

26. THE SITUATION IN THE OCCUPIED ARAB TERRITORIES

Decision of 18 March 1994 (3351st meeting): resolution 904 (1994)

By a letter¹ dated 25 February 1994, the Observer of Palestine² informed the Secretary-General that a group of Israeli settlers had opened fire at Palestinian worshippers in a mosque in Al-Haram Al-Ibrahimi in Al-Khalil (Hebron), which had resulted in more than 50 killed and more than 200 wounded. The massacre was followed by the killing of more than 10 Palestinians in confrontations with the Israeli army in Al-Khalil and other locations throughout the occupied Palestinian territory and by the closure of several areas by the Israeli authorities. The Palestinian Liberation Organization (PLO) believed that the underlying cause of those actions remained the official Israeli policy regarding settlements in the occupied Palestinian territory and that the Israeli Government should be held responsible for the massacre. In that connection, it recalled Security Council resolutions which considered settlements to be illegal and obstacles to peace, and which called for their dismantlement. The PLO called upon the international community to bring an end to such acts committed against the Palestinian people and reiterated its request for international protection through a direct international presence in the occupied Palestinian territory. It also called upon the Council to fulfil its responsibilities and to take the necessary measures in reaction to the situation in a meeting to be held immediately.

By a letter³ of the same date addressed to the President of the Council, the representative of Egypt, in his capacity as Chairman of the Arab Group, referred to the above letter from the Observer of Palestine and requested that the Council be convened immediately to discuss the serious situation in the occupied Palestinian territories, including Jerusalem. By a letter⁴ of the same date addressed to the President of the Council, the representative of Pakistan, in his capacity as Chairman of the Organization of

¹ S/1994/218.

² For details concerning the use of the designation “ Palestine” in lieu of Palestinian Liberation Organization”, see A/RES.43/177 of 15 Dec.1988.

³ S/1994/222.

⁴ S/1994/223.

the Islamic Conference (OIC) Group at the United Nations, transmitted a statement adopted at a meeting of the member States of the OIC at which they had, *inter alia*, requested that the Council be convened immediately in order to discuss the grave situation resulting from the attack in a mosque in Al-Khalil. The member States of the OIC also called for an investigation of the situation which could have serious implications for peace and security in the region as well as for the ongoing peace process.

At its 3340th meeting, on 28 February 1994, the Council included the letters from the representatives of Egypt and Pakistan in its agenda. The Council considered the item at its 3340th, 3341st, 3342nd and 3351st meetings on 28 February, 1, 2 and 18 March 1994.

The Council invited the following, at their request, to participate in the discussion at the 3340th meeting without the right to vote: the representatives of Afghanistan, Algeria, Egypt, Greece, Indonesia, the Islamic Republic of Iran, Israel, Jordan, Kuwait, Lebanon, the Libyan Arab Jamahiriya, Malaysia, Qatar, the Sudan, the Syrian Arab Republic, Tunisia, Turkey and the United Arab Emirates; at the 3341st meeting, the representatives of Bahrain, Bangladesh, Japan, Mauritania and Ukraine; and at the 3342nd meeting, the representative of Bosnia and Herzegovina. The Council also decided to invite, at its 3340th meeting, the Observer of Palestine, at his request, to participate in the proceedings without the right to vote. The Council also extended an invitation under rule 39 of its provisional rules of procedure at its 3340th meeting to the Observer of the OIC and at its 3341st meeting to the Chairman of the Committee on the Exercise of the Inalienable Rights of the Palestinian People.

At the 3340th meeting, the President (Djibouti) drew the attention of the members of the Council to several documents.⁵

⁵ Two identical letters dated 25 February 1994 from the Chargé d'affaires a.i. of Jordan addressed to the Secretary-General and the President of the Security Council (S/1994/214); a letter of the same date from the observer of Palestine addressed to the Secretary-General (S/1994/218); a letter of the same date from the Chairman of the Committee on the Exercise of the Inalienable Rights of the Palestinian People addressed to the Secretary-General (S/1994/220); and a letter dated 28 February 1994 from the representative of Egypt addressed to the President of the Council, transmitting the text of a resolution adopted by the League of Arab States on 27 February 1994 (S/1994/233).

At that meeting, the representative of Palestine welcomed the fact that the Council had unanimously agreed to allow him to participate in its work, without the right to vote. At the same time, he regretted the Council's delay in taking decisive measures with respect to the question before it and stressed the need for the Council to act quickly. He contended that what had taken place at the Ibrahim mosque was the result of the campaign of illegitimate Israeli settlements, which climate that that had created, and not an isolated act, regardless of the numbers involved in the commission of the crime. His delegation believed that the Council should rapidly adopt a new resolution condemning the massacre perpetrated against the Palestinian people and assuming responsibility for the protection of the Palestinian people in the occupied territories, in accordance with previous resolutions, in particular, resolution 681 (1990). His delegation reaffirmed that Israel and the Government of Israel were responsible for the events at Al-Khalil, given the fact that the Israeli army was usually present in considerable strength in the area and did nothing to prevent it, and called upon the Israeli Government to adopt a number of measures reflecting a real change in its policy regarding settlements. He stressed that the settlers had to be disarmed, all the settlements dismantled and the activities of the settlers in all the occupied territories, including Jerusalem, stopped; it was not a question of merely limiting or reducing the number of settlements. They had to be immediately offered the possibility of leaving the territories quickly, after receiving compensation from the Israeli Government. Furthermore, in the framework of the Declaration of Principles on Interim Self-Government Arrangements signed by Israel and the PLO, at Washington, on 13 September 1993,⁶ the pace of the negotiations on the settlements had to be accelerated, in accordance with certain priorities, in order to defuse the "explosive situation" which existed due to the illegal settlements.⁷

The representative of Egypt, in his capacity as Chairman of the Arab Group, referred to the events at the Ibrahim mosque as an unprecedented development since the beginning of the Israeli occupation. Besides referring to a draft resolution tabled by the Arab Group, requesting, *inter alia*, the deployment of an international commission to investigate that incident, the representative asked the international community to face the

⁶ S/26560, Annex.

⁷ S/PV.3340, pp. 5-9.

following issues: First, full attention should be given to providing protection for the Palestinian people until it achieved its complete independence through the peace process, and to reaffirming that the Government of Israel, as the “occupying authority”, was fully responsible for providing protection for Palestinians in the occupied territories in accordance with the 1949 Fourth Geneva Convention. Secondly, attention should be paid to the security requirements of the Palestinian people. Thirdly, no party interested in the establishment of peace in the Middle East should allow a biased, extremist minority to impose its will on the overwhelming majority that aspired to put an end to the violence. The speedy achievement of an Israeli-Palestinian agreement on the implementation of the Declaration of Principles could be a first step in that regard. Fourthly, the international community should convey to the Palestinian people a clear message of solidarity. The representative hoped that the Council would unanimously adopt a resolution condemning the events at the Ibrahimi mosque and reaffirming the need to provide stability and security for the Palestinian people until the end of the occupation.⁸

The representative of Israel stated that Israel regretted and condemned the criminal murder of worshippers in Hebron perpetrated by a “fanatic individual”. Extremists on both sides were wrong in believing that they could derail the peace process by creating a vicious circle of violence. The fact was that the point of no return had been passed on the way to a new era of peace, security and cooperation. Following the formation of the Israeli Government on 13 July 1992, Israel had made far-reaching changes in its order of national priorities. Also, at two meetings on 25 and 27 February 1994, the Israeli Cabinet had discussed the massacre in Hebron and had authorized a number of steps in that regard, including the establishment of a commission of inquiry to fully investigate the massacre and a series of measures against radical elements among Israeli residents in the territories. The representative stressed that the Government of Israel was fully committed to doing its utmost to protect Arabs and Jews alike. Once the implementation of the Israeli-Palestinian agreement began, the Palestinian police would take its part in ensuring security. The Government believed that the only solution to the conflict was to enhance the implementation of the agreement between Israel and the PLO. In that connection, the

⁸ *Ibid.*, pp. 10-16.

