. "Gaza has no natural resources whatsoever. The only thing we have is people, a situation the same as Japan's. What I learned in Japan is the spirit of never, ever giving up." After being educated in Japan for a month, Najjar Osama brought solar-power technology back to his hometown, to be attached to the facility in greatest need of a stand-alone power system. The equipment that he and his colleagues introduced to the largest hospital in the Gaza Strip had endured the unrest and kept the lights on in the hospital's emergency room.

94. **H.E. Sheikh Jaber Al-Mubarak Al-Hamad Al Sabah**, Prime Minister of the State of Kuwait stated that several countries of the Middle East were facing tremendous security, political and humanitarian challenges and an exceptional situation, due to the inability of the Security Council to carry out its functions, which had led to the aggravation and deterioration of the situation in many States of the region. He pointed out that the recent Israeli military aggression against the Gaza Strip lasted for 50 consecutive days, during which the non-stop killing and machine of destruction continuously targeted everything human, mowing down thousands of unarmed civilians, the majority of them elderly, women and children. That action appeared to have been emblematic of the series of Israeli violations of the most basic rules of international law and international humanitarian law, and constitutes yet another addition to its bloody history of rejecting all regional and international initiatives to lay the foundations of a just and lasting peace.

95. In that regard, the State of Kuwait welcomed the ceasefire agreement signed on 26 August 2014, as well as the international and regional initiatives undertaken to end to that crisis and aggression, primarily those promoted by our sister Arab Republic of Egypt. In that context, Kuwait renewed its call on the Security Council to assume its responsibility to provide international protection to the Palestinian people and territory, pursuant to the provisions of the Fourth Geneva Convention of 1949, and to compel Israel, the occupying Power, to halt its unilateral practices aimed at imposing a policy of *faits accomplis*, such as illegal settlements and the unlawful siege of the Gaza Strip, in addition to attempts to change the demographic nature of Jerusalem by means of Judaization. He stated that Israel must be compelled to return to the negotiating table with a view to ending its occupation of all Palestinian and Arab lands, as well to achieve the establishment of a Palestinian State with East Jerusalem as its capital, in accordance with the relevant Security Council resolutions, the principle of land for peace, the road map and the Arab Peace Initiative.

96. **Mr. Ndiaye** (Senegal) (*spoke in French*) said he welcomed the opportunity to represent His Excellency Mr. Macky Sall, President of the Republic of Senegal, before the General Assembly and to deliver this intervention on his behalf. Commenting on the thorny issue of the Palestinian conflict Senegal welcomed the ceasefire of recent months. In its

capacity as Chairman of the Committee on the Exercise of the Inalienable Rights of the Palestinian People, Senegal reiterated its call to revive the peace process and put an end to the blockade that has been suffocating Gaza since 2007. In this International Year of Solidarity with the Palestinian People, Senegal renewed its support for a just, peaceful and negotiated solution as the only option capable of ending the conflict and achieving the creation of a viable, independent Palestinian State with East Jerusalem as its capital, living side by side with Israel within secure, internationally recognized borders.

97. **H.E. Al Hadji Yahya Jammeh**, President of the Republic of the Gambia stated that the situation in the Middle East remained highly volatile, and the United Nations had been watching the cycle of violence in the region rather helplessly. In the most recent conflict between the Palestinians and Israelis, approximately 2,000 people from Gaza, mostly women and children, died at the hands of the Israeli army, and approximately 70 Israelis, all of them soldiers except for three children, lost their lives. The continuing expansion of Israeli settlements on Palestinian land, despite repeated calls for restraint by the international community, was unacceptable, as it undermined any prospects for a two-State solution. The United States Government had played a very strategic and useful mediating role in the past, but the United Nations must now take up its commanding role in seeking a peaceful settlement that is just, durable and acceptable to all the Members of the United Nations.

98. **H.H. Sheikh Tamim bin Hamad Al-Thani**, Amir of the State of Qatar stated that the Middle East went through an extremely dangerous phase during the recent war on our Palestinian brothers. There were no guarantees that it would not recur. Israel continues to persist in its policies of occupation and to defy the will of the international community by confiscating land in the West Bank and building settlements in an effort to perpetuate that occupation. Humankind was shocked by the tragic scenes and unprecedented images of destruction during the latest round of aggression targeting civilians in Gaza. Babies were killed in their mothers' arms, almost half a million Palestinians were displaced and the Gaza Strip was virtually destroyed when people had hardly managed to rebuild after the destruction inflicted on Gaza during the previous war. Under international law and international humanitarian law, such acts are defined as crimes against humanity. The arrogance of power would not prevail over the resistance of the Palestinian people.

99. He added that Israel must realize that it could achieve security for its people only through peace, and that the occupation is bound to end. The damage caused by Israel's repeated acts of aggression in the Gaza Strip in recent years, the unjust blockade imposed on it and the destruction wreaked on its infrastructure make it incumbent on the international community to compel Israel to implement internationally agreed-on resolutions, fulfil its obligations and hasten to remove every obstacle to lifting the blockade and launching the process of reconstruction. The State of Qatar would spare no effort to provide assistance for the reconstruction of the Gaza Strip, and he urged every country to follow suit.

100. Thus, the international community's response to the aspirations of the Palestinian people to freedom and national independence was vital to affirming the justice of international legality, especially since the question of Palestine was the last remaining issue on the decolonization agenda. In that context, temporary solutions and piecemeal settlements have proved useless and unacceptable. Israel's intransigence compels us to resort to the United Nations as a framework that can accommodate all parties.

101. He emphasized that the Security Council should shoulder its moral and legal responsibilities by upholding the principles of international legality and human rights and avoiding the selectivity that has characterized its approach to this issue in recent times. It should adopt a resolution, under Chapter VII of the Charter of the United Nations, forcing Israel to end its occupation of the lands it seized in 1967 and to implement the two-State solution agreed on by the international community, according to a clear and time-bound political plan, within the framework of peace negotiations leading to a permanent settlement of the Palestinian question through a two-State solution, in accordance with the Arab Peace Initiative and the relevant internationally legitimate resolutions.

102. **H.E. Mr. Abdel Fattah Al Sisi**, President of the Arab Republic of Egypt stated that despite the multitude of crises threatening the Middle East, the Palestinian issue remains a top priority for Egypt. Palestinians still aspire to establish their independent State on the territories occupied in 1967, with East Jerusalem as its capital, on the basis of the principles of the peace process that was established in the 1970s, following an Egyptian initiative. Those principles were not up for negotiation; otherwise the basis of a comprehensive peace in the region would erode and the values of justice and humanity would vanish. The continued deprivation of the Palestinian people of their rights is undoubtedly exploited by some to inflame other crises, achieve hidden goals, fragment Arab unity and impose control on Palestinians under the guise of realizing their aspirations.

103. All of these factors placed a special responsibility on Egypt, and on the strength with which it confronted terrorism and extremism in the 1990s. He was confident that certain challenges would require serious work and with a clear vision to achieve the ambitions of the people for democracy and human dignity and for the youth and their aspirations for a brighter future.

104. **H.H. His Majesty King Abdullah II ibn Al Hussein**, King of the Hashemite Kingdom of Jordan said that the future of the region without addressing its central conflict: the denial of Palestinian rights and statehood. 2014 had seen a dangerous halt in the progress towards peace and a Palestinian State. Instead, in Gaza, the world had witnessed another violent detour into conflict. A first imperative step was to mobilize international efforts to rebuild Gaza. In addition it was important to marshal the united global response needed to achieve a once-and-for-all lasting settlement. Such action can create the environment necessary to relaunch the final status negotiations on the basis of the Arab Peace Initiative.

105. That approach offers a clear path — the only path — to a comprehensive settlement based on the two-State solution, international legitimacy and the terms of reference. For Israel, it offers security and normal diplomatic and economic relations with Arab and Muslim States and, for Palestinians, a viable and independent sovereign State, within the 1967 lines, with East Jerusalem as its capital. Unilateral actions that seek to pre-empt negotiations must end. Jordan strongly opposes threats to the Arab, Muslim and Christian identity of Jerusalem. As the Hashemite custodian of Jerusalem's Muslim and Christian Holy Sites, I will continue to oppose any violation of the sanctity of the Al-Aqsa mosque.

