

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

BACKGROUND

1. The item “Deportation of Palestinians in Violation of International Law particularly the Fourth Geneva Convention of 1949 and the Massive Immigration and Settlement of Jews in Occupied Territories”, was taken up, at the initiative of the Government of the Islamic Republic of Iran at the Committee’s 27th Session which was held in Singapore (1988). During the 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 Relating to Protection of Civilian Persons in time of War, 1949 all of which prohibit deportation as a form of punishment, in an occupied territory.” The Government of Islamic Republic of Iran, after a preliminary exchange of views had submitted to the AALCO Secretariat a memorandum, and the Secretariat was called upon to study the legal consequences of the deportation of Palestinians from occupied territories. The item has since been discussed at successive sessions¹ of the Organization as part of its Work Programme.

2. At the 34th 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 35th 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.

1. The topic has been considered at the 28th (Nairobi); 29th (Beijing); 30th (Cairo); 31st (Islamabad 1992); 32nd (Kampala 1993).

3. The study prepared for the 36th Session (Tehran 1997) apprised the AALCO Member States of the developments in the occupied territories which could lead to deterioration of the situation in the region and to resumed cycle of tension and violence, endangering peace and security in the Middle East.

4. For the 37th (New Delhi 1998) Session the Secretariat brief monitored the situation, which unfortunately was not satisfactory. The Israeli Government had continued to evade the implementation of the agreements, among them the Wye River memorandum (1998) which *inter alia* comprised of steps to facilitate the implementation of the Israeli-Palestinian Agreement of 1995 and other related agreements, including the Note of the Record of 1997 and commitments that had been agreed upon, thus endangering the whole peace process. At that Session the scope of the topic was expanded to “Deportation of Palestinians and other Israeli Practices”. The Secretariat was directed to enlarge the scope of monitoring the developments in the occupied territories from the view point of relevant legal aspects; and placed 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” on the agenda of the 38th Session (Accra 1999).

5. For the 39th (Cairo) Session the Secretariat monitored the situation in the Middle East and observed that the year 1999 had witnessed important regional and international meetings aimed at saving the peace process and enhancing the applicability of the rule of law and implementation of the agreements signed between the parties. However, while the negotiations concerning the final settlement of the Middle East Peace Process had gained momentum, yet there were many uncertain factors, one of the most important being the Israeli Government’s continued illegal and destructive settlement activities. At the session the Secretariat was directed to monitor developments in the occupied territories from the viewpoint of relevant legal aspects and report to the 40th Session.

II. Deliberations during the 41st Abuja (2002) Session

1. Deliberations during the 41st Abuja session revealed that unfortunately despite all international efforts, the situation in the Middle East was deteriorating everyday on account of the atrocities being committed by the occupying power. However, the international community as well as the AALCO were supportive of the Palestinian determination to uphold the rule of law and relevant UN Resolutions as the main terms of reference of solving the crisis and in protection of the rights of the Palestinian people.

2. Within the deliberations of this item, the delegations of Palestine, Islamic Republic of Iran, Arab Republic of Egypt, Indonesia, Qatar, Pakistan, United Arab Emirates, Kuwait, India and Sudan raised the following concerns. *

3. One Delegate emphasized that the comprehensive, just and equitable peace based on right and justice, remained the Palestinian choice, it is as well the choice of other Arab Nations as manifested by the initiative presented by Saudi Crown Prince Abdallah which was adopted by the Arab Summit in Beirut, on 27th March 2002. The Palestinians had accepted the solution deemed fit by the international legality and by its resolutions and decisions which stipulated that Israel, the occupying power, should withdraw from the Arab and Palestinian territories to the 4th June 1967 borders in accordance with Security Council Resolutions 242, 338 and 425 as well as United Nations General Assembly Resolution 194 that had presented the solution to the problem of the Palestinian refugees. Israel, however, is continuing, since many decades, its rejection to accept the Resolutions of International Legality on Palestine. Israel placed itself above international laws, violated international laws and resolutions, international humanitarian laws, the International Declaration of Human Rights and the Fourth Geneva Conventions. In addition, Israel reneged on all agreements signed between the Parties, which if implemented in a sincere and honest way on the stipulated dates, would have brought to the region the peace yearned for.

4. He reiterated that justice and reason necessitated that every party should respect its commitments and obligations, accept the resolutions of

* For a detailed report on the topic see "Report of the Forty-first session of the Asian African Legal Consultative Organization (AALCO)" held in Abuja (Nigeria) 15-19 July 2002 at pages 110-119.

international legality related to Palestine, to implement the understandings and agreements signed, resume the negotiations from where they ended in Taba, on the basis of the principle of land for peace and in accordance with the above mentioned United Nations Security Council Resolutions. The accurate and honest implementation of these Resolutions was the only way to achieve the peace that safeguards security and stability for all the peoples and states in the region.

5. Another delegate stated that the excessive and disproportionate use of force and the policy of collective punishment by Israel against the Palestinian people had been condoned by the self-declared champions of human rights. In the last session of the Commission on Human Rights, which ironically coincided with the massacre of the civilian people in the Palestinian camp of Jenin, the pro-human rights members of the Commission turned a blind eye to the plight of Palestinian people by refusing to support a resolution which had been drafted to condemn Israel for its atrocities committed in the occupied territories.

6. Other delegations emphasized that the consensus opinion, expressed and maintained by the international community over the past decades, stressed explicitly on the applicability of the “Fourth Geneva Convention of 1949” Relative to the Protection of Civilian Persons in Times of War” to all Arab and Palestinian territories. The continuation of illegal acts by the Israeli regime, constituted an intentional and flagrant violation of this Convention as well as other international instruments on humanitarian issues and human rights, and in total disregard to the numerous UN resolutions and statements. Israel even disregarded its obligations and commitments arising from the agreements which it had willfully entered into.

