

ASIAN-AFRICAN LEGAL CONSULTATIVE ORGANIZATION



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

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I. Introduction

1. The item “Deportation of Palestinians in Violation of International Law particularly the Fourth Geneva Convention of 1949 and the Massive Immigration and Settlement of Jews in Occupied Territories” was 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. 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. In compliance with this mandate, the AALCO Secretariat has brought out the study entitled “The Statehood of Palestine under International law”.

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

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

8. The present brief, after summarizing the deliberations on the topic at the Fifty-Sixth Annual Session, focuses on the international affirmations as regards the legal status of Jerusalem in the context of the recent decision of the United States to shift its embassy in Israel to the City.

II. Deliberations at the Fifty-Sixth Annual Session of AALCO (Nairobi, Kenya, 1 - 5 May 2017)

9. During the Fifty-Sixth Annual Session, Agenda Item titled “Discussions on the Special Study on the “Legality of Prolonged Israeli Occupation of the Occupied Palestinian territory and its Colonial Practices under International Law and International Humanitarian Law” was deliberated in the context of the release of the Special Study.

10. **The Secretary-General, Prof. Dr. Kennedy Gastorn**, in his introductory remarks, noted the significance of the year 2017 to the Palestinian people as it marked a hundred years from the *Balfour Declaration* and fifty years from the Six-Day War. He also noted that the Organization had long supported the Palestinian people’s quest for freedom and autonomy and would provide to support it through the continuation of its activities such as the recently released Special Study on the *The Legality of Israel’s Prolonged Occupation of Palestinian Territory and its Colonial Practices Therein*. He then outlined the framework for possible deliberations at the Session.

11. Thereafter, the delegates **of State of Qatar, State of Palestine, People’s Republic of China, Islamic Republic of Iran, Indonesia and Japan** made their statements on the topic.

12. **The Delegate of the State of Qatar** pointed out that the instability in a number of countries in the region and the continued sorry status of the Palestinian issue all put together pose an existential threat of instability to the peace and security in the region of the Middle East particularly and the world in general. He criticized Israel for expanding the borders of the Jerusalem both from east and north sides, doubling the number of settlers and other measures the Israeli government took to corrode the identity of the Arab identity of the Jerusalem.

13. He called for serious action to put pressure on the international community and the UN Security Council to take the necessary measures to make Israel stop building the settlements and stop the continued violations of the rights of the Palestinian people. The State of Qatar, further, called for taking necessary measures to implement UN Security Council Resolution 2334 and all other international resolutions issued over time regarding the occupied lands of Palestine.

14. **The Delegate of the State of Palestine**, firstly, brought the attention of the Plenary to the strike by the Palestinian prisoners in the prisons of Israel. He pointed out that it was a strike for dignity as they were demanding their minimum human rights guaranteed by international law.

15. He further pointed out that the UNSC Resolution No. 2343 calls for immediate and complete suspension of all settlement activities in the occupied Palestinian lands, including East Jerusalem, the capital of the State of Palestine. The resolution affirms the illegitimacy of

constructing settlements by Israel in the occupied Palestinian lands since 1967. The construction of settlements and racist separation wall confirms that Israel is an apartheid state as it constitutes a flagrant violation of international law and a hurdle for the efforts to achieve peace, establishment of the State of Palestine, the Arab initiative and other agreements based on the formula of two states.

16. He also stated that Palestine is a peace loving state which is keen to extend the hand of friendship provided it is given its full rights under international law and the partition resolution of 1947. Palestine has acceded to Rome Statute and signed more than 54 international conventions and treaties.

17. Lastly, he stated that the State of Palestine was still waiting further action by International Criminal Court and sought its support to the Palestinian legal position on the issue of prosecuting war crimes and crimes against humanity.

18. **The Delegate of the People's Republic of China** highlighted the common political will of the international community to prevent the Palestinian issue from being marginalized and while sticking to the Two-State Solution. He stated that China firmly supports the Two-State Solution and the Arab countries' Peace Proposal.