106. **H.E. Mr. Recep Tayyip Erdogan**, President of the Republic of Turkey stated that the unresolved issue of half a century — Palestine — was already a root cause of many problems in the region. Implementing a two-State solution, lifting the blockade against Gaza and establishing an independent, viable State of Palestine alongside Israel is a political, human and moral necessity. Many have spoken about a two-State solution from this rostrum.

However, speaking about it is not sufficient. It is high time to act. It was no longer appropriate simply to talk about the issue — it was necessary to advance beyond that.

107. He noted that the world was larger than the five permanent members of the Security Council. The fact that they had rendered the United Nations ineffective, despite the situation in the world, must not be accepted by the global conscience. Otherwise, decisions taken at the United Nations would depend on a single country.

108. He found it strange that the international community focused on issues selectively. If 2,000 people were killed by chemical weapons, then the focus should be on chemical weapons, and consider the killing of 2,000 people by chemical weapons to be a crime. But what about the killing of 200,000 people by conventional weapons — was that not a crime? He felt that it should be understood that the use of any kind of weapon leading to the deaths of people is a crime, whether by chemical or conventional means.

109. Turkey had been trying very hard to build peace and prosperity in the region, and had been working to try to achieve a two-State solution based on peace and mutual respect.

110. **H.E. Mr. Jacob Zuma**, President of the Republic of South Africa condemned the actions of both Israel and Hamas, and called for an immediate cessation of hostilities. He was of the strong view that there can be no military solution to the Israeli-Palestinian question. We should all remain committed to the two-State solution, based on the 1967 borders, with Palestine and Israel coexisting side by side in peace.

111. Of concern in this matter has been the helplessness displayed by the United Nations, especially the Security Council during the current conflict. The United Nations has the moral authority and legitimacy to unite the world in promoting the quest for peace, justice and self-determination for the people of Palestine, while addressing whatever security concerns Israel may have. This body must play its role without fear or favour and be a beacon for all who suffer oppression in the world.

C. Resolutions adopted at the 69th Session of the United Nations General Assembly. Among the numerous resolutions adopted by the UNGA the most important ones are as follows:

- (1) UNGA Resolution 69/89 (December 5, 2014) affirmed that the Palestine refugees are entitled to their property and to the income derived, therefrom, in conformity with the principles of equity and justice.
- (2) UNGA Resolution 69/93 (December 5, 2014) affirmed the applicability of the Geneva Convention relative to the Protection of Civilian Persons in The Time of War, of 12 August 1949, to the occupied Palestine territory, including the East Jerusalem, and other Arab Territories occupied by Israel since 1967. It also stressed on the need for full compliance with the Israeli-Palestinian agreements reached within the context of the Middle East peace process, including the Sharm el-Sheikh understandings, and the implementation of the Quartet road map to a permanent two-State solution to the Israeli-Palestinian conflict.

- (3) UNGA Resolution 69/24 (November 25, 2014) reiterated its determination that any actions taken by Israel, the occupying Power, to impose its laws, jurisdiction and administration on the Holy City of Jerusalem are illegal and therefore null and void and have no validity whatsoever, and called upon Israel to immediately cease all such illegal and unilateral measures.
- (4) UNGA Resolution 69/25 (November 25, 2014) declared that the Israeli decision of 14 December 1981 to impose its laws, jurisdiction and administration on the occupied Syrian Golan is null and void and has no validity whatsoever, as confirmed by the Security Council in its resolution 497 (1981), and calls upon Israel to rescind it.

VI. OTHER DEVELOPMENTS

A. Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and the occupied Syrian Golan-Report of the UN Secretary-General³³

112. The present report, was prepared by the Office of the United Nations High Commissioner for Human Rights pursuant to General Assembly [resolution 68/82](#), provides an update on Israel's activities aimed at creating and expanding settlements in the West Bank, including East Jerusalem, and in the occupied Syrian Golan. It focuses on both official and informal methods used by Israel to control land, which is then allocated to settlements. It also provides an update on settler violence and addresses the failure of Israel to maintain public order and ensure accountability for settler violence.

113. The legal framework applicable to Israeli settlements in the Occupied Palestinian Territory and in the occupied Syrian Golan is found in international humanitarian law and international human rights law³⁴. The General Assembly ([resolution 68/82](#)), the Security Council ([resolution 799](#) (1992)), the Human Rights Council (resolution 25/30) and the International Court of Justice ([A/ES-10/273](#) and [Corr.1, para. 101](#)) have all affirmed that the Geneva Convention relative to the Protection of Civilian Persons in Time of War of 1949 (Fourth Geneva Convention) applies to the Occupied Palestinian Territory. Article 49 of that Convention, in absolute terms, prohibits the Occupying Power from deporting or transferring parts of its own civilian population into the territory it occupies. The Hague Regulations¹ further prohibit an occupying power from undertaking permanent changes in the occupied area unless they are strictly for military necessity or for the benefit of the local population (A/64/516, para. 8).

114. Moreover, the International Court of Justice (A/ES-10/273 and Corr.1, paras. 102-113) and United Nations treaty bodies responsible for reviewing the implementation of international human rights treaties have affirmed that Israel, as the Occupying Power, is bound by the international human rights treaties it has ratified (A/67/375, para. 5) and has the obligation to implement its human rights obligations in the occupied territories.² The recent accession by the State of Palestine to several human rights treaties³ does not affect Israel's obligations under international human rights law and international humanitarian law. During

³³ A/69/34,25 August 2014
<http://unispal.un.org/unispal.nsf/9a798adb322aff38525617b006d88d7/f94cd758d45ae6d985257d88006eccba?OpenDocument>, assessed on 5 February 2015

³⁴ (see [A/68/513](#), para. 4, and [A/67/375](#), para. 4)

the reporting period, Israel continued to expand existing settlements in occupied territory and to approve new settlements. According to Peace Now, an Israeli NGO, between 1 July 2013 and 15 May 2014, tenders were announced for 6,013 housing units in Israeli settlements in the West Bank, including East Jerusalem, and 9,712 housing units were “promoted”,⁴ including 7,290 in the West Bank and 2,422 in East Jerusalem. In addition, on 4 June 2014, the Government of Israel announced the issuance of tenders for over 1,400 new settlement units in the West Bank, including East Jerusalem. According to the Office of the United Nations Special Coordinator for the Middle East Peace Process, Israeli authorities have also advanced plans for around 1,000 settlement housing units, following the Government’s decision to unfreeze planning processes for 1,800 settlements units. According to Peace Now, Israeli official statistics show new construction and building plans in Israeli settlements increased by over 150 per cent during 2013, and construction began on 828 units in the latter half of 2013 in the Occupied Palestinian Territory compared with 484 units during the same period in 2012.⁵

115. Israeli settlements continue to be at the centre of multiple violations of the human rights of Palestinians, including their freedoms of non-discrimination, liberty, security of person and fair trial, freedom of movement, adequate housing, health, education, work and an adequate standard of living (see A/HRC/25/38 and A/68/513). Article 1 of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights establishes that all peoples have the right to self-determination and that they may freely determine their political status and freely pursue their economic, social and cultural development. The continuation of the transfer by Israel of its population into the Occupied Palestinian Territory and the maintenance, creation and expansion of Israeli settlements have severe negative impacts on the right to self-determination of Palestinian people (A/67/375, para. 10). This right is generally understood as having several elements, including the right to have a demographic and territorial presence and the right to permanent sovereignty over natural resources.¹⁰ Those elements are affected not only by the expansion of Israeli settlements, but also by their mere presence (A/67/375, para. 10) and by the phenomenon of settler violence. The Secretary-General recalls that the realization of the right to self-determination is of particular importance because it is an essential condition for the effective guarantee and observance of human rights and for the promotion and strengthening of those rights.¹⁰ In addition, articles 1(3) of the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights, to which Israel is party, establish that States should promote and respect the right to self-determination.

i) Expansion of settlements through informal methods Control of land through agriculture