7. He pointed out that the deportation of the Palestinian people by Israel from the occupied territories, constituted 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, and the Fourth Geneva Convention of 1949, all of which prohibited deportation as a form of punishment in an occupied territory.

8. Some delegations recalled that UN Security Council Resolution 1397 (2002) had demanded a cessation of all acts of violence, provocation, incitement and destruction as well as laid down a road map towards a comprehensive political settlement. The resolution had rightly designed the workable settlement of the very core of the problem, namely the creation of peace and the independent Palestinian State and the recognition of the exercise of inalienable right of the Palestinians to self-determination. That

resolution had been further strengthened by the adoption of Security Council Resolution 1402 (2002). However, he stated that it was regrettable that these resolutions remained unimplemented. He reiterated that lasting peace in the Middle East required the impartial implementation of Security Council resolutions 242 (1967) and 338 (1973) respectively and on the principle of land for peace.

9. Some delegations referred to the Mitchell Commission's recommendations and the Tenet Plan. One delegate emphasized that AALCO could play an important and effective role in solving this problem which could be a threat to international peace and security. He suggested that AALCO should prepare a legal, ethical study of the problem and support the rights of Palestinian people by condemning the Israeli Practices.

10. The Resolution 41/4 unanimously adopted at the Abuja Session inter alia condemned Israel's continued acts of violence, use of force against Palestinians, resulting in injury, loss of life and destruction, coercive migration and their deportation in violation of Human Rights and the fourth Geneva Convention of 1949. It expressed concern about the continuing dangerous deterioration of the situation in the occupied Palestinian Territory including Jerusalem and the severe consequences of continuous illegal Israeli settlement activities. It expressed the hope for the success of the peace efforts exerted by the international community for the achievement of a just and comprehensive solution of the question of Palestine on the basis of Security Council Resolutions 194(1949), 242(1967), 338(1973), 425(1978) and 1397 (2002).

11. The Resolution had demanded that Israel, the occupying power, comply fully with the provisions and principles of the Universal Declaration of Human Rights, the Regulations annexed to the Hague Convention of 1907 and the Fourth Geneva Convention relative to the protection of Civilians in time of war (12 August, 1949) in order to protect the rights of Palestinians. It also reiterated the demand for implementation of Security Council Resolutions 1402 and 1403 (2002) as a first step for ending the Israeli occupation of Palestinian land occupied since 1967, it called upon Israel to facilitate the return of refugees and displaced persons to their homes and restoring their property, in compliance with relevant UN resolution. It affirmed that a comprehensive, just and durable solution could be achieved through the implementation of the existing agreements between the Parties; the relevant UN resolutions which will allow all the countries of the region to live in peace, security and harmony. Finally, it directed the Secretariat to closely monitor the developments in the occupied territories from the relevant legal aspects and placed the item on the agenda of the 42nd Session.

12. During the Legal Advisers Meeting held in November 2002, the Secretary General, H.E. Amb. Dr. Wafik Z.kamil presented his ideas on having focused discussion on some of the substantive items on the Agenda of AALCO. The present topic was chosen as one of those items, bearing in mind its importance in bringing about a just and lasting peace in the Middle East. **Therefore, the presentation of this brief is on a new pattern, which the Secretary General hopes will help focus attention on the violations of international law being continuously committed by Israel, the core issues which need to be discussed from the grass root level, and the role of the international community in trying to sort out this vexious issue. Part I - Background, Part II – Deliberations during the 41st Abuja (2002) Session Part III- Points for focused discussion during the forthcoming 42nd Session, Part IV - Recent developments from mid 2002 upto March 2003.**

III. Points for focused discussion during the forthcoming 42nd (Seoul) Session (16-20 June 2002)

1. For more than half a century, following the founding of the State of Israel in 1948, the Middle East conflict has been a source of worldwide tension. At Camp David in 1978 and in Oslo in 1993, Israelis, Egyptians and Palestinians have endorsed the only reasonable prescription for peace: United Nations Resolution 242, it condemns the acquisition of territory by force, calls for withdrawal of Israel from the occupied territories, and provides for Israelis to live securely and in harmony with their neighbours. There is no other mandate whose implementation could more profoundly improve international relations.²

2. During the past two years, the world has witnessed, with consternation, powerlessness or resignation, a disconcerting deterioration in the situation on the ground, resulting in an undoubted setback to the Palestinian-Israeli peace process. Now countless months of confrontations, acts of violence and tragedies have brought about the death of thousands of people including children and the elderly, and have left as many injured. Since 28 September 2000, the occupying power has implacably imposed its law: lethal incursions into Gaza, the West Bank and Jerusalem, the destruction of property on a massive scale, the establishment of new settlements and the enlargement of existing ones, military occupation, the closure of towns and a merciless blockade, paralyzing economic activity, imposing hardships on populations and exposing them to rebellion and, at the same time, shattering what little remained of the fragile trust between the two parties.”³

3. “Israel the occupying power, continues to use excessive and indiscriminate force against the civilian population under its occupation, committing war crimes, state terrorism and systematic human rights violations against the Palestinian people on a daily basis.

4. In addition to the heinous killings of Palestinian civilians, the occupying forces have continued to carry out raids throughout Palestinian cities, towns, villages and refugee camps, abducting and detaining dozens of Palestinians. Moreover, the occupying power has continued to carry out the illegal practice of home demolitions in the occupied Palestinian Territory.

² Except for former US President Carter’s Nobel Prize acceptance speech 11 December 2002

³ Statement of the Chairman of the Committee on the Exercise of the Inalienable Rights of the Palestinian People on the occasion of the “International Day of Solidarity with Palestinian people” 29 November 2002.

