Reply

TO:

THE ADVISORY OPINION OF 9 JULY 2004
IN THE MATTER OF THE

LEGAL CONSEQUENCES OF THE CONSTRUCTION OF A WALL IN THE OCCUPIED PALESTINIAN TERRITORY

AS SUBMITTED BY THE
INTERNATIONAL COURT OF JUSTICE

No distinction rests between genocide and the undoing of the State of Israel by the International Court of Justice at the Hague.

To suggest denying Israel's right for self-defence in favor of Palestinian terrorism, is a crime against humanity.

Eli E. Hertz

July 2005

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To my wife Marilyn and my children Etie, Mala and Danny,
thank you for your love and support

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Preface

"After a sharp rise in Palestinian *terror attacks* in the spring of 2002"[1] the Government of Israel called for the construction of a barrier in parts of the West Bank.

On October 21 2003, the UN General Assembly adopted resolution ES-10/13, that among others: "*Demands* that Israel stop and reverse the construction of the wall in the Occupied Palestinian territory, including in and around East Jerusalem."

On November 24 2003, the UN General Assembly adopted Resolution ES-10/248, concluding that "Israel is not in compliance with the Assembly's demand that it 'stop and reverse the construction of the wall in the Occupied Palestinian Territory.'"

On December 3 2003, the UN General Assembly adopted Resolution ES-10L.16, to [among others] "request the International Court of Justice ... to urgently render an advisory opinion" on the legal consequences arising from he construction of the wall being built by Israel.

[1] See "Background to the construction of the Barrier" UN General Assembly Resolution ES-10/248. (10575)

On July 9 2004, the International Court of Justice delivered its Advisory Opinion on the "legal consequences of the construction of a wall in the occupied Palestinian Territory."

The International Court of Justice at the Hague (Netherlands), is the principal judicial organ of the United Nations and operates under a Statute which is an integral part of the Charter of the United Nations.

The Court has a twofold role: to settle legal disputes between states that have accepted its jurisdiction, and to give advisory opinions on legal questions referred to it by duly authorized international organs and agencies.

The Court is made-up of 15 judges elected to nine-year terms of office by the United Nations General Assembly and the Security Council. The Bench rendering the advisory opinion in this case included: President Shi Jiuyong (China); Vice-President Raymond Ranjeva (Madagascar); Judges Abdul G. Koroma (Sierra Leone); Vladlen S. Vereshchetin (Russian Federation); Rosalyn Higgins (United Kingdom); Gonzalo Parra-Aranguren (Venezuela); Pieter H. Kooijmans (Netherlands); Francisco Rezek (Brazil); Awn Shawkat Al-Khasawneh (Jordan); Thomas Buergenthal (United States of America); Nabil Elaraby (Egypt); Hisashi Owada (Japan); Bruno Simma (Germany); Peter Tomka (Slovakia), and Judge Gilbert Guillaume (France).

14 Judges voted in favor of the Advisory Opinion. Judge Thomas Buergenthal (United States of America) was the only dissenting vote.

Introduction

In July 2004, Israel-bashing at the United Nations took a new and dangerous turn, including for the first time, the UN's judicial machinery, the International Court of Justice. A coalition dominated by oppressive regimes at the UN requested an advisory opinion from the International Court of Justice (ICJ) regarding the "legality" of the security barrier Israel built to impede the movements of suicide bombers from the West Bank into Israel and the "ramifications" of the barrier – on Palestinians only.

Reply is not a formal legal brief. It is a critique that focuses on examination of the ICJ's 62-page Opinion – an inquiry that revealed just how far the Bench was willing to go to serve political ends. The Court's attempt to demonize the State of Israel and ignore Jewish rights by rewriting the last 90-year history of the Arab-Israeli conflict, compelled me to expand this critique to include a broader un-doctored version of the "*historical background*."[1]

[1] ICJ Opinion, July 9 2004, see *Historical background* in the preamble at: http://middleeastfacts.org/content/ICJ/ICJ-Ruling-HTML.htm. (10908)

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Consider just two of the 'myths and facts' that surrounds the Court's rationale in its opinion on the 'Wall,' when it states that:

> "… it is the Court's view that the construction of the wall must be deemed to be directly of concern to the United Nations. The responsibility of the United Nations in this matter also has its origin in the *Mandate* [for Palestine] and the *Partition Resolution* [UN Resolution 181] concerning Palestine" [italics by author].

Myth – The ICJ claims that responsibility to bring about "the realization of the inalienable rights of the Palestinian people … has its origin in the Mandate."

Fact – Had the ICJ Bench examined the six pages of the "Mandate of Palestine" document, it would have noted that the Mandate for Palestine states explicitly the goal of the Mandate: "the establishment of the *Jewish national home* [in Palestine]."

Not once in the entire Mandate for Palestine document are Arabs as a people mentioned. Jews were the only group granted political rights in the area designated as Palestine, the *National home of the Jewish people.* There is a clear differentiation between *political* rights granted Jews, and *civil* and *religious* rights granted members of non-Jewish groups residing in Palestine. The Mandate does not mention the word "Palestinians" or the phrase "Palestinian Arabs" even once, as employed time and again in the ICJ's Opinion.

Myth – The ICJ claims that responsibility to bring about "the realization of the inalienable rights of the Palestinian people" also depends on "the Partition Resolution [UN Resolution 181] concerning Palestine."

Fact – It appears that the ICJ was unaware that in November 1947, all Arab States voted en bloc against UN Resolution 181 and kept their promise to defy its implementation by force. At the same time that the ICJ was re-writing history and building a case against the 'Wall' – the Palestinian Authority was rejecting this 'pillar of Palestinian self-

determination' – as stated clearly in the PLO Charter[2] vis-à-vis the Mandate and the Partition Plan:

> **Article 19:** "The partition of Palestine in 1947 and the establishment of the state of Israel are entirely illegal, regardless of the passage of time …"
>
> **Article 20:** "The Balfour Declaration, the Mandate for Palestine, and everything that has been based upon them, are deemed null and void."

In another blunder, the Bench was willing to go to extraordinary lengths, undermining fundamental principles of the United Nations, in denying Israel's rights to battle terrorism. Thus, one encounters the Court's *fallacious interpretation* of Article 51 of the UN Charter, declaring that Israel cannot claim self-defence against Palestinian terrorism because "the attacks against it are [not] imputable to a foreign State."

Ironically, by the same logic, the British judge on the Bench, Rosalyn Higgins (who voted in favor of adopting the Opinion as written), should now advise her Government to refrain from any act of self-defence since the four terror attacks that rocked London's public transportation system on July 7 2005, that left 56 people dead and over 700 injured, were not "imputable to a foreign State," and originated "within a territory over which … [Britain] … exercises control …"

In fact, the International Court of Justice's Advisory Opinion on Israel's security barrier merits the same treatment as another shameful United Nations document – the 1975 General Assembly Resolution 3379 that equated Zionism with racism. Israel's ambassador to the UN, the late Haim Herzog, tore up that insidious document from the General Assembly's podium.

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[2] See Appendix G. The PLO Charter.

"A recommendation's significance will not least depend on the moral authority of the adopting organ.

"Only the maintenance of high and impartial standards of decision-making in the international organ will endow its recommendations with persuasive force for all sectors of the international community.

"The application of politically motivated double standards or the use of general resolutions to champion positions in political quarrels are liable to undermine the credibility of the international organ even in areas of relative agreement."

More than two decades ago, in his volume "Israel and Palestine: Assault on the Law of Nations," jurist Professor Julius Stone quoted a warning issued by Professor Schreuer in 1977 regarding the state of international law, written against the backdrop of a growing tendency within the General Assembly to adopt double standards and the waning credibility of the General Assembly's resolutions as a result. Schreuer's words are particularly relevant today vis-à-vis the International Court of Justice. More about Professor Christoph H. Schreuer see:

http://www.austria.org/oldsite/oct95/quit.htm. (11028)

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1 Testimony Testifying Against Israel

In preparation for its hearing on the issue of Israel's security fence, the ICJ invited a series of anti-Israeli terrorist organizations that openly champion and justify use of force and terrorism as a means of achieving their objectives as "likely to be able to furnish information on the question submitted to the Court."[1]

It is revealing just whom the ICJ believed could *contribute* information under its limited, fact-finding apparatus of written affidavits and oral presentations.

The ICJ heard testimony from the PLO, the Organization of Islamic Conference (OIC), and the Arab League, while refusing to hear any input from the Israeli victims of terrorism.

The ICJ approved requests from the League of Arab States (which is officially in a state of war with Israel, see p. 16 for some of the League Resolutions), and the Organization of the Islamic Conference (OIC) to

[1] "Legal consequences of the construction of a wall in the Occupied Palestinian Territory", July 9 2004, paragraph 6. (10908)

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participate.[2] The ICJ's decision to honor the requests of these two Arab 'international bodies' (i.e., accepting that they have something to contribute to the question at hand) is allowed under Article 66, Clause 3 of the ICJ's Charter. Yet the decision to invite them is in stark contrast with the fact that the ICJ did not consider it fitting and proper to invite the Organization of Casualties of Terror Acts in Israel to present evidence – a step offered under Article 66, Clause 2 of its own Charter, which makes provisions for its own judicial procedures:

> "To … notify any state entitled to appear before the Court or *international organization* considered by the Court … as likely to be able to furnish information on the question" [italics by author].

A request on the part of Israeli terror victims' families to participate in oral hearings was rejected by the ICJ on the eve of oral hearings on the grounds that the families do not represent a country and therefore should not take part in the hearings.[3]

This was doubly ironic, for prior to this the ICJ decided in the Order of its docket, Resolution 2 (December 19 2003) that it is fitting and proper for the ICJ to permit 'Palestine' – which does not represent a country – to "submit to the Court a written statement on the question … taking into account the fact that the General Assembly has granted Palestine a special status of observer and that the latter is co-sponsor of the draft resolution requesting the advisory opinion."[4]

Dr. Pieter H. F. Bekker, a member of the American Society of International Law and former staff lawyer at the ICJ, dryly described the

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[2] "OIC at Hague: Link between suicide attacks, Israeli 'terror'" at: http://www.jafi.org.il/education/actual/conflict/fence/6.html. (11352)

[3] "ICJ rejects terror victim's families participation," *The Jerusalem Post,* February 21 2004 at: http://www.jpost.com/servlet/Satellite?pagename=JPost/JPArticle/Printer&cid=1077351468319. (11353)

[4] Order December 19 2003, at: http://www.mefacts.com/cache/pdf/wallruling_/11354.pdf. (11354)

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ICJ's decision to invite a non-state "a novelty."[5] In a move reflecting a dubious regard for justice, the Court utilizes as an evidentiary source – the PLO, a terror conglomerate, that in 1972 had murdered 11 Israelis at the Munich Olympics[6] and whose UN-sponsored website to this very day features the "Palestinian Charter" calling for the destruction of Israel by armed struggle.[7]

Taking the 'fence issue' to the International Court of Justice was a controversial step from the start. The voting in the General Assembly on the resolution to request an advisory opinion passed the General Assembly, but not with the typical near-unanimous anti-Israel vote. The resolution failed to receive an absolute majority among 191 member states. There were 90 in favor, 8 against and 74 abstentions, including most of Europe.[8] 19 delegations didn't even show up to vote.[9]

According to Article 66 of the "International Court of Justice's Charter," "… any state[s] [are] entitled to appear before the Court." Nevertheless, one is struck by the fact that 23 out of the 26 states who chose to present affidavits are categorized as "Not Free" by the human rights monitoring organization, Freedom House.

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5 Pieter H. F. Bekker, "the UN General Assembly Requests a World Court Advisory Opinion on Israel's Separation Barrier," American Society of International Law, December 2003, at: http://www.asil.org/insights/insigh121.htm. (11355)

6 This and a host of other atrocities, including a 1970 attack on an Israeli elementary school bus that killed 12 children and adults. For details of the Munich massacre, see: http://www.palestinefacts.org/pf_1967to1991_munich.php. (11356)

7 Appendix G "Palestine National Charter 1968." Also see: http://www.pna.gov.ps/Government/gov/plo_Charter.asp. (10366) There is no 'revised text' of the Charter, as promised in 1993.

8 Saul Singer, "Delegitimizing Israel," *National Review* at: http://nationalreview.com/script/printpage.asp?ref=/comment/singer200401230908.asp. (11357)

9 Pieter H. F. Bekker, "the UN General Assembly Requests a World Court Advisory Opinion on Israel's Separation Barrier," American Society of International Law, December 2003, at: http://www.asil.org/insights/insigh121.htm. (11355)

Some states are rated as the worst offenders of human rights for which:

> "Political rights are absent or virtually nonexistent as a result of the extremely oppressive nature of the regime or severe oppression in combination with civil war. States and territories in this group may also be marked by extreme violence or warlord rule that dominates political power in the absence of an authoritative, functioning central government."[10]

The 26 states include: Algeria, Bahrain, Bangladesh, Brunei Darussalam, Comoros, Cuba, Djibouti, Egypt, Indonesia, Jordan, Kuwait, Lebanon, Malaysia, Mauritania, Morocco, Namibia, Oman, Qatar, Saudi Arabia, Senegal, Somalia, South Africa, Sudan, Tunisia, United Arab Emirates, Yemen and 'Palestine' – all of whom submitted scathing 'finger pointing' affidavits regarding Israel's conduct. Nearly one-half of the briefs were from entities that do not even recognize Israel's right to exist or have diplomatic relations with Israel.[11]

What other entities were allowed to present affidavits? Clause 2 of Article 66 of the ICJ's Charter cites that:

> "The Registrar shall also, by means of a special and direct communication, notify any state entitled to appear before the Court or international organization considered by the Court … as likely to be able to furnish information on the question."

It is most incongruous that the ICJ, 'sticking strictly to its mandate' repeats time and again the "inadmissibility of the acquisition of territory by war" (out of context) but sees nothing wrong with accepting testimony from the PLO, Fateh, the Arab League and the Organization of Islamic States, entities that refuse to recognize Israel, oppose compromise, justify support for terrorism, champion the use of violence and defy in words and deeds, 'the inadmissability of use of violence.'

[10] Freedom House, an NGO founded nearly sixty years ago by Eleanor Roosevelt, monitors the degree of freedom accorded citizens of various countries according to various parameters, and classifies countries accordingly. For the full report see: http://www.freedomhouse.org/research/survey2004.htm. (10783)

[11] Cuba, Indonesia, Kuwait, Lebanon, Republic of Korea. Malaysia, Pakistan, Saudi Arabia, Sudan, Syria and Yemen submitted briefs, but have refused to recognize Israel.

Fateh – the main faction of the PLO to which Arafat belonged and was its founding member – displays its constitution, a publicly accessible document, on its website.[12] It calls under Article 12 for the

> "Complete liberation of Palestine, and eradication of Zionist economic, political, military and cultural existence."

The next Fateh Article calls for:

> "Establishing an independent democratic state with complete sovereignty on all Palestinian lands, and Jerusalem as its capital city, and protecting the citizens' legal and equal rights without any racial or religious discrimination."

As for how it will achieve its goals, Fateh's constitution, Article 19, minces no words:

> "Armed struggle is a strategy and not a tactic, and the Palestinian Arab People's armed revolution is a decisive factor in the liberation fight and in uprooting the Zionist existence, and this struggle will not cease unless the Zionist state is demolished and Palestine is completely liberated."

In the PLO's testimony to the ICJ, which appears in paragraph 115 of the opinion, the organization claims that the Barrier

> "… severs the territorial sphere over which the Palestinian people are entitled to exercise their right of self-determination and constitutes a violation of the legal principle prohibiting the acquisition of territory by the use of force."

The ICJ addresses this charge with all seriousness.

It is illuminating to examine a sample of their records of conduct and public policy statements.