116. Along with the official methods by which the Government of Israel seeks to take control of land that is subsequently allocated to settlements (A/68/513, paras. 17-22), it appears that the Government has also encouraged takeovers of land by Israeli settlers through agricultural projects.²⁶ A study commissioned in 2005 by the Government of Israel on outposts in the West Bank indicated that one way that settlers establish outposts is to falsely request the creation of an agricultural farm, which is then transformed into an outpost. This is facilitated by the fact that agricultural projects do not need political-level approval. It is reported by Kerem Navot that, as of August 2013, Israeli settler agriculture in the West Bank covers around 23,000 acres (93,000 dunams), more than the built-up area of settlements and outposts, excluding those in East Jerusalem, constituting about 15,000 acres (60,000 dunams). Most of this increase has occurred after the signing of the Oslo Accords in

September 1993. Between 1997 and 2012, land used by Israelis for agriculture in the West Bank grew by 35 per cent.²⁷

117. In addition, Israel continues to fail to protect Palestinians and Palestinian property from criminal attacks by settlers, including the construction of physical obstacles impeding the access of Palestinians to their own farmlands, intimidation and violence against Palestinian farmers (A/67/375, para. 19), and destruction of trees and crops. According to the United Nations Office for the Coordination of Humanitarian Affairs, during the reporting period, there were 217 incidents involving damage to Palestinian property by Israeli settlers, including to 10,711 trees. The lack of enforcement and of accountability in relation to such violent acts creates an atmosphere of impunity that facilitates the seizing of land by settlers, which they can then cultivate in order to expand the area effectively occupied by settlements (see A/67/375, paras. 30-36, and A/68/513, paras. 42-49). The Yesh Din volunteer organization reports that the vast majority of cases accusing settlers of seizing Palestinian land, including by trespassing and unauthorized cultivation, are closed without indictment.

118. The Israeli NGO Kerem Navot reports that the fastest growth of Israeli settler agriculture is taking place in the West Bank Hill Country,²⁸ and is linked to numerous restrictions affecting Palestinian farmers' access to agricultural fields, (A/67/375, paras. 19-21). It argues that privately owned Palestinian land situated around most settlements in these areas has been appropriated de facto by settlers for agricultural use, with the support of the Israeli military present in the settlements. Kerem Navot has reported that between 1997 and 2012, Israeli settler agriculture increased in areas close to Ramallah (by 64 per cent), Hebron (by 61 per cent) and Nablus (by 89 per cent).²⁹

119. In contrast, Palestinian agriculture is in decline. Cultivated areas in the West Bank shrank by 30 per cent between the 1960s and the 1990s, mainly due to land confiscation and restrictions on access to land and to water resources imposed by Israel on the Palestinian population (A/68/513, paras. 36-41).³³ This correlates to figures showing that around 40 per cent of Israeli settler agriculture in the West Bank is farmed on privately owned Palestinian land.²⁸ The decline is further reflected in figures on exports of agricultural products. Every year, Israeli settlers export around \$285 million worth of agricultural products, whereas Palestinians only export \$19 million. Approximately 28 per cent of the total Israeli agricultural exports come from products grown in the West Bank and in the occupied Syrian Golan.³⁴

ii) Proposed way forward- Conclusions and recommendations (UNHCHR)

- Israel continues to violate its international legal obligations and commitments under the road map, and fails to heed the repeated calls from the international community to cease transferring its civilian population into occupied territory.
- Israel plays a leading role in the establishment and expansion of Israeli settlements in the West Bank, including East Jerusalem, and in the occupied Syrian Golan, including by using its legal system to seize land, which is later allocated to settlements, and by expanding the area effectively occupied by settlements. Israel must implement relevant United Nations resolutions, including Security Council resolution 497 (1981), and withdraw from territories occupied in 1967.
- Israel continues to fail to protect Palestinians from violent acts committed by Israeli settlers, in contravention of its international obligation as the occupying Power to

maintain public order and safety in the occupied territory. Israel continues to fail to ensure accountability for settler violence.

- Israeli settlements in the West Bank, including East Jerusalem lead to multiple violations of the human rights of Palestinians. Israel must abide by its international obligations by respecting, protecting and fulfilling the rights of Palestinians, as contained in international human rights law. In addition, Israel, as the occupying Power, must ensure that Palestinians are afforded the protection provided under international humanitarian law for protected persons.
- Israel is called on to put an end to the creation and expansion of settlements in the Occupied Palestinian Territory and in the occupied Syrian Golan. In particular, it should cease using its legal system to control land which is then allocated to settlements, specifically through declarations and endorsements of State land. In addition, the Secretary-General calls on Israel to immediately stop using informal land control methods, such as agriculture and archaeological parks, aimed at expanding the area effectively occupied by settlements. In this regard, Israel must take action against settlers who take over land, including by agricultural activities.
- Moreover, Israel must stop the funding, support and participation in archaeological projects, often managed by settler organizations, which contribute to the consolidation of settler presence in the Occupied Palestinian Territory and could result in several violations of the rights of Palestinians, including their right to freedom of movement.
- The forcible transfer of the Palestinian population, including the Bedouin communities and herders currently residing in the central West Bank and the eastern Jerusalem periphery, violates Israel's obligations under international humanitarian and international human rights law. Therefore, plans that would result in the forcible transfer of such communities should be halted immediately.
- Israel also has an obligation under international law to provide Palestinian communities in Area C, including the Bedouin communities and herders at risk of forcible transfer, with adequate housing, security of tenure and access to water and services, including health and education, in their current locations.
- Israel, as the occupying Power, is obliged to prevent violent attacks by Israeli settlers against Palestinians, in particular in geographic locations where such acts are known to occur persistently. Israel must take all measures to ensure that all acts of violence committed by Israeli settlers against Palestinians and their property are investigated independently, impartially, thoroughly, promptly, effectively and in a non-discriminatory manner. Investigations should allow for public scrutiny and the participation of victims. Individuals responsible for violations should be prosecuted and victims should be granted effective remedies.

VII. REPORT OF THE SPECIAL COMMITTEE TO INVESTIGATE ISRAELI PRACTICES AFFECTING THE HUMAN RIGHTS OF THE PALESTINIAN PEOPLE AND OTHER ARABS OF THE OCCUPIED TERRITORIES³⁵ - 26 August 2014³⁶

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 General Assembly resolution 2443 (XXIII). It is currently composed of three Member States: Sri Lanka (Chair), Malaysia and Senegal. The Special Committee members are the Permanent Representative of Sri Lanka to the United Nations in New York, Palitha Kohona, the Permanent Representative of Malaysia to the United Nations in New York, Hussein Haniff, and the Permanent Representative of Senegal to the United Nations Office at Geneva, Fode Seck. During the annual

120. The report addresses the situation of Palestinian detainees, including children in Israeli detention facilities. The report also focuses on Israeli policies and practices relating to settlement expansion and the demolition of homes and forcible transfer of Palestinians; interference with international humanitarian assistance; the designation of areas as closed military zones, national parks and archaeological sites; and settler violence. The Special Committee examines the situation of Palestinian residents in East Jerusalem and issues relating to business and human rights in the Occupied Palestinian Territory. With regard to the Gaza Strip, the report addresses long-standing concerns associated with the blockade and the access-restricted areas and focuses on recent hostilities between Israel, and the others.