Such measures of collective punishment, similar to the killing and injury of Palestinians by the occupying forces being carried out on a daily basis. This has included the continuing imposition of severe restrictions on the movement of persons and goods, including the imposition of 24-hour curfews on several cities, towns and refugee camps. These restrictions and curfews have completely debilitated Palestinian society in all areas and have gravely impacted the socio-economic situation in the occupied Palestinian Territory.

5. We once again reiterate the urgent need for the international community to take action to address all of the above mentioned serious violations and grave breaches of international law and international humanitarian law being committed by the occupying power against the Palestinian people”.⁴²

Violations of International Law by Israel including United Nations Security Council and General Assembly Resolutions

6. Since the beginning of the al-aqsa Intifada in September 2000 the atrocities being committed by the Israeli occupying power have increased manifold and are in gross violation of all international law principles. Though the Israeli Government persists in describing the second Intifada as a security crisis or a disruption to the “peace process”, in international law Palestinian resistance to occupation is a legally protected right. For nearly 35 years, 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.⁵ The international consensus has been expressed through widely supported resolutions passed by the UN Security Council (UNSC) and UN General Assembly. (UNGA). The UN General Assembly or Security Council Resolutions 242 and 338 affirmed the legal obligation of Israel to withdraw from Palestinian territories obtained in the 1967 six day war. This must be the end point of any peace process that can bring lasting peace.

7. Until such time as Israel respects this obligation, the relevant principles of international law are contained in the Fourth Geneva Convention concerning 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, and oblige all state signatories to

4 Extract from letter dated 13 December 2002 from the Permanent Observer of Palestine to UN addressed to the Secretary General and President of Security Council. General Assembly, Tenth Emergency Special Session, Agenda item 5. “Illegal Israeli actions in occupied East Jerusalem and the rest of the occupied Palestinian Territory”.

⁵ Beyond Oslo: The new uprising International law and the al-Aqsa Intifada – Middle East Report 219, Winter 2002

enforce the convention in the face of “grave breaches”. Since 1967, Israel has refused to accept this framework of legal obligations. Not only has Israel failed to withdraw from the occupied territories, during the occupation Israel has created facts, heavily armed settlements, bypass roads and security zones in the midst of a future Palestinian state that seriously compromise basic Palestinian rights.

8. The events of the “Oslo peace process” do not alter the Palestinian right of resistance to the occupation, due to Israeli refusal to implement the underlying directives established by a consensus within the UN. The UN consensus is particularly persuasive because the Palestinian right of self-determination is recognized by a majority of states, and because 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 Israeli-Palestinian conflict in a series of widely supported resolutions, including the following:

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

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

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

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

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

(vi) UNSC Resolutions 476, 480, 1322, 1397, 1402 and 1403 (1980, 1980, 2000, 2002, 2002, 2002) reaffirm the basic principle of International and UN

Law that it is inadmissible to acquire territory by force or conquest, as well as the unconditional applicability of the Fourth Geneva Convention to the civilian population of occupied territory.

9. As long as Israel maintains its occupation of the West Bank and Gaza, it is bound to respect the fundamental human rights of the Palestinian people under the Fourth Geneva Convention relative to the protection of civilian persons in the Time of War. The Fourth Geneva Convention imposes an underlying obligation on an occupying power to protect the civilian population as specified in considerable detail in Articles 47-78.

Article 47 - affirms the “inviolability of rights” granted to the civilian population that can in no circumstances be suspended or evaded.

Article 49 - has been interpreted as forcing both deportation of Palestinians and population transfers of the sort associated with the establishment and continuous expansion of Israeli Settlements.

Article 50 - imposes a special burden on the occupying power to protect children from the effect of war and accompanying hardships.

10. In these contexts the international community has a duty to take steps, in accordance with Article 1 of the fourth Geneva Convention, to secure Israeli Compliance with the relevant provisions of international humanitarian law. The language of Article 1 is clear: “The High Contracting Parties undertake to respect and to ensure respect for the present convention in all circumstances.

Acts of Israel that obstruct the Peace Process

11. Given the continued denial of the fundamental rights of the Palestinian people, Israel has an overriding duty to use its contested authority in the occupied territories to protect the civilian population. Despite the emergence of the Palestinian Authority, Israel has retained a preponderant security role, augmented the illegal settlements throughout the “peace process” and ignored the issues of primary importance such as the status of Jerusalem or the right of Palestinians to establish their own sovereign state. The other equally important points ignored by the Israelis have been in relation to settlements, refugees and water.

12. **Settlements:** For more than 35 years now, the creation of Jewish Settlements has been a central component of Israel’s efforts to consolidate control over the Gaza Strip and the West Bank, including East Jerusalem.

Israeli settlement construction has served not only to facilitate territorial acquisition and to justify the continuing presence of Israel armed 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.

13. The International consensus Against Settlements: Israel's settlement policy and practices clearly contravene international law particularly Article 49, paragraph 6 of the fourth Geneva Convention, as has been mentioned in the proceeding paragraphs. Moreover, the confiscation of land for settlement construction is also in violation of the rules contained in the 1907 Hague Regulations protecting public and private property in occupied territory.

14. Settlement activity is also fundamentally incompatible with the concept of a "just and lasting peace" called for in UNSC resolution 242. In Resolution 465, which was unanimously adopted the Security Council made clear that "Israel's policy and practices of settling parts of its population and new immigrants" in the occupied territories not only violate the Fourth Geneva Convention, but also constitute "a serious obstruction to achieving a comprehensive, just and lasting peace in the Middle East. The Security Council called upon Israel to "dismantle the existing settlements and in particular to cease, on an urgent basis, the establishment, construction of planning settlements in the Arab territories occupied since 1967, including Jerusalem.