Security Council had a responsibility to support the proponents of peace by calling for accelerated progress towards implementing the agreement.⁹

The representative of Pakistan, in his capacity as Chairman of the OIC group in New York, condemned that “cold-blooded and wanton attack directed against the people of Palestine”. He called on the Government of Israel to put an immediate end to the “repressive measures against the people of Palestine” and to take the necessary steps to ensure the safety and protection of the Palestinians in the occupied Palestinian territories, in accordance with the Fourth Geneva Convention of 12 August 1949.¹⁰

The representative of Tunisia condemned the killing as an “abominable crime” and called for an impartial inquiry. He stressed the absolute need for the disarmament of the Israeli settlers, the dismantlement of Israeli settlements and for an international presence to protect the lives of civilians in the Palestinian territories.¹¹

The representative of Jordan said that beyond condemnation, the Council should meet its responsibilities, including, as a matter of urgency, by dispatching a commission of inquiry to investigate the massacre and taking the necessary steps to ensure the commission’s ability to carry out its work successfully and report back to the Council. The representative called on the Council to examine what had occurred, considering the fact that Israel’s settlement policy was illegal and that Israel did not abide by the Geneva Convention Relative to the Protection of Civilian Persons in Time of War. In order to remove the root causes of violence, the Council had to provide protection for Palestinian civilians. It should be guided by its resolutions concerning the illegality of the Israeli settlements, particularly resolution 465 (1980), which determined that Israel’s settlement policy constituted a serious obstruction to achieving a comprehensive, just and lasting peace in the Middle East. While the issue of the settlements fell within the purview of the Declaration of Principles and was to be discussed directly by those involved in the negotiations, the issue of disarming the settlers and safeguarding Palestinian lives,

⁹ *Ibid.*, pp. 16-21.

¹⁰ *Ibid.*, pp. 21-24.

¹¹ *Ibid.*, pp. 24-27.

however, should in no way be linked or be subjected to any criteria: the right to life must be protected, legally and morally, at all times, including under occupation, and it was the duty of the Council to safeguard that right without delay. Furthermore, it was incumbent upon the Council to uphold the application of the Fourth Geneva Convention to the territory of Palestine, as provided in resolutions 605 (1987), 681 (1990) and 726 (1992), which were still in force. The Council was called upon to provide an appropriate mechanism for implementing the provisions of the Fourth Geneva Convention. Among the measures which the Council could take, what was urgently required was to provide effective and constant protection to the Palestinian people so long as they were suffering under occupation. The representative also expressed his discontent with the work of the Security Council and held the latter responsible for not having forced Israel to abide by the above mentioned Geneva Convention and to implement its own resolutions on that issue. Therefore, he accused the Council of not having lived up to its responsibility to protect the Palestinian people.¹²

The representative of the OIC stated that the member States of the OIC extended its full support for the Palestinian people in their struggle until they achieved their inalienable national rights, including their right to return, to self-determination and to the establishment of their independent State on their national homeland, with its capital Al-Quds Al-Sharif (Jerusalem), under the leadership of the PLO as their sole legitimate representative. The OIC called upon the United Nations to continue to play an active role in the peace process and for the immediate implementation of the relevant resolutions, in particular resolution 681 (1990), and recalled that the occupying Power had a responsibility to protect the Palestinian people in accordance with the Fourth Geneva Convention, which was applicable to the occupied Palestinian territory, including Jerusalem. The OIC demanded an immediate end to the Israeli policies of repression against the Palestinian people and called for effective international protection to be provided to the Palestinian people in the occupied territories and the disarming of the Israeli settlers as a step towards the

¹² *Ibid.*, pp. 28-32.

dismantling of the Israeli settlements in the occupied territories, which were illegal. The member States of OIC appealed to the Council to adopt a resolution of determination.¹³

At its 3341st and 3342nd meetings, held respectively on 1 and 2 March 1994, the President (France) drew the attention of the members of the Council to several documents.¹⁴

At the 3342nd meeting, the representative of Greece, speaking on behalf of the European Union, expressed its outrage over the abominable act of terrorism that had taken place in Hebron. While noting with satisfaction the strong condemnation of the acts by the Israeli Government, he recalled that it had responsibility for ensuring the protection and safety of the Palestinian population in the occupied territories in accordance with the 1949 Fourth Geneva Convention. The European Union welcomed the measures announced by the Israeli Government to end the illegal acts by Israeli settlers and appealed to the Israeli authorities to continue their efforts to establish the necessary conditions for stabilizing the situation. It would, in particular, call on the parties to conclude an agreement on a temporary international or foreign presence, as provided for in the Declaration of Principles.¹⁵

At the same meeting, the Chairman of the Committee on the Exercise of the Inalienable Rights of the Palestinian People stated that the Committee, while noting the measures already taken by the Israeli Government, was convinced that steps had to be taken to put an end to violent activities by settlers and to begin dismantling the settlements in accordance with international law and numerous Security Council resolutions. The Committee fully supported the Palestinian requests for an international presence in the occupied territory and for measures aimed at disarming the settlers and urged the Security

¹³ *Ibid.*, pp. 33-36.

¹⁴ At the 3341st meeting: letter dated 28 February 1994 from the representative of Greece to the Secretary-General, transmitting the text of a declaration of the European Union (S/1994/231); letter dated 28 February 1994 from the representative of Sudan to the President of the Council (S/1994/236). At the 3342nd meeting: letter dated 28 February 1994 from the representative of Kuwait addressed to the President of the Security Council (S/1994/229); letter dated 28 February 1994 from the Chargé d'affaires a.i of Australia addressed to the Secretary-General (S/1994/237); letter dated 28 February 1994 from the Chargé d'affaires a.i of India addressed to the Secretary-General (S/1994/238); letter dated 1 March 1994 from the representative of Indonesia addressed to the President of the Council, transmitting the text of a Communiqué on Palestine of the Non-Aligned Movement (S/1994/239).

¹⁵ S/PV.3342: Greece, pp. 3-4.

Council to take the necessary measures in that regard. It believed that only rapid and consistent progress in the negotiations leading to the disengagement of Israeli forces and self-rule for Palestinians would prevent the situation from deteriorating further.¹⁶

Many other speakers who participated in the debate stressed the responsibility of Israel under the Fourth Geneva Convention to protect the Palestinian people in the occupied territories, including Jerusalem and called upon Israel to abide by its provisions. They also called for the disarmament of the settlers and the dismantlement of the Israeli settlements in the occupied territories.¹⁷ Some called for an international inquiry to investigate the events.¹⁸ Some were in favour of an international presence in the occupied territories.¹⁹

At the 3351st meeting, on 18 March 1994, the President drew the attention of the members of the Council to a draft resolution²⁰ submitted by Djibouti, on behalf of the Non-Aligned members of the Council, as well as France, the Russian Federation, Spain and the United Kingdom. He further drew their attention to several other documents²¹, including a letter dated 14 March 1994 from the representative of Israel to the Secretary-General, transmitting the text of a decision of the Israeli Government of 13 March 1994, taking measures, including outlawing two Israeli terrorist organizations.

The representative of Djibouti welcomed the initial reaction of the Israeli Government, including the strong public condemnation, the announced intention of

¹⁶ *Ibid.*, pp. 13-14.

¹⁷ S/PV. 3340: Pakistan, pp. 21-24; Tunisia, pp. 24-27; S/PV. 3341: Afghanistan, pp. 3-4; United Arab Emirates, pp. 5-6; Libyan Arab Jamahariya, pp. 6-7; Lebanon, pp. 7-9; S/PV. 3342: Indonesia, pp. 2-3; Syrian Arab Republic, pp. 4-5; Algeria, pp. 5-6; Malaysia, pp. 6-7; Kuwait, pp. 7-8; Turkey, pp. 8-9; Sudan, pp. 9-10; Ukraine, pp. 11-12; Bangladesh, p. 15; Bahrain, p. 16; Bosnia and Herzegovina, pp. 16-17.

¹⁸ S/PV. 3340: Tunisia, pp. 24-27; S/PV. 3341: United Arab Emirates, pp. 5-6; Libya Arab Jamahariya, pp. 6-7; S/PV. 3342: Kuwait, pp. 7-8; Bahrain, p. 16.

¹⁹ S/PV. 3340: Tunisia, pp. 24-27; S/PV. 3341: Lebanon, pp. 7-9; S/PV. 3342: Algeria, pp. 5-6; Malaysia, pp. 6-7; Kuwait, pp. 7-8; Ukraine, pp. 11-12; Bangladesh, p. 15; Bosnia and Herzegovina, pp. 16-17.

²⁰ S/1994/280.