121. The Report enumerated in detail the following aspects: Palestinian prisoners and detainees in Israeli detention facilities; with regard to administrative detention and hunger strikers, the Special Committee reiterates that international law only exceptionally permits the use of administrative detention, yet Israel has regularly placed individuals under administrative detention, with approximately 23,000 administrative detention orders reportedly issued since 2000. The Secretary-General and the United Nations High Commissioner for Human Rights have repeatedly stated that administrative detainees should be charged or released without delay.

i) The situation of Palestinian children detained by Israel

122. The Special Committee was alarmed by reports of widespread ill-treatment among the 500-700 Palestinian children passing through Israeli prisons and detention centres each year. In 2013, approximately 76.5 per cent of children detained by the Israeli military in the occupied West Bank allegedly endured some form of physical violence during arrest, transfer or interrogation. Most of the alleged incidents were said to occur within the first 24-48 hours after arrest. In the vast majority of cases involving children, they were accused of throwing stones, which under Israeli military occupation can potentially lead to a sentence of up to 20 years' imprisonment, depending on the age of the child. As in past years, many Palestinian children were reportedly transferred to interrogation and detention centres located in Israel, in violation of international law.⁴

123. Notwithstanding the observations and recommendations made by the United Nations Children's Fund early in 2013 with respect to children in Israeli military detention, the ill-treatment of children continued with impunity. In 98 cases monitored in 2013 by a non-governmental organization based in the West Bank, the majority of those children had been blindfolded with their hands tied; questioned alone; not informed of their right to remain silent; and not informed of the reason for their arrest. More than half of those children had been subjected to night-time raids and arrest; physical violence; verbal abuse, humiliation and intimidation; strip-searching; and denial of adequate food and water. In 21 of those cases, children had been held in solitary confinement for two or more days. The longest period of solitary confinement of a minor documented in 2013 was reportedly 28 days.

mission of the Special Committee to the region in 2014, Mr. Haniff served as acting Chair while Sri Lanka was represented by the Minister and Head of Chancery of the Sri Lankan Embassy in Brussels, Samantha Jayasuriya.
³⁶ A/69/355

[http://unispal.un.org/unispal.nsf/9a798adbf322aff38525617b006d88d7/5cb088a503903f6485257d880056b608?](http://unispal.un.org/unispal.nsf/9a798adbf322aff38525617b006d88d7/5cb088a503903f6485257d880056b608?OpenDocument)
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124. In addition to this there have been marked Human Rights violations in settler colonies during this recent armed conflict and details pertaining to the same have been presented elsewhere in this document. The Special Committee remains seriously concerned by the ongoing demolition of Palestinian structures and the forcible transfer of families and communities in the West Bank, including East Jerusalem. During the nine-month period of Israeli-Palestinian negotiations until April 2014, the issuance and implementation of demolition orders in Area C of the West Bank and in East Jerusalem continued at an alarming rate. The Special Committee notes that 565 Palestinian-owned properties were destroyed in 2013, including residential shelters, schools, water cisterns and animal pens, on the basis of a lack of planning permits, which are rarely issued by the Israeli authorities.

ii) Interference with international humanitarian assistance

125. There have been reports indicating that Israeli authorities have further exacerbated the hardships experienced by displaced Palestinians through the denial of, or interference with, international humanitarian assistance to the affected communities. It was alleged that Israeli authorities intentionally targeted humanitarian assistance as part of a coercive environment that facilitates forcible transfer. It was also noted that the Israeli judicial system appeared to be unwilling or unable to provide effective remedy in such cases because of recurrent delays in the appeals against stop-work or confiscation orders against humanitarian assistance projects. Interference with humanitarian aid affecting access to water for Palestinian communities is particularly alarming, in view of the already disproportionate distribution of water resources in the West Bank. Committee members note that, in marginalized communities in the West Bank, Palestinians survive on less than 20 litres per capita a day, the minimum amount recommended by the World Health Organization in emergency situations to sustain life. In contrast, settlements nearby have unrestricted access to water, well-watered lawns and swimming pools.

iii) The human rights of Palestinian residents of East Jerusalem

126. Palestinians living in East Jerusalem continued to be treated by Israel as “permanent residents”, with their residency status subject to revocation at any time on the basis of a number of discriminatory laws. These include the Passports Law of 1952, the Entry into Israel Law of 1952 (requiring residents to prove that East Jerusalem is their centre of life) and the Nationality Law of 1952 (amendment 9). It has been estimated that, between 1967 and the end of 2013, more than 14,000 Palestinian residents of East Jerusalem had their residency status revoked.

127. One non-governmental organization working for Palestinian residency rights noted that, if only one parent has permanent residency, then the parents must submit “a request to register birth” and prove “centre of life” before the child can become a permanent resident. Since 2004, the Ministry of Interior of Israel has reportedly received 17,616 applications for child registration, of which 12,247 were approved and 3,933 rejected.

iv) Designation of areas as closed military zones, national parks and archaeological sites

128. The Special Committee notes that Israeli strategies for settlement and territorial expansion have also included the designation of certain areas of the West Bank, including East Jerusalem, as closed military zones, national parks and archaeological heritage and tourism sites. This has reportedly served to fulfil broader political objectives aimed at

redefining the demographic boundaries of the West Bank, including East Jerusalem. In this context, testimonies heard by the Special Committee highlighted the plight of the Masafer Yatta herder community of 1,300 persons in the South Hebron Hills. Surrounded by three Israeli settlements (Ma'on, Suseya and Karmel), it is at particular risk of eviction, in view of the area that it inhabits being designated as a live firing zone. According to information from the Office for the Coordination of Humanitarian Affairs, between 2011 and 2013, more than 80 per cent of these communities reported a decrease in the number of their livestock due to a number of Israeli measures, including restrictive planning and zoning, settler violence and Israeli military activities.

v) Settler violence

129. Testimonies of representatives of non-governmental organizations and Palestinian refugee camps indicated that settler violence continued to afflict Palestinian communities across the West Bank, including East Jerusalem. The most common forms were reported to be physical assault and stone-throwing. Palestinians are often victims of beating with sticks, iron pipes and knives, and in some cases they are exposed to Molotov cocktails and live ammunition. The Special Committee was briefed that Israeli Defense Forces typically intervened on the side of the settlers and fired tear gas to disperse the Palestinian crowds gathered to repel a settler attack. The Special Committee was informed that, in Ureef village, villagers built a 4-metre-high wall to protect children at school from stone-throwing settlers. In Burin village, a school counsellor was reported in February 2014 as stating that settler violence was responsible for the increased aggressiveness of schoolchildren, a regression in academic standards and more frequent absence from the classroom.

vi) Excessive use of force by Israeli security forces in the West Bank

130. Briefings received by the Special Committee indicated a dramatic increase in Palestinian fatalities, including children, in incidents of use of force by Israeli security forces in the West Bank. Reportedly, 27 Palestinians were killed in the West Bank in 2013, of whom 17 were Palestinian refugees killed in 14 separate incidents, compared with 8 in 2012. In the first half of 2014, 12 Palestinians were reportedly killed by Israeli security forces. In the context of a marked increase in the number of Israeli security operations in 2013, the Committee also noted a rise in the number of Palestinians injured in 2013, reportedly as a result of the excessive use of force by Israeli security forces. The number of Palestinians injured from rubber bullets doubled from 757 in 2012 to 1,516 in 2013. This was particularly notable in and around refugee camps, where the number of those injured rose from 38 in 2012 to 486 in 2013. It was also reported that 11 of the 12 refugee fatalities in 2013 were caused by live ammunition. On 15 May 2014, Israeli security forces allegedly shot and killed two boys, aged 16 and 17 years, during Nakba Day demonstrations. As documented in closed-circuit television footage, the boys posed no direct threat when they were killed. In relation to that incident, the Office of the United Nations High Commissioner for Human Rights has stated that the killings may amount to extrajudicial executions under international human rights law, as well as wilful killings under international humanitarian law.

vii) Blockade

131. In June 2014, the Israeli-imposed blockade entered its eighth consecutive year despite repeated calls by the international community to lift it.⁷ The Committee reiterates that the

blockade constitutes a form of collective punishment imposed by Israel on the population of Gaza in contravention of international law

viii) Access-restricted areas

132. The access-restricted areas on land and sea in Gaza, which have been imposed by Israel since 2000, continue to have an adverse human rights impact on Gaza. The main impacts are twofold: the effects on livelihoods, especially during peak fishing and harvest seasons, contributing to food insecurity and poverty; and the physical insecurity resulting from the enforcement by Israel of the access-restricted areas.

133. According to several sources, between 80 and 88 per cent of households in Gaza are aid recipients, even before the 2014 conflict. According to the United Nations, 35 per cent of agricultural land in Gaza and up to 85 per cent of Gaza's fishing waters are affected by the restrictions. Under the 1993 Oslo Accords, a 20-nautical-mile fishing limit was agreed. While Israel has cited security reasons for imposing the access-restricted areas, the Special Committee is concerned that the measure creates a disproportionate negative impact on the lives of ordinary Palestinians in Gaza and that it is used as a punitive measure. The fishing limit has reportedly been changed, including in response to rocket fire from Gaza. The Special Committee also heard accounts of confiscation and destruction of fishing boats and nets.