The record of the League of Arab States' resolutions since the founding of the Arab League in 1945 is hardly a model for peaceful settlement of disputes in the spirit of the United Nations. For instance, prior to the

[12] See Appendix H. Fateh Online, at: http://www.fateh.net/e_public/constitution.htm#Goals. (10910)

establishment of the Jewish state, the League took the following steps:[13]

- In December 1945, the Arab League launched a boycott of 'Zionist goods' that continues to this day.[14]
- In June 1946, it established the Higher Arab Committee to "coordinate efforts with regard to Palestine," a radical body that led and coordinated attempts to wipe Israel off the map.[15]
- In December 1946, it rejected the first Palestine partition plans, reaffirming "that Palestine is a part of the Arab motherland."[16]
- In October 1947, (prior to the vote on Resolution 181), it reasserted the necessity for military preparations along Arab borders to "defending Palestine."[17]
- In February 1948, it approved "a plan for political, military, and economic measures to be taken in response to the Palestine crisis."[18]

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[13] Listing of the Arab League sessions covering the League sessions between June 4 1945 to November 17 1957 can be found at: http://faculty.winthrop.edu/haynese/mlas/ALSessions.html. (11358)

[14] Session: 2, Cairo, Egypt. Resolution 16 (December 16 1945), "The Boycott of Zionist Goods and Products" (Khalil, 2:161) – plans made to establish a committee to enforce the boycott. (11358)

[15] Session 4, Bludan, Syria, Resolution 82 (June 12 1946), "The Higher Arab Executive Committee" (Khalil, 2:162) – Establish the body to coordinate efforts with regard to Palestine. (11358)

[16] Ibid.

[17] Session: 7, Cairo, Egypt, Resolution 181 (October 9 1947), "Defending Palestine" (Khalil, 2:164-65) – Reassertion of the necessity for military preparations along Arab borders. (11358)

[18] Session: 8, Cairo, Egypt, February 1948, Council approved plan for political, military, and economic measures to be taken in response to the Palestine crisis, including withholding petroleum concessions and other possible sanctions against countries aiding the Zionists. (11358)

- In October 1948, it rejected the UN partition plan for Palestine adopted by the General Assembly in Resolution 181.[19]

On May 15 1948 – as the regular forces of Jordan, Egypt, Syria and Lebanon invaded Israel to 'restore law and order,' the Arab League issued a lengthy document entitled "Declaration on the Invasion of Palestine." In it, the Arab States drew attention to:

> "… the injustice implied in this solution [affecting] the right of the people of Palestine to immediate independence … declared the Arabs' rejection of [Resolution 181]" which the League said "would not be possible to carry it out by peaceful means, and that its forcible imposition would constitute a threat to peace and security in this area" and claimed that the "security and order in Palestine have become disrupted" due to the "aggressive intentions and the imperialistic designs of the Zionists" and "the Governments of the Arab States, as members of the Arab League, a regional organization … view the events taking place in Palestine as a threat to peace and security in the area as a whole. … Therefore, as security in Palestine is a sacred trust in the hands of the Arab States, and in order to put an end to this state of affairs … the Governments of the Arab States have found themselves compelled to intervene in Palestine."[20]

The Secretary-General of the Arab League, Azzam Pasha, was less diplomatic and far more candid. With no patience for polite or veiled language, on the same day Israel declared its independence on May 14 1948, at a Cairo press conference reported the next day in the *New York Times,* Pasha repeated the Arabs' "intervention to restore law and order" revealing:

> "This will be a war of extermination and a momentous massacre which will be spoken of like the Mongolian massacres and the Crusades."

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[19] Session: 9, Cairo, Egypt, October 1948, rejection of partition plan for Palestine. (11358)

[20] For the full text of the Arab League declaration on the invasion of Palestine – 15 May 1948 see Israel Ministry of Foreign Affairs at: http://www.mefacts.com/cache/html/wall-ruling_/11359.htm. (11359)

The League of Arab States continued to oppose peace after the War of Independence:

- In July 15 1948, the UN Security Council adopted Resolution 54 calling on Arab aggression to stop:

  > "Taking into consideration that the Provisional Government of Israel has indicated its acceptance in principle of a prolongation of the truce in Palestine; that the States members of the Arab League have rejected successive appeals of the United Nations Mediator, and of the Security Council in its resolution 53 (1948) of 7 July 1948, for the prolongation of the truce in Palestine; and that there has consequently developed a renewal of hostilities in Palestine."[21]

- In October 1949, the Arab League declared that negotiation with Israel by any Arab state would be in violation of Article 18 of the Arab League.[22]

- In April 1950, it called for severance of relations with any Arab state which engaged in relations or contacts with Israel and prohibited Member states from negotiating unilateral peace with Israel.[23]

- In March 1979, it suspended Egypt's membership in the League (retroactively) from the date of its signing a peace treaty with Israel.[24]

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[21] UN Security Council S/RES/54 (1948), July 15 1948, at: http://domino.un.org/UNISPAL.NSF/0/2e2bcb7cbafd9b70852560c2005b5eec?OpenDocument. (10894)

[22] Session: 11, Resolution 250, October 1949, Cairo, Egypt, Declared that any member State negotiating with Israel would be in violation of Article 18 of the Arab League Pact. (11358)

[23] Session: 12, Resolution 312 (April 13 1950) Called for severance of relations with any Arab State, which engaged in relations or contacts with Israel. (11358)

[24] Session: 70, March 1979, Bagdad, Iraq, Resolution to recommend severance of political and diplomatic relations with Egypt. (11358)

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More recently, in the Beirut Declaration of March 27-28, 2002, adopted at the height of Palestinian suicide attacks, the Arab League declared:

> "We, the kings, presidents, and emirs of the Arab states meeting in the Council of the Arab League Summit in Beirut, capital of Lebanon ... have conducted a thorough assessment of the developments and challenges ... relating to the Arab region and, more specifically, to the occupied Palestinian territory. With great pride, we followed the Palestinian people's intifada and valiant resistance. … We address a greeting of pride and honour to the Palestinian people's steadfastness and valiant intifada against the Israeli occupation and its destructive war machine. We greet with honour and pride the valiant martyrs of the intifada."[25]

This organization, which has systematically opposed and blocked peace efforts for 60 years, and is in a declared state-of-war with Israel, and more recently, proudly and publicly supports the deeds of suicide bombers (*shahids*, or 'martyrs' in Arabic), is now deemed by the International Court of Justice to have something significant to contribute regarding the propriety of Israel's security barrier.

Another 'welcome participant' in the ICJ's proceedings was the Organization of the Islamic Conference. The OIC recently held a conference in Malaysia prior to the issuance of the ICJ opinion, dedicated to refuting the connection between the Muslim world and terrorism. In an editorial in the *Washington Post* ("Death Wish," April 4 2002)[26] the stunned editors of the paper noted the nature of this organization and its agenda:

> "57 assembled states adopted a resolution that specifically rejected the idea that Palestinian 'resistance' to Israel has anything to do with terrorism … In

[25] For excerpts from the text, posted in English translation on the Arab portal al-bab ('Gateway'), see: http://www.al-bab.com/arab/docs/league/communique02.htm. (11360)

[26] Defending Palestinian suicide bombers. Kuala Lumpur, Malaysia, April 3 2002. See: http://www.mefacts.com/cache/html/islam/11369.htm. (11369). See also "Malaysia PM: Arm Islam, Fight Jews" at: http://www.mefacts.com/cache/html/antisemitism/10514.htm (10514) and http://www.mefacts.com/cache/html/icj/11482.htm. (11482)

> effect, the Islamic conference sanctioned not only terrorism but also suicide as legitimate political instruments … It is hard to imagine any other grouping of the world's nations that could reach such a self-destructive and morally repugnant conclusion … Muslim spokesmen protest that terrorism is not easily defined. … And yet it should not be hard to agree that a person who detonates himself in a pizza parlor or a discotheque filled with children, spraying scrap metal and nails in an effort to kill and maim as many of them as possible, has done something evil that can only discredit and damage whatever cause he hopes to advance."

It continued and warned prophetically:

> "That Muslim governments cannot agree on this is shameful evidence of their own moral and political corruption. … The Palestinian national cause will never recover – nor should it – until its leadership is willing to break definitively with the bombers. And Muslim states that support such sickening carnage will risk not just stigma but also their own eventual self-destruction."

Nevertheless, the Bench of the International Court of Justice is convinced that such an organization can contribute to its deliberations.

The ICJ overlooks the existence of Palestinian self-rule[27] and the role of the PA and Arafat in encouraging, financing, directing and even engaging directly in terrorism.[28] It also ignored the solidarity Palestinian society has exhibited toward terrorism.

At the time of the hearings, reputable Palestinian pollster, Dr. Khalil Shikaki of Ramallah, found broad public support for terrorism and the belief that 'terrorism pays off.' In late September 2004 following the ICJ opinion that judges terrorism immaterial, Dr. Shikaki's annual poll found 77 percent of all Palestinians support the double suicide bombing

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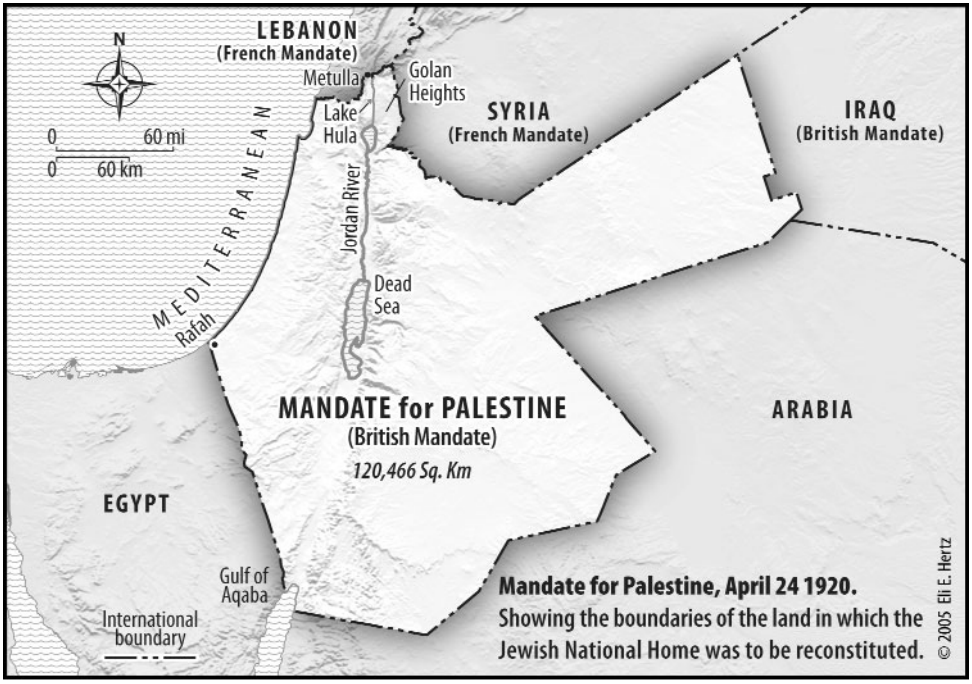
[27] See Main Points of Gaza-Jericho Agreement (Oslo) at: http://www.mfa.gov.il/MFA/Peace%20Process/Guide%20to%20the%20Peace%20Process/Main%20Points%20of%20Gaza-Jericho%20Agremeent. (11371)

[28] See IDF report: "Arafat's and the PA's Involvement in Terrorism" at: http://www.intelligence.org.il/eng/bu/financing/pdfs/03.pdf. (11372)

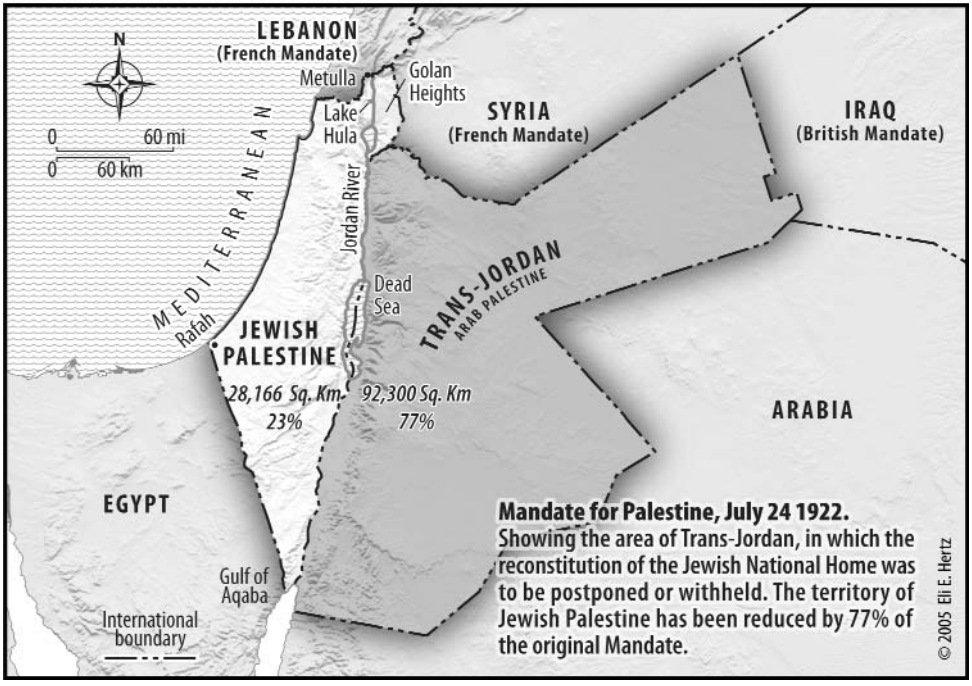
of two public buses in Beersheba (compared to 75 percent for a similar act at the Maxim restaurant in Haifa in October 2003, before the issuing the ICJ's opinion); 75 percent support the shelling of Israeli civilian settlements from Gaza; and 64 percent (up from 59 percent in October 2003) "believe armed confrontations have helped Palestinians achieve their national rights in ways that negotiations could not."[29]

[29] See polls by pollster Dr. Khalil Shukaki, at: www.pcpsr.org.

1920 – Original territory assigned to the Jewish National Home



1922 – Final territory assigned to the Jewish National Home



2 The "Mandate for Palestine"

The ICJ, in noting it would briefly analyze "the status of the territory concerned," and the "*Historical background*", fails to cite the true and relevant content of the historical document the "Mandate for Palestine."[1]

The "Mandate for Palestine" [E.H. The Court calls "Mandate"] laid down the Jewish right to settle anywhere in western Palestine, the area between the Jordan River and the Mediterranean Sea, an entitlement unaltered in international law and valid to this day.

The legally binding Mandate for Palestine, was conferred on April 24 1920, at the San Remo Conference and its terms outlined in the Treaty of Sevres on August 10 1920. The Mandate's terms were finalized on July 24 1922, and became operational in 1923.

In paragraphs 68 and 69 of the opinion, ICJ states it will first "determine whether or not the construction of that wall breaches international law." The opinion quotes hundreds of documents as relevant to the case at hand, but only a few misleading paragraphs are devoted to the "Mandate". Moreover, when it comes to discussing the significance of the 'founding document' regarding the status of the territory in question – situated between the Jordan River and the Mediterranean Sea, including the State of Israel, the West Bank and Gaza – the ICJ devotes a mere 237 murky words to nearly 30 years of history when Great Britain ruled the land it called Palestine.

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[1] See Appendix A. "Mandate for Palestine."

All the more remarkable, the ICJ *thinks* that the "Mandate for Palestine" was the founding document for Arab Palestinian self-determination!

The ICJ's faulty reading of the "Mandate."

> "Palestine was part of the Ottoman Empire. At the end of the First World War, a class 'A' Mandate for Palestine was entrusted to Great Britain by the League of Nations, pursuant to paragraph 4 of Article 22 of the Covenant, which provided that: 'Certain communities, formerly belonging to the Turkish Empire, have reached a stage of development where their existence as independent nations can be provisionally recognized, subject to the rendering of administrative advice and assistance by a Mandatory until such time as they are able to stand alone.'"[2]

The judges choose to speak of "Palestine" in lieu of the actual wording of the historic document that established the Mandate for Palestine – "territory of Palestine."[3] The latter would demonstrate that "Palestine" is a geographic designation, like the Great Plains, and not a polity. In fact, Palestine has never been an independent state belonging to any people, nor did a Palestinian people, distinct from other Arabs, appear during 1,300 years of Muslim hegemony in Palestine under Arab and Ottoman rule. Local Arabs during that rule were actually considered part of and subject to the authority of Greater Syria *(Suriyya al-Kubra).*

The ICJ, throughout its lengthy opinion, chooses to speak incessantly of "Palestinians" and "Palestine" as an *Arab entity*, failing to define these two terms and making no clarification as to the nature of the "Mandate for Palestine."