²¹ Letter dated 1 March 1994 from the representative of Senegal addressed to the Secretary-General (S/1994/242); letter dated 1 March 1994 from the representative of Tajikistan addressed to the Secretary-General (S/1994/244); letter dated 2 March 1994 from the representative of Malaysia addressed to the Secretary-General (S/1994/247); letter dated 3 March 1994 from the Chargé d'affaires a.i of Brunei Darussalam addressed to the Secretary-General (S/1994/256); letter dated 7 March 1994 from the representative of Jordan addressed to the President of the Council (S/1994/269); letter dated 7 March 1994 from the representative of Pakistan addressed to the President of the Council, transmitting the text of a statement adopted by the States members of the OIC in New York (S/1994/275); and letter dated 14 March 1994 from the representative of Israel addressed to the Secretary-General (S/1994/295).

disarming selected individual settlers and the outlawing of two of the most extreme settler organizations. He also called for an international presence in the occupied territories to assure Palestinians of their safety. In explanation of vote, the representative said that the delay in the Council's reaction was unfortunate and could only damage its credibility. Nevertheless, his delegation supported the draft resolution which would have a mandatory effect, like any other resolution adopted by the Council.²² That view was shared by the representative of Oman.²³

The representative of Spain welcomed the measures adopted by the Israeli Government to ensure the security and protection of all inhabitants of the occupied territories and stated that such measures must be complemented and implemented diligently. His delegation stressed that an impartial and complete investigation should be conducted and that effective measures should be taken to control all extremist elements among the Israeli settlers and noted, in that regard, the decisions of the Israeli authority to establish a commission of investigation and to declare illegal two extremist Israeli organizations. His delegation believed that the presence of international observers in the occupied territories was appropriate as an important confidence-building measure to facilitate implementation of the Declaration of Principles and encouraged the parties to reach agreement as soon as possible on the composition and modalities of that temporary presence. Spain believed that the draft resolution duly reflected the range of measures aimed at ensuring the security of the population in the occupied territories and at making it possible for the peace process to resume.²⁴

The Council then proceeded to a paragraph-by-paragraph vote on the draft resolution.²⁵ All paragraphs were adopted unanimously except the second and sixth preambular paragraphs which were each adopted by 14 votes in favour, 1 abstention²⁶ and

²² S/PV. 3351: pp.3-4.

²³ *Ibid.*, pp. 4-5.

²⁴ *Ibid.*, pp. 6-7.

²⁵ See S/PV.3351, pp. 9-11. See also this *Supplement*, Chapter I.

²⁶ United States.

none against. The draft resolution as a whole was then adopted without a vote²⁷ as resolution 904 (1994), which reads as follows:

The Security Council,

Shocked by the appalling massacre committed against Palestinian worshippers in the Mosque of Ibrahim in Hebron, on 25 February 1994, during the holy month of Ramadan,

Gravely concerned by the consequent Palestinian casualties in the occupied Palestinian territory as a result of the massacre, which underlines the need to provide protection and security for the Palestinian people,

Determined to overcome the adverse impact of the massacre on the peace process currently under way,

Noting with satisfaction the efforts undertaken to guarantee the smooth proceeding of the peace process, and calling upon all concerned to continue their efforts to this end,

Noting the condemnation of this massacre by the entire international community,

Reaffirming its relevant resolutions, which affirmed the applicability of the fourth Geneva Convention of 12 August 1949²⁸ to the territories occupied by Israel in June 1967, including Jerusalem, and the Israeli responsibilities thereunder,

1. *Strongly condemns* the massacre in Hebron and its aftermath which took the lives of more than fifty Palestinian civilians and injured several hundred others;

2. *Calls upon* Israel, the occupying Power, to continue to take and implement measures, including, *inter alia*, confiscation of arms, with the aim of preventing illegal acts of violence by Israeli settlers;

3. *Calls* for measures to be taken to guarantee the safety and protection of the Palestinian civilians throughout the occupied territory, including, *inter alia*, a temporary international or foreign presence, which was provided for in the Declaration of Principles on Interim Self-Government Arrangements, signed by the Government of Israel and the Palestine Liberation Organization at Washington, D.C. on 13 September 1993, within the context of the ongoing peace process;

²⁷ See also this *Supplement*, Chapter IV.

²⁸ Geneva Convention relative to the Protection of Civilian Persons in Time of War (United Nations, *Treaty Series*, vol. 75, No. 973).

4. *Requests* the co-sponsors of the peace process, the United States of America and the Russian Federation, to continue their efforts to invigorate the peace process and to undertake the necessary support for the implementation of the above-mentioned measures;

5. *Reaffirms its support* for the peace process currently under way, and calls for the implementation of the Declaration of Principles without delay.

After the vote, the representative of the United States stated that her Government condemned the massacre in Hebron in the strongest possible terms. The only answer to that massacre was for Israel and the PLO to promptly conclude their negotiations and begin the implementation of the Declaration of Principles as rapidly as possible. It was precisely to serve and protect the peace process that her Government had – with great reluctance – made the difficult decision to allow resolution 904 (1994) to pass, despite the existence of some language it found objectionable. For at the same time, the United States Government had announced steps that would serve to restart the stalled Middle East process. The United States supported the operative paragraphs of resolution 904 (1994). However, it had sought a paragraph-by-paragraph vote on the resolution because it wanted to record its objections to language introduced there. The United States did not accept the description of the territories occupied by Israel in the 1967 war as “occupied Palestinian territory”, as that language could be taken to indicate sovereignty. That was a matter which both Israel and the PLO had agreed must be decided in negotiations on the final status of the territories. Similarly, while the United States Government reaffirmed its view that the 1949 Fourth Geneva Convention applied to territories occupied by Israel since 1967, it opposed the specific reference to Jerusalem in resolution 904 (1994) and would continue to oppose such reference in the future. Instead of exercising its veto, the United States had chosen to disavow that language and express its opposition by abstaining on the second and sixth preambular paragraphs. It was up to Israel and the Palestinians – not the United Nations – to negotiate in order to achieve peace on the ground. The representative also said that the provision in resolution 904 (1994) concerning measures to be taken to guarantee the safety and protection of Palestinian civilians, possibly to include a temporary international or foreign presence, was a reference to the Declaration of Principles, which provided for the possibility of such a presence, if agreed to by the parties. She concluded by stating that

without the confidence that the peace process would shortly resume, positive action on resolution 904 (1994) would not have been possible.²⁹

According to the representative of the Russian Federation, resolution 904 (1994) would play an important part in the resumption of the peace process and in the implementation of all necessary measures in the interest of the prompt normalization of the situation in the occupied territories. He deplored, however, that the Council did not act with the swiftness required by the circumstances. The Russian Federation stressed that the Council's adoption of resolution 904 (1994) was an indispensable step, failing which the resumption of the negotiating process would be impossible. There was an understanding in principle on that point between the parties to the negotiating process, and between the sponsors thereof.³⁰

The representative of the United Kingdom regretted the delay in adopting resolution 904 (1994) that was caused by the need to resolve satisfactorily a number of very difficult and sensitive issues. Disunity in the Council suited nobody but the extremists on both sides. His Government believed that the United Nations Observer Mission in South Africa could provide a good model for an international civilian presence in the occupied territories which would usefully contribute to improving the safety and protection of the Palestinian inhabitants as foreseen in the Declaration of Principles. He stressed, however, that while an international presence could help to defuse tension, it could not be a substitute for the responsibility of the Israeli authorities to provide protection for all the inhabitants of the occupied territories.³¹

The President, speaking in his capacity as the representative of France, noted that the Council had been prompted to meet urgently to debate the situation and to examine the measures necessary to continue the peace process, at the same time as discussions were in progress on its formal reaction, whereby it would voice its condemnation and make its decisions public. His delegation had repeatedly insisted that the Council take an official

²⁹ S/PV.3351, pp. 11-12.

³⁰ *Ibid.*, pp. 12-13.

³¹ *Ibid.*, p. 15.

stand as soon as possible. Turning to resolution 904 (1994), he said that his Government attached particular importance to provisions recommending that measures to protect Palestinians civilians be taken, in particular through a temporary foreign or international presence in the occupied territories. Such a presence could take the form of the dispatch of civilian observers of the United Nations with a monitoring and verification mission, the details of which remained to be defined. His Government also attached importance to the provisions which urged the parties to step up the peace negotiations in order to implement the Declaration of Principles. In that regard, the question of settlements and their possible regrouping must be the subject of negotiations.³²

The representative of Israel stated that his Government shared the Council's support for the ongoing peace process and called for the implementation of the Declaration of Principles without delay. He stressed that security must be guaranteed for all residents of the territories and that the best way to achieve that was by implementing Article VIII of the Declaration of Principles which provided for the establishment of a strong police force by the Palestinian Council. The Declaration of Principles also provided for the possibility of a temporary international or foreign presence. His delegation maintained that nothing in resolution 904 (1994) prejudiced that provision in the Declaration of Principles. His delegation also noted that the reference in the resolution to Jerusalem was not compatible with the Declaration of Principles, whereby both parties had agreed to address the issue not later than the beginning of the third year of the interim period. The reference to Jerusalem was also at variance with Israel's position regarding the city's status at that time and in the future, according to which Jerusalem would remain united under Israeli sovereignty as Israel's eternal capital. Finally, Israel remained fully committed to advancing towards peace on the basis of Security Council resolutions 242 (1967) and 338 (1973), and the Declaration of Principles.³³

The representative of Palestine noted that the lengthy delay, which had elapsed since the massacre of 25 February 1994, had undoubtedly generated a great deal of suspicion and many questions regarding the Council's desire – or, for that matter, its

³² *Ibid.*, pp. 16-17.