15. The Palestinian population is growing rapidly and needs space. The combined population of West Bank including East Jerusalem, and Gaza strip in 2000 was approximately 3,300,000. That figure is expected to increase to almost 5 million by the year 2010 – without taking into consideration returning displaced persons. As a reference point Israel's 1990 population was less than 5 million and Israel is three times as large as the West Bank and Gaza strip combined. The population of Palestinians in diaspora exceeds 4 million the vast majority of whom reside in other Arab countries if some of these Palestinians choose to come to the Palestinian State, when established, instead of exercising their right to return to Israel, it would place an added burden on Palestinian territory.⁶

16. Thus, Israeli's Settlements place intolerable burden on Palestinian movement and development, they institutionalize prejudice and discriminate, they deprive the Palestinian people of important land and water resources, and are plainly illegal. If the just and lasting peace envisaged in UNSC resolutions is to come to fruition, then settlement must be dismantled.

⁶ Settlement Report of Foundation for Middle East Peace, November-December 2002.

17. **Refugees:** The universal recognition of the right of refugees to return to their homes is not only legal but also moral in character. It responds to practical necessities and considerations. The return of refugees is an essential component of generating public confidence in peace. It plays an essential part in validating and stabilizing the post conflict political order. The return of refugees is an essential part of the transition to peace, rather than simply a result of it. The end of a conflict is inconceivable without bringing closure to refugee problems.

18. UNGA Resolution 194 restated and reaffirmed the well-established norm in international law and practice namely the right of return. This norm is reiterated in several international law instruments such as Article 13 of the Universal Declaration of Human Rights, which states “everyone has the right to.....return to his country”.

19. In practice, this right has been exercised recently in various parts of the world such as Central America, the Balkans, Southern Africa and parts of Asia.

20. The stability generated by the return of refugees is an essential element of any post war security regime. This was most recently recognized in Article 22 of the charter for European Security, adopted by the organization for Security and Co-operation in Europe, which states “we reaffirm our commitment.....to facilitate the voluntary return of refugees and internally displaced persons in dignity and safety”.

21. In order to bring the Palestinian Israeli conflict to an end, so as to reach a peace settlement that is indeed “just and lasting” the refugee problem has to be definitively resolved. To that end, Israel must recognize its responsibility for the forced displacement and dispossession of the Palestinian people and for the subsequent prevention of their return to their homes. Besides its symbolic significance, such recognition entails Israeli responsibility for the eventual resolution of the problem.

22. To date, Palestinian refugees and their descendants constitute the largest and most longstanding refugee population in the world. Keeping such a population without connection to, or inclusion in peace will contribute to the perpetuation of the conflict.⁷

23. **Water:** It is a well-established principle of international law that the Palestinian people have the right to self-determination. As a corollary, the

⁷ The final status negotiations on the refugee issue: positions and strategies. August 2001.

Palestinian people also enjoy sovereignty over their natural resources, including water. The Palestinian people are entitled to the sole control and use of the watercourses located wholly within the borders of Palestine. As for International watercourses, the 1997 United Nations Convention on the Law of the Non-Navigational Uses of International Watercourses provides that states sharing an international watercourse “shall in their respective territories utilize an international watercourse in an equitable and reasonable manner” (Article 5(1)). The principle of equitable utilization applies to surface waters and ground water systems, parts of which are situated in different states. In 1997, the International Court of Justice recently affirmed that this principle constitute a norm of customary international law. Pending the establishment of the Palestinian state, the Palestinian people enjoy the right to an equitable and reasonable share of international watercourses in accordance with international law.⁸ It is critical that the resolution of this problem be on the basis of international legal norms.

24. Despite all efforts to bring “durable and lasting peace” to the Middle East, the events of 11 September 2001 apparently have encouraged Israel to lead a war of terror on the Palestinians in the occupied territories as well as in West Asia. This is of particular concern to the international community. Its latest military actions are regarded as an excessively disproportionate use of force that goes well beyond the requirements of any saber rattling that might induce peace. All these policies of the occupying power further recess the peace process, which despite its fading prospects, continues to command international support as the only option still open to both the parties.

25. In spite of all the ongoing efforts at international and regional levels possible aimed at condemning the actions of Israel the occupying power, it continues to defy the world completely. It seems from the ongoing events that there is no rule of law and no sancity for the United Nations. We need to ask ourselves that can’t we impose the collective will of the international community on an occupying power which is threatening world peace and security disregarding the established rules of law particularly principles enshrined in the UN Charter, human rights law, humanitarian law, the Fourth Geneva Convention of 1949 as well as all other efforts aimed at codification and implementation of International Law.

26. It is a fact that the Palestinian territory is occupied and that we have to base our efforts on Security Council resolutions 242 (1967) and 338 (1973) on the principle of land for peace.

⁸ Aggregate consumption of water by Palestinians is approx. 260 mcm/yr. Or only 13% of the capacity of renewable water in Palestine. Aggregate Israeli use amounts to 1760 mcm/yr. Aggregate Palestinian use is 1/3 of Aggregate Israeli use.

27. Finally as Mr. Terje Roed-Larsen* stated recently “ we have to work towards reproducing a situation where there is belief among the leaders that a solution exists.”

28. We at the AALCO believe that the above enumerated are some of the core issues that need to be tackled carefully if any meaningful solution is to be brought to this conflict. In the absence of the will to enforce the body of international law on the Israeli – Palestinian conflict, resolutions and conventions cannot on their own bring justice to the people of Palestine and Israel. Equally important, the flagrant violation of international law daily increases the injustice to the Palestinian people, intensifies their suffering and cannot be ignored in any approach to conflict resolution. The severity of these violations, and their persistence and frequency, also establishes the foundation for an inquiry into whether an abusive structure of illegal prolonged belligerent occupation does not itself amount to the commission of crimes against humanity, beyond the specific wrongs alleged in relation to the Fourth Geneva Convention of 1949 and international humanitarian law.