134. In June 2014, the Working Group on the issue of human rights and transnational corporations and other business enterprises issued a statement on the implications of the Guiding Principles on Business and Human Rights in the context of Israeli settlements in the Occupied Palestinian Territory.¹² In that statement, it recognized that the military occupation of the Palestinian territory constituted a conflict situation, even in the absence of active hostilities, and referred to the heightened risks of corporate involvement in human rights abuses in such situations. With respect to the illegal status of settlements under international law and the publicly available information about the relation between settlements and human rights violations in the Occupied Palestinian Territory, the Working Group noted that this “should necessarily preface and inform any human rights due diligence exercise carried out by a business operating in the settlements” and that “the corporate responsibility to respect human rights exists over and above compliance with national laws and regulations”.

135. At the end of this Report, the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied Territories made some recommendations to the concerned parties regarding the resolution of the conflict.

VIII. ISRAELI PRACTICES AFFECTING THE HUMAN RIGHT OF THE PALESTINIAN PEOPLE IN THE OCCUPIED PALESTINIAN TERRITORY, INCLUDING EAST JERUSALEM-REPORT OF THE SECRETARY-GENERAL³⁷

136. The present report has been prepared by the Office of the United Nations High Commissioner for Human Rights pursuant to General Assembly resolution 68/83. It focuses

³⁷ A/69/347, 25 August 2014 available at <http://unispal.un.org/unispal.nsf/9a798adbf322aff38525617b006d88d7/1c3953f27b0d139785257d8800758980?OpenDocument> last assessed on 5 February 2015

on four main themes: an assessment of the impact of the wall and related measures in the light of the advisory opinion of the International Court of Justice of 9 July 2004 on the *Legal Consequences of a Wall in the Occupied Palestinian Territory*; Israel's practice of administrative detention; the human rights situation in Gaza; and accountability for reported excessive use of force by security forces. The report also provides an update of ongoing efforts to build the capacity of Palestinian institutions.

137. International human rights law and international humanitarian law are applicable in the Occupied Palestinian Territory. A detailed analysis of the legal obligations of Israel as the Occupying Power, the Palestinian Authority and the de facto authorities in Gaza can be found in the High Commissioner's first periodic report on the situation of human rights in the Occupied Palestinian Territory.

138. On 23 April 2014, Fatah and Hamas agreed to form a government of national consensus, which was sworn in by President Mahmoud Abbas, under the leadership of Prime Minister Rami Hamdallah, on 2 June 2014. In April 2014, the State of Palestine acceded to 20 international treaties,¹ including eight human rights treaties, the Geneva Conventions of 12 August 1949, Additional Protocol I to the [Geneva Conventions](#), the Hague Convention (IV) respecting the Laws and Customs of War on Land and the Regulations respecting the Laws and Customs of War on Land.

139. By acceding to these treaties, the State of Palestine has assumed legal obligations under international law, including reporting to various human rights treaty bodies. Notwithstanding, Israel, as the occupying power, remains bound by international human rights law and humanitarian law, while other relevant actors also remain bound by international law, as set out in the High Commissioner's first periodic report.

140. The Secretary-General commends the formal legal commitment of the State of Palestine to be bound by the international human rights standards contained in these treaties and to engage with the associated human rights treaty bodies that monitor their implementation.

Implementation of General Assembly [resolution 68/83](#)

i) Tenth Anniversary of the Advisory Opinion on the Wall

141. With the tenth anniversary, on 9 July 2014, of the landmark advisory opinion of the International Court of Justice on the *Legal Consequences of a Wall in the Occupied Palestinian Territory* it seems timely to reflect upon some of the Court's key findings and the current situation in the Occupied Palestinian Territory.

142. As highlighted in previous reports of the Secretary-General and the High Commissioner serious concerns remain regarding Israel's compliance with its "obligation to put an end to the violation of its international obligations flowing from the construction of a wall in the Occupied Palestinian Territory". With the continued construction of the wall and the expansion of the illegal settlements Israel has further entrenched the violations of international law identified by the International Court of Justice in 2004

143. At the time of the Secretary-General's report to the Court in November 2003, the length of the sections of the wall either completed or under construction was approximately

180 km . As of July 2013, approximately 62 per cent of the route approved by the Israeli authorities had been completed, with 10 per cent under construction — a total of approximately 512 km — almost three times the size of the wall considered by the Court in 2004. Construction on 28 per cent of the planned route of the wall has not yet begun³⁸ In its 2004 advisory opinion, the International Court of Justice made a number of key findings that remain relevant to the current situation.

ii) Applicability of international human rights law to the Occupied Palestinian Territory

144. The Court underlined that “the protection offered by human rights conventions does not cease in case of armed conflict, save through the effect of provisions for derogation of the kind to be found in Article 4” of the International Covenant on Civil and Political Rights. Thus both international human rights law and international humanitarian law are applicable in times of armed conflict, including situations of belligerent occupation.

145. Further, in response to Israel's assertion that international human rights law was not applicable to the Occupied Palestinian Territory, the Court affirmed the contrary, observing that the “territories occupied by Israel have for over 37 years been subject to its territorial jurisdiction as the occupying power”, thus making the international human rights conventions to which Israel is party applicable to the Occupied Palestinian. Israel continues to dispute this.²

iii) Illegality of territorial acquisition by force

146. The Court further reaffirmed the “illegality of territorial acquisition resulting from the threat or use of force”. It held that “the construction of the wall and its associated regime create a 'fait accompli' on the ground that could well become permanent”, which “would be tantamount to de facto annexation”. This conclusion is of increased pertinence given the expansion and entrenchment of the wall and settlements.

iv) Self-determination

147. The Court also emphasized that the construction of the wall, with its associated regime and other measures including settlements, “severely impedes the exercise by the Palestinian people of its right to self-determination, and is therefore a breach of Israel's obligation to respect that right”. The Court drew attention to the “illegal measures taken by Israel with regard to Jerusalem and the settlements, as deplored by the Security Council”, the impact of the wall and associated regime on the rights of Palestinians, and the fact that “a significant number of Palestinians have already been compelled by the construction of the wall and its associated regime to depart from certain areas”. The Court condemned these practices, underlining that these measures were “tending to alter the demographic composition of the Occupied Palestinian Territory”.

149. In its advisory opinion, the Court focused on the wall, but as the Secretary-General pointed out in paragraphs 5 to 28 of his report a number of Israeli policies and practices

³⁸ see www.ochaopt.org/documents/ocha_opt_barrier_factsheet_july_2013_english.pdf.

continue to undermine the right of the Palestinian to self-determination. These include the combined effects of: Israel's blockade of Gaza; the closure regime in the West Bank, including the continued construction of the wall; the access restricted areas in Gaza; demolition and/or confiscation of Palestinian structures, including residential, and the eviction of their inhabitants; the transfer of Israeli citizens into occupied territory ; the revocation of residency rights of Palestinians in East Jerusalem; control of the population registry ;and the use of Palestinian natural resources.

v) Illegality of settlements

150. Part of the Court's concern derived from the “sinuous” route of the wall, which “has been traced in such a way as to include within that area the great majority of the Israeli settlements in the Occupied Palestinian Territory (including East Jerusalem)” (advisory opinion, para. 119). The Court conclusively found that the “Israeli settlements in the Occupied Palestinian Territory (including East Jerusalem) have been established in breach of international law” (ibid., para. 120). This situation has significantly deteriorated since the advisory opinion was issued. The settler population in the West Bank, including East Jerusalem, has grown from approximately 416,000 in 2004, to between 500,000 and 650,000 by the end of 2012. The Court also noted that the wall had serious effects on the following: *Freedom of movement, agriculture and food; Impact of the wall on the rights to health and education; and Demolitions and forcible transfer*. Thus, 10 years after the International Court of Justice gave its advisory opinion, the situation had further deteriorated. The Court underlined that Israel remains “obliged to comply with the international obligations it has breached by the construction of the wall in the Occupied Palestinian Territory” and “to put an end to the violation of its international obligations”, emphasizing the well-established “obligation of a State responsible for an internationally wrongful act to put an end to that act”. Accordingly, it affirmed Israel's obligation within the Occupied Palestinian Territory to cease the construction of the wall and dismantle the parts already constructed, as well as provide reparation, including restitution and compensation, to victims. To date, Israel has failed to comply with the various **Gaza blockade**.