³³ *Ibid.*, pp. 17-18.

ability, because of the position of one permanent member – effectively to fulfil its responsibilities with the required speed when it came to the question of Palestine and the situation in the Middle East. He said that since the massacre in Al-Khalil, the Israeli army had continued to take repressive measures, including extensive curfews and indiscriminate shooting. He also referred to the problem of the illegal presence of settlers in the occupied territory, to which there could be no solutions without the adoption of new policies aimed at the reversal of the existing situation and, at a later stage, the dismantlement of the settlements. Another issue he raised was the reference in resolution 904 (1994) to Jerusalem as part of the occupied territories since 1967 and the relationship between that reference and the Declaration of Principles. Such reference had been a consistent practice of the Council, as formulated in every single resolution relating to the Palestinian issue adopted by it, in preambular and in operative paragraphs alike. The Council's adoption of the same language in resolution 904 (1994) only reflected a continuation of that policy. and any attempt to change that language posed the danger of a change in its policy. His delegation was disappointed and deeply concerned at the United States' abstention in the vote on resolution 904 (1994) and hoped that it did not signal a departure from its long-held consistent position on that issue. The speaker further stated that resolution 904 (1994) was undoubtedly an essential step forward and demonstrated that the Council had upheld its own responsibilities towards the situation in the occupied Palestinian territories, including Jerusalem. The main question was the provision of protection for the Palestinian civilians under occupation. The fact that the Council had not gone into the details of such protection did not absolve it from its responsibilities towards the implementation of the resolution in the direction defined by the Council in its resolutions, particularly resolution 681 (1990). He added that resolution 904 (1994) could not be viewed in isolation from the peace process and that it would have a positive impact on that process. However, the real and qualitative impact would take place with the implementation of the resolution, not only with its adoption. That could be achieved by means of the international presence mentioned in the resolution. He concluded by taking due note of the measures taken by the Israeli Government, which were steps in the right direction, but definitely fell short of meeting the requirements for rescuing the peace process.³⁴

³⁴ *Ibid.*, pp. 18-20.

Decision of 28 February 1995 (3505th meeting): Adjournment

By a letter³⁵ dated 9 January 1995, the Observer of Palestine informed the Secretary-General that Israel had continued the illegal policy and practice of building settlements in the occupied Palestinian territory and allowing more settlers to move to those settlements, in violation of the Fourth Geneva Convention of 1949 and numerous resolutions of the Council, particularly resolutions 446 (1979), 452 (1979) and 465 (1980). Such a policy and practice was also a clear attempt to create additional illegal facts which pre-empted negotiations on a final settlement between the two sides, in violation of the spirit and letter of the Declaration of Principles. The international community and the Security Council bore a special responsibility in that regard to guarantee the integrity of international law and that of the Council's own resolutions. The two co-sponsors of the peace process, particularly the United States, should fulfil their duties in preserving the integrity of the agreements that had been reached in a way which would guarantee the successful outcome of the process. Referring to a letter³⁶ dated 6 January 1995 addressed to the Secretary-General from the Chairman of the Arab Group, he called upon the Council to formally and urgently deal with the issue of Israeli illegal settlements and to take steps to end that threat to the peace process. He also called upon the Secretary-General to use his good offices in that regard.

By a letter³⁷ dated 31 January 1995, the Observer of Palestine informed the Secretary-General of a decision by the Israeli Government of 24 January 1995 to approve further settlement activity in the occupied Palestinian territory. That decision came at a time when the implementation of the second stage of the Declaration of Principles had been delayed for six months, including the redeployment of Israeli forces outside populated areas in the West Bank and the election of the Palestinian Council. He reiterated that the Israeli settlements were illegal under the Fourth Geneva Convention which was applicable to all the occupied territory since 1967, including Jerusalem, as repeatedly confirmed in

³⁵ S/1995/14.

³⁶ S/1995/11.

³⁷ S/1995/95.

resolutions of the Council. Moreover, the continued settlement activity violated the letter and spirit of the agreements reached between the two sides and threatened the integrity of the peace process at a critical stage. The PLO therefore believed that it was imperative for the Council to take quick and concrete action to bring an effective end to all settlement activities by Israel in the occupied Palestinian territory, including Jerusalem.

By a letter³⁸ dated 22 February 1995 addressed to the President of the Council, the representative of Djibouti, in his capacity as Chairman of the Arab Group, requested that a meeting of the Council be convened urgently to consider the question of the establishment of Israeli settlements in the territories occupied since 1967, including Jerusalem, and the dangerous consequences of these activities for the Palestinian people and the Middle East peace process.

At its 3505th meeting, held on 28 February 1995 in response to the request from the representative of Djibouti, the Council included the letter from the representative of Djibouti in its agenda. Following the adoption of the agenda, the Council invited the representatives of Algeria, Brunei Darussalam, Djibouti, Egypt, the Islamic Republic of Iran, Israel, Japan, Jordan, Malaysia, Morocco, Pakistan, Sudan, the Syrian Arab Republic, Tunisia, Turkey and the United Arab Emirates, at their request, to participate in the discussion, without the right to vote. The Council also decided to invite the Observer of Palestine, at his request, to participate in the discussion without the right to vote. It further extended an invitation under rule 39 of its provisional rules of procedure to the Chairman of the Committee on the Exercise of the Inalienable Rights of the Palestinian People and to Mr. Ansay, the Observer of the Organization of the Islamic Conference. The President (Botswana) drew the attention of the members of the Council to several documents.³⁹

The representative of Palestine stated that the Council had a fundamental responsibility regarding the question of Israeli settlements in the occupied Palestinian

³⁸ S/1995/151.

³⁹ Letter dated 6 January 1995 from the representative of Algeria addressed to the Secretary-General (S/1995/11); letters dated 9 and 31 January 1995 respectively from the observer of Palestine to the Secretary-General (S/1995/14 and S/1995/95); letter dated 17 January 1995 from the Chairman of the Committee on the Exercise of the Inalienable Rights of the Palestinian People addressed to the Secretary-General (S/1995/50).

territory, including the preservation of the integrity of international law and international humanitarian law and of its previous resolutions. It had the responsibility to ensure that justice was achieved by bringing a final and comprehensive end to any and all settlement activity in the occupied territories. With reference to the signing of the Declaration of Principles and the subsequent agreement on the implementation thereof, he stated that no one had imagined that the Israeli Government would actually continue carrying out its settlement policy while seeking to move forward in the peace process: the two things simply could not be reconciled. The PLO believed that any settlement activity constituted a flagrant violation of the letter and spirit of the Declaration of Principles, the Fourth Geneva Convention and relevant resolutions of the Council. What was needed was the immediate and total cessation of all settlement activity, whatever its nature or volume. The alternative could seriously undermine the peace process. The basic responsibility of the Council therefore was to guarantee the continuation and integrity of the peace process, as it had done in resolution 904 (1994). In addition to the question of settlements, the speaker referred to other Israeli practices that violated the human rights of the Palestinian people, including the repeated closures of the occupied territory, the isolation of Jerusalem and the delays in the implementation of agreements between the two sides. In that regard, he questioned the connection between the closures and Israeli security concerns and Israel's right to unilaterally and without warning close the border crossings agreed upon in the Declaration of Principles. He stated that the closure constituted an act of revenge and punishment against the Palestinian people and violated many provisions of the agreement reached by the two sides. Other outstanding issues included Israeli delays in completing implementation of all the provisions of the Gaza-Jericho Agreement and of the second phase of the Declaration of Principles. Israeli positions and practices represented a policy aimed at delaying the implementation of the agreements reached. He concluded by warning that the peace process was experiencing a real crisis. The process must be salvaged and that could be achieved only through the complete fulfilment of the parties' contractual obligations emanating from the agreements reached, including the timeframe, which was an integral part of the agreements.⁴⁰

⁴⁰ S/PV.3505, pp. 3-6.