29. This study has been prepared for the benefit of delegations of AALCO Member States who are here to discuss how AALCO as a Legal Body can contribute to the settlement of this dispute in accordance with the well established principles of International Law.

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IV. Recent Developments August 2002 – March 2003

Alike the past several years, the years 2002 as well as the first quarter of 2003 witnessed many important regional and international initiatives and meetings which aimed at saving the peace process, and enhancing the applicability of the rule of Law and implementation of agreements between the parties concerned. Given below are some of the important events during the latter part of the year 2002 and the first quarter of 2003.

A. General Assembly Resumes 10th Emergency Special Session

1. **On 5 August 2002** the 10th Emergency Special Session (ESS) of the General Assembly resumed, upon the urgent request of the Arab Group and the Non-Aligned Movement, to consider the report of the United Nations Secretary-General on the recent events that took place in Jenin and other Palestinian cities. The report was submitted pursuant to resolution ES-10/10, adopted by the ESS on 7 May 2002, which requested the Secretary General to prepare a report on the matter, drawing upon the available resources and information, due to Israel's refusal to cooperate with the Secretary-General's fact finding team in disregard of Security Council resolution 1405 (2002).

The Secretary-General's report was issued on **1 August 2002**. The report covered only a specific period of time, from early March 2002 to 7 May 2002, and, as noted above, was prepared on the basis of available information, without a visit to Jenin or the other Palestinian cities in question. The government of Israel refused to even submit information to assist in the report's preparation, as requested by the UN Under-Secretary-General (USG) for Political Affairs, yet the report manages to extensively quote Israeli sources. An official Palestinian response to the USG's request was submitted in early June and was composed of a main submission, included as Annex I of the report, as well as various support documents and annexes.

In the meantime, between the time of the Assembly's request and the issuance of the report, the Security Council convened twice to address the deterioration of the situation in the Occupied Palestinian Territory. The Council convened on 13 June, 2002 following the Israeli reoccupation of major Palestinian population centers in the West Bank, including the siege of President Arafat's headquarters in Ramallah, and convened again on 24 July, 2002 following the Israeli air bombing of a densely populated neighborhood in Gaza that killed 15 Palestinians, including 9 children. More than 30

speakers addressed the Council at each of those meetings, with the overwhelming majority expressing grave concern over the dire situation being faced by the Palestinian people due to the ongoing Israeli military siege and assaults.

When the 10th ESS resumed on **5 August, 2002** the Assembly held an intense and lengthy debate regarding the Secretary General's report on the recent events, with 37 speakers addressing the session. The Permanent Observer of Palestine to the UN. delivered the Palestinian assessment of the report as well as of the current situation on the ground in the Occupied Palestinian Territory, including Jerusalem.

Upon concluding its debate on the report, the General Assembly adopted resolution ES-10/11 by a vote of 114 in favor, 4 against, 11 abstentions. The negative votes were cast by Israel, U.S., Marshall Islands and Micronesia.

Clearly, such a large majority voting in favor definitely contributes to the importance of the resolution, which deals with the report of the Secretary-General in the proper context, namely that of the existence of the Israeli occupation, the obligations of the occupying Power and the need to end that occupation. The resolution also addresses the current situation on the ground, demanding the immediate withdrawal of the Israeli occupying forces from Palestinian population centers. It also emphasizes the urgency of unhindered access for medical and humanitarian organizations, and in this regard specifically addresses the humanitarian situation and the need for assistance and reconstruction.

In addition, resolution ES-10/11 affirms the obligations of the High Contracting Parties to the 4th Geneva Convention, including the follow-up on the implementation of the Geneva Declaration of **5 December 2001**. In this regard, it is important to note that the Secretary-General's report did indeed affirm that, except for Israel, all of the High Contracting Parties to the Convention, as well as the International Committee of the Red Cross, maintain that the Convention does apply *de jure* to the Occupied Palestinian Territory.

B. SG's Humanitarian Envoy Visits Occupied Palestinian Territories and Reports on Crisis

2. In light of the growing humanitarian crisis facing the Palestinian people, U.N. Secretary-General Kofi Annan, appointed Ms. Catherine Bertini as his Personal Humanitarian Envoy. Ms. Bertini, the former director of the World Food Programme, was charged with assessing the situation and reporting to the Secretary-General, and through him to the Quartet, on what should be done in response to it and to prevent it from deteriorating further. It had been earlier agreed upon by the Quartet that the UN. should lead the international effort to alleviate the plight of the Palestinian people.

Ms. Bertini traveled to the Occupied Palestinian Territory from **12 to 19 August 2002** to assess the nature and scale of the humanitarian crisis facing the Palestinian people and to determine their humanitarian needs in light of recent developments. While there, she met with President Arafat and several other Palestinian officials and traveled throughout the West Bank and Gaza to observe first-hand the situation on the ground as well as running humanitarian projects in the area, including in several Palestinian refugee camps.

Ms. Bertini also met with Israeli officials, including Prime Minister Sharon and Foreign Minister Peres. During her visit, Ms. Bertini met and consulted with representatives of various U.N. agencies, including UNESCO, UNRWA, UNDP and UNICEF, who briefed her on their work and specifically on projects and services in response to the current situation. Ms. Bertini also met with representatives of the International Red Cross and Red Crescent as well as with representatives of both local and international non-governmental organizations and observed various programmes and projects being sponsored by them in the Occupied Palestinian Territory.

In early September, Ms. Bertini presented a report to the Secretary-General, which concluded that, *"a serious and mounting humanitarian crisis is occurring in the West Bank and Gaza"*. The report indicates that *"the crisis is primarily evidenced by rising levels of malnutrition among children; high levels of poverty and unemployment; deteriorating health conditions; and an increasing exhaustion of the coping mechanisms that have allowed the Palestinian population to sustain itself since the situation started deteriorating in late September 2000"*.