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[2] ICJ Advisory Opinion, July 9 2004, see: http://middleeastfacts.org/content/ICJ/ICJ-Ruling-HTML.htm. (10908)

[3] See Appendix A. "Mandate for Palestine," first sentence: "Whereas the Principal Allied Powers have agreed, for the purpose of giving effect to the provisions of Article 22 of the Covenant of the League of Nations, to entrust to a Mandatory selected by the said Powers the administration of the *territory of Palestine*, which formerly belonged to the Turkish Empire, within such boundaries as may be fixed by them." [italics by author]

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'Palestine' is a Geographical area, Not a Nationality.

Below is a copy of the document as filed at the British National Archive describing the delineation of the geographical area called Palestine:

PALESTINE

INTRODUCTORY.
POSITION, ETC.

Palestine lies on the western edge of the continent of Asia between Latitude 30° N. and 33° N., Longitude 34° 30' E. and 35° 30' E.

On the North it is bounded by the French Mandated Territories of Syria and Lebanon, on the East by Syria and Trans-Jordan, on the South-west by the Egyptian province of Sinai, on the South-east by the Gulf of Aqaba and on the West by the Mediterranean. The frontier with Syria was laid down by the Anglo-French Convention of the 23rd December, 1920, and its delimitation was ratified in 1923. Briefly stated, the boundaries are as follows:

North. – From Ras en Naqura on the Mediterranean eastwards to a point west of Qadas, thence in a northerly direction to Metulla, thence east to a point west of Banias.

East. – From Banias in a southerly direction east of Lake Hula to Jisr Banat Ya'pub, thence along a line east of the Jordan and the Lake of Tiberias and on to El Hamme station on the Samakh-Deraa railway line, thence along the centre of the river Yarmuq to its confluence with the Jordan, thence along the centres of the Jordan, the Dead Sea and the Wadi Araba to a point on the Gulf of Aqaba two miles west of the town of Aqaba, thence along the shore of the Gulf of Aqaba to Ras Jaba.

South. – From Ras Jaba in a generally north-westerly direction to the junction of the Neki-Aqaba and Gaza Aqaba Roads, thence to a point west-north-west of Ain Maghara and thence to a point on the Mediterranean coast north-west of Rafa.

West. – The Mediterranean Sea.

Like a mantra, Arabs, the UN, its organs and now the International Court of Justice have claimed repeatedly that the Palestinians are a native people – so much so that almost everyone takes it for granted. The problem is that a stateless Palestinian people is a fabrication. The word 'Palestine' is not even Arabic.[4]

In a report by His Majesty's Government in the United Kingdom of Great Britain and Northern Ireland to the Council of the League of

[4] For more on this subject see, Popular Searches: Territories and Palestinians at http://www.MEfacts.com.

Nations on the administration of Palestine and Trans-Jordan for the year 1938, the British made it clear: *Palestine is not a State but is the name of a geographical area.*[5]

The ICJ Bench creates the impression that the League of Nations was speaking of a nascent state or national grouping – the Palestinians who were one of the "communities" mentioned in Article 22 of the League of Nations. *Nothing could be farther from the truth.* The Mandate for Palestine was a Mandate for Jewish self-determination.

It appears that the Court seemingly ignored the content of this most significant legally-binding document regarding the status of the Territories.

Paragraph 1 of Article 22 of the Covenant of the League of Nations reads:

> "To those colonies and territories which as a consequence of the late war have ceased to be under the sovereignty of the States which formerly governed them and which are inhabited by peoples not yet able to stand by themselves under the strenuous conditions of the modern world, there should be applied the principle that the well-being and development of such peoples form a sacred trust of civilization and that securities for the performance of this trust should be embodied in this Covenant."[6]

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[5] Palestine is a word coined by the Romans around 135 CE from the name of a seagoing Aegean people who settled on the coast of Canaan in antiquity – the Philistines. The name was chosen to replace Judea, as a sign that Jewish sovereignty had been eradicated after the Jewish Revolt against Rome. In the course of time, the name Philistia in Latin was further bastardized into Palistina or Palestine. In modern times the name 'Palestine' or 'Palestinian' was applied as an adjective to all inhabitants of the geographical area between the Mediterranean Sea and the Jordan River – Palestinian Jews and Palestinian Arabs alike. In fact, up until the 1960s, most Arabs in Palestine preferred to identify themselves merely as part of the great Arab nation or as part of Arab Syria.

Until recently, no Arab nation or group recognized or claimed the existence of an independent Palestinian nationality or ethnicity. Arabs who happened to live in Palestine denied that they had a unique Palestinian identity. The First Congress of Muslim-Christian Associations (Jerusalem, February 1919) met to select Palestinian Arab representatives for the Paris Peace Conference. They adopted the following resolution: "We consider Palestine as part of Arab Syria, as it has never been separated from it at any time. We are connected with it by national, religious, linguistic, natural, economic and geographical bonds." See Yehoshua Porath, "The Palestinian Arab National Movement: From Riots to Rebellion," Frank Cass and Co., Ltd, London, 1977, vol. 2, pp. 81-82.

[6] See Appendix F. Article 22 of The Covenant of The League of Nations, A/297, April 30 1947.

The Palestinian [British] Royal Commission Report of July 1937 addresses Arab claims that the creation of the Jewish National Home as directed by the Mandate for Palestine violated Article 22 of the Covenant of the League of Nations, arguing that they are the communities mentioned in paragraph 4:

> "As to the claim, argued before us by Arab witnesses, that the Palestine Mandate violates Article 22 of the Covenant because it is not in accordance with paragraph 4 thereof, we would point out *(a)* that the provisional recognition of 'certain communities formerly belonging to the Turkish Empire' as independent nations is permissive; the words are '*can* be provisionally recognised', not '*will*' or '*shall*': *(b)* that the penultimate paragraph of Article 22 prescribes that the degree of authority to be exercised by the Mandatory shall be defined, at need, by the Council of the League: *(c)* that the acceptance by the Allied Powers and the United States of the policy of the Balfour Declaration made it clear from the beginning that Palestine would have to be treated differently from Syria and Iraq, and that this difference of treatment was confirmed by the Supreme Council in the Treaty of Sevres and by the Council of the League in sanctioning the Mandate. [E.H. The "Mandate for Palestine" was conferred on April 24 1920 at the San Remo Conference and its terms were delineated on August 10, 1920 in Article 95 of the Treaty of Sevres. The Mandate's document was finalized on July 24 1922.]
>
> "This particular question is of less practical importance than it might seem to be. For Article 2 of the Mandate requires 'the development of self-governing institutions'; and, read in the light of the general intention of the Mandate System (of which something will be said presently), this requirement implies, in our judgment, the ultimate establishment of independence.
>
> "(3) The field [Territory] in which the Jewish National Home was to be established was understood, at the time of the Balfour Declaration, to be the whole of historic Palestine, and the Zionists were seriously disappointed when Trans-Jordan was cut away from that field [Territory] under Article 25." (E.H. That excluded 77 percent of historic Palestine – the territory east of the Jordan River, what became later Trans-Jordan.)[7]

The "inhabitants" of the territory for whom the Mandate for Palestine was created, who according to the Mandate were "not yet able" to govern themselves and for whom self-determination was a "sacred trust," were not Palestinians, or even Arabs. The Mandate for Palestine was created by the predecessor of the United Nations, the League of Nations, for the *Jewish People*.[8]

[7] Palestine Royal Report, July 1937, Chapter II, p. 38.

[8] See: Appendix A. "Mandate for Palestine."

The second paragraph of the preamble of the Mandate for Palestine therefore reads:

> "Whereas the Principal Allied Powers have also agreed that the Mandatory should be responsible for putting into effect the declaration originally made on November 2nd, 1917, by the Government of His Britannic Majesty, and adopted by the said Powers, in favor of the *establishment in Palestine of a national home for the Jewish people,* it being clearly understood that nothing should be done which might prejudice the civil and religious rights of existing non-Jewish communities in Palestine … *Recognition has thereby been given to the historical connection of the Jewish people with Palestine and to the grounds for reconstituting their national home in that country ...*"[9] [italics by author].

The ICJ Erred in Identifying the "Mandate for Palestine" as a Class "A" Mandate.

The Court also assumed that the "Mandate for Palestine" was a Class "A" mandate,[10] a common, but inaccurate assertion that can be found in many dictionaries and encyclopedias, and is frequently used by the pro-Palestinian media. In paragraph 70 of the opinion, the Court erroneously states that:

> "Palestine was part of the Ottoman Empire. At the end of the First World War, *a class [type] 'A' Mandate for Palestine* was entrusted to Great Britain by the League of Nations, pursuant to paragraph 4 of Article 22 of the Covenant …"[11] [italics by author].

Indeed, Class "A" status was granted to a number of Arab peoples who were ready for independence in the former Ottoman Empire, and only to Arab entities.[12] Palestinian Arabs were not one of these 'Arab peoples.'

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[9] Ibid.

[10] The British Government used the term 'Special Regime.'

[11] ICJ ruling, July 9 2004, see: http://middleeastfacts.org/content/ICJ/ICJ-Ruling-HTML.htm. (10908)

[12] Class "A" mandates assigned to Britain was Iraq, and assigned to France was Syria and Lebanon. Examples of other type of Mandates were the Class "B" mandate assigned to Belgium administrating Ruanda-Urundi, and the Class "C" mandate assigned to South Africa administering South West Africa.

The Palestine Royal Report clarifies this point:

> "(2) The Mandate [for Palestine] is of a *different type* from the Mandate for Syria and the Lebanon and the draft Mandate for Iraq. These latter, which were called for convenience "A" Mandates, accorded with the fourth paragraph of Article 22. Thus the Syrian Mandate provided that the government should be based on an organic law which should take into account the rights, interests and wishes of all the inhabitants, and that measures should be enacted 'to facilitate the progressive development of Syria and the Lebanon as independent States'. The corresponding sentences of the draft Mandate for Iraq were the same. In compliance with them National Legislatures were established in due course on an elective basis. Article 1 of the *Palestine Mandate, on the other hand,* vests 'full powers of legislation and of administration', within the limits of the Mandate, in the Mandatory"[13, 14] [italics by author].

The Palestine Royal Report highlight additional differences:

> "Unquestionably, however, the primary purpose of the Mandate, as expressed in its preamble and its articles, is to promote the establishment of the Jewish National Home.
>
> "(5) Articles 4, 6 and 11 provide for the recognition of a Jewish Agency 'as a public body for the purpose of advising and co-operating with the Administration' on matters affecting Jewish interests. No such body is envisaged for dealing with Arab interests.[15]
>
> "48. But Palestine was *different* from the other ex-Turkish provinces. It was, indeed, *unique* both as the Holy Land of three world-religions and as the old historic homeland of the Jews. The Arabs had lived in it for centuries, but they had long ceased to rule it, and in view of its peculiar character they could not now claim to possess it in the same way as they could claim possession of Syria or Iraq"[16] [italics by author].

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[13] The "Palestine Royal Report", July 1937, Chapter II, p.38.

[14] Claims that Palestinian self-determination was granted under Chapter 22 of the UN Charter and the 'pre-existence' of an Arab governmental structure (of a host of fallacies) can be found in Issa Nakhlah, "Encyclopedia of the Palestinian Problem" at http://www.palestine-encyclopedia.com/EPP/Chapter01.htm. (11452)

[15] Palestine Royal Report, July 1937, Chapter II, p. 39.

[16] Ibid. p. 40.

Identifying the Mandate for Palestine as Class "A" was vital to the ICJ.

There is much to be gained by attributing Class "A" status to the Mandate for Palestine. If 'the inhabitants of Palestine' were ready for independence under a Class "A" mandate, then the Palestinian Arabs that made up the majority of the inhabitants of Palestine in 1922 (589,177 Arabs vs. 83,790 Jews),[17] could then logically claim that they were the intended beneficiaries of the Mandate for Palestine – provided one never reads the actual wording of the document:

1. The "Mandate for Palestine"[18] *never mentions Class "A" status at any time* for Palestinian Arabs.

2. Article 2 clearly speaks of the Mandatory as being

> "responsible for placing the country under such political, administrative and economic conditions as will secure the establishment of the *Jewish national home*" [italics by author].

The Mandate calls for steps to encourage *Jewish immigration and settlement* throughout Palestin e except east of the Jordan River. Historically, therefore, Palestine was an 'anomaly' within the Mandate system, 'in a class of its own' – initially referred by the British as a "special regime."[19]

Political rights were granted to Jews only.

Had the ICJ Bench examined all six pages of the Mandate for Palestine document, it would have noted that several times the Mandate for Palestine clearly differentiates between *political* rights – referring to Jewish self-determination as an emerging polity and *civil* and *religious* rights – referring to guarantees of equal personal freedoms to non-Jewish residents as individuals and within select communities. Not once are

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[17] Citing by the UN. 1922 Census. See at: http://www.unu.edu/unupress/unupbooks/80859e/80859E05.htm. (11373)

[18] See: Appendix A. "Mandate for Palestine."

[19] Palestine Royal Report, July 1937, Chapter II, p. 28, paragraph 29.

Arabs as a people mentioned in the Mandate for Palestine. At no point in the entire document is there any granting of political rights to non-Jewish entities (i.e. Arabs) because political rights to self-determination as a polity for Arabs were guaranteed in three other parallel Class "A" mandates – in Lebanon, Syria and Iraq. Again, the Bench failed to do its history homework. For instance, Article 2 of the Mandate for Palestine states explicitly that the Mandatory should:

> "… be responsible for placing the country under such *political*, administrative and economic conditions as will secure the establishment of the *Jewish national home*, as laid down in the preamble, and the development of self-governing institutions, and also for safeguarding the *civil* and religious *rights* of all the inhabitants of Palestine, irrespective of race and religion" [italics by author].

Eleven times in the Mandate for Palestine the League of Nations speaks specifically of Jews and the Jewish people, calling upon Great Britain to create a nationality law: "to facilitate the acquisition of Palestinian citizenship by Jews who take up their permanent residence in Palestine."

There is not one mention of the word "Palestinians" or the phrase "Palestinian Arabs," as it is exploited today. Alas, the "non-Jewish communities" the Mandate speaks of were extensions (or in today's parlance, 'diaspora communities') of another Arab people for whom a *separate* mandate had been drawn up at the same time – the Syrians that the International Court of Justice ignored in its so-called 'discussion' of the Mandate system.[20]

Consequently, it is not surprising that a local Arab leader, Auni Bey Abdul-Hadi, stated in his testimony in 1937 before the Peel Commission:

> "There is no such country [as Palestine]! Palestine is a term the Zionists invented! There is no Palestine in the Bible. Our country was for centuries, part of Syria."[21]

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[20] For a brief description of the Mandate System, see Q. Wright, *Mandates under the League of Nations* (1930, Repr. 1968) cited on Fact Monster, at: http://www.factmonster.com/ce6/history/A0831495.html.

[21] For this and a host of other quotes from Arab spokespersons on the Syrian identity of local Arabs, see http://www.yahoodi.com/peace/palestinians.html. (11538)

The term 'Palestinian', in its present connotation, had only been invented in the 1960s to paint Jews – who had adopted the term 'Israelis' after the establishment of the State of Israel – as invaders now residing on Arab turf. The ICJ was unaware that written into the terms of the Mandate, Palestinian Jews had been directed to establish a 'Jewish Agency for Palestine' (today, the 'Jewish Agency'), to further Jewish settlements, or that since 1902, there had been an 'Anglo-Palestine Bank', established by the Zionist Movement (today 'Bank Leumi'). Nor did they know that Jews had established a 'Palestine Philharmonic Orchestra' in 1936 (today, the 'Israeli Philharmonic'), and an English-language newspaper called the '*The Palestine Post*' in 1932 (today named the '*The Jerusalem Post*') – along with numerous other Jewish 'Palestinian institutions.'