Speaking in his capacity as Chairman of the Arab Group, the representative of Djibouti stated that the draft resolution before the Council was moderate and balanced, and was a positive reflection of the desire of the Arab Group to restart the negotiations in good faith. He noted the lack of progress in the negotiations between the Palestinians and Israeli authorities since the signing of the Declaration of Principles and stated that the Arab Group could not accept the Israeli position that, unless the Palestinian Authority (PA) demonstrated its ability to control all acts of terrorism, the terms of the agreement could not be implemented. If the issue of terrorism was to be employed to halt progress, then surely the factors contributing to it must be emphasized. There was a direct correlation between the violence in the occupied territories and the continued expansion of Jewish settlements in the West Bank. It was therefore necessary for the peace process to resume in a meaningful manner that the settlements in the West Bank be immediately frozen and these in Gaza dismantled. Contrary to the expectations implicit in the Declaration of Principles that Israeli settlements would cease during the interim period of negotiations, the ongoing confiscation of Palestinian territory pre-empted the negotiations and deliberately complicated the issues at stake. Israel's settlement policy and related activities were contrary to international law, United Nations resolutions and the Fourth Geneva Convention. He concluded by stating that for the Arab world, the issue of self-rule in Palestine needed to be resolved before there could be sustained peace elsewhere in the Middle East. At that stage, however, there was much to question regarding Israel's good faith in desiring genuine accord with the Palestinians and, by extension, with the rest of the Arab world.⁴¹

The representative of Israel emphasized that the PLO's initiative to debate the issue of settlements in the Security Council was incompatible with its signed commitments *vis-à-vis* Israel, whereby all outstanding permanent-status issues, such as settlements and Jerusalem, would be resolved in direct and bilateral negotiations at a specific time – namely, in the negotiations on permanent status, at the final stage of the process. He stated that immediately after it had been formed in July 1992, the Israeli Government had substantially changed Israel's settlement policy. No new settlements had been established

⁴¹ *Ibid.*, pp. 6-7.

in the territories since then, nor would they be. The Government had stopped allocating public resources to support the extension of existing settlements and no land had been confiscated to establish new settlements. Meanwhile, Israelis had the right to continue to build in Jerusalem, as did the Arabs. Pointing to the progress achieved over the past year towards comprehensive peace in the region, he noted that the Israeli Defence Forces had already withdrawn from the Gaza Strip and the Jericho area, and the PA had been established there. Israel had signed three agreements with Jordan and established formal relations with Morocco and Tunisia. At the same time, opposition to the peace process had become more violent, and terrorism was at present the major obstacle to peace. The most important task, therefore, was to credibly address the growing sense in the Israeli public opinion that the Palestinians were unable to meet their commitments to fighting terrorism. While Israel believed that the PA also did not want terrorism to hold the peace process hostage, it was convinced that the PA could and should do more to respect its commitments in that respect. On the question of closure, the speaker noted that it was neither a policy nor an act of collective punishment, but rather an act of self-defence in the face of repeated terrorist attacks. Certain measures to ease the closure were under way in order to continue with Israel's policy of normalization. He concluded by stating that differences between the two sides must be addressed at the negotiating table, as agreed.⁴²

The representative of Egypt stated that in confronting the crisis facing the peace process, and in view of Israel's lack of commitment to ending settlement activities, recourse to the Security Council had become necessary in order to secure respect for the provisions of the Geneva Conventions. On the political side, the policy of establishing settlements constituted a rejection of the "land for peace" formula, which was the basis of resolution 242 (1967). On the legal side, the norms of the 1949 Fourth Geneva Convention were rules of *jus cogens* which could not be derogated from. No party could therefore argue that any bilateral agreement, of whatever kind, allowed it to deny the right of the international community to discharge its fundamental responsibility for guaranteeing the implementation of such basic rules. The Council must send a clear and unambiguous message that Israeli settlement activity was a grave legal violation that would abort the

⁴² *Ibid.*, 7-9.

peace negotiations. The Israeli Government should respect its international commitments and immediately put an end to all construction and establishment of settlements.⁴³

The representative of France stated that continuing the expansion of the Israeli settlements in the West Bank and Jerusalem in addition to ignoring the 1949 Fourth Geneva Convention ran counter to the spirit of the Oslo Agreements and was therefore contributing to the difficulties currently being encountered in the peace process. France encouraged the Israeli Government to find a way to halt the work on expanding the settlements, which was being carried out by private interests and with private financing. At the same time, France understood that Israeli public opinion, traumatized by the resurgence of terrorism, doubted the choice made at Oslo. For that reason, it called on the PA to do all it could, within the framework of the responsibilities entrusted to it, to prevent and to punish acts of terrorism.⁴⁴

According to the representative of Italy, the request for a meeting of the Council was justified, procedurally and substantively. Legally, Articles 34 and 35 of the Charter and rules 2 and 3 of the Council's provisional rules of procedures provided for the President's calling a meeting at the request of any member of the Council and, moreover, any Member State might bring to the Council's attention any dispute or situation that might lead to international friction or give rise to a dispute. Politically, the Council could not ignore a request emanating from 21 Member States. The Council's debate ought not to interfere with the ongoing negotiations between Israel and the PLO, but should provide an opportunity for a constructive exchange.⁴⁵

The representative of the United Kingdom expressed his Government's regret that the question of settlements had had to come before the Council again. One of the major achievements of the peace process was that it had enabled the parties concerned to resolve problems by direct negotiations. The British Government's position was that the settlements were illegal, contravened the Fourth Geneva Convention and represented an

⁴³ *Ibid.*, pp. 10-12.

⁴⁴ *Ibid.*, p.12.

⁴⁵ *Ibid.*, pp. 13-14.

obstacle to an overall peace. The Declaration of Principles defined settlements as a final status issue, which implied that the *status quo* would remain in the meantime. Any expansion of existing settlements thus went against the spirit of the Declaration of Principles. At the same time, his Government did not underestimate Israel's legitimate security concerns which, however, must not be allowed to hold up progress towards peace.⁴⁶

According to the representative of the United States, the ultimate test for activities in the Security Council must be whether the actions served the cause of peace. His Government doubted that Council activity on the present subject at that time was likely to pass that test. It would not be productive or useful for the Council to involve itself in a question that the parties had agreed to cover when they addressed permanent status issues in their negotiations. At a time when the parties were making serious efforts to find a balance that addressed both Israel's security concerns and the Palestinians' political and economic concerns, debate in the Council could only sour the atmosphere and deflect them from working together. While the United States remained actively engaged with the parties to help them work through these concerns, his delegation must oppose any activity that would only complicate efforts to spur the negotiating process. The United States Government acknowledged and respected the interests of the United Nations and the Security Council in the peace process and supported the vital work of the United Nations agencies and the United Nations Special Coordinator to improve economic conditions. It disapproved, however, of any effort to redirect the negotiating process agreed to previously by the parties. The authority of the Security Council should, however, be invoked only wisely, sparingly, and at the proper time.⁴⁷

The representative of the Russian Federation stated that the question of the expansion of settlements, primarily those around Jerusalem, had had an adverse effect on the talks on the implementation of the Declaration of Principles, according to which it was considered desirable to avoid bringing up that sort of particularly sensitive problem. His delegation condemned the violations of human rights in the occupied territories and the

⁴⁶ *Ibid.*, pp. 14-15.

⁴⁷ *Ibid.*, p. 15.

terrorist methods employed by certain extremist groups. It believed that it was essential for the parties to refrain from any acts that would prejudice a Palestinian-Israeli settlement and disturb the status quo. The best way of resolving the problems that had arisen was through direct dialogue between the Israelis and the Palestinians using the machinery that had been set up in the course of the peace process.⁴⁸

Speaking on behalf of the European Union, the representative of France stated that Israel's concern over security matters was quite legitimate. The PA must provide itself with the necessary means and take every possible step, while respecting human rights, to monitor the activities of extremists in the regions that it administered. However, the question of security must not become an obstacle to progress in the negotiations. The Israeli settlements were in contravention of The Hague and Geneva Conventions. Although the Israeli Government's decision to put a freeze on the settlements was in accordance with the Israeli-Palestinian agreements, the authorization for new construction on the West Bank and around Jerusalem was at variance with the Declaration of Principles. The European Union appealed to the Israeli Government to find ways to settle the matter, with respect for international law and commitments solemnly undertaken. It also issued a plea for the prompt conclusion of the main discussions currently under way between the Government of Israel and the PA.⁴⁹

The Chairman of the Committee on the Exercise of the Inalienable Rights of the Palestinian People stated that the Committee considered that the increasing expansion and consolidation of settlements created facts on ground inconsistent with Security Council resolutions 242 (1967) and 338 (1973), which the current peace process sought to implement, and seriously compromised the agreements between the two sides. The Committee appealed to the Council, to the sponsors of the peace process and to all concerned to exert their influence on the Israeli Government to end its settlement policy, as an indispensable step towards the attainment of peace. The Committee hoped that the

⁴⁸ S/PV.3505 (Resumption), p. 3.