Further, the report points out that this humanitarian crisis is inextricably linked to the ongoing conflict and in particular to the "security measures" adopted by Israel. These measures, include, in particular, the external and

internal closures and curfews imposing severe and sustained mobility restrictions on the Palestinian people that have caused a loss of access to employment and income; the physical destruction of agricultural production facilities; and the obstruction of access to basic services and goods, such as health, education, food supply and water.

Among its recommendations, the report calls on the Israeli government to make every effort to ensure the movement of persons and goods in the Occupied Palestinian Territory to allow trading, farming and other forms of economic activity. Israel is also called upon to ensure access to all people in need of medical services and to ensure the free flow of all aid workers and supplies and services, including medical. Moreover, Israel should ensure that all children, students and teachers have access to schools and universities throughout the West Bank and Gaza. Lastly, the report calls on the Israeli government to urgently accelerate the release of Palestinian funds it is withholding to avoid exacerbating the humanitarian situation.

C. The Bleak Situation Today and the Road Ahead

3. If any further proof was needed of the true intentions of the Israeli government, Prime Minister Sharon provided it in an interview that was published on **6 September, 2002** in an Israeli daily newspaper, when he stated that the Oslo Agreements do not exist anymore. That was an extreme and dangerous statement, legally and politically, even from an Israeli point of view. Yet, such a statement accurately and concisely reflects the thinking of Mr. Sharon and the goals he has pursued from the very beginning of his government.

The goals of Mr. Sharon have clearly been to take the situation back to a pre-Oslo era and to prevent the conclusion of any final settlement between the Israeli and Palestinian sides, thus allowing the continuation of the Israeli occupation and settler colonialism. To achieve that, Mr. Sharon, his government and his army have destroyed most of the institutions of the Palestinian Authority, including the security apparatus, under the pretext of fighting terrorism, and have preempted any efforts to end the confrontation on the ground and return to negotiations. This has included preemption of the Mitchell recommendations under the pretext of the need for seven days of quiet first.

At this point in time, the Palestinian people as a whole are being subjected to unprecedented, systematic oppression by the occupying Power. The Israeli occupying forces, which have reoccupied almost the entire area which is supposed to be under full Palestinian control, have been imposing

round-the-clock curfews in addition to the constant military siege and closure being imposed and severe restrictions on the movement of persons and goods, including medical and humanitarian assistance. The occupying forces have also continuously committed assassinations, killings of children, women and men, home demolitions, abductions and countless other war crimes and State terrorism. The Palestinian economy has been destroyed and a real humanitarian disaster is unfolding in the Occupied Palestinian Territory.

All of these illegal and criminal actions have been coupled with serious efforts to get rid of the elected leader of the Palestinian people, President Yasser Arafat. It is obvious that such efforts are driven in large part by the desire to create a political vacuum and possibly anarchy. The greater aim, of course, is to have the Palestinian people kneel and submit to the Israeli will and accept long-term transitional arrangements that have nothing to do with achieving Palestinian national goals.

On another front, the international agenda on fighting global terrorism is becoming distorted and often seems to be heading in the wrong direction. First, in this regard, came Israel's effort, which has been at least partially successful, to link the atrocities it is committing as an occupying Power against the Palestinian people with what the US is doing in its fight against international terrorism.

To ensure success, an international presence is undoubtedly needed, whether in the form of observers or in the form of the bolder and definitely more useful approach of a multinational force.

D. Security Council's Permanent Members issue statement on World's Hotspots

4. The Foreign Ministers from all five permanent members of the United Nations Security Council, along with Secretary General Kofi Annan, on **13 September 2002** issued a wide ranging statement laying out their joint position concerning various hotspots across the world concerning the situation in the Middle East.

The statement reiterated the group's determination to promote a "just, comprehensive and lasting settlement" based on Security Council resolutions, the Madrid terms of reference, and the principle of land for peace. The Ministers and the Secretary General strongly supported the goal of achieving a final Israeli – Palestinian settlement, and remained committed to implementing the vision of two states, Israel and an independent viable and democratic Palestine, living side by side in peace and security. Unequivocally

condemning all acts of violence and terrorism, the group voiced increasing concern at the mounting humanitarian issues in the Palestinian areas and, while recognizing Israel's legitimate security concerns called on Israel to take the immediate measures necessary to alleviate humanitarian sufferings of the Palestinian people.

E. Meeting of Members of the Diplomatic Quartet on the Middle East

5. Following what he termed a “historic” meeting of members of the diplomatic Quartet on Middle East, UN Secretary General on **17 September 2002** outlined their agreed peace plan, which aimed to achieve a final settlement by 2005. The Quartet members agreed that the overall plan must deal with political, economic, humanitarian and institutional dimensions, spelling out reciprocal steps to be taken by the parties at each phase. The Quartet had agreed to set up a mechanism to monitor the compliance of each side with performance benchmarks established as part of the three-phase implementation roadmap. The first phase would see Palestinian Security reform, Israeli withdrawals and support for Palestinian elections to be held in early 2003. In the second phase, during 2003 efforts would focus on the option of creating a Palestinian state with provisional borders and based on a new constitution, as a way station to a permanent status settlement. The final phase from 2004 to mid 2005 would envision on Israeli Palestinian negotiations aimed at permanent status solution.

F. UNRWA Killing

6. On **22 November 2002** UN Secretary General voiced serious concern about Israeli actions in response to the shooting in the West Bank of a British worker supervising a project of the United Nations Relief and Works Agency for Palestine Refugees in near East. This event revealed a lack of respect – almost a disdain for the international legal framework under which UNRWA and other organizations rendering humanitarian assistance.