19. Further, he reiterated China's support for the establishment of an independent State of Palestine with full sovereignty, taking the 1967 borders as the basis and East Jerusalem as its capital. China also supports any efforts that are conducive to easing the situation between Palestine and Israel. He also stated that China would continue to provide assistance to Palestine, and stands ready to help Palestine achieve economic and social development under the cooperation framework of the "Belt and Road" initiative.

20. He pointed out that China is clear and consistent in its position on the settlement issue. The construction of Jewish settlements on the Occupied Palestinian Territories constitutes a violation of international law, which has been repeatedly confirmed by the ICJ's statement in the Advisory Opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, as well as the relevant resolutions of the UN General Assembly and Security Council. He called on Israel to strictly observe the UN Charter and other applicable rules of international human rights law and humanitarian law, calls for an immediate and overall halt of the settlement activities, and urges both sides to rebuild mutual trust and maintain an atmosphere that is conducive to the resumption of peace talks.

21. **The Delegate from the Islamic Republic of Iran** pointed out the grave violations of international law in the occupied Palestinian territories continue persistently. The Fourth Geneva Convention has been declared applicable to the Occupied Palestinian Territories on numerous occasions by the United Nations General Assembly and Security Council, the International Court of Justice, the International Committee of the Red Cross, and the High Contracting Parties to the Convention. Based on relevant General Assembly and Security Council resolutions, the Fourth Geneva Convention and the 1907 Hague Regulations, the Occupying Power has certain obligations, all of which have been violated by the Israeli regime on a daily basis.

22. Further, the illegal expropriation of Palestinian territories and the expanding of settlements, the deportation of Palestinians and the construction of the wall in Palestinian territory have all continued in the face of numerous calls by the international community to put an end thereto.

In this regard, he referred to the UN Security Council resolution 2334 dated 23 December 2016 whereby the Council not only stresses the inadmissibility of acquisition of territory by force, but also describes the establishment of settlements by the Israeli regime in the Palestine territory as a flagrant violation under international law. While the occupation and illegal activities of the Occupying Power in the Occupied Palestinian Territories is a clear example of situations created as a result of the violation of norms of *jus cogens*, it is incumbent upon members of the international community to refrain from rendering aid or assistance to the Occupying Power which could, in any manner, lead to the maintenance of the current situation.

23. Furthermore, in UN General Assembly resolution 70/89, the illegality of the Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan, as ruled by the International Court of Justice, in its advisory opinion in 2004, and reiterated by the Security Council and the High Commissioner for Human Rights, has been reaffirmed and reiterated. Transfer of the population of the Occupying Power in the territory it occupies is prohibited by international humanitarian law. He reminded that the Israeli regime was thus under an urgent obligation to stop building settlements, reverse any settlement development activity and make full reparations, which include the obligation to re-establish the situation affected by the violation.

24. Lastly, he cautioned the plenary of measures aimed at falsely legalising the violations committed by the Israeli regime. Adoption and implementation of any laws in the Occupied Territories by the Occupying Power unless those authorised by the 1907 Hague Regulations remains illegitimate and as such must be condemned.

25. **The Delegate of the Republic of Indonesia** reiterated his nation's position that a "two-State solution" is a principle basis for peaceful settlement of conflict in the Palestine territories occupied by Israel. He highlighted that Indonesia's continuous support for the legitimate struggle for the self-determination of the Palestine people is reflected with the recent establishment of the Indonesian honorary consulate in Ramallah, Palestine.

26. **The Delegate of Japan** expressed his nation's concern about the stagnated status of the peace process. He urged urges both sides to resume talks and to refrain from any unilateral actions that might hinder direct negotiations. He further stated that improving living conditions and securing access to basic infrastructure such as electricity and water for the people in Gaza would contribute to preventing violence and maintaining stability in Gaza. He also highlighted his government's announcement of an additional assistance package amounting to over US\$ 34 million for Palestine in February in 2017.