⁴⁹ *Ibid.*, pp. 7-8.

debate in the Council would culminate in a clear demonstration of the Council's determination to find ways and means to reinvigorate the peace process.⁵⁰

The representative of the OIC stated that, instead of taking steps that would contribute to a confidence-building atmosphere, and begin reversing their expansionist settlement policies, the Israeli authorities were continuing with their policy of establishing settlements as well as expanding existing ones in the occupied territories, in flagrant violation of the relevant international resolutions. The Seventh Islamic Summit Conference in Casablanca had adopted several resolutions calling, *inter alia*, for the dismantling of the settlements already established and for a halt to further settlements in occupied Palestinian and Arab territories. The member States of the OIC believed that by adopting a new series of measures of determination, the Council could help all the parties involved in the peace process, but it could especially assist Israel to take the required bold measures conducive to accomplishing a lasting peace in the region.⁵¹

The representative of Lebanon stated that there could be no doubt that the crisis in which the peace process found itself derived from Israel's insistence on a policy aimed at maintaining its hold over the territories and maintaining peace at the same time. Currently, Israel was imposing a sea blockade against several ports in Lebanon and was also engaged in continuing aggression through the use of weapons and air power. The continuation of those violations of Lebanese territorial integrity was part of an Israeli practice aimed at imposing its hegemony over its neighbours and at totally rejecting resolution 425 (1978). Noting that the Israeli settlement policy in the Palestinian territories and the explosive situation in Southern Lebanon were a major threat to the peace process, he hoped to see the Council play a decisive role by taking the necessary measures to put an end to that situation.⁵²

The representative of Palestine expressed regret at the fact that, despite serious efforts made to ensure that the Council would adopt clear and specific measures on the

⁵⁰ *Ibid.*, pp. 14-15.

⁵¹ *Ibid.*, pp. 20-21.

⁵² *Ibid.*, pp. 24-25.

matter before it, such an outcome was not achieved for reasons to do with the situation in the Council and probably with the position of one of its permanent members. The PLO understood that the sponsors of the process, particularly the United States, planned to intensify their efforts to achieve that result. The speaker hoped for an end to settlements and for the implementation of the agreements between the two sides. However, if the ongoing efforts did not yield tangible results, the PLO would have to turn once again to the Council.⁵³

Other speakers which participated in the debate emphasized that Israeli settlement activities in the occupied territories had an adverse effect on the peace process, violated the Fourth Geneva Convention and contravened Security Council resolutions as well as the Declaration of Principles.⁵⁴ While some representatives saw bilateral negotiations between the parties as the appropriate channel for solving issues such as the settlements,⁵⁵ others stressed the role of the Security Council and its responsibilities in the peace process and called upon the Council to adopt practical measures.⁵⁶

Decision of 17 May 1995 (3538th meeting): rejection of draft resolution

By a letter⁵⁷ dated 28 April 1995, the Observer of Palestine informed the Secretary-General that the Israeli Government had declared confiscation orders of 53 hectares of Palestinian land within the area of illegally annexed East Jerusalem. The Israeli

⁵³ *Ibid.*, p. 26.

⁵⁴ S/PV. 3505: Indonesia, pp. 12-14; Honduras, pp. 15-16; S/PV. 3505 (Resumption): Germany, pp. 2-3; Oman, p.3; Nigeria, p.4; Czech Republic, p.5; Argentina, pp. 5-6; Jordan, pp. 8-9; Algeria, pp. 10-11; Tunisia, pp. 11-12; United Arab Emirates, pp. 12-13; Malaysia, pp. 15-16; Iran, pp. 16-17; Pakistan, pp. 17-18; Morocco, pp. 18-19; Brunei Darussalam, p.21; Turkey, p. 22; Sudan, pp. 22-23; Syria Arab Republic, pp. 23-24.

⁵⁵ S/PV.3505 (Resumption): Germany, p. 2; Czech Republic, p. 5; Nigeria pp. 3-4; Argentina, pp. 5-6.

⁵⁶ S/PV. 3505: Honduras, pp. 15-16; S/PV.3505 (Resumption): Oman, p.3; Jordan, pp. 8-9; Algeria, 10-11; Tunisia, pp. 11-12; United Arab Emirates, pp. 12-13; Malaysia, pp. 15-16; Iran, pp. 16-17; Sudan, pp. 22-23.

⁵⁷ S/1995/341.

Government had also declared that the land would be appropriated to build further illegal settlements. The letter noted that such an action flagrantly violated international humanitarian law and relevant Security Council resolutions as well as the Declaration of Principles, endangered negotiations and represented a clear attempt to prejudge their outcome. The letter also referred to other illegal actions by the Israeli authorities in and around Jerusalem, including the continuing seizure and closure of the city, Israeli excavations which threatened the integrity and foundations of the Al-Aqsa mosque, and attacks and attempts by illegal settlers and religious fanatics to impose their presence on and overtake that area. The PLO called upon the Council to take urgent measures to redress that grave situation and to bring an end to the above-mentioned Israeli violations. The Council had the duty to order the Israeli authorities to desist from taking any further illegal measures and to rescind the declared confiscation orders.

By a letter⁵⁸ dated 8 May 1995 addressed to the President of the Council, the representatives of Morocco and the United Arab Emirates requested that an urgent meeting of the Council be convened to discuss the situation in the occupied Arab territories, as well as to take the necessary measures for revocation of the recent Israeli confiscation orders in respect of Palestinian land situated in the area of East Jerusalem. By a letter⁵⁹ of the same date addressed to the President of the Council, the representative of Morocco, in his capacity as Chairman of the Islamic Group at the United Nations, conveyed the Islamic Group's position towards the confiscation orders of the Israeli Government and its announcement that such land was to be allocated for building more Israeli settlements, in contravention of international law and the relevant resolutions of the Council. He also informed the Council that at a meeting on 4 May 1995, the Islamic Group had decided to request an urgent meeting of the Council to discuss the grave situation concerning Jerusalem.

At its 3536th meeting, held on 12 and 15 May 1995 in response to the request from the representative of Morocco and the United Arab Emirates, the Council included the

⁵⁸ S/1995/366.

⁵⁹ S/1995/367.

letters of 8 May 1995 in its agenda. The Council continued consideration of the item at its 3538th meeting on 17 May 1995.

The Council invited the following, at their request, to participate in the discussion without the right to vote: the representatives of Algeria, Australia, Bangladesh, Canada, Cuba, Djibouti, Egypt, Iraq, Israel, the Islamic Republic of Iran, Japan, Jordan, Kuwait, Lebanon, Libyan Arab Jamahiriya, Malaysia, Morocco, Pakistan, Qatar, Saudi Arabia, Sudan, the Syrian Arab Republic, Tunisia, Turkey and the United Arab Emirates. The Council also invited the Observer of Palestine, at his request, to participate in the discussion without the right to vote. It further extended an invitation under rule 39 of its provisional rules of procedure to the Acting Chairman of the Committee on the Exercise of the Inalienable Rights of the Palestinian People. The President (France) drew the attention of the members of the Council to several documents.⁶⁰

At the 3536th meeting, the representative of Palestine stated that the ordering by the Israeli authorities of the confiscation of 53 hectares of land located in the area of occupied East Jerusalem constituted a flagrant violation of the relevant resolutions of the Council and of the Fourth Geneva Convention, as well as of the Declaration of Principles. Reviewing the stages through which the central issue of Jerusalem had gone, both within the United Nations and outside, he contended that Israel's actions had all been done in spite of the clear positions taken by the international community, in defiance of the United Nations and in violation of relevant resolutions of the Council, including resolutions 250 (1968), 252 (1968), 267 (1969), 271 (1969), 298 (1971), 476 (1980), 478 (1980) and 672 (1990). He recalled that in the Declaration of Principles, the two parties had agreed on a transitional period and to postpone negotiations on several issues, including Jerusalem, until the second phase. As such, they had also agreed to negotiate the issue of Jerusalem within a specific timeframe. The minimum level of compliance with the contractual obligations of the parties and negotiation in good faith required that the parties did not make changes on the ground that prejudged or influenced the results of

⁶⁰ Letters dated 28 April and 3 May 1995, respectively from the observer of Palestine addressed to the Secretary-General (S/1995/341 and S/1995/376); letter dated 8 May 1995 from the observer of Palestine addressed to the President of the Council (S/1995/352).