Consequently, the ICJ incorrectly cites the unfulfilled Mandate for Palestine and the Partition Resolution concerning Palestine, as justification for the Bench's intervention in the case. The ICJ argues that as the judicial arm of the United Nations, the International Court of Justice has jurisdiction in this case because of its responsibility as a UN institution for bringing Palestinian self-determination to fruition! In paragraph 49 of the opinion, the Bench declares:

> "… the Court does not consider that the subject-matter of the General Assembly's request can be regarded as only a bilateral matter between Israel and Palestine …[therefore] construction of the wall must be deemed to be directly of concern to the United Nations. The responsibility of the United Nations in this matter also has its *origin in the Mandate* and the Partition Resolution concerning Palestine.[22] This responsibility has been described by the General Assembly as 'a permanent responsibility towards the question of Palestine until the question is resolved in all its aspects in a satisfactory manner in accordance with international legitimacy' (General Assembly

[22] See paragraphs 70 and 71 of the ICJ ruling, July 9 2004, see: http://middleeastfacts.org/content/ICJ/ICJ-Ruling-HTML.htm. (10908)

> resolution 57/107 of 3 December 2002.) …" the objective being "the realization of the inalienable rights of the Palestinian people" [italics by author].

To the average reader lacking historical knowledge of this conflict, the term 'Mandate for Palestine' sounds like an Arab trusteeship, but this interpretation changes neither history nor legal facts about Israel.

Had the ICJ examined the minutes of the report of the 1947 United Nations Special Committee on Palestine,[23] among the myriad of documents it did 'examine,' the learned judges would have known that the Arabs categorically rejected the Mandate for Palestine. In the July 22, 1947 testimony of the President of the Council of Lebanon, Hamid Frangie, the Lebanese Minister of Foreign Affairs, speaking on behalf of all the Arab countries, declared unequivocally:

> "... there is only one solution for the Palestinian problem, namely cessation of the Mandate [for the Jews]" and both the Balfour Declaration and the Mandate are "null and valueless." All of Palestine, he claimed, "is in fact an integral part of this Arab world, which is organized into sovereign States bound together by the political and economic pact of 22 March 1945"[24] [E.H. the Arab League] – with no mention of an Arab Palestinian state.

Frangie warned of more bloodshed:

> "The Governments of the Arab States will not under any circumstances agree to permit the establishment of Zionism as an autonomous State on Arab territory" and that Arab countries "wish to state that they feel certain that the partition of Palestine and the creation of a Jewish State would result only in *bloodshed* and unrest throughout the entire Middle East"[25] [italics by author].

This is not the only document that would have instructed the judges that the Mandate for Palestine was not for Arab Palestinians. Article 20[26] of the PLO Charter, adopted by the Palestine National Council in July

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[23] See doc. at: http://www.mefacts.com/cache/html/un-documents/11188.htm. (11188)

[24] Ibid.

[25] Ibid.

[26] See Appendix G. Article 20 of the PLO Charter. (10366)

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1968 and never legally revised,[27] and proudly posted on the Palestinian delegation's UN website, states:

> "The Balfour Declaration, the Mandate for Palestine, and everything that has been based upon them, are deemed null and void."[28]

The PLO Charter adds that Jews do not meet the criteria of a nationality and therefore do not deserve statehood at all, clarifying this statement in Article 21 of the Palestinian Charter, that Palestinians,

> "… reject all solutions which are substitutes for the total liberation of Palestine."

It is difficult to ignore yet another instance of historical fantasy, where the ICJ also quotes extensively from Article 13 of the Mandate for Palestine with respect to Jerusalem's Holy Places and access to them as one of the foundations for Palestinian rights allegedly violated by the security barrier. The ICJ states in paragraph 129 of the Opinion:

> "In addition to the general guarantees of freedom of movement under Article 12 of the International Covenant on Civil and Political Rights, account must also be taken of specific guarantees of access to the Christian, Jewish and Islamic Holy Places. The status of the Christian Holy Places in the Ottoman Empire dates far back in time, the latest provisions relating thereto having been incorporated into Article 62 of the Treaty of Berlin of 13 July 1878. The Mandate for Palestine given to the British Government on 24 July 1922 included an Article 13, under which:
>
> "All responsibility in connection with the Holy Places and religious buildings or sites in Palestine, including that of preserving existing rights and of securing free access to the Holy Places, religious buildings and sites and the free exercise of worship, while ensuring the requirements of public order and decorum, is assumed by the Mandatory …" Article 13 further stated: -

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[27] The Palestinians pretend that all anti-Israel clauses were abolished in a three day meeting of the Palestinian National Council (PNC) in Gaza in April 1996. In fact, the Council took only a bureaucratic decision to establish a committee to discuss abolishment of the clauses that call for the destruction of Israel as they had promised to do at the outset of the Oslo Accords, and no further action has been taken by this 'committee' to this day.

[28] See Permanent Missions to the UN, at: http://www.palestine-un.org/plo/pna_three.html. (11361)

> "nothing in this mandate shall be construed as conferring … authority to interfere with the fabric or the management of purely Moslem sacred shrines, the immunities of which are guaranteed."[29]

In fact, the 187 word quote is longer than the ICJ's entire treatment of nearly three decades of British Mandate, which is summed up in one sentence, and is part of the ICJ rewriting of history:

> "In 1947 the United Kingdom announced its intention to complete evacuation of the mandated territory by 1 August 1948, subsequently advancing that date to 15 May 1948."[30]

The Preamble of the Mandate for Palestine as well as the other 28 articles of this legal document, including eight articles of which specifically refer to the *Jewish* nature of the Mandate and discuss where Jews are legally permitted to settle and where they are not, *appear nowhere* in the Court's document.[31]

The origin of the Mandate for Palestine the ICJ overlooked – started in 1920.

The Mandate for Palestine was conferred on April 24 1920, at the San Remo Conference, and the terms of the Mandate were further delineated on August 10 1920, in the Treaty of Sevres.

The Treaty of Sevres, known also as the Peace Treaty, was concluded after World War I at Sevres (France), between the Ottoman Empire (Turkey), on the one hand, and the Principal Allied Powers on the other.

The treaty brought to an end the Ottoman Empire. Turkey renounced its sovereignty over Mesopotamia (Iraq) and Palestine, which became British mandates; and Syria (including Lebanon), which became a French mandate.

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[29] ICJ ruling, July 9 2004, see: http://middleeastfacts.org/content/ICJ/ICJ-Ruling-HTML.htm. (10908)

[30] Ibid. Paragraph 71.

[31] See: Appendix A. Article 2 of the "Mandate for Palestine."

The Treaty of Sevres in Section VII, Articles 94 and 95,[32] states clearly in each case, who are the inhabitant referred to in paragraph 4 of Article 22 of the Covenant of the League of Nations.

Article 94 of the Treaty of Sevres distinctly indicates that Paragraph 4 of Article 22 of the Covenant of the League of Nations does apply to the Arab inhabitants living within the areas covered by the Mandates for Syria and Mesopotamia, created at the same time as the Mandate for Palestine. The Article reads:

> "The High Contracting Parties agree that Syria and Mesopotamia shall, in accordance with the fourth paragraph of Article 22.
>
> Part I (Covenant of the League of Nations), be provisionally recognised as independent States subject to the rendering of administrative advice and assistance by a Mandatory until such time as they are able to stand alone …"

Article 95 of the Treaty of Sevres however makes it clear that paragraph 4 of Article 22 of the Covenant of the League of Nations was not to be applied to the Arab inhabitants living within the area to be delineated by the Mandate for Palestine, but only for the Jews. The Article reads:

> "The High Contracting Parties agree to entrust, by application of the provisions of Article 22, the administration of Palestine, within such boundaries as may be determined by the Principal Allied Powers, to a Mandatory to be selected by the said Powers. The Mandatory will be responsible for putting into effect the declaration originally made on November 2, 1917, by the British Government, and adopted by the other Allied Powers, in favour of the establishment in Palestine of a national home for the Jewish people, it being clearly understood that nothing shall be done which may prejudice the civil and religious rights of existing non-Jewish communities in Palestine, or the rights and political status enjoyed by Jews in any other country ..."

Historically, therefore, Palestine was an 'anomaly' within the Mandate system, 'in a class of its own' – initially referred to by the British Government as a "special regime."

[32] See Appendix F. Article 22 of the Covenant of the League of Nations.

Articles 94 and 95 of the Treaty of Sevres, which the ICJ never discussed, completely undermines the ICJ's argument that the Mandate for Palestine was a Class "A" Mandate. This erroneous claim, renders the Court's subsequent assertions baseless.

The ICJ attempts to overcome historical facts.

In paragraph 162 of the Advisory Opinion, the Court states:

> "Since 1947, the year when General Assembly resolution 181 (II) was adopted and the *Mandate for Palestine was terminated,* there has been a succession of armed conflicts, acts of indiscriminate violence and repressive measures on the former mandated territory" [italics by author].

The Court attempts to 'overcome' historical legal facts by making the reader believe that adoption of Resolution 181 by the General Assembly in 1947 has present day legal standing.[33]

The Court also seems to be confused when it states in paragraph 162 of the opinion that "the Mandate for Palestine was terminated" – with no substantiation [E.H. Unless the Court has mixed up the termination of the 'British Mandate' over the territory of Palestine, with the "Mandate for Palestine" document] as to how this could take place, since the Mandates of the League of Nations have a special status in international law and are considered to be 'sacred trusts.' A trust – as in Article 80 of the UN Charter – does not end because the trustee fades away. The Mandate for Palestine, an international accord that was never amended, survived the British withdrawal in 1948, and is a binding legal instrument, valid to this day (See Chapter 9: "Territories – Legality of Jewish Settlement").

The Court affirmation of the present validity of the Mandate for Palestine is evident in paragraph 49 of the Opinion:

> "... It is the Court's view that the construction of the wall must be deemed to be directly of concern to the United Nations. The responsibility of the United Nations in this matter also has its origin in the Mandate [for Palestine] ..."

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[33] See Chapter 4, Resolution 181, The "Partition Plan".

Addressing the Arab claim that Palestine was part of the territories promised to the Arabs in 1915 by Sir Henry McMahon, the British Government stated:

> "We think it sufficient for the purposes of this Report to state that the British Government have *never accepted the Arab case.* When it was first formally presented by the Arab Delegation in London in 1922, the Secretary of State for the Colonies (Mr. Churchill) replied as follows:
>
> "That letter [Sir H. McMahon's letter of the 24 October 1915] is quoted as conveying the promise to the Sherif of Mecca to recognize and support the independence of the Arabs within the territories proposed by him. But this promise was given subject to a reservation made in the same letter, which excluded from its scope, among other territories, the portions of Syria lying to the west of the district of Damascus. This reservation has always been regarded by His Majesty's Government as covering the vilayet of Beirut and the independent Sanjak of Jerusalem. *The whole of Palestine west of the Jordan was thus excluded from Sir H. McMahon's pledge.*
>
> "It was in the highest degree unfortunate that, in the exigencies of war, the British Government was unable to make their intention clear to the Sherif. *Palestine*, it will have been noticed, *was not expressly mentioned* in Sir Henry McMahon's letter of the 24th October, 1915. Nor was any later reference made to it. In the further correspondence between Sir Henry McMahon and the Sherif the only areas relevant to the present discussion which were mentioned were the Vilayets of Aleppo and Beirut. The Sherif asserted that these Vilayets were purely Arab; and, when Sir Henry McMahon pointed out that French interests were involved, he replied that, while he did not recede from his full claims in the north, he did not wish to injure the alliance between Britain and France and would not ask 'for what we now leave to France in Beirut and its coasts' till after the War. There was no more bargaining over boundaries. It only remained for the British Government to supply the Sherif with the monthly subsidy in gold and the rifles, ammunition and foodstuffs he required for launching and sustaining the revolt"[34] [italics by author].

In recent decades, Palestinians have been quite successful in co-opting for themselves the term 'Palestinian'. It appears that the authors of the opinion were totally unaware of the fact that "Palestinian" was once used as a 'Jewish' term, a phenomenon discussed on page 32 of this critique.

[34] The "Palestine Royal Report," July 1937, Chapter II, p. 20.

3 Jerusalem and the Holy Places

The International Court of Justice erroneously assumes that 'East Jerusalem' is Occupied Palestinian territory. The Opinion ignores the fact that UN Resolution 181 which *recommended* turning Jerusalem and its environs into an international city for a limited "period of 10 years" was never consummated; in 1947 all Arab States voted as a bloc against it and kept their promise to defy its implementation by force.

In their 'concern' for freedom of movement, the ICJ completely ignores the fact that since September 2000, Palestinians turned the City of Peace into their primary target for suicide bombers, making a barrier to impede movement of terrorists into the heart of the city an imperative.

In 1968 – soon after Israel took control of East Jerusalem in the Six Day War – Professor, Judge Sir Elihu Lauterpacht, a renowned expert in International Law warned against confusing the issue of the Holy Places and the issue of Jerusalem:[1]

> "Jerusalem, it seems, is at the physical center of the Arab-Israeli conflict. In fact, two distinct issues exist: the issue of Jerusalem and the issue of the Holy Places.

[1] Professor, Judge Sir Elihu Lauterpacht, "Jerusalem and the Holy Places," Pamphlet No. 19 (London, Anglo-Israel Association, 1968). Professor Elihu Lauterpacht, is a highly experienced academic and practitioner in the field of public international law. He has been active as an international litigator, advisor and arbitrator. Among the countries for which he has appeared in land and maritime boundary cases are Bahrain, Chile, El Salvador, Israel, Malta and Namibia. He is an ad hoc Judge of the International Court of Justice, and has been an arbitrator in a number of cases in the International Centre for the Settlement of Investment Disputes and in various other international cases. He is an honorary Professor of the University of Cambridge where he taught for thirty five years, and is the founder and first Director of the Research Centre for International Law.

> Not only are the two problems separate; they are also quite distinct in nature from one another. So far as the Holy Places are concerned, the question is for the most part one of assuring respect for the existing interests of the three religions and of providing the necessary guarantees of freedom of access, worship, and religious administration. Questions of this nature are only marginally an issue between Israel and her neighbors and their solution should not complicate the peace negotiations. As far as the City of Jerusalem itself is concerned, the question is one of establishing an effective administration of the City which can protect the rights of the various elements of its permanent population – Christian, Arab and Jewish – and ensure the governmental stability and physical security which are essential requirements for the city of the Holy Places."

The ICJ Fixation – Internationalization of Jerusalem.

> "Nothing was said in the Mandate about the internationalization of Jerusalem. Indeed Jerusalem as such is not mentioned, – though the Holy Places are. And this in itself is a fact of relevance now. For it shows that in 1922 there was no inclination to identify the question of the Holy Places with that of the internationalization of Jerusalem."[2]

Professor Julius Stone notes that Resolution 181 that was rejected by all Arab states, "lacked binding force" from the outset, since it required acceptance by all parties concerned:

> "While the state of Israel did for her part express willingness to accept it, the other states concerned both rejected it and took up arms unlawfully against it."[3]

Sir Lauterpacht elaborated in 1968 about the new conditions that had arisen since 1948 with regard to the original thoughts of the internationalization of Jerusalem:

> – "The Arab States rejected the Partition Plan and the proposal for the internationalization of Jerusalem.

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[2] Ibid.

[3] Professor Julius Stone (1907-1985), "Israel and Palestine, Assault on the Law of Nations" *The Johns Hopkins University Press,* 1981, p. 127. The late Professor Julius Stone was recognized as one of the twentieth century's leading authorities on the Law of Nations. His work represents a detailed analysis of the central principles of international law governing the issues raised by the Arab-Israel conflict. He was one of a few scholars to gain outstanding recognition in more than one field. Professor Stone was one of the world's best-known authorities in both Jurisprudence and International Law.

– "The Arab States physically opposed the implementation of the General Assembly Resolution. They sought by force of arms to expel the Jewish inhabitants of Jerusalem and to achieve sole occupation of the City.

– "In the event, Jordan obtained control only of the Eastern part of the City, including the Walled City.

– "While Jordan permitted reasonably free access to Christian Holy Places, it denied the Jews any access to the Jewish Holy Places. This was a fundamental departure from the tradition of freedom of religious worship in the Holy Land, which had evolved over centuries. It was also a clear violation of the undertaking given by Jordan in the Armistice Agreement concluded with Israel on 3rd April, 1949. Article VIII of this Agreement called for the establishment of a Special Committee of Israeli and Jordanian representatives to formulate agreed plans on certain matters which, in any case, shall include the following, on which agreement in principle already exists ... free access to the Holy Places and cultural institutions and use of the Cemetery on the Mount of Olives.