III. Legal Status of Jerusalem: Issue for Focused Deliberation at Fifty-Seventh Annual Session of AALCO, 2018

27. In a proclamation signed on 5 December 2017, the President of the United States (US), Donald Trump, decided to shift the US Embassy from Tel Aviv to Jerusalem and, in effect, unilaterally recognized Jerusalem as Israel's capital, departing from the policy of successive US administrations which recognized the status of Jerusalem as that of an occupied territory.¹ Trump specifically cited the Jerusalem Embassy Act as the basis of his decision, which refers to the "undivided" Jerusalem that Israel considers to be under its sovereignty.² In justifying his

¹ <http://edition.cnn.com/2017/01/24/middleeast/donald-trump-us-embassy-israel-explainer/index.html>

² *The 1995 Law Behind President Trump's Plan to Move the U.S. Embassy in Israel to Jerusalem*, <http://time.com/5049019/jerusalem-embassy-history/>

decision, he mentioned locations not just within West Jerusalem (the parliament, Supreme Court, and prime minister's residence) but also within the occupied Old City, including Al-Aqsa Mosque, without stating that he was or was not recognizing Israeli sovereignty in the East. Trump's declaration was criticized by the Arab League as "dangerous and unacceptable" and a "flagrant attack on a political solution" to the Israeli- Palestinian conflict.³ On 14 May 2018, the US Embassy was officially opened in Jerusalem.

28. The status of Jerusalem is a matter of high contention. While Israel contends that Jerusalem is its undivided capital, the State of Palestine wants to establish their capital in East Jerusalem. It is widely held that this recent decision is inconsistent with this as it prejudices and predetermines the status of Jerusalem, and arguably violates the basic right of Palestinians to self-determination. The legal status of Jerusalem rests upon *Corpus Separatum* as envisaged in General Assembly Resolution 181 (ii) of 1947. This Resolution, on which Israel relies upon to proclaim the legality of its State, reiterates the internationalization of the city administered by the UN Trusteeship Council.⁴

29. Shortly after, Armistice lines dividing Jerusalem into a "West" and an "East" were drawn as a result of 1948 war. Israel occupied and extended its jurisdiction to West Jerusalem. Jordan, on the other hand, occupied East Jerusalem, which is of religious and political importance to the Palestinians. The General Assembly issued another Resolution in 1948 after the war reaffirming the international status of Jerusalem. In 1950, the Israeli Knesset declared Jerusalem (West and East) its capital and moved on to establish its government agencies in the Western part, in violation of international law. Then, in 1967, Israel illegally occupied and annexed East Jerusalem, and occupied the West Bank and Gaza. It declared sovereignty over this occupied territory, and proceeded to retroactively build illegal settlements in East Jerusalem.⁵

30. Since 1967, the United Nations, including the UN Security Council, has repeatedly stated that East Jerusalem is occupied territory subject to the 1949 Geneva Convention IV.

A. UN Security Council

31. Resolution 242⁶ was unanimously adopted which called upon Israel to withdraw its armed forces from territories occupied in the 1967 conflict. Pursuant to this, Israel was further asked not to hold a military parade in Jerusalem⁷. Nonetheless, Israel was condemned for holding the military parade in Jerusalem by the UN Security Council⁸. Further, the Council asked Israel to cancel all activities in Jerusalem, and condemning the occupation of any land through armed aggression. It also demanded Israel "desist from taking any further action which tends to change the status" of the city⁹. This was reaffirmed the following year¹⁰. It was confirmed in "the clearest possible terms" that all actions taken by Israel to change the status of Jerusalem, such as land confiscation, were illegal¹¹. In 1980, the Council, demanded Israel to stop the planning

³<http://www.aljazeera.com/news/2017/12/arab-league-condemns-move-dangerous-illegal171209185754563.html>

⁴ Loureen Sayej, *President Trump's Recognition of Jerusalem: A Legal Analysis*, <http://ohrh.law.ox.ac.uk/president-trumps-recognition-of-jerusalem-a-legal-analysis/>

⁵ Ibid.

⁶ November 22, 1967

⁷ Resolution 251: May 2, 1968

⁸ Resolution 251: May 2, 1968

⁹ Resolution 252: May 21, 1968

¹⁰ Resolution 267: July 3, 1969

¹¹ Resolution 298: September 25, 1971

and construction of settlements in territories occupied since 1967, including Jerusalem. It also called on Israel to "dismantle the existing settlements"¹². This is also evidenced in one of the recent resolution wherein Israel was condemned for construction of settlements in all territory occupied since 1967, including East Jerusalem. The UNSC emphasized it would not recognize any changes to the pre-1967 conflict lines, and stressed that the "cessation of all Israeli settlement activities is essential for salvaging the two-State solution"¹³.