the negotiations. Neither one of the parties should undertake hostile actions which caused extreme damage to the other side. He stated that Israel had to understand that the Declaration of Principles had been reached between two parties representing two equal peoples and therefore the rights and aspirations of both of them should be respected, not only those of one side at the expense of the other. The PLO believed that the co-sponsors of the peace process, especially the United States, had to intensify their efforts to rescue the process and to guarantee its progress. What was required was that the Council assumed its duty to guarantee the rescinding of the Israeli confiscation orders through the adoption of a clear resolution. The representative expressed the hope that the Council would succeed in assuming its responsibilities, in contrast to its failure to do so on 28 February 1995. Referring to attempts in the United States Congress to move the American embassy in Israel to Jerusalem, he warned that the PLO's response would in part be within the framework of the United Nations system, including the Security Council – under Article 27(3) of the Charter – and the International Court of Justice, to which it would turn for an advisory opinion or some other form of involvement.⁶¹

The representative of the United Arab Emirates described the measures adopted by the Israeli Government in the occupied Palestinian territories as illegitimate and expansionist, aimed at bringing about radical demographic change and forcing the international community to deal with such practices as a *fait accompli*, based on force alone. That was done without any legal basis and to gain further territory by expropriating Arab land and establishing settlements at the expense of the legitimate rights of the Arab-Palestinian people in their homeland. Referring to the position of the League of Arab States, he called upon the Council to consider the following measures: first, there should be an international condemnation of the Government of Israel's decision to confiscate additional Palestinian land in Al-Quds (Jerusalem) and outside the city; second, Israel should be obliged to rescind the decision to confiscate that land, end its settlement policies and plans, dismantle its existing settlements, stop closing off the city and end all Israeli excavations which threatened the foundations of Al-Aqsa Mosque; third, none of the changes made by Israel to the legal status, demographic structure or

⁶¹ S/PV.3536, pp. 3-6.

geographical dimensions of Al-Quds should be recognized and any claims that Al-Quds is the eternal capital of Israel should be rejected; and fourth, the Arab and Palestinian presence should be supported, as should their institutions in Al-Quds, and international security measures should be taken to protect Arab and Palestinian territories. The United Arab Emirates hoped that the Council would adopt the draft resolution before it which provided for appropriate machinery to deal with decisions on settlement and confiscation in Al-Quds.⁶²

The representative of Israel said that the recent decision to “expropriate, not to confiscate, land for construction in Jerusalem – not for settlements” – was based on Israel’s long-standing policy to ensure that development in Jerusalem kept pace with the changes that were a natural feature of any living city. Construction and development for all residents had always been regular features of Jerusalem life and would continue to be in the future. It was inconceivable that the people of Jerusalem – Jews and Arabs alike – should be deprived of sufficient schools, roads, housing, workplaces, etc. He contended that there was no contradiction between Israel’s policy and bilateral agreements it had signed, including the Declaration of Principles. Israel remained committed to the Declaration, which contained no reference to any prohibition of development activity in Jerusalem and in which it was agreed that permanent status issues would be negotiated by the parties themselves at a later stage. Neither was there any contradiction between the peace process and continued development in Jerusalem for the benefit of all its residents. Any difference on the matter should be appropriately addressed in the framework of the bilateral negotiations. He also recalled that Israel and the PLO had agreed that differences and disputes arising out of the application or the interpretation of the agreements should be settled between the parties themselves according to an agreed process. Accordingly, Israel believed that any attempts to address the issue outside the agreed-upon framework contradicted the letter and spirit of the agreements signed by Israel and the PLO and the principles of the peace process. It therefore called upon Council members not to take any action on the matter.⁶³

⁶² *Ibid.*, pp. 9-11.

⁶³ *Ibid.*, pp. 11-13.

The representative of the Russian Federation noted that his delegation was among those that supported the request for a meeting of the Council on that matter. According to the Declaration of Principles, the future of Jerusalem was to be the subject of future negotiations on the final status of the Palestinian territories. Until then, any action to alter the status quo in Jerusalem could be viewed only as contravening the spirit of the Palestinian-Israeli agreements and of the peace process as a whole. His delegation understood that the necessary legal machinery for Israel's reconsideration of the confiscation order did exist and hoped that the Israeli Government would reconsider its view on the issue of confiscating Palestinian lands in Jerusalem.⁶⁴

The representative of the United States said that, in regard to the Israeli notice to expropriate land in the Jerusalem area, his Government had publicly stated that such actions were not particularly helpful and that it was difficult to see how they promoted the peace process. However, the United States did not believe that the Security Council was the appropriate forum for dealing with the issue, which was for the parties to address. Israel and the Palestinians were engaged in important negotiations to implement the next stage of the Declaration of Principles. Debate in the Council on issues which were for the parties to address would only distract attention from their efforts and have a negative impact on the process. It was therefore incumbent on Council members that they not undercut the peace process with a divisive debate or hasty action. On the question of the American embassy in Israel, he stated that although the Palestinian Observer had correctly noted the position of the United States Government with regard to legislation before Congress, it was regrettable that an issue internal to United States decision-making was brought into the debate in a threatening and distorted manner.⁶⁵

Speaking on behalf of the European Union, Bulgaria, the Czech Republic, Hungary, Poland, Romania and Slovakia, the President stated that the expropriation decision of the Israeli authorities was contrary to the spirit of the Declaration of Principles and was likely to jeopardize the peace process. That decision was an act whereby the public authority demonstrated the sovereignty that it claimed. The Israeli

⁶⁴ *Ibid.*, p. 15.

⁶⁵ *Ibid.*, pp. 16-17.

authorities thereby seemed to reaffirm their *de facto* hold on Jerusalem and blatantly to modify the *status quo* in that city, whereas the spirit of the Declaration of Principles was to maintain the situation as it stood so long as negotiations on the final settlement had not been concluded. The European Union had also repeatedly held that the settlements were illegal under international law, particularly under the Fourth Geneva Convention, and jeopardized the peace process. It was regrettable that the expropriations that were announced were designed to develop such settlements. The European Union therefore called upon the Government of Israel to reverse its decision and to refrain in the future from taking any such measures. The speaker further noted that it was unfortunate that the question could not be resolved directly by the parties and had to be brought before the Council. However, the fact that the parties had agreed that certain items should be dealt with during the discussions on the final settlement did not mean that international law no longer applied to those issues nor that the serious developments that affected them should not be brought up by the international community.⁶⁶

The representative of Egypt stated that the international community, through the Security Council, must reaffirm the position it had always held, that the Israeli measures intended to alter the status of Arab Jerusalem were inadmissible. He pointed out that Israel had no right under resolution 478 (1980) to annex Jerusalem and urged all States not to send diplomatic delegations to Jerusalem. He recalled that the Ministerial Conference of the League of Arab States, which had met on 6 May 1995, had decided to demand, based on international law and on the relevant Security Council resolutions, that the Security Council declare the Israeli confiscation order illegal and that Israel must rescind its decision to expropriate Arab territories in Jerusalem and in other areas so as to put an end to Israel's annexationist programmes and plans, the encirclement of the city and the diggings that were endangering the foundations of Al-Aqsa Mosque. The Conference also urged the Council to reaffirm the need for security measures to be taken to protect the Palestinian Arab territories, while still granting Jerusalem its special status.⁶⁷

⁶⁶ *Ibid.*, pp. 20-21.

⁶⁷ *Ibid.*, pp.21-23.

The Acting Chairman Committee on the Exercise of the Inalienable Rights of the Palestinian People said that the Committee considered that the confiscation of land in East Jerusalem and the increasing expansion and consolidation of settlements created a *de facto* situation inconsistent with Security Council resolutions 242 (1967) and 338 (1973) and seriously compromised the agreements between Israel and the PLO. The Committee appealed to the Council, to the sponsors of the peace process and to all concerned to exert their influence on the Israeli Government to desist from taking any further measures that undermined the peace process and to rescind its decision to confiscate Palestinian land in East Jerusalem and end its settlement policy. It also hoped that the debate would culminate in a clear demonstration of the Council's determination to find ways and means to reinvigorate the peace process.⁶⁸

Other speakers who participated in the debate stressed that the Israeli Government's expropriation order violated international law, the Fourth Geneva Convention, the Charter and relevant resolutions of the Council, and ran contrary to the spirit of the peace process, including the Declaration of Principles. They called upon Israel to reconsider its decision.⁶⁹ Some representatives stressed the Council's responsibility to consider the matter and take action on it.⁷⁰

At the 3538th meeting, on 17 May 1995, the President drew the attention of the members of the Council to a draft resolution⁷¹ submitted by Botswana, Honduras, Indonesia, Nigeria, Oman and Rwanda. Under the draft resolution, in its preambular part, the Council, *inter alia*, would have: reaffirmed its previous resolutions on the status of Jerusalem; expressed concern over the recent declaration of Israeli expropriation orders of 53 hectares of land in East Jerusalem; reaffirmed the applicability of the Fourth

⁶⁸ *Ibid.*, pp. 23-24.