G. 57th Session of the General Assembly

7. During the Fifty-seventh Session of the General Assembly which concluded on **20 December 2002**, the following 15 important resolutions were adopted on the question of Palestine. This clearly indicates the efforts of the UN and the international community aimed at solving the complex issues involved in this problem and their efforts towards a solution.

1. Permanent sovereignty of the Palestinian people in the Occupied Palestinian territory, including East Jerusalem and of the Arab population in the Occupied Syrian Golan over their natural resources¹
2. The right of the Palestinian people to self determination²
3. Situation of and assistance to Palestinian children³
4. Assistance to the Palestinian people⁴
5. Israeli Practices affecting the human rights of the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem⁵
6. Israeli Settlements in the Occupied Palestinian Territory, including East Jerusalem, and the Occupied Syrian Golan⁶
7. Applicability of the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, to the Occupied Palestinian Territory, including East Jerusalem, and other Occupied Arab Territories.⁷
8. Work of the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and other Arabs of the Occupied Territories⁸
9. Palestine refugees' Properties and their revenues⁹
10. Operations of the UNRWA for the Palestinian Refugees in the Near East¹⁰
11. Working Group on the financing of the UNRWA for Palestinian Refugees in the Near East¹¹
12. Assistance to Palestinian refugees¹²
13. Jerusalem¹³
14. Peaceful Settlement of the question of Palestine¹⁴
15. Committee on the exercise of the Inalienable Rights of the Palestinian people¹⁵

¹ A/RES/57/269, 20 Dec. 2002

² A/RES/57/198, 18 Dec. 2002

³ A/RES/57/190, 18 Dec. 2003

⁴ A/RES/57/147, 16 Dec. 2002

⁵ A/RES/57/127, 11 Dec. 2002

⁶ A/RES/57/126, 11 Dec. 2002

⁷ A/RES/57/125, 11 Dec. 2002

⁸ A/RES/57/124, 11 Dec. 2002

⁹ A/RES/57/122, 11 Dec. 2002

¹⁰ A/RES/57/121, 11 Dec. 2002

¹¹ A/RES/57/118, 11 Dec. 2002

¹² A/RES/57/117, 11 Dec. 2002

¹³ A/RES/57/111, 3 Dec. 2002

¹⁴ A/RES/57/110, 3 Dec. 2002

¹⁵ A/RES/57/107, 3 Dec. 2002

H. GCC-EU 13th Joint Council and Ministerial meeting in Doha, Qatar

8. The thirteenth session of the Joint Council and Ministerial meeting between the European Union and the Gulf Cooperation Council was held in Doha, Qatar on **3 March 2003**. The GCC delegation was led by H.E. Sheikh Hamad Bin Jassem Bin Jaber represented by H.E. Abdulrahman Hamad Al Attiyah, Secretary General. The EU delegation was led by Mr. Georgios Papandreou, Minister for foreign Affairs of Greece and President of the Council of the European Union. The European Commission was represented by Mr. Fernando Valenzuela, Deputy Director General. The EU Council Secretariat was represented by Deputy Director General, Mr. Anastassios Vikas.

The GCC and the EU recognized Israel's legitimate security concerns and Palestinian legitimate rights to a viable Palestinian State, living peacefully side by side with Israel and its neighbours, all within secure borders, and stressed their support to the Palestinian efforts to take forward the reform process. The GCC and the EU recalled that the aim of all efforts remains reaching a just, comprehensive and lasting peace settlement in the Middle East, including Syria and Lebanon, based on the relevant UNSC Resolutions, the principles of the Madrid Conference, the principle "land for peace", Oslo and subsequent agreements and taking into account of the initiative of His Highness Crown Prince Abdullah of Saudi Arabia, endorsed by the Arab League Summit in Beirut in 2002.

The GCC and the EU stressed the need to move ahead with the work, which has been carried out in the framework of the Middle East Quartet. The roadmap endorsed at the meeting in Washington on **20 December 2002** by all four participants in the Quartet and which sets clear timelines for the establishment of a Palestinian State by 2005 must be implemented.

One of the key elements to success will be Palestinian reform. Conditions on the ground must be normalized so that free, fair and open elections can be held, as proposed in the roadmap. The EU and the GCC welcomed President Arafat's decision to appoint an interim Palestinian Prime Minister. Substantial efforts will have to be made concerning security.

I. UN Envoy Voices concern over demolition of Palestinian property in West Bank

9. The senior United Nations envoy for the Middle East Peace Process, Mr. Terje Roed-Larsen, voiced serious concern on 21 January 2003 for the demolition of Palestinian homes and commercial property in West Bank town of Tulkarem by the Israeli military. Such actions by the Israeli Defense Forces have resulted in clashes and protests leading to the injuries of at least four Palestinians. Such actions could also have a negative economic and humanitarian impact on the local community. Such demolitions constituted a breach of Israel's obligations as an occupying power under the Fourth Geneva Convention.

J. Quartet Road map remains best path towards Middle East Peace

10. In an open briefing on 13 February 2003 of the Security Council on the situation in the Middle East, including the Palestinian question, Under Secretary General for Political Affairs Kieran Prendergast said the situation in the region remained very serious. He stressed that without the prospect of some forward movement on the political front, it was difficult to see how the current cycle of violence and counter violence in the Middle East could be stopped.

Early implementation of the road map of the Quartet, which is comprised of the UN, EU, Russian Federation and United States, would break the current stalemate and allow Israelis and Palestinians to actively pursue their legitimate aspirations across the negotiating table.

K. UN Secretary General on recent developments

11. The UN Secretary General, on 14 February 2003 welcomed the announcement by Palestinian Authority President Yasser Arafat that he intends to appoint Prime Minister and also that he fully embraces the road map of the diplomatic Quartet. These were two very important steps towards restarting the Middle East Peace Process.