151. Israel continued to impose a blockade of Gaza in violation of international law including by severely restricting movement into and out of Gaza, and transfers of goods to and from the West Bank, as well as exports abroad. Imports are also subjected to considerable restrictions. This situation has adversely impacted the rights of Palestinians in Gaza, specifically their rights to education, health, work, housing and an adequate standard of living. Israel's restrictions on movement between the West Bank and the Gaza Strip also continued to sever family ties and inhibit social interaction.

152. Given the Israeli-imposed restrictions, Gaza residents have relied heavily on transit and trade with Egypt through the Rafah crossing as well as through tunnels used to smuggle goods. However, since July 2013, the Egyptian authorities have severely restricted travel through Rafah — with the passage of persons in both directions dropping by 76 per cent from the first to the second half of 2013 — and have destroyed most smuggling tunnels. This has resulted in shortages of affordable fuel, construction materials, medicine and other goods in Gaza.

153. Restrictions at the Rafah crossing have led to increased Palestinian demand to use the Erez crossing into Israel. On average, 36 per cent more Palestinians crossed through Erez in the period following July 2013 compared to the first half of 2013. Although more

Palestinians crossed through Erez, Israel's restrictions, in terms of categories of persons or reasons for which Palestinians may cross, remained the same, falling significantly short of Palestinians' need to travel through Erez. The slight increase of imports through the Kerem Shalom crossing between July and October 2013 following the destruction of tunnels was not sustained, due to the repeated closure of the crossing and the restrictions imposed, including by limiting volumes and types of materials allowed into Gaza. Additionally, average monthly imports following November 2013 declined by 19 percent in comparison to the first half of 2013.

154. Israel's lengthy approval process with respect to international reconstruction projects continues to hinder urgent humanitarian responses, and considerably increases project costs. The situation was aggravated when, in October 2013, Israel prohibited the import of construction material for international organizations following the discovery of an underground tunnel from Gaza into Israel, before again partially allowing such imports as of December 2013. This disrupted the implementation of approved international projects. At the same time, Israel also reinstated its prohibition on construction material imports for the private sector, which paralysed the construction industry, which employed about 24,000 people.

155. Gaza's exports continue to be restricted despite the installation of a scanner for containers at the Kerem Shalom crossing, and remained at just under 2 per cent of the pre-closure level. These measures have had a direct impact on Palestinians' enjoyment of numerous rights, including their rights to an adequate standard of living, to education and to work.

156. The cumulative impact of Israel's blockade and Egyptian restrictions has had a detrimental effect on the rights of Palestinians, particularly to work, food and health. Unemployment in the Gaza Strip increased from 27.9 per cent in the second quarter of 2013 to 40.8 per cent in the first quarter of 2014. Over a million people in the Gaza Strip live in food-insecure households, and at least 80 per cent of the population depend on aid. Owing to the socioeconomic situation, 45 per cent of the Palestinian families suffer from post-traumatic stress disorders.

157. The Report also highlighted the Excessive use of force by Israeli security forces in the West Bank, including East Jerusalem; Accountability for alleged violations of international law by Israeli security forces; including Criminal accountability *Opening of investigations, Conduct of investigations; Reform of investigative and criminal accountability mechanisms: the Turkel Commission*; Compensation; Strengthening Palestinian institutions; and Technical support.

vi) Proposed way forward - Recommendations to the Government of Israel (UN Secretary-General)

- The Government of Israel should fully comply with the advisory opinion of the International Court of Justice on the *Legal Consequences of a Wall in the Occupied Palestinian Territory*.
- The Government of Israel should fully lift the blockade of Gaza to remedy the ongoing punitive measures against the civilian population. Any measures restricting the freedom of movement of civilians and the transfer of goods from, into and within Gaza must be consistent with international law.

- The Government of Israel should ensure that the rules of engagement or open fire regulations of Israeli security forces, including in the access restricted areas, are consistent with international law, including by carrying out an independent review and adopting and implementing any necessary revision.
- The Government of Israel should ensure that appropriate orders are issued and that disciplinary and criminal accountability mechanisms are in place and used to ensure the effective implementation of rules of engagement and open fire regulations related to the use of force by Israeli security forces, including in the access-restricted areas, in situations other than hostilities.
- The Government of Israel should take all possible measures to ensure full respect of its obligations under international humanitarian law, in particular the principles of distinction, proportionality and precautions, and international human rights law, during the conduct of hostilities in the Occupied Palestinian Territory.
- The Government of Israel should carry out prompt, thorough, effective, independent and impartial investigations into allegations of unlawful killing or injury, or of torture or other cruel, inhuman or degrading treatment or punishment. Investigations should also be subject to public scrutiny and allow for meaningful victim participation. Individuals who are responsible for violations should be held accountable and prosecuted in fair trials and victims should be provided with an effective remedy. As an initial step to reforming the investigative system, the Government should implement the recommendations of the second report of the Turkel Commission.
- The Government of Israel should rescind all policies and practices that directly or indirectly lead to the forced eviction and/or forcible transfer of civilians, including demolitions and/or confiscations, or plans for demolitions or confiscations, and those that contribute to the creation of a coercive environment that forces Palestinians to leave their homes or land. It should permit and facilitate the return of those communities already affected to the places from which they were evicted and/or transferred and ensure the right to adequate housing and legal security of tenure. The Government of Israel should charge or release any detainees held in administrative detention and bring to an end the administrative detention regime.

IX. PALESTINE REFUGEES' PROPERTIES AND THEIR REVENUES: REPORT OF THE SECRETARY-GENERAL-26 AUGUST 2014³⁹.

158. The present report was submitted pursuant to General Assembly resolution 68/79. On 21 May 2014, the Secretary-General sent notes verbales to Israel and all other Member States, drawing their attention to the relevant provisions of resolutions 68/76 to 68/80 and requesting information by 10 July 2014 concerning any action taken or envisaged in relation to the implementation of those resolutions. A reply dated 11 June 2014 was received from the Russian Federation, responding to the requests contained in paragraph 4 of resolution 68/77 and paragraph 23 of resolution 68/78. A reply dated 25 June 2014 was received from Mexico, responding to the requests contained in paragraph 4 of resolution 68/77 and paragraph 25 of resolution 68/78. A reply dated 21 July 2014 was received from Israel responding to the requests contained in paragraphs 15 to 19 of resolution 68/78.

³⁹ A/69/150

[http://unispal.un.org/unispal.nsf/9a798adb322aff38525617b006d88d7/d0f44f56ec52e65185257d860058b580?](http://unispal.un.org/unispal.nsf/9a798adb322aff38525617b006d88d7/d0f44f56ec52e65185257d860058b580?OpenDocument)
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159. A reply dated 21 July 2014 was received from Israel, responding to the request contained in paragraphs 15 to 19 of General Assembly resolution 68/78. While Israel voted, as it did in the past, against these resolutions due to their politicized character and one-sided perspective, the Permanent mission reiterated Israel's support for the humanitarian activities of UNRWA. Israel had gone to great lengths to foster conditions for Palestinian economic development and cooperation, approving a substantial number of UNRWA projects and facilitating UNRWA humanitarian assistance to its Palestinian beneficiaries.

160. The Government of Israel had taken further steps to facilitate the crossing of both people and goods in and out of the Gaza Strip. All civilian goods were allowed into Gaza, with the exception of weapons and "dual use" items. Israel urged the Secretary-General and UNRWA to consider, together with the concerned parties, ways in which the United Nations could enhance the manner in which it advances the welfare of the Palestinian people.

161. In this respect, Israel strongly supported an application of the standard principles guiding the United Nations, with respect to the treatment of refugees elsewhere, to the Palestinian situation. Specifically, the mandate of UNRWA should be consistent with the standard United Nations policy on refugees. Furthermore, the mandate of UNRWA should include the active promotion in the Palestinian context of the broadly applied United Nations goals of resettlement and local integration of refugees.