⁶⁹ S/PV.3536: Morocco, pp. 6-9; Oman, pp. 13-14; China, p.14; United Kingdom, pp. 14-15; Indonesia, p.16; Nigeria, pp. 17-18; Argentina, pp. 18-19; Botswana, pp. 19-20; Honduras, p.20; Algeria, pp. 24-25; Lebanon, pp. 25-26; S/PV.3536 (Resumption 1): Qatar, pp. 28-29; Tunisia, pp. 30-32; Malaysia, pp. 32-33; Jordan, pp. 33-36; Turkey, p. 36; Canada, pp. 36-37; Australia, pp. 37-38; Syrian Arab Republic, pp. 38-39; Bangladesh, p.39; Pakistan, pp. 39-40; Cuba, pp. 40-41; Kuwait, pp. 41-42; Iraq, pp. 42-43.

⁷⁰ S/PV. 3536: Morocco, pp. 6-9; Oman, pp. 13-14; Indonesia, p.16; Nigeria, pp. 17-18; Botswana, pp. 19-20; Algeria, pp. 24-25; Lebanon, pp. 25-26; S/PV. 3536 (Resumption 1): Qatar, pp. 28-29; Tunisia, pp. 30-32; Malaysia, pp. 32-33; Jordan, pp. 33-36; Syrian Arab Republic, pp. 38-39; Bangladesh, p. 39; Pakistan, pp. 39-40; Cuba, pp. 40-41; Kuwait, pp. 41-42; Iraq, pp. 42-43.

⁷¹ S/1995/394.

Geneva Convention to all territories occupied by Israel since 1967, including Jerusalem; and expressed its awareness of the negative impact of the expropriation on the Middle East peace process and that Israel and the PLO agreed in the Declaration of Principles to postpone negotiations on final status issues, including Jerusalem, until the second stage of the peace process. In the operative part of the draft resolution, the Council would have (i) confirmed that the expropriation of land by Israel, the occupying Power, in East Jerusalem, was invalid and in violation of its relevant resolutions and the provisions of the Fourth Geneva Convention; (ii) called upon the Government of Israel to rescind the expropriation orders and to refrain from such action in the future; (iii) expressed its full support for the Middle East peace process and its achievements, including the Declaration of Principles as well as the following implementation agreements; and (iv) urged the parties to adhere to the provisions of the agreements reached and to follow up with the full implementation of these agreements.

Speaking before the vote, the representative of Oman said that the draft resolution before the Council was the fruit of the efforts made and extensive consultations conducted by the Non-Aligned Movement caucus. He believed that the Council's adoption of the draft resolution accorded with the Council's responsibility, with the Charter and with the relevant Security Council resolutions. Furthermore, it would give a positive impetus to the ongoing peace process. On the other hand, the Council's inability to take action in that respect, despite the calls of the more than 40 nations that participated in the general debate, would raise doubts about the credibility and the international legitimacy of the relevant resolutions and cast a shadow over future negotiations in the peace process in the region.⁷²

The representative of the Russian Federation stated that the question of Jerusalem had to be the subject of future negotiations on the final status of the Palestinian territories, as provided for in the Declaration of Principles. Until then, any action to alter the status quo in Jerusalem could not be considered otherwise than as contravening the spirit of the Palestinian-Israeli agreements and the peace process as a whole. Although the best possible course would have been to achieve a consensus reaction to Israel's actions in the

⁷² S/PV. 3538, pp. 2-3.

form of a statement by the President, the Russian Federation would support the draft resolution, with which it fully concurred.⁷³

The representative of the Czech Republic said that his delegation took note of the decision by the Israeli Government of 14 May 1995 according to which it had no intention of carrying out additional expropriations of land in East Jerusalem. It would have preferred that decision to be reflected in the draft resolution. While the Declaration of Principles envisaged resolving issues such as that one between the parties themselves, it did not prevent the Council from dealing with a matter that violated the Declaration. It was therefore proper to debate the issue in the Council and to vote on the draft resolution.⁷⁴

The draft resolution was then put to the vote and received 14 votes in favour and 1 against (United States). The draft resolution was not adopted, owing to the negative vote of a permanent member of the Council.

After the vote, the representative of the United States stated that she had cast a veto on an issue of principle for the United States. The only path to achieve a just, lasting and comprehensive peace in the Middle East was direct talks between the parties. Her Government was compelled to oppose the draft resolution because the Council sought to declare itself on the permanent-status issue of Jerusalem and thus violated that principle. Those issues had to be resolved by the parties, with the support of the international community, but without its interference. The Council was not able – and should not seek – to try to resolve sensitive issues in the Middle East peace process. She stressed that at that point, progress towards peace in the Middle East did not depend on what the United Nations did, but on what the parties agreed to. While it was necessary and appropriate that the Council, the General Assembly and Member States continue to express support for the Middle East peace process and for the Declaration of Principles, passage of the draft resolution would have had the Council intrude upon the agreed political process set out in the Declaration of Principles, which would have yielded no positive result. The United States had expressed the view that the Israeli expropriation notice was unhelpful and

⁷³ *Ibid.*, p. 3.

⁷⁴ *Ibid.*, pp.5-6.

clearly did not move the peace process in the right direction. The international community had an important role to play in supporting the efforts of the parties to the Middle East process. But to be effective, the support of the international community must also be discreet, maintaining a certain distance from the details of the negotiations. She stressed that the United States did not vote against the draft resolution because it supported the Israeli decision on land expropriation, for it did not. Its vote was a result of its consistent position regarding what it could and could not support in the Council. She reiterated that her Government would not agree to a resolution that prejudged or prejudiced the outcome of negotiations over such a sensitive issue as Jerusalem. Nor would it agree to any Council action that overstepped the Council's appropriate role as supporter of the negotiations aimed at achieving a lasting settlement to the conflict.⁷⁵

The representative of the United Kingdom expressed the view that the draft resolution represented a calm but clear statement of the legal position. Moreover, the text avoided any reference to wider issues, apart from a clear declaration of support for the peace process. While he understood the attachment to Jerusalem of the Israeli people, he believed that the Government of Israel should recognize that others felt equally strongly about the city, and should refrain from taking actions which sought to change the *status quo* on that most sensitive of all issues before the conclusion of the final-status negotiations. His delegation regretted that that issue had caused divisions in the Council and did not believe that would be helpful to the peace process. The fact that all members of the Council had expressed concern about the Israeli expropriation orders, however, was an important message for the Israeli Government and his delegation hoped that it would consider its future actions carefully in the light of it.⁷⁶

The representative of China noted that although the draft resolution had not been adopted, the Government of Israel should understand that the fact that there were 14 votes in favour of the draft text forcefully demonstrated that its decision to confiscate land in East

⁷⁵ *Ibid.*, pp. 6-7.

⁷⁶ *Ibid.*, pp.7-8.

Jerusalem was wrong and could not be accepted by the international community or the Security Council.⁷⁷

The representative of Israel reaffirmed that the issue before the Council was for the parties to deal with, based on the Declaration of Principles. From the outset, Israel maintained that the Council was not the appropriate forum in which to address that issue and that, accordingly, it should take no action in that regard. Israel therefore considered that the outcome of the Council's deliberations was appropriate.⁷⁸

The representative of Palestine noted that the overwhelming support for the draft resolution by 14 Council members was a genuine demonstration of the clear and decisive position of the international community against the illegal Israeli action to confiscate land in occupied East Jerusalem. Nevertheless, the Council was intentionally and by coercion prevented from expressing itself and from assuming its duties and implementing its responsibilities – responsibilities which remained in place either within or without the peace process. The PLO did not accept the position of the United States, which seemed to consider that the existence of the peace process would marginalize the Council's role and responsibilities regarding the situation in the Middle East. The use by the United States of its right of veto represented a clear backing of the illegal Israeli action and an attempt to legalize it, and would only complicate the peace process in so far as it ran counter to the foundations of the process and to the Palestinian participation therein. He called upon the President to follow up the matter and to continue to fulfil his obligations as President in order to ensure that the Israeli confiscation orders were rescinded.⁷⁹

⁷⁷ *Ibid.*, p. 8.

⁷⁸ *Ibid.*, p. 10.

⁷⁹ *Ibid.*, pp. 10-11.