Concerned at the escalating violence in the Middle East, UN Secretary General on 19 February 2003 called on the conflicting parties to respect international law while settling their differences peacefully. The Secretary General remained convinced that there is no military solution to this conflict,

and that violence far from protecting security or lasting peace would only feed the terrible cycle which began in September 2000.

L. Middle East Quartet Voices serious concern at continuing cycle of violence

12. Envoys for the diplomatic Quartet on the Middle East Peace Process on **20 February 2003** voiced their very serious concern at the continuing cycle of violence in the region and repeated their call for an immediate ceasefire. The Quartet Envoys emphasized Israelis' obligation, consistent with legitimate security concerns to do more to ease the dire humanitarian and socio-economic situation in the West Bank and Gaza, including facilitating freedom of movement and access, alleviating the daily burdens of life under occupation and respecting the dignity of Palestinian civilians. They welcomed the opportunity for direct discussions between the donor community and Israelis and Palestinians to address the critical issue.

M. Tenth Emergency Special Session: Illegal Israeli actions in occupied East Jerusalem and the rest of the occupied Palestinian Territory

13. In his letter dated **24 February 2003**, the Charge d'Affaires of Permanent Observer Mission of Palestine to the United Nations informed the Secretary General and President of the Security Council that Israel, the occupying Power, continues to wage its vicious military campaign against the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem, causing more death and devastation with each passing day. At the same time, the Israeli occupying forces continued to carry out raids and attacks throughout the Nablus and Tulkarem areas over the weekend. In this regard, it seems tragically clear that without concerted and urgent measures by the international community to address this crisis, Israel, the occupying Power will continue to act with impunity and brutality against the defenseless Palestinian people under its occupation.

N. World Bank report highlights to 60 percent poverty level in Palestinian Territories

14. Twenty-seven months after the outbreak of the Intifada, 60 percent of the population of the West Bank and Gaza live under a poverty line of US\$ 2 per day. The numbers of the poor have tripled from 637,000 in September 2000 to nearly 2 million today.

The World Bank's new report issued on **5 March 2003** "Two Years of Intifada, Closures and Palestinian Economic Crisis", surveys the economic

and social damage caused by the current conflict and proposes measures to help stabilize the ailing Palestinian economy. A first draft was presented in February 2003 to the recent meeting in London of the Ad Hoc Liaison Committee, which is comprised of representatives from Canada, the European Union, Israel, Norway, the Palestinian Authority, Russia, Saudi Arabia and the United States.

All Palestinian economic indicators continued their dramatic decline through the second year of the Intifada. Gross national income per capita has fallen to nearly half of what it was two years ago. More than 50 percent of the work force is unemployed. Physical damage resulting from the conflict amounted to US\$ 728 million by the end of August 2002. Between June 2000 and June 2002, Palestinian exports declined by almost a half, and imports by a third. Investment shrunk from an estimated US\$ 1.5 billion in 1999 to a mere US\$ 140 million last year. Overall national income losses in just over two years have reached US\$ 5.4 billion – the equivalent of one full year of national income prior to the Intifada.

The Palestinian Authority's (PA) financial situation remains precarious. As a result of rising unemployment, reduced demand and the Government of Israel's withholding of taxes collected on the PA's behalf, monthly revenues dropped from US\$ 91 million in late 2000 to US\$ 19 million today. A collapse of the PA has been avoided by donor budget support, which totals US\$ 1.1 billion over the last two years. Seventy-five percent of this has come from Arab countries. The recent resumption of revenue transfer by the Government of Israel is a positive development.

With unemployment rising and incomes collapsing, over half a million Palestinians in this formerly middle-income economy are now fully dependent on food aid. Per capita food consumption has declined by 30 percent in the past two years, and the incidence of severe malnutrition recently reported in Gaza by Johns Hopkins University is equivalent to levels found in some of the poorer sub-Saharan countries.

The proximate cause of Palestinian economic crisis is closure – the imposition by the Government of Israel (GOI) of restrictions on the movement of Palestinian people and goods across borders and within the West Bank and Gaza. Closure is viewed by GOI as regrettable but necessary in order to protect Israeli citizens from violent attacks.

“Two years of Intifada, Closures and Palestinian Economic Crisis” identifies three main reasons why the battered economy has not collapsed. The most important is the cohesion and resilience of Palestinian society.

Lending and sharing are widespread and families for the most part remain functional, despite economic hardship and severe disruptions to daily life. Another critical factor has been the continued delivery of basic services by the PA. Third, donor support has been essential – particularly budget support to the PA, which employs one-third of those still working and pays half of all wages earned in the West Bank and Gaza. Donor disbursements as a whole doubled from pre-intifada levels to US\$929 million in 2001, and increased again in 2002 to just over US\$ 1 billion.

The report warns that confrontation and closures will continue to throttle the Palestinian economy, with each passing month making ultimate recovery more difficult.

Continued high levels of donor assistance are vital, but they cannot prevent further economic decline. Under closure, every additional billion in foreign aid will only pull down the poverty rate by about 6 percentage points. This is not a crisis that can be resolved with money alone, “ says Nigel Roberts, World Bank Country Director for “Agreed framework for political progress remains indispensable to reestablish the conditions for the resumption of economic and social development in both Israel and the Palestinian territories,” adds Roberts. “This poses many challenges to the three main groups: the Palestinian Authority, the donors, and the Government of Israel.”

The report also calls on donors to disburse a minimum of US\$ 1.1 billion in 2003 and to give top priority to budget support and humanitarian/welfare assistance. Comparing different assistance instruments, the report finds that budget support is more efficient on welfare grounds than food aid or employment schemes, and for this reason expresses great concern at recent signs that Arab and European budget support is less than secure for 2003. Donors are also urged not to abandon their medium-term development programs, and to continue their commitment to the creation of the institutions and infrastructure of a future state.