– "The U.N. displayed no concern over the discrimination thus practiced against persons of the Jewish faith.

– "The U.N. accepted as tolerable the unsupervised control of the Old City of Jerusalem by Jordanian forces - notwithstanding the fact that the presence of Jordanian forces west of the Jordan River was entirely lacking in any legal justification.

– "During the period 1948-1952 the General Assembly gradually came to accept that the plan for the territorial internationalization of Jerusalem had been quite overtaken by events. From 1952 to the present time [1968] virtually nothing more has been heard of the idea in the General Assembly.

"On 5th June, 1967, Jordan deliberately overthrew the Armistice Agreement by attacking the Israeli-held part of Jerusalem. There was no question of this Jordanian action being a reaction to any Israeli attack. It took place notwithstanding explicit Israeli assurances, conveyed to King Hussein through the U.N. Commander, that if Jordan did not attack Israel, Israel would not attack Jordan. Although the charge of aggression is freely made against Israel in relation to the Six-Day War the fact remains that the two attempts made in the General Assembly in June-July 1967 to secure the condemnation of Israel as an aggressor failed. A clear and striking majority of

> the members of the U.N. voted against the proposition that Israel was an aggressor."[4]

Today, more than 55 years later, Israel has reunited Jerusalem and provided unrestricted freedom of religion, with access to the Holy Places in the unified City of Peace assured.

Significant events appear to have escaped the ICJ, which mentioned Jerusalem 54 times in its opinion:

> "Moslems have enjoyed, under Israeli control, the very freedom which Jews were denied during Jordanian occupation."[5]

The UN General Assembly and the Security Council have limited influence on the future of Jerusalem.

Sir Lauterpacht explains:

> "(i) The role of the U.N. in relation to the future of Jerusalem and the Holy Places is limited. In particular, the General Assembly has no power of disposition over Jerusalem and no right to lay down regulations for the Holy Places. The Security Council, of course, retains its powers under Chapter VII of the Charter in relation to threats to the peace, breaches of the peace and acts of aggression, but these powers do not extend to the adoption of any general position regarding the future of Jerusalem and the Holy Places.
>
> "(ii) Israel's governmental measures in relation to Jerusalem – both New and Old – are lawful and valid."

Originally, internationalization of Jerusalem was part of a much broader proposal that the Arab states rejected (Resolution 181), both at the UN and 'on the ground' – Arab's rejection by armed invasion of Palestine by the forces of Egypt, Transjordan, Syria, Lebanon, Iraq, and contingents from Saudi Arabia and Yemen … aimed at destroying Israel.

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4 Professor, Judge Sir Elihu Lauterpacht, "Jerusalem and the Holy Places," Pamphlet No. 19 (London, Anglo-Israel Association, 1968).

5 Ibid.

The outcome of 'consistent' Arab aggression was best described by Judge Stephen Schwebel:

> "… as between Israel, acting defensively in 1948 and 1967, on the one hand, and her Arab neighbors, acting aggressively in 1948 and 1967, on the other, Israel has better title in the territory of what was Palestine, including *the whole of Jerusalem* …"[6] [italics by author]

The Myth of 'Two Jerusalems,' an Arab 'East Jerusalem' and a Jewish 'West Jerusalem.'

Jerusalem was *never* an Arab city; Jews have held a majority in Jerusalem since 1870,[7] and 'east-west' is a geographic, not a political designation. It is no different than claiming the Eastern Shore of Maryland in the U.S. should be a separate political entity from the rest of that state.

Although uniting the city transformed *all* of Jerusalem into the largest city in Israel and a bustling metropolis, even moderate Palestinian leaders reject the idea of a united city. Their minimal demand for 'just East Jerusalem' really means the Jewish holy sites (including the Jewish Quarter and the Western Wall), which Arabs have historically failed to protect, and transfer to Arabs of neighborhoods that house a significant percentage of Jerusalem's present-day Jewish population. Most of that city is built on rock-strewn empty land around the city that was in the

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[6] Professor, Judge Stephen M. Schwebel, *What Weight to Conquest?* in "Justice in International Law", Cambridge University Press, 1994. Judge Schwebel has served on the International Court since 15 January 1981. He was Vice-President of the Court from 1994 to 1997 and has been President from 1997 to 2000. A former Deputy Legal Adviser of the United States Department of State and Burling Professor of International Law at the School of Advanced International Studies of The Johns Hopkins University (Washington). Judge Schwebel is the author of several books and over 150 articles on international law. He is Honorary President of the American Society of International Law.

Opinions quoted in this critiques are not derived from his position as a judge of the ICJ.

[7] For these and more statistics, see "Jerusalem: The City's Development from a Historical Viewpoint," at: http://www.mfa.gov.il/MFA/MFAArchive/1990_1999/1998/7/Jerusalem-%20The%20City-s%20Development%20from%20a%20Historica. (10748)

public domain for the past 36 years. With an overall population of 704,000 (June 2005), separating East Jerusalem and West Jerusalem is as viable and acceptable as the notion of splitting Berlin into two cities again, or separating East Harlem from the rest of Manhattan within New York City.

Jerusalem's Jewish Link: Historic, Religious, Political.

Jerusalem, wrote historian Martin Gilbert,[8] is not a "'mere' capital: It holds the central spiritual and physical place in the history of the Jews as a people."[9]

For more than 3,000 years, the Jewish people have looked to Jerusalem as their spiritual, political, and historical capital, even when they did not physically rule over the city. Throughout its long history, Jerusalem has served, and still serves, as the political capital of only one nation – the one belonging to the Jews. Its prominence in Jewish history began in 1004 BCE, when King David declared the city the capital of the first Jewish kingdom.[10] David's successor and son, King Solomon, built the First Temple there, according to the Bible, as a holy place to worship the Almighty. History, however, would not be kind to the Jewish people. Four hundred ten years after King Solomon completed construction of Jerusalem, the Babylonians (early ancestors to today's Iraqis) seized and destroyed the city, forcing the Jews into exile. Fifty years later, the Jews, or Israelites as they were called, were permitted to return after Persia (present-day Iran) conquered Babylon. The Jews' first order of business was to reclaim Jerusalem as their capital and rebuild the Holy Temple, recorded in history as the Second Temple.

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8 Martin Gilbert is an Honorary Fellow of Merton College Oxford and the biographer of Winston Churchill. He is the author of the "Jerusalem: Illustrated History Atlas" (Vallentine Mitchell) and "Jerusalem: Rebirth of the City" (Viking-Penguin).

9 Martin Gilbert, "Jerusalem: A Tale of One City," *The New Republic,* Nov. 14 1994. See: http://web.idirect.com/~cic/jerusalem/martinGilbertArticle.htm. (11362)

10 Ibid.

Jerusalem was more than the Jewish kingdom's political capital. It was a spiritual beacon. During the First and Second Temple periods, Jews throughout the kingdom would travel to Jerusalem three times yearly for the pilgrimages of the Jewish holy days of Sukkot, Passover, and Shavuot, until the Roman Empire destroyed the Second Temple in 70 CE and ended Jewish sovereignty over Jerusalem for the next 1,900 years. Despite that fate, Jews never relinquished their bond to Jerusalem or, for that matter, to *Eretz Yisrael*, the Land of Israel.

No matter where Jews lived throughout the world for those two millennia, their thoughts and prayers were directed toward Jerusalem. Even today, whether in Israel, the United States or anywhere else, Jewish ritual practice, holiday celebration and lifecycle events include recognition of Jerusalem as a core element of the Jewish experience. Consider that:

- Jews in prayer always turn toward Jerusalem.
- Arks (the sacred chests) that hold Torah scrolls in synagogues throughout the world face Jerusalem.
- Jews end Passover Seders each year with the words: "Next year in Jerusalem"; the same words are pronounced at the end of Yom Kippur, the most solemn day of the Jewish year.
- A three-week moratorium on weddings in the summer recalls the breaching of the walls of Jerusalem by the Babylonian army in 586 BCE. That period culminates in a special day of mourning – Tisha B'Av (the 9th day of the Hebrew month Av) – commemorating the destruction of both the First and Second Temples.
- Jewish wedding ceremonies – a joyous occasion, that is marked by sorrow over the loss of Jerusalem. The groom recites a biblical verse from the Babylonian Exile: "If I forget thee, O Jerusalem, let my right hand forget her cunning," and breaks a glass in commemoration of the destruction of the Temples.

Even 'body language', often said to tell volumes about a person, reflects the importance of Jerusalem to Jews as a people and, arguably, the lower priority the city holds for Muslims:

- When Jews pray they *face Jerusalem*; in Jerusalem they pray *facing the Temple Mount.*
- When Muslims pray, they *face Mecca*; in Jerusalem they pray with their *backs to the city.*
- Even at burial, a Muslim face, is turned toward Mecca.

Finally, consider the number of times 'Jerusalem' is mentioned in the two religions' holy books:

- The Old Testament mentions 'Jerusalem' 349 times. Zion, another name for 'Jerusalem,' is mentioned 108 times.[11]
- The Quran never mentions Jerusalem – not even once.

Even when others controlled Jerusalem, Jews have maintained a physical presence in the city, despite being persecuted and impoverished. Before the advent of modern Zionism in the 1880s, Jews were moved by a form of religious Zionism to live in the Holy Land, settling particularly in four holy cities: Safed, Tiberias, Hebron, and most importantly – Jerusalem. Consequently, Jews constituted a majority of the city's population for generations. In 1898, "In this City of the Jews, where the Jewish population outnumber[ed]s all others three to one …" Jews constituted 75 percent[12] of the Old City population in what Secretary-General Kofi Annan calls 'East Jerusalem.' In 1914, when the Ottoman

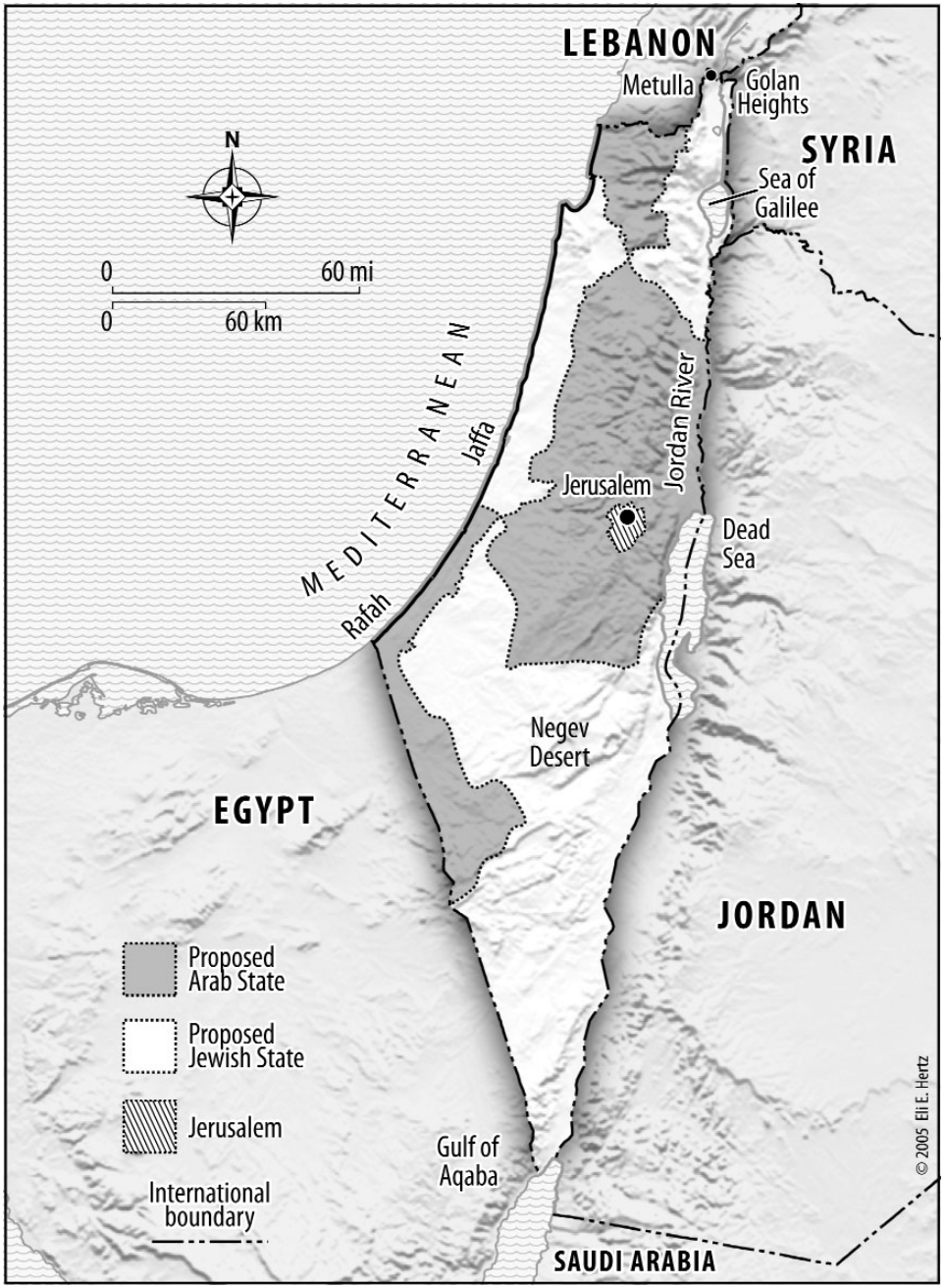
[11] See Ken Spiro, "Jerusalem: Jewish and Moslem Claims to the Holy City," at http://www.aish.com/Israel/articles/ _Jewish_and_Moslem_Claims_to_the_Holy_City.asp. (11341)

[12] "The eighty thousand Jews in Palestine, fully one-half are living within the walls, or in the twenty-three colonies just outside the walls, of Jerusalem. This number – forty thousand Jews in Jerusalem – is not an estimate carelessly made. …" Edwin S. Wallace, Former U.S. Consul "The Jews in Jerusalem" *Cosmopolitan* magazine (1898; original pages of article are in possession of the author).

Turks ruled the city, 45,000 Jews made up a majority of the 65,000 residents. And at the time of Israeli statehood in 1948, 100,000 Jews lived in the city, compared to only 65,000 Arabs.[13] Prior to unification, Jordanian-controlled 'East Jerusalem' was a mere 6 square kilometers, compared to 38 square kilometers on the 'Jewish side.' Arab claims to Jerusalem, a Jewish city by all definitions, reflect the "what's-mine-is-mine, what's-yours-is-mine."

[13] "JERUSALEM – Whose City?" at http://christianactionforisrael.org/whosecity.html. (10744)

Recommended Partition Plan, November 29, 1947



4 Resolution 181 – the "Partition Plan"

The International Court of Justice insists that as a UN institution it must take the case of the security fence, based on two major documents: The "Mandate for Palestine" and the November 1947 UN General Assembly Resolution 181[1] [The "Partition Plan"], a non-binding *recommendation* that was never legally consummated and one that all Arabs rejected by use of force.[2]

Had the recommendations of UN Resolution 181 been accepted and implemented by both parties, it would have been the foundation for the creation in Palestine, of an Arab state and a Jewish state, and as a result would cause the termination of the Mandate for Palestine.

The Court's careless 'legal review' of the status of the Territories, reaches its apex in the way the ICJ relates to Resolution 181. The Court ignores Arab total rejectionism of the "Partition Plan" and views the *recommendation* of Resolution 181 as if it was a valid Security Council *directive*.

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[1] UN General Assembly Resolution 181 (II). Future government of Palestine. November 29 1947. See at: http://www.mefacts.com/cache/html/un-resolutions/10063.htm. (10063)

[2] "*Appeals* to all Governments and all peoples to refrain from taking action which might hamper or delay the carrying out of these *recommendations* [to partition] ," UN Resolution 181, A, (d) [italics by author].

The ICJ cites Resolution 181 as one of the *legal pillars* supporting the right of Palestinian Arabs to self-determination alongside the "Mandate for Palestine."