32. After the adoption of Resolution 267, within three months, Israel was condemned for the extensive damage caused by arson to the Holy Al Aqsa Mosque, a building under its military occupation. It called on Israel to observe the provisions of the Geneva Conventions and "refrain from causing any hindrance to the discharge of the established functions of the Supreme Muslim Council of Jerusalem", including "its plans for the maintenance and repair of the Islamic Holy Places" within the city¹⁴. In 1990, the Security Council expressed alarm at the violence which claimed more than twenty Palestinian lives at the al-Aqsa Mosque on October 8, 1990. The resolution condemned the acts of violence committed by Israeli security forces and referred to Israel as an "occupying power"¹⁵. Following this, in 1996, the Council expressed concern about developments in Jerusalem relating to Israel's opening of an entrance to a tunnel near the al-Aqsa Mosque, which resulted in a number of civilian deaths, and called for "the safety and protection of Palestinian civilians to be ensured"¹⁶. The visit made by Israeli opposition leader, Ariel Sharon, to the al-Aqsa Mosque and the "subsequent violence there and at other holy places" resulted in more than 80 Palestinian deaths was denounced¹⁷.

33. It was reaffirmed by the Security Council that there was an "overriding necessity for ending the prolonged occupation of Arab territories occupied by Israel since 1967" and all measures which had altered the status of Jerusalem were "null and void" and had to be rescinded¹⁸. In the following month, Israel was condemned in "the strongest terms" for the enactment of Israeli law proclaiming a change in status of Jerusalem and also called on all states "that have established diplomatic missions" in Jerusalem to withdraw them from the city¹⁹.

34. Finally, it was in 2002, the Security Council called on Palestinian and Israeli leaders to resume the peace process through negotiations regarding a political settlement.²⁰

B. UN General Assembly

35. In the same manner, the General Assembly has adopted several resolutions confirming the applicability of the Fourth Geneva Convention, rejecting any Israeli sovereignty over the occupied territories, and affirming that Israel's rule of East Jerusalem is a military occupation.

36. In 1967, the UNGA expressed concern at Israel's attempts to change the status of Jerusalem and called for "all measures already taken" to be rescinded and no further such action²¹. The Assembly determined that Israel's transformation of Jerusalem, including historical, cultural and religious sites, constituted a "flagrant violation of the principles of international law" and such acts "constitute a serious obstruction to achieving a comprehensive and just peace in the

¹² Resolution 465: March 1, 1980

¹³ Resolution 2334: December 23, 2016

¹⁴ Resolution 271: September 15, 1969

¹⁵ Resolution 672: October 12, 1990

¹⁶ Resolution 1073: September 28, 1996

¹⁷ Resolution 1322: October 7, 2000

¹⁸ Resolution 476: June 30, 1980

¹⁹ Resolution 478: August 20, 1980

²⁰ Resolution 1397: March 12, 2002

²¹ Resolution 2253: July 4, 1967

Middle East"²². Further towards the end of 2015, the Assembly condemned the continuation of Israeli occupation of the Occupied Palestinian Territory, including East Jerusalem, as a violation of international law. The resolution also denounced Israel's "unlawful construction" of a wall inside occupied territories, including "in and around East Jerusalem"²³.

37. Noting the developments in the subsequent two decades, in 2001, Israel was demanded to cooperate with a Special Committee set up to "investigate Israeli practices affecting the human rights of Palestinian people and other Arabs" in the occupied territories. The resolution expressed "grave concerns" were expressed about the situation in Jerusalem "as a result of Israeli practices and measures ... [especially] the excessive use of force ... which has resulted in more than 160 Palestinian deaths"²⁴. This Committee was requested to continue the investigation of Israeli actions in "the Occupied Palestinian Territory, including East Jerusalem, and other Arab territories" since 1967 "pending complete termination of the Israeli occupation."²⁵