162. While other refugee populations were not treated by UNRWA, thereby allowing for a gradual decrease in their numbers commensurate to their rehabilitation into civilian life, the Palestinian refugee population was growing at an exponential rate (from 700,000 in 1949 to 4.2 million in 2005, to 4.9 million in 2012 and due to reach 6.2 million in 2020). Those refugees (now into their fourth generation) were reliant on international aid and funds for their health, education and livelihood.

X. COMMENTS AND OBSERVATIONS OF AALCO SECRETARIAT

163. Precisely, forty-eight years have elapsed since Israel first illegally occupied the Palestinian Territories in 1967. The renewed vigour with which Israel is targeting Palestinian civilians, especially children cannot be justified on any account. *With their economy suffocated by the illegal Israeli blockade, Palestinians in Gaza suffer from massive unemployment, as well as ongoing Israeli attacks from air and sea. Economic strangulation is as deadly for Gaza as the renewed Israeli bombings,* however, despite all legal efforts exerted by the international community to persuade Israel to stop its illegal expansionist settlement activities and declare Palestine as an Independent State, occupation continues till date, without an early solution in site.

164. The Secretary General of the United Nations, in his briefing to the Security Council pointed out that over a period of a handful of days during the war in 2014, the Palestinian factions Hamas and Islamic Jihad fired a barrage of more than 550 rockets and mortars from Gaza into Israel, and in response the Israeli Defense Forces (IDF) launched more than 500 airstrikes on Gaza, primarily targeted at Hamas/Islamic Jihad facilities and private residences

of their members.⁴⁰ Irrespective of who is responsible for the initiation of violence, the fact remains that innocent civilians were caught in between this exchange.

165. An absolute disregard to human life was displayed by the Israeli forces and details revealed that eight cases where residential family homes in Gaza were attacked by Israeli forces without warning during Operation Protective Edge in July and August 2014, causing the deaths of more than 2000 people, the vast majority of which were Palestinians. This action revealed a pattern of frequent Israeli attacks using large aerial bombs to level civilian homes, sometimes killing entire families. “Israeli forces have brazenly flouted the laws of war by carrying out a series of attacks on civilian homes, displaying callous indifference to the carnage caused,” said Philip Luther, Director of the Middle East and North Africa Programme at Amnesty International. The devastation to civilian lives and property caused in all cases was clearly disproportionate to the military advantages gained by launching the attacks.

166. At least 18,000 homes were destroyed or rendered uninhabitable during the conflict. More than 2000 Palestinian civilians including 519 children were killed in Israeli attacks carried out during the latest Gaza conflict. In these circumstances it was crucial that there is accountability for any violations of international humanitarian law that have been committed. The Israeli authorities must provide answers to these charges and must not be allowed to remain immune to accountability. The international community must take urgent steps to end the perpetual cycle of serious violations and complete impunity, failing which the very legitimacy and purpose of legal institutions meant for the same will stand in question.⁴¹

167. Developments such as these 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.

168. 11 years have now passed since the International Court of Justice delivered its advisory opinion on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*.⁴² The decision is an important milestone for the Palestinian peoples as the opinion of the court touches on nearly every legal aspect of the conflict, pronounces on the rights of the Palestinian peoples and the duties of both Israel and the international community at large. The Court was categorical in affirming the illegal nature of the construction of the wall, the continuing occupation of Palestinian lands, the blockade of Gaza and the applicability of the Geneva Convention to the Conflict. The Court also observed that “all States are under an obligation not to recognize the illegal situation resulting from the construction of the wall in the Occupied Palestinian Territory, including in and around East

⁴⁰U N Secretary-General’s briefing to the Security Council on the situation in the Middle East, including the Question of Palestine, SG/SM/16012 (10 July 2014), available at: <<http://unispal.un.org/unispal.nsf/47d4e277b48d9d3685256ddc00612265/bf205cc2f5d84ab885257d110072a21d?OpenDocument>>

⁴¹ Israeli forces displayed ‘callous indifference’ in deadly attacks on family homes in Gaza, 5 November 2014, Report by Amnesty International

⁴² *The Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion of the International Court of Justice, dated, 7 July 2014. ICJ Reports 2004, p.136

Jerusalem. They are also under an obligation not to render aid or assistance in maintaining the situation created by such construction. . . . In addition, all the State parties to the Geneva Convention . . . are under an obligation. . . to ensure compliance by Israel with international humanitarian law as embodied in that Convention”⁴³ Despite these strong words and courageous expression by the Court, the situation on ground has changed very little. With impunity and in violation of these determinations, Israel continues to perform every act that the court declared illegal. Such disregard for the opinion of the court (which was widely received by the General Assembly) strikes at the foundations of an international order built on rule of law. The failure of Israel to meet its international obligations, including the obligations to promote and protect international law must be viewed seriously by the community of states.

169. As the numerous reports that were discussed in the brief demonstrate, the continuing occupation of Palestinian lands lies at the root of all the human rights violations faced by the Palestinian peoples. An occupation regime that refuses to earnestly contribute to efforts to reach a peaceful solution should be considered illegal. The scarcity of water and contamination of the available water resources, as a result of the policies perpetrated by Israel has been condemned by numerous United Nations bodies especially by the United Nations High Commissioner for Human Rights. The occupant has a duty under international law to conduct negotiations in good faith for a peaceful solution.⁴⁴ It would seem that an occupant who proposes unreasonable conditions, or otherwise obstructs negotiations for peace for the purpose of retaining control over the occupied territory, could be considered a violator of international law.

170. 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.

171. 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, it has in fact created heavily armed settlements, bypass roads and security zones in the midst of a future Palestinian state that seriously compromises the basic Palestinian rights.

172. The issue concerning the Statehood of Palestine has been debated by the various United Nations Organs since 1947. Even though the UN General Assembly granted “Non-Member Observer Status to the State of Palestine on 29 November 2012, no amicable solution of the issue has yet been found. The Legal Status of Palestine, both in the United Nations and as an independent State recognized as such by other Members of the international community is a vexed question that has evoked different reactions from both the groups of States – that has aligned in favour and not in favour of Palestine’s Statehood. The

⁴³ *Ibid*, para 159.

⁴⁴ Eyal Benvenisti, *The International Law of Occupation* (2nd Edition), Oxford University Press (2012), p. 245.

recognition of Palestine as a full member of the United Nations and as an independent State throws up several issues in International Law.

173. However the importance of granting recognition to Palestine would lie in its political significance. Full membership and voting rights would help Palestine gain further political leverage to pressure the international community to comply with its responsibility to bring Israel's violations of International law and particularly International Humanitarian law to an end. By raising the State of Palestine on an equal footing with other States and accruing such legitimacy in the international legal order. Further, Palestine would be better situated to claim its rights from the international community, in particular the means to exercise the right to self-determination.

174. There is every need to prosecute the violations of international law in general and International Humanitarian Law in particular, committed by Israel against Palestinians in occupied territories, as has been stressed repeatedly by AALCO for a very long time. It is pertinent to note here that the Prosecutor of the ICC has opened a Preliminary Investigation into this issue on 16 January 2015. This augurs well for the "rule of law" governed international society that AALCO has been trying to articulate for some time now. As the Preliminary Investigation is expected to begin in April 2015, after the Preliminary Investigation is done, AALCO would be in a better position to make substantial comments on the outcome of the same.

175. AALCO maintains its stance that until all the rights accorded to the Palestinian people by virtue of the principles enshrined in international law, are respected by Israel, the Palestinian right of resistance to the occupation, 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 Peace Initiative.

176. Mindful of the pertinent observations made by some delegates at the Fifty-Third Annual Session of AALCO held in Tehran in 2014, regarding the title of the topic under consideration the AALCO Secretariat has a few suggestions. These have been reflected in the draft resolution annexed to this document, for consideration by the Member States.⁴⁵

177. 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", comply fully with the provisions and principles of the Charter of the United Nations, Universal Declaration of Human Rights, the Regulations annexed to the Hague Convention of 1907 and the Geneva Conventions in particular the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949, in order to protect the rights of Palestinians.