It appears that the ICJ was unaware of the fact that in November 1947, all Arab States voted as a bloc against Resolution 181 and kept their promise to defy its implementation by force.

Aware of Arab past aggression, Resolution 181, in paragraph C, calls on the Security Council to:

> "… determine as a threat to the peace, breach of the peace or *act of aggression,* in accordance with Article 39 of the Charter, any attempt to *alter by force* the settlement envisaged by this resolution" [italics by author].

The ones who sought to alter by force the settlement envisioned in Resolution 181 were the Arabs who threatened bloodshed if the UN were to adopt the Resolution:

> "The Government of Palestine [E.H., that is, the British mandate government] fear that strife in Palestine will be greatly intensified when the Mandate is terminated, and that the international status of the United Nations Commission will mean little or nothing to the Arabs in Palestine, to whom *the killing of Jews now transcends all other considerations.* Thus, the Commission will be faced with the problem of how to avert certain bloodshed on a very much wider scale than prevails at present. … The Arabs have made it quite clear and have told the Palestine government that they do not propose to co-operate or to assist the Commission, and that, far from it, they *propose to attack and impede* its work in every possible way. We have no reason to suppose that they do not mean what they say"[3] [italics by author].

Arabs' intentions and deeds did not fare better after Resolution 181 was adopted:

> "Taking into consideration that the Provisional Government of Israel has indicated its acceptance in principle of a prolongation of the truce in

[3] United Nations Palestine Commission, First Monthly Progress Report to the Security Council. A/AC.21/7, 29 January 1948. See: http://www.mefacts.com/cache/html/un-resolutions/10923.htm. (10923)

> Palestine; that the States members of the Arab League have rejected successive appeals of the United Nations Mediator, and of the Security Council in its resolution 53 (1948) of 7 July 1948, for the prolongation of the truce in Palestine; and that there has consequently developed a renewal of hostilities in Palestine."[4]

Resolution 181 reads:

> "Having met in special session at the request of the mandatory Power to constitute and instruct a Special Committee to prepare for the consideration of the question of the future Government of Palestine. … and to prepare proposals for the solution of the problem, and Having received and examined the report of the Special Committee (document A/364). … *Recommends* to the United Kingdom, as the mandatory Power for Palestine, and to all other Members of the United Nations the adoption and implementation, with regard to the future Government of Palestine, of the Plan of Partition with Economic Union set out below …" [italics by author].

The ICJ in its preamble states:

> "Recalling relevant General Assembly resolutions, including resolution 181 (II) of 29 November 1947, which partitioned mandated Palestine into two States, one Arab and one Jewish, …"

In fact, Resolution 181 – was a *non-binding* resolution that only *recommended* partition. It *never* "partitioned" or "mandated" *anything* as the ICJ tries to inject.

The ICJ continues the discussion on the Partition Plan in paragraph 71 of the opinion:

> "In 1947 the United Kingdom announced its intention to complete evacuation of the mandated territory by 1 August 1948, subsequently advancing that date to 15 May 1948. In the meantime, the General Assembly had on 29 November 1947 adopted resolution 181 (II) on the future government of Palestine, which 'Recommends to the United Kingdom … and to all other Members of the United Nations the adoption and implementation … of the Plan of Partition' of the territory, as set forth in the

[4] Security Council Resolution S/RES/ 54 (1948) at http://www.mefacts.com/cache/html/un-resolutions/10894.htm. (10894)

> resolution, between two independent States, one Arab, the other Jewish, as well as the creation of a special international régime for the City of Jerusalem. The Arab population of Palestine and the Arab States rejected this plan, contending that it was unbalanced; on 14 May 1948, Israel proclaimed its independence on the strength of the General Assembly resolution; armed conflict then broke out between Israel and a number of Arab States and the Plan of Partition was not implemented."

The 1947 Partition Plan was the last of a series of recommendations that had been drawn up over the years by the Mandator and by international commissions, plans designed to reach an historic compromise between Arabs and Jews in western Palestine. The first was in 1922 when Great Britain obtained the League of Nations' approval under Article 25 of the Mandate for Palestine to cut away the territory east of the Jordan River; Trans-Jordan, today's Jordan. This territory represented 77 percent of the historical area of Palestine that was severed for the benefit of the Arabs of Palestine. But this did not satisfy the Arabts that wanted the entire country.

Every scheme since 1922 has been rejected by the Arab side, including decidedly pro-Arab recommendations. This was not because the suggestions were "unbalanced," as the ICJ *has been told* in Arab affidavits and stated in paragraph 71 of the Court opinion, but because these plans recognized the Jews as a nation and gave the Jewish citizens of Mandate Palestine political dominance.

The ICJ's use of the term 'unbalanced' in describing the reason for Arab rejectionism of Resolution 181 hardly fits reality. 77 percent of the landmass of the original Mandate for the Jews was *excised* in 1922 to create a fourth Arab state – Transjordan (today Jordan).

David Lloyd George, then the British Prime Minister described the recommendation in resolution 181 rather differently than the ICJ describes. In his words:

> "… the Balfour Declaration implied that the whole of Palestine, including Transjordan, should ultimately become a Jewish state. Transjordan had, nevertheless, been severed from Palestine in 1922 and had subsequently been

> set up as an Arab kingdom. Now a second Arab state was to be carved out of the remainder of Palestine, with the result that the Jewish National Home would represent less than one eighth of the territory originally set aside for it. Such a sacrifice should not be asked of the Jewish people."[5]

Referring to the Arab States established as independent countries since the First World War, he said:

> "17,000,000 Arabs now occupied an area of 1,290,000 square miles, including all the principal Arab and Moslem centres, while Palestine, after the loss of Transjordan, was only 10,000 square miles; yet the majority plan proposed to reduce it by one half. UNSCOP proposed to eliminate Western Galilee from the Jewish State; that was *an injustice and a grievous* handicap to the development of the *Jewish State*"[6] [italics by author].

The ICJ assumes that Israel's independence is a result of a partial implementation of the Partition Plan.

The ICJ Bench states in paragraph 71 of its opinion that:

> "… on 14 May 1948, Israel proclaimed its independence on the strength of the General Assembly resolution."

Resolution 181 recognized the Jewish right to statehood, but its validity as a potentially legal and binding document was never consummated. Like the schemes that preceded it, Resolution 181's validity hinged on acceptance by *both parties* of the General Assembly's recommendation.

Sir Lauterpacht, a renowned expert on international law and editor of one of the 'bibles' of international law, *Oppenheim's International Law,* clarified that from a legal standpoint: The 1947 UN Partition Resolution had no legislative character to vest territorial rights in either Jews or Arabs. In a monograph relating to one of the most complex

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[5] Yearbook of the United Nations 1947-48. 1949.I.13. December 31 1948. See at: http://www.mefacts.com/cache/html/un-documents/11270.htm. (11270)

[6] Ibid.

aspects of the territorial issue, the status of Jerusalem,[7] Lauterpacht wrote that any binding force the Partition Plan would have had to arise from the principle *pacta sunt servanda*,[8] that is, from agreement of the parties at variance to the proposed plan. In the case of Israel, Lauterpacht explains:

> "… the coming into existence of Israel does not depend legally upon the Resolution. The right of a State to exist flows from its factual existence – especially when that existence is prolonged, shows every sign of continuance and is recognised by the generality of nations."

Reviewing Lauterpacht's arguments, Professor Stone added that Israel's "legitimacy" or the "legal foundation" for its birth does not reside with the United Nations' Partition Plan, which as a consequence of Arab actions became a dead issue. Professor Stone concluded:

> "… The State of Israel is thus not legally derived from the partition plan, but rests (as do most other states in the world) on assertion of independence by its people and government, on the vindication of that independence by arms against assault by other states, and on the establishment of orderly government within territory under its stable control."[9]

Such attempts by Palestinians (and now by the ICJ) to 'roll back the clock' and resuscitate Resolution 181 more than five decades after they rejected it 'as if nothing had happened,' are totally inadmissible. Both Palestinians and their Arab brethren in neighboring countries rendered the plan null and void by their own subsequent aggressive actions.

Arabs absolute rejectionism of Resolution 181.

Following passage of Resolution 181 by the General Assembly, Arab countries took the dais to reiterate their absolute rejection of the recommendation and intention to render implementation of Resolution

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7 Professor, Judge Sir Elihu Lauterpacht, "Jerusalem and the Holy Places," Pamphlet No. 19 (London, Anglo-Israel Association, 1968).

8 "Treaties must be honored," the first principle of international law.

9 Professor Julius Stone, "Israel and Palestine, Assault on the Law of Nations" *The Johns Hopkins University Press,* 1981, p. 127.

181 a moot question by the use of force. These examples from the transcript of the General Assembly plenary meeting on November 29 1947 speak for themselves:

> "Mr. JAMALI (Iraq): … We believe that the decision which we have now taken … undermines peace, justice and democracy. In the name of my Government, I wish to state that it feels that this decision is antidemocratic, illegal, impractical and contrary to the Charter … Therefore, in the name of my Government, I wish to put on record that Iraq does not recognize the validity of this decision, will reserve freedom of action towards its implementation, and holds those who were influential in passing it against the free conscience of mankind responsible for the consequences."
>
> "Amir. ARSLAN (Syria): … Gentlemen, the Charter is dead. But it did not die a natural death; it was murdered, and you all know who is guilty. My country will never recognize such a decision [Partition]. It will never agree to be responsible for it. Let the consequences be on the heads of others, not on ours."
>
> "H. R. H. Prince Seif El ISLAM ABDULLAH (Yemen): The Yemen delegation has stated previously that the partition plan is contrary to justice and to the Charter of the United Nations. Therefore, the Government of Yemen does not consider itself bound by such a decision … and will reserve its freedom of action towards the implementation of this decision."[10]

The Partition Plan was met not only by verbal rejection on the Arab side but also by concrete, bellicose steps to block its implementation and destroy the Jewish polity by force of arms, a goal the Arabs publicly declared even before Resolution 181 was brought to a vote.

The ICJ simply ignores the unpleasant fact that the Arabs not only rejected the compromise and took action to prevent establishment of a Jewish state but also blocked establishment of an Arab state under the partition plan not just *before* the Israel War of Independence, but also *after* the war when they themselves controlled the West Bank (1948-1967), rendering the *recommendation* a still birth.

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[10] UN GA "Continuation of the discussion on the Palestinian question." Hundred and twenty-eighth plenary meeting. A/PV.128, November 29 1947. (11363)

Professor Stone wrote about this novelty of resurrection in 1981 when he analyzed a similar attempt by pro-Palestinians 'experts' at the UN to rewrite the history of the conflict (published as 'Studies'). Stone called it "revival of the dead":

> "To attempt to show, as these studies do, that Resolution 181(II) 'remains' in force in 1981 is thus an undertaking even more *miraculous* than would be the *revival of the dead*. It is an attempt to give life to an entity that the Arab states had themselves aborted before it came to maturity and birth. To propose that Resolution 181(II) can be treated as if it has binding force in 1981, [E.H. the year Professor Stone's book was published] for the benefit of the same Arab states, who by their aggression destroyed it *ab initio,*[11] also violates 'general principles of law,' such as those requiring claimants to equity to come 'with clean hands,' and forbidding a party who has unlawfully repudiated a transaction from holding the other party to terms that suit the later expediencies of the repudiating party"[12] [italics by author].

In its narrative of events, the International Court of Justice's opinion does not even mention the fact that Jordan (at the time, Transjordan) crossed the international border (the Jordan River) and illegally occupied part of Mandate Palestine, annexing and labeling it the 'West Bank' to make it sound like a natural part of the 'east bank' (Transjordan). Indeed, it was Jordan that controlled the West Bank territory for 19 years between 1948 and 1967.[13]

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[11] In Latin: From the beginning.

[12] Professor Julius Stone, "Israel and Palestine, Assault on the Law of Nations" The Johns Hopkins University Press, 1981, p. 128.

[13] "The 1948 Arab-Israeli War – Prior to the UN General Assembly's November 1947 decision to partition Palestine, King Abdullah had proposed sending the Arab Legion to defend the Arabs of Palestine. Reacting to the passing of the partition plan, he announced Jordan's readiness to deploy the full force of the Arab Legion in Palestine. An Arab League meeting held in Amman two days before the expiration of the British mandate concluded that Arab countries would send troops to Palestine to join forces with Jordan's army. … [Jordan] Parliament unanimously approved a motion to unite the two banks of the Jordan River, constitutionally expanding the Hashemite Kingdom of Jordan in order to safeguard what was left of the Arab territory of Palestine from further Zionist expansion." See the official Hashemite Kingdom of Jordan website at: http://www.kinghussein.gov.jo/his_palestine.html. (10634)

The ICJ describes these scores of events in seven words: "The Plan of Partition was not implemented."[14]

The ICJ fails to read the *fine print* in the Resolutions it cites. The ICJ embraces the General Assembly's generous annexation of Jerusalem (discussed later in this critique) as part of 'Occupied Palestinian Territory' – constantly referring to "the Occupied Palestinian Territories, including East Jerusalem." In the same breath, the ICJ cites Resolution 181 that leaves the status of Jerusalem in abeyance, in Part III (D) calling for a temporary 'special regime' for the City of Jerusalem:

> "… not later than 1 October 1948. It shall remain in force in the first instance for a *period of ten years*, unless the Trusteeship Council finds it necessary to undertake a re-examination of these provisions at an earlier date. After the expiration of this period the whole scheme shall be subject to re-examination by the Trusteeship Council in the light of the experience acquired with its functioning. The residents of the City shall be then free to express by means of a referendum their wishes as to possible modifications of the regime of the City" [italics by author].

Again, this never took place because the Partition Plan became a dead issue. If it is not a dead issue, then logically, after 56 years it is time to call for a referendum (as stated in Resolution 181, see above) of all Jerusalemites, Jews and Arabs, to decide the status of the city that has always had a Jewish majority as far back as 1870.

Even the UN recognized that Resolution 181 was a moot issue. Had the ICJ examined UN records, it would have had to address a July 30 1949, working paper of the UN Secretariat, entitled *The Future of Arab Palestine and the Question of Partition,* which noted that:

> "The Arabs rejected the United Nations Partition Plan so that any comment of theirs did not specifically concern the status of the Arab section of Palestine under partition but rather rejected the scheme in its entirety.

[14] See paragraph 71 of the ICJ's ruling at: http://middleeastfacts.org/content/ICJ/ICJ-Ruling-HTML.htm. (10908)

> "… On 18 September the Progress Report of the Mediator was submitted to the General Assembly. In evaluating the situation of the proposed Arab State, the Mediator stated: 'As regards the parts of Palestine under Arab control, no central authority exists and no independent Arab State has been organized or attempted. This situation may be explained in part by Arab unwillingness to undertake any step which would suggest even tacit acceptance of partition, and by their insistence on a unitary State in Palestine. The Partition Plan presumed that effective organs of state government could be more or less immediately set up in the Arab part of Palestine. This does not seem possible today in view of the lack of organized authority springing from Arab Palestine itself, and the administrative disintegration following the termination of the Mandate.'"[15]

The Secretariat considered Resolution 181 a dead issue, noting:

> "… an Arab State for which the Partition Plan provided has not materialized …"[16]

In the eyes of the International Court of Justice, even the 1948 Israel War of Independence – *before the occupation* and clearly an Arab war of aggression – gets the same treatment as the Six-Day War of 1967. The ICJ's rendition of events exonerates the Arabs of any complicity, skipping merrily over uncomfortable facts in the process:

> "The Arab population of Palestine and the Arab States rejected the [Partition] plan, contending that it was *unbalanced*; on 14 May 1948, Israel proclaimed its independence on the strength of the General Assembly resolution; armed conflict then broke out between Israel and a number of Arab States and the Plan of Partition was not implemented"[17] [italics by author].

Far more significantly, from 1922 forward and through nearly three decades of British Mandatory rule, the Arabs systematically rejected every plan for co-existence that included any form of Jewish political

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[15] United Nations Conciliation Commission for Palestine: The Future of Arab Palestine and the Question of Partition. A/AC.25/W.19, July 30 1949. See: http://www.mefacts.com/cache/html/un-documents/11070.htm. (11070)

[16] Ibid.