38. In addition to this, the UNGA requested the International Court of Justice to provide an advisory opinion on the legal consequences of Israel's construction of a wall in the "Occupied Palestinian Territory, including in and around East Jerusalem"²⁶. It was reaffirmed by the General Assembly that the Geneva Convention, relative to the protection of civilians during conflict, was applicable to the "Occupied Palestinian Territory, including East Jerusalem, and other Arab territories occupied by Israel since 1967".²⁷

39. On 21 December 2017, in the context of the US decision to shift its embassy to Jerusalem, the UNGA declared that "any decisions and actions which purport to have altered, the character, status or demographic composition of the Holy City of Jerusalem have no legal effect, are null and void and must be rescinded in compliance with relevant resolutions of the Security Council, and in this regard, calls upon all States to refrain from the establishment of diplomatic missions in the Holy City of Jerusalem, pursuant to resolution 478 (1980) of the Security Council".²⁸

C. The United Nations Educational, Scientific and Cultural Organization (UNESCO)

40. UNESCO, in 1996, stated that the "Old City of Jerusalem" was inscribed on the endangered world heritage list, and labeled Israel's opening of an entrance to a tunnel near the al-Aqsa Mosque "an act which has offended religious sensibilities in the world"²⁹. It expressed concern at "the measures which continue to impede the free access of Palestinians to Jerusalem"³⁰. Again, "deep concern" was expressed regarding Israeli archeological works, including excavations, at the al-Aqsa Mosque compound in Jerusalem. It was categorically stated the works "contradict UNESCO decisions and conventions"³¹.

41. In 2014, Israel was criticized for the "continuous, [and] intrusive" archeological demolitions, excavations and works in East Jerusalem³². A "deep regret" was expressed at Israel's "refusal to implement previous UNESCO decisions concerning Jerusalem" and a

²² Resolution 36/15: October 28, 1981

²³ Resolution 70/89: December 15, 2015

²⁴ Resolution 55/130: February 28, 2001

²⁵ Resolution 60/104: January 18, 2006

²⁶ Resolution 10/14: December 12, 2003

²⁷ Resolution 71/96: December 23, 2016

²⁸ Resolution ES-10/L.22: December 21, 2017

²⁹ 150: November 27, 1996

³⁰ 159: June 15, 2000

³¹ 184: April 2, 2010

³² 192: January 13, 2014

permanent expert to East Jerusalem was deployed "to report on a regular basis about all the aspects covering all UNESCO fields of competence in East Jerusalem"³³. Failing to fulfill this, UNESCO expressed regret at Israel's refusal to "implement the UNESCO request ... to appoint a permanent representative to be stationed in East Jerusalem", and stressed the "urgent need to implement the UNESCO reactive monitoring mission to the Old City of Jerusalem and its Walls"³⁴.

IV. Comments and Observations of the AALCO Secretariat

42. The opinion of the international community, as is evident from the UN resolutions, is overwhelmingly against any unilateral move to alter the status quo as regards Jerusalem. In this context, it is to be noted that the International Court of Justice, in its 2004 Israeli Wall Advisory Opinion, spoke of East Jerusalem as 'occupied Palestinian territory'. The Court reaffirmed the illegality of Israel's separation wall and settlements, holding that Israel was bound by the Fourth Geneva Convention. Moreover, Israel's obligation to apply human rights law in the occupied territories has been recognized by the Court and human rights treaty bodies such as the United Nations Human Rights Office of the High Commissioner, the Committee on Economic, Social and Cultural Rights, and the Convention on the Elimination of all Forms of Discrimination against Women.³⁵

43. Although the Jerusalem question primarily demands a political solution, the legal underpinnings on determining its status cannot be overstated. The parties involved essentially base their claims on legal arguments and any formal settlement will be legal in nature. It is in this context that the Secretariat of AALCO proposes a "Special Study" on the legal status of Jerusalem to further expound on the topic in pursuance of bringing more clarity and aid Member States in their efforts to find long-lasting solution to the dispute over the city.

³³ 196: May 22, 2015

³⁴ 202: November 18, 2017

³⁵ [2004] ICJ Rep 136 para. 78.