⁴⁵ See operative paragraph 12 of the draft resolution annexed herewith.

ANNEX

SECRETARIAT'S DRAFT
AALCO/RES/DFT/54/S 4
17 APRIL 2015

**THE 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
(Deliberated)**

The Asian-African Legal Consultative Organization at its Fifty-Fourth Session,

Having considered the Secretariat Document No AALCO/54/BEIJING/2015/SD/S4,

Noting with appreciation the introductory remarks of the Deputy Secretary-General,

Recalling and reiterating the decisions taken at the consecutive Annual Sessions of the Asian-African Legal Consultative Organization since 1988, when the topic was first introduced on the agenda of the Organization, in particular the decisions adopted on 22 April 1998 and 23 April 1999,

Also recalling and reiterating the resolutions adopted on 23 February 2000, RES/40/4 of 24 June 2001, RES/41/4 of 19 July 2002, RES/42/3 of 20 June 2003, RES/43/S 4 of 25 June 2004, RES/44/S 4 of 1 July 2005, RES/45/S 4 of 8 April 2006, RESW/46/S 4 of 6 July 2007, RES/47/S 4 of 4 July 2008, RES/48/S 4 of 20 August 2009, RES/49/S 4 of 8 August 2010, RES/50/S 4 of 1 July 2011, RES/51/ S 4 of 22 June 2012, RES/52/S 4 of 12 September 2013 and RES/53/S 4 of 18 September 2014,

Having followed with great interest the deliberations on the item reflecting the views of Member States,

Being concerned with the serious obstacles created by the occupying power, which hinder the achievement of a just and lasting peace in the region,

Recognizing that the massive Israeli military operation in the Occupied Palestinian Territories, particularly in the occupied Gaza strip, has caused grave violations of the human rights of the Palestinian civilians therein and international humanitarian law, and exacerbated the severe humanitarian crisis in the Occupied Palestinian Territories,

Also recognizing that the Israeli siege imposed on the occupied Gaza strip, including the closure of border crossings and the cutting of the supply of fuel, food and medicine, constitutes collective punishment of Palestinian civilians and leads to disastrous humanitarian and environmental consequences,

Welcoming the international and regional initiatives for peace in the Middle East,

Condemning Israel's acts of violence and use of force against Palestinians, resulting in injury, loss of life and destruction, coercive migration and deportation in violation of human rights and the Fourth Geneva Convention of 1949,

Stressing the need to compliance with existing Israeli – Palestinian agreements concluded in order to reach a final settlement,

Being concerned about the continuing dangerous deterioration of the situation in the Occupied Palestinian Territories, including East Jerusalem and Gaza strip, the continuous deportation of Palestinians from their homeland, and the continuing serious and systematic violation of human rights of the Palestinian people by Israel, the occupying power, including that arising from the excessive use of force, the use of collective punishment, the occupation and closure of areas, the confiscation of land, the establishment and expansion of settlements, the construction of a wall in the occupied Palestinian Territories, the destruction of property and infrastructure, use of prohibited weapons and all other actions designed to change the legal status, demographic composition of the Occupied Palestinian Territories, including East Jerusalem and Gaza strip, and about war crimes and crimes against humanity committed in these territories, and calling for the implementation of the relevant United Nations resolutions on the humanitarian situation of the Palestinian people,

Recalling the Advisory Opinion rendered by the International Court of Justice in the case concerning the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, and related General Assembly Resolution (A/RES/ES-10/15 of 20 July 2004 and ES-10/17 of 15 December 2006), as well as the United Nations initiative of establishment of a Register of Damage arising from the construction of the separation wall, and **bearing in mind** that **more than ten years** have elapsed since the International Court of Justice delivered its opinion,

Deeply concerned about the tenacity of Israel in proceeding with the construction of wall in the Occupied Palestinian Territory, including in and around East Jerusalem, and its associated regime which is contrary to international law,

Acknowledging with deep concern that the Security Council is still unable to adopt a resolution stipulating the illegality of the Israeli expansionist wall,

Expressing its support to the Arab Peace Initiative for resolving the issue of Palestine and the Middle East, adopted by the 14th Arab Summit held in Beirut (Lebanon) on 28 March 2002 and reaffirmed in the 19th Summit Conference of the League of Arab States, Riyadh, 28-29 March 2007 as well as other peace initiatives, including the Quartet Road Map,

Taking note of conclusions and outcomes of all events held at both regional and international levels aiming at the achievement of a just, durable and comprehensive solution of the question of Palestine,

Taking note of the initiation of a preliminary examination of the situation in Palestine by the Prosecutor of the International Criminal Court,

Affirming that a comprehensive, just and durable solution can only be achieved by ending the occupation in pursuance of the Charter of the United Nations, existing agreement between the

parties and the relevant Security Council and General Assembly resolutions, which will allow all the countries of the region to live in peace, security and harmony,

1. **Urges** its Member States to take part in the peace process/efforts exerted by the international community for the achievement of a just and comprehensive solution of the question of Palestine on the basis of relevant Security Council resolutions, including 242 (1967), 338 (1973), 425 (1978), 1397 (2002) and 1860 (2009), and relevant General Assembly Resolutions, including 194 (1949) on the formula of “land for peace” and the legitimate rights of the Palestinian people, and expressing solidarity with the Palestinian people and their elected leadership;
2. **Takes note** of the findings of the United Nations Secretary General’s Board of Enquiry as transmitted on 4 May 2009 to the Security Council as well as the findings of the recent report of the Special Rapporteur of the Human Rights Council and other regional organizations;
3. **Also takes note** of the report of the Independent Fact Finding Committee on Gaza presented to the League of Arab States on 30 April 2009;
4. **Strongly condemns** the shocking developments that have continued to occur in the Occupied Palestinian Territory, including East Jerusalem, including the deportation of Palestinians from their homeland, the large number of deaths and injuries, mostly among Palestinian civilians, the acts of violence and brutality against Palestinian civilians, the widespread destruction of public and private Palestinian property and infrastructure, the internal displacement of civilians and the serious deterioration of the socio-economic and humanitarian conditions of the Palestinian people;
5. **Demands** that Israel, the Occupying Power, comply fully with the provisions and principles of the Charter of the United Nations, Universal Declaration of Human Rights, the Regulations annexed to the Hague Convention of 1907 and the Geneva Conventions in particular the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949, in order to protect the rights of Palestinians;
6. **Also demands** that Israel positively respond to the 2009 Report of Mr. Richard Falk the Special Rapporteur for the Palestinian Territories Occupied Since 1967 and 2010 Report and Recommendations of Justice Goldstone, United Nations Fact Finding Mission on the Gaza Conflict in order to protect the rights of Palestinians;
7. **Further Demands** that Israel comply with its legal obligations as mentioned in the Advisory Opinion rendered by the International Court of Justice in the case concerning the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, and related General Assembly Resolution (A/RES/ES-10/15 of 20th July 2004);
8. **Strongly demands** that Israel stop and reverse the construction of the wall in the Occupied Palestinian Territory;
9. **Strongly deplores** the Israeli blockade of the Gaza strip and its consequent human rights and humanitarian law violation;

10. **Further demands** for an immediate cessation of all acts of violence, including all acts of terror, provocation, incitement and destruction of property and calls for the immediate and full withdrawal of Israeli (occupying) forces from Palestinians territories in implementation of Security Council Resolutions, including 1402 (2002), 1403 (2002), 1515 (2003), and 1544 (2004) as a first step for ending the Israeli occupation of Palestinian territories occupied since 1967;
11. **Calls upon** Israel to ensure the return of refugees and displaced Palestinians to their homes and the restoration to them of their properties, in compliance with the relevant UN resolutions;
12. **Decides to change the title of this agenda item from “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” to “Violations of International Law in Palestine and other Occupied Territories by Israel and other International Legal Issues related to the Question of Palestine”;***
13. **Directs** the Secretariat to closely follow the developments in occupied territories from the view point of relevant legal aspects;
14. **Decides** to place the item on the provisional agenda of the Fifty-Fifth Annual Session.

* In furtherance of observations made by some delegates at the Fifty-Third Annual Session of AALCO held in Tehran in 2014 as regards changing the title, the Secretariat proposes the above.