[17] Paragraph 71 of the Court's ruling. See: http://middleeastfacts.org/content/ICJ/ICJ-Ruling-HTML.htm. (10908)

empowerment whatsoever. These plans included British attempts to create a joint legislature, insuring the Arabs would have had an overwhelming majority and that they could have cut off any further Jewish immigration. These same Arabs even refused to establish an Arab Agency for development of the Arab sector, which would parallel the Jewish Agency.[18]

In the fall of 1947, the UN Ad Hoc Committee on Palestinian Question[19] tried, to no avail, to 'bring the Arabs around.' Had the ICJ read the minutes of this damning UN document, they would find this rejectionism clearly established. The Special Rapporteur, Thor Thors of Iceland, wrote to the Security Council days before the historic vote on November 25 1947. He cited how the Arab Higher Committee first:

> "… rejected the recommendations of the Special Committee on Palestine and advocated the establishment on democratic lines, in the whole of Palestine, of an Arab State which would protect the legitimate rights and interests of all minorities."[20]

and later:

> "… did not accept an invitation to … discussed the question of boundaries. The Arab Higher Committee was prepared to assist and furnish information only with regard to the question of the termination of the Mandate and the creation of a unitary State."[21]

Suffice it to say, the use of the terms "rejection" and "contending" in the ICJ's 'historical narrative' hardly befit 1948 realities. "Rejection" was expressed in nearly six months of guerrilla warfare by local Arabs (today's Palestinians) against the Jews of Palestine (today's Israelis), targeting

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[18] Christopher Sykes, Cross Roads to Israel – Palestine from Balfour to Bevin, Collins London 1965, p. 81.

[19] General Assembly, A/516, November 25 1947, at http://www.mefacts.com/cache/html/un-documents/11290.htm. (11290)

[20] Ibid.

[21] In lieu of the two independent States, the city of Jerusalem under an international regime, and the economic union proposed.

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primarily civilians. In the midst of this period (January 29 1948), the First Monthly Progress Report of the UN-appointed Palestine Commission was submitted to the Security Council. How does the UN describe what actually transpired? Actualization of Resolution 181 was placed in the hands of a:

> "commission … with direct responsibility for implementing the measures recommended by the General Assembly."[22]

Implementation of Resolution 181 hinged not only on the five Member States appointed to represent the UN (Bolivia, Czechoslovakia, Denmark, Panama, Philippines) and Great Britain, but first and foremost on the participation of the *two sides* who were invited to appoint representatives. The Commission than reported:

> "… The invitation extended by the [181] resolution was promptly accepted by the Government of the United Kingdom and by the Jewish Agency for Palestine, both of which designated representatives to assist the commission. … As regards [to] the Arab Higher Committee, the following telegraphic response was received by the Secretary-General on 19 January:
>
> ARAB HIGHER COMMITTEE IS DETERMINED PRESIST [PERSIST] IN REJECTION PARTITION AND IN REFUSAL RECOGNIZE UN[O] RESOLUTION THIS RESPECT AND ANYTHING DERIVING THEREFROM [THERE FROM]. FOR THESE REASONS IT IS UNABLE [TO] ACCEPT [THE] INVITATION."[23]

The fact that Resolution 181 was a non-binding *recommendation* is clearly reflected in the language of the report, which declares, "… the full implementation of the Assembly's *recommendations* requires the presence of the commission in Palestine" and speaks of an "invitation" to all the parties concerned to accept the scheme and bring it to fruition.

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[22] United Nations Palestine Commission. First Monthly Progress Report To The Security Council. A/AC.21/7. 29 January 1948. See at: http://www.mefacts.com/cache/html/un-resolutions/10923.htm. (10923)

[23] Ibid.

ICJ – "Armed conflict then broke out."

The "armed conflict [that] then broke out,"[24] in the words of the International Court of Justice, was Israel's War of Independence, actually the *second* stage of this Arab war of aggression, launched the day after Israel's acceptance of Resolution 181 on November 29 1947. It was a pre-planned and coordinated invasion by the armed forces of Egypt, Transjordan, Syria, Lebanon, Iraq, and contingents from Saudi Arabia and Yemen forces across the international borders of Mandate Palestine, boasting they would "throw the Jews into the sea."

On May 22 1948, in response to an urgent cablegram to the Lebanese foreign minister from the Security Council inquiring whether Lebanon had invaded, the foreign minister wrote the Security Council:

> "[Lebanese forces] are operating in northern Palestine. Their military objectives are to help pacify Palestine in cooperation with the forces of other States of the Arab League, as stated in the memorandum of the Secretary-General of the Arab League on May 1 (document S/745). … The League of Arab States is responsible for the exercise of political functions in any and all parts of Palestine. … The League of Arab States is not now negotiating with the Jews on a political settlement in Palestine and will not enter into such negotiations so long as the Jews persist in their intention and their efforts to establish a Jewish state in Palestine."[25]

On May 18 1948 in response to a similar cablegram to the Iraqi delegate to the UN, the reply was that indeed there were Iraqi troops in Palestine in areas where Jews are the majority, declaring that:

> "… Elements of our armed forces entered Palestine without discrimination either to the character of areas or to the creed of the inhabitants [invaded

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[24] Paragraph 71 of the Court's ruling. See: http://middleeastfacts.org/content/ICJ/ICJ-Ruling-HTML.htm. (10908)

[25] United Nations Security Council Document S/770, May 22 1948, at: http://domino.un.org/unispal.nsf/9a798adbf322aff38525617b006d88d7/98be7a17e488f06985256db200676705!OpenDocument. (11364)

> Jewish areas] … Units of Iraqi forces are now operating west of the Jordan. … Their military objectives … are the suppression of lawless Zionist terrorism which was dangerously spreading all over the country, and restoration of peace and order. Such objectives will result in enabling the people of Palestine to set up a 'united state' in which both Arabs and Jews will enjoy equal Democratic rights. … Upon the termination of the Mandate on the 15th May, 1948, no legal authority was constituted to take its place. In the same time the terrorism and the aggression of a minority assumed vast proportions and resulted in atrocities and massacre leading up to a complete state of anarchy. … The Arab League, as a regional organization interested in keeping the peace in that region could not stand by without action. … Concerning what is called areas (Towns, cities, districts) of Palestine where Jews are in the majority, it must again be stated that the division of the country into such units for the present purpose is misleading and can be entertained on the basis of partition which we reject."[26]

A similar query to the foreign minister of Transjordan was ignored. The following questions were not answered:

> "Are armed element of your armed forces or irregular forces sponsored by your government now operating (1) in Palestine (2) in areas (towns, cities, districts) of Palestine where the Jews are in the majority?"[27]

Instead the Transjordanian foreign minister complained in a short cablegram that

> "the government of the United States of America [who had penned the questions for the Security Council] has not yet recognized the government of the Hashemite Kingdom of Transjordan … yet [it] recognized the so-called Jewish government within a few hours."

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[26] United Nations Security Council Document S/769 May 22 1948. See: http://domino.un.org/unispal.nsf/9a798adbf322aff38525617b006d88d7/65eb4dccbb362b5585256e4c006f6a02!OpenDocument (11365)

[27] Security Council Document S/760, May 20 2003 (the date is incorrect in the original), http://domino.un.org/unispal.nsf/9a798adbf322aff38525617b006d88d7/aa99ba96c0a95d5985256db2006928bd!OpenDocument. (11366)

The Arabs rejected repeated calls by the Security Council for a cease-fire and only agreed to a four-week truce after being warned by the Security Council on May 29 1948:

> "… if the present resolution is rejected by either party or by both, or if, having been accepted, it is subsequently repudiated or violated, the situation in Palestine will be reconsidered with a view to action under Chapter VII of the Charter."[28]

The first cease-fire in the 18-month war finally took effect on June 11 1948. The documents cited above are only a few examples of the evidence available to the ICJ, all of which appear to have been ignored.

Israel overcomes Arab aggression at a terrible cost.

While Israel prevailed, one percent of the pre-war Jewish population (6,000 persons) was killed. In American terms, that is equivalent to 2.8 million American civilians and soldiers being killed over an 18-month period.[29] The facts that there was a clear aggressor and a clear target in the "armed conflict" in 1948 appears in a host of UN documents that are as immaterial in the International Court of Justice's eyes as the fate of over a thousand Israelis, again, mostly civilians, murdered in cold blood by Palestinian suicide bombers and other terrorists since 2000. These latest killings precipitated the building of a non-lethal security barrier.

What became of Resolution 181? On May 17 1948 – after the invasion began – the Palestine Commission designed to implement Resolution 181 adjourned *sine die* [indefinitely], after the General Assembly:

> "appointed a United Nations Mediator in Palestine, which relieves the United Nations Palestine Commission from the further exercise of its responsibilities."

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[28] Security Council Document S/801, May 29 1948, at: http://domino.un.org/unispal.nsf/9a798adbf322aff38525617b006d88d7/34235b8f785c7b4485256e76006e58da!OpenDocument. (11367)

[29] Between November 30 1947 – July 20 1949.

At the time, some thought the partition plan could be revived, but by the end of the war, Resolution 181 had become a moot issue as realities on the ground made establishment of an armistice-line (the Green Line), a temporary ceasefire line expected to be followed by peace treaties, the most constructive path to solving the conflict.

The Palestinians, for their part, continued to reject Resolution 181, viewing the Jewish state as "occupied territory," a label that exists to this day in PLO and Palestinian Authority maps, insignias and even statistical data. Rejection of any form of Jewish polity anywhere in western Palestine was underscored in the PLO's 1964 Charter.

The Arab Palestinians and the 'Clean Hand' principle.

Only a few years ago voices were suddenly heard in Arab circles that the Partition Plan should be the basis of a "just and lasting peace," rather than demanding a return to the Green Line. The ICJ is the first highly regarded institution to *fall for the bait,* claiming that Palestinian rights to self-determination emanate from the very document repudiated by the Arabs for more than fifty years. In 1976, for example, the Arab League was still berating the 'Family of Nations' at the UN that: "In its resolution 181(II) of 29 November 1947, the General Assembly imposed the partition on Palestine against the expressed wishes of the majority of its population."[30]

The International Court of Justice, which accepted testimony from the Palestinians as interested parties and declared that it is the ICJ's solemn responsibility to stand up for Palestinian rights, performs another flip-flop, declaring that in such instances (i.e. the "clean hands" test) the Palestinians are exempt.

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[30] At a meeting of the Committee on the Exercise of the Inalienable Rights of the Palestinians People, General Assembly Document A/AC.183/L.22, April 26 1976, at: http://domino.un.org/UNISPAL.NSF/0/842f480902f25fef85256e2f006a82d2?OpenDocument. (11374)

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In paragraphs 63 and 64 of the opinion, the ICJ says:

> "Israel has contended that Palestine, given its responsibility for acts of violence against Israel and its population which the wall is aimed at addressing, cannot seek from the Court a remedy for a situation resulting from its own wrongdoing. In this context, Israel has invoked the *maxim nullus commodum capere potest de sua injuria propria,* which it considers to be as relevant in advisory proceedings as it is in contentious cases. Therefore, Israel concludes, good faith and the principle of 'clean hands' provide a compelling reason that should lead the Court to refuse the General Assembly's request. The Court does not consider this argument [the 'clean hands' argument raised by Israel] to be pertinent. As was emphasized earlier, it was the General Assembly which requested the advisory opinion, and the opinion is to be given to the General Assembly, and not to a specific State or entity."

Professor Stone explains the 'clean hands' concept:

> "… there are also certain other legal grounds, rooted in basic notions of justice and equity, on which the Arab states (and the Palestinians whom they represented in these matters) should not, in any case, be permitted, after so lawless a resort to violence against the plan, to turn around decades later, and claim legal entitlements under it.
>
> "More than one of 'the general principles of law' acknowledged in Article 38(1)(c) of the Statute of the International Court of Justice seem to forbid it. Such claimants do not come with 'clean hands' to seek equity; their hands indeed are mired by their lawlessly violent bid to destroy the very resolution [181] and plan from which they now seek equity. They may also be thought by their representations concerning these documents, to have led others to act to their own detriment, and thus to be debarred by their own conduct from espousing, in pursuit of present expediencies, positions they formerly so strongly denounced. They may also be thought to be in breach of the general principle of good faith in two other respects.
>
> "Their position resembles that of a party to a transaction who has unlawfully repudiated the transaction, and comes to court years later claiming that selected provisions of it should be meticulously enforced against the wronged party. It also resembles that of a party who has by unlawful violence wilfully destroyed the subject-matter that is 'the fundamental basis' on which consent rested, and now clamors to have the original terms enforced against the other party. These are grounds that reinforce the pithy view of U.S. Legal Adviser Herbert Hansell that the 1947 partition was never effectuated.

> "… the Partition Resolution and Plan, since they were prevented by Arab rejection and armed aggression from entering into legal operation, could not thereafter carry any legal effects binding on Israel."[31]

When armistice lines were finally drawn, in the spring and summer of 1949, under the auspices of the UN, they reflected 'facts on the ground.'

In closing, Resolution 181 had been tossed into the waste bin of history, along with all other plans of partition.

[31] Professor Julius Stone, "Israel and Palestine, Assault on the Law of Nations" p.65, The Johns Hopkins University Press, 1981.

5 Self-Defence

Article 51 – The Right to Self-Defence

ICJ's attempt to qualify the use of self-defence under Article 51 as aggression committed by a 'state' *only*, is clearly an attempt to evade international law.

The ICJ Bench ignored repeated acts of terrorism from 'Palestine' as emanating from non-State entities and therefore inadmissible to the issue of the security fence.

The ICJ's opinion engages in some highly questionable interpretations not only of its own mandate, but also the UN Charter's article on the right to self-defence, or in the case of Israel – the lack of the right to self-defence. The worst of all statements concerns a *fallacious interpretation* of Article 51 of the UN Charter.

The ICJ writes in paragraph 139 of the opinion:

> "Under the terms of Article 51 of the Charter of the United Nations:
>
> 'Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security.'
>
> "Article 51 of the Charter thus recognizes the existence of an inherent right of self-defence in the case of armed attack by *one State against another State.* However, Israel does not claim that the attacks against it are imputable to a foreign State. … Consequently, the Court concludes that *Article 51 of the Charter has no relevance in this case*" [italics by author].

Article 51 of the UN Charter clearly recognizes "the inherent right of individual or collective self-defence" *by anyone.* That is, the language of Article 51 does not identify or stipulate the kind of aggressor or aggressors against whom this right of self-defence can be exercised … and certainly does not limit the right to self-defence to attacks by States!

In addition to and apart from the provisions of Article 51, the ICJ also ignores the fact that Palestinian warfare is "… strictly regulated by the customs and provisions of the law of armed conflict, referred to here as international humanitarian law (IHL)."

> "The authoritative commentary of the ICRC to the Fourth Geneva Convention justifies applying the provision to *non-state actors,* saying [t]here can be no drawbacks in this, since the Article in its reduced form, contrary to what might be thought, *does not in any way limit the right* [E.H. to self-defence] *of a State to put down rebellion,* nor does it increase in the slightest the authority of the rebel [in this case the Palestinian Authority] party …"[1] [italics by author].

The ICJ ignores the Palestinian Authority (PA) violations of their assumed responsibility, such as the Oslo Accords, that required the Palestinians to abide by internationally recognized human rights standards. The Israeli Palestinian interim agreement of September 28 1995 stated:

> "Israel and the Council [Palestinian Interim Self-Government Authority, i.e. the elected Council,] hereinafter 'the Council' or 'the Palestinian Council' shall exercise their powers and responsibilities pursuant to this Agreement with due regard to internationally-accepted norms and principles of human rights and the rule of law."[2]

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[1] See Legal Standards in *Erased In A Moment: Suicide Bombing Attacks Against Israeli Civilians,* HRW, October 2002 at: http://www.hrw.org/reports/2002/isrl-pa/index.htm#TopOfPage. (11262)

See also ICRC "…the right of a State to put down rebellion." In "Article 3 - Conflicts not of an International Character" at: http://www.icrc.org/ihl.nsf/0/1919123e0d121fefc12563cd0041fc08?OpenDocument. (11368)

[2] Under "Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip," Article XIX, Human Rights and the Rule of Law. September 28 1995. See: http://www.mfa.gov.il/MFA/Peace%20Process/Guide%20to%20the%20Peace%20Process/THE%20ISRAELI-PALESTINIAN%20INTERIM%20AGREEMENT#art13. (10944)

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Both under the "international humanitarian law" and the 'Oslo Accord' Israel rights to self-defence under Article 51 can not be more apparent.

Nothing can be more ludicrous than the ICJ conclusion that because "Israel does not claim that the attacks [by Palestinian terrorists] against it are imputable to a foreign State" Israel *lost* its right to act in self-defence.

It is worth noting that the UN and its organs have compromised even the Geneva Convention's protocols, by selective politicization to bash Israel.[3] The High Contracting Parties never met once to discuss Cambodia's killing fields or the 800,000 Rwandans murdered in the course of three months in 1994.[4] *Israel is the only country in the Geneva Convention's 52-year history to be the object of a country-specific denunciation.*

The ICJ lacks the authority to amend or 'interpret' Article 51.

There is no foundation for 'adding restrictions,' narrowly interpreting Article 51's meaning, or simply making changes to the UN Charter. The ICJ neglects to reference Articles 108 and 109 of the UN Charter that set the precedent rules for amending the Charter:

> "Amendments to the present Charter shall come into force for all Members [E.H. and not a customized version for Israel] of the United Nations when they have been adopted by a vote of two thirds of the members of the General Assembly and ratified in accordance with their respective constitutional processes by two thirds of the Members of the United Nations, including all the permanent members of the Security Council."

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[3] For the text of the February 9 1999 resolution "Illegal Israeli actions in Occupied East Jerusalem and the rest of the Occupied Palestinian Territory," see: http://www.mefacts.com/cache/html/un-resolutions/11124.htm. (11124)

[4] See Associated Press report "More Than One Million Rwandans Killed in 1990's," *New York Times*, February 16 2002 at http://www.mtholyoke.edu/acad/intrel/bush/rwandadeaths.htm. (10731)

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It is rather strange that the ICJ, of all bodies, takes liberties to change what Article 51 clearly states. This ICJ also failed to review its own past writings on the subject of *attempting to interpret* UN Charter Articles. Elsewhere in the opinion, the ICJ quotes its 1950 ruling on South West Africa (Namibia) regarding Article 80 of the same UN Charter, saying that Articles of the UN Charter were carefully penned and should be strictly read in a direct manner 'as is':

> "The Court considered that if Article … had been intended to create an obligation … such intention would have been *expressed in a direct manner*"[5] [italics by author].

The ICJ Bench zig-zags from strict construction to loose construction, coupled with biased *interpretation* to deny Israel the fundamental right to defend its citizens from terrorism.

Writing on the subject of the *legal effect of Resolutions and Codes of Conduct of the United Nations,* Schwebel, the former president of the ICJ, notes:

> "what the terms and the *travaux* (notes for the official record) of the Charter do not support can scarcely be implemented."[6]

Ironically, in December 2004, the UN High-level Panel on Threats, Challenges and Change, published the much anticipated report entitled "A more secure world: Our shared responsibility." Paragraph 192 of this report states:

> **"We do not favour the rewriting or reinterpretation of Article 51"** [Bold in the original].

The same is true of the International Court of Justice, an organ of the United Nations, which lacks the mandate to 'amend' Article 51.

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[5] See International status of South-West Africa. Advisory Opinion of 11 July 1950 at: http://www.icj-cij.org/icjwww/idecisions/isummaries/isswasummary500711.htm. (10954)

[6] Professor, Judge Stephen M. Schwebel, *The Legal Effect of Resolutions and Codes of Conduct of the United Nations* in "Justice in International Law", Cambridge University Press, 1994. Opinions quoted in this critiques are not derived from his position as a judge of the ICJ.

When Use of Force is Lawful

UN Charter Article 51 is not the only UN sanction of self-defence disregarded by the ICJ.[7] The Court chooses to totally ignore a number of highly-relevant United Nations Resolutions, passed by both the General Assembly and the Security Council, addressing the legitimate and lawful use of force in self-defence by Member States.

For instance: the rationale behind General Assembly Resolution 3314 "Definition of Aggression" is highly relevant to the case at hand. It states:

> "*Convinced* that the adoption of a definition of aggression ought to have the effect of deterring a potential aggressor, would simplify the determination of acts of aggression and the implementation of measures to suppress them and would also facilitate the protection of the rights and lawful interests of, and the rendering of assistance to, the victim."[8]

The ICJ speaks repeatedly of the "inadmissibility of the acquisition of territory by war." What does this phrase mean in the framework of international law? The ICJ's use of this important principle is selective, misplaced, misleading and totally out of context.

The Bench chooses to quote Article 2, paragraph 4, of the UN Charter, which says:

> "All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the Purposes of the United Nations."

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[7] Article 51 reads: "Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defence shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security." See: http://www.un.org/aboutun/charter/chapter7.htm. (10370)

[8] See Appendix E. UN General Assembly Resolution 3314 (XXIX). http://middleeastfacts.org/content/book/18-aggression-nm-010504.doc. (10495)

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But the Bench chooses to ignore Article 5, paragraph 3, of UN GA Resolution 3314 which states:

> "No territorial acquisition or special advantage *resulting from aggression* is or shall be recognized as lawful." [italics by author]

That is, the inadmissibility of the acquisition of territory by war cannot and should not be viewed as a blanket statement. Rather, it hinges on acquisition being the result of aggression. Arab countries acted aggressively against Israel in 1948 and 1967. Israel was not the aggressor, neither in Israel's 1948 War of Independence nor in the 1967 Six-Day War.

In the same manner, the ICJ quotes *selectively* from the 1970 General Assembly Resolution 2625 ("Declaration on Principles of International Law Concerning Friendly Relations and Co-operation Among States")[9]. In paragraph 87 of the ICJ opinion, the Bench notes that Resolution 2625:

> "… emphasized that 'No territorial acquisition resulting from the threat or use of force shall be recognized as legal.'"

It hides from the reader that the same Resolution subsequently clarifies that:

> "The territory of a State shall not be the object of military occupation *resulting from* the use of force in contravention of the provisions of the Charter" [italics by author].

And the same Resolution continues:

> "Nothing in the foregoing paragraphs shall be construed as enlarging or diminishing in any way the scope of the provisions of the Charter concerning *cases in which the use of force is lawful*" [italics by author].

Schwebel explains that the principle of "acquisition of territory by war is inadmissible" must be read together with other principles:

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[9] See Appendix D. "Declaration on principles of international law concerning friendly relations and cooperation among states in accordance with the charter of the united nations" at: http://www.un.org/documents/ga/res/25/ares25.htm. (11488)

> "… namely, that no legal right shall spring from a wrong, and the Charter principle that the Members of the United Nations shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State."[10]

Simply stated: Arab illegal aggression against the territorial integrity and political independence of Israel, cannot be rewarded.

Had the Charter forbidden use of force in any and all manners and situations, it would not need to use the words "resulting from." The Resolution would have simply read: "The territory of a State shall not be the object of military occupation by another State." Period.

It is relevant at this juncture to recall again Lauterpacht's explanation on this important issue (a point which was also cited by Schwebel in his writings):

> "… territorial change cannot properly take place as a result of the 'unlawful' use of force. But to omit the word 'unlawful' is to change the substantive content of the rule and to turn an important safeguard of legal principle into an aggressor's charter. For if force can never be used to effect lawful territory change, then, if territory has once changed hands as a result of the unlawful use of force, the illegitimacy of the position thus established is sterilized by the prohibition upon the use of force to restore the lawful sovereign. This cannot be regarded as reasonable or correct."[11]

That is, there are situations involving *lawful* use of force and there are *lawful* occupations in the course of repelling aggression. Article 51 addresses the right to self-defence and the lawful use of force when one faces an aggressor.

The Security Council is the only UN body authorized to label a Member State (or non-State entity) an aggressor. In the Preamble of Resolution 3314 ('Definition of Aggression') it says:

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[10] Professor, Judge Schwebel in *What Weight to Conquest?* in "Justice in International Law," Cambridge University Press, 1994.

[11] Professor, Judge Sir Elihu Lauterpacht, "Jerusalem and the Holy Places," Pamphlet No. 19 (London, Anglo-Israel Association, 1968).

> "Recalling that the Security Council, in accordance with Article 39 of the Charter of the United Nations, shall determine the existence of any threat to the peace, breach of the peace or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security."[12]

Who is labeled aggressor?

The Security Council has never labeled Israel an aggressor in its entire history. Attempts by the International Court of Justice to misuse the slogan "inadmissibility of the acquisition of territory by war" concerning Israel, in a case that it patently refuses to recognize has a strong security component, is simply disgraceful.

General Assembly Resolution 3314 makes it adamantly clear that no group, including non-State entities, individuals or groups, can expect to be shielded behind such a narrow and warped interpretation of Article 51 (the right to Self-Defence). Passed unanimously in 1974 without even a formal vote, Article 3(a) clarifies that the definition of a State when defining aggressors must be loosely construed:

> "… without prejudice to questions of recognition or to whether a State is a member of the United Nations."[13]

This clause clearly covers aggression emanating from the Palestinian Authority, an internationally recognized autonomous, national political entity established by international treaty – the Oslo Accords.[14] Moreover, Article 3(g) cites specifically that this includes:

> "… the sending by or on behalf of a State of armed hands, groups, irregulars or mercenaries, which carry out acts of armed force against another State of such gravity as to amount to the acts listed above, or its substantial involvement therein."

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[12] See discussion in this critique, Chapter 8: "Attempting to Brand Israel the Aggressor."

[13] UN General Assembly Resolution 3314 (XXIX) at: http://middleeastfacts.org/content/book/18-aggression-nm-010504.doc (10495)

[14] See: Israel-PLO Agreement: Oslo, 1993 [9/13/1993] Ref #11318. (11318) and Oslo II Interim Agreement - Washington, D.C., September 28 1995 [9/28/1995] Ref #10944. (10944)

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Furthermore, in Article 4, Resolution 3314 notes that "… the acts enumerated above are not exhaustive" and declares they can be further enumerated by the Security Council. Palestinian terrorist organizations, with headquarters and support in places such as Gaza, Jenin, Lebanon, Iran and Syria, using areas under the civil and security responsibility of the Palestinian Authority as organizational and staging areas to commit terrorist acts, clearly fall within the confines of this Resolution. Resolution 3314 defines aggression in Article 3(b), in a list of acts of aggression, as "… the use of any weapons by a State against the territory of another State."

This clause clearly covers the waves of suicide bombers targeting Israeli civilians. The ICJ pretends this resolution doesn't exist.

"All Perpetrators" and "Whomever" means Anyone.

The following Resolutions and International Convention call for specific actions to be taken by all States and underscore repeatedly that terrorism must be fought by *all parties,* by *all means*, at *all times,* by *whomever* and against *all perpetrators*. None of these requirements are cited by the ICJ, neither in its discussion of Article 51 and the right of a Member State to self-defence, nor in any other similar context within the ICJ's opinion; Security Council Resolution 1269[15] – in the wake of the first attack on the World Trade Center (in 1999); Resolution 1373 (September 2001) and Resolution 1377 (November 2001) – after the September 11 attacks; and Security Council Resolution 1456 (January 2003) all deplore terrorism and censure its use in any case or form "*regardless of their motivation, whenever and by whomever committed*." The same language appears in the only convention in international law dealing with terrorism, Resolution 52/164 – the *International Convention for the Suppression of Terrorist Bombings*.[16]

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[15] See Appendix B. UN Security Council, Resolution 1269, October 19 1999. See: http://www.mefacts.com/cache/html/un-resolutions/11375.htm. (11375)

[16] Adopted without a vote, December 15 1997. See: http://www.un.org/ga/documents/gares52/res52164.htm. (10899)

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The ICJ suggests: Israelis have to face deadly acts of violence.

In paragraph 141 of the ICJ Opinion the Court concludes that, "The fact remains that Israel *has* to face numerous indiscriminate and deadly acts of violence against its civilian population" [italics the author].

In this 19-word statement the Court recognizes Israel's predicaments, while being careful not to use the "T" word (terrorism) or bring itself to classify Palestinian's acts as "*crimes against humanity*,"[17] for to do so would infer that Israel's plight comes under the umbrella of Resolutions and International Conventions safeguarding universal human rights.

The Court use of the word '*has*' rather than 'faces' [deadly acts], has the ring of a 'court order.' The Court doesn't condemn the attacks; instead it 'sentences' Israel to a form of cruel and unusual punishment.

The Court that in paragraph 141 futilely suggests that Israel "has the right, and indeed the duty, to respond in order to protect the life of its citizens," is the same Court that in paragraph 142 leaves Israel powerless; denies it the right for self-defence and rules against building a non-lethal security barrier that saves lives, in favor of Palestinian inconvenience and Palestinian terrorism.

[17] See "Element of Crimes" at the Rome Statue of the International Criminal Court, at http://www.icc-cpi.int/library/about/officialjournal/basicdocuments/elements(e).pdf (11456)

6 Terrorism

The International Court of Justice fails to examine Palestinian terrorism, the root cause of the construction of the security barrier, and what one may and may not do to combat it.

UN-sponsored International Conventions, Security Council Resolutions and Directives, including the Report of the Secretary-General prepared pursuant to General Assembly Resolution ES-10/13, are all ignored by the ICJ.[1]

What makes this all the more ironic is the fact that the ICJ cites UN Document A/ES-10/248 – the report of the Secretary General on the security fence – as a key document and source of information for its opinion. Yet the ICJ overlooks entirely the points in the Secretary-General's Report[2] that admits the causal relationship between terrorism

[1] Report of the Secretary-General prepared pursuant to General Assembly resolution ES-10/13, October 21 2003, paragraph C, 1. (11317)

[2] UN Document A/ES-10/248, November 24 2003, "Report of the Secretary-General prepared pursuant to General Assembly resolution ES-10/13," November 24 2003, at: http://domino.un.org/unispal.nsf/0/a5a017029c05606b85256dec00626057?Open Document. (10575)

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and the security barrier. In Section C (Route of the Barrier) (4) of his report, the Secretary-General cites:

> "… After a sharp rise in Palestinian terror attacks in the spring of 2002, the [Israeli] Cabinet approved Government Decision 64/B on 14 April 2002, which called for construction of 80 kilometers of the Barrier in the three areas of the West Bank."

Not only does the report label the Palestinian actions as *terror*, but it also clearly establishes, in its own words, the cause for building a security barrier. The ICJ completely ignores this fact; at no point is it addressed in the ICJ's opinion.

In December 1997, the United Nations adopted Resolution 52/164 – *the International Convention for the Suppression of Terrorist Bombings*[3] – a contribution to international law that establishes rules of jurisdiction in the prosecution of terrorists.

The UN legislation clearly defines terrorism and 'who is a terrorist,' declaring, for the first time, that:

> "… the States Members of the United Nations solemnly reaffirm their unequivocal condemnation of all acts, methods and practices of terrorism as criminal and unjustifiable, *wherever* and by *whomever* committed" [italics by author].

This text is clear: Regarding *any* act of terrorism, the ends do not justify the means.

Article 2 of Resolution 52/164 defines a terrorist as:

> "*Any* person [who] unlawfully and intentionally delivers, places, discharges or detonates an explosive or other lethal device in, into or against a place of

[3] UN General Assembly, International Convention for the Suppression of Terrorist Bombings, Adopted without a vote, 15 December 1997. See: http://www.un.org/ga/documents/gares52/res52164.htm. (10899)

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> public use, a State or government facility, a public transportation system or an infrastructure facility … with the intent to cause death or serious bodily injury … or with the intent to cause extensive destruction of such a place, facility or system, where such destruction results in or is likely to result in major economic loss."

It underscores in 2 a-c that this includes:

> "… accomplices, organizers and directors and other persons who in any other way contribute to the commission of such acts."

There is no *escape clause* in this piece of international law that exempts "struggles for self-determination" from anti-terrorism resolutions. In fact, the *International Convention for the Suppression of Terrorist Bombings* clarifies in Article 11 that:

> "None of the offences set forth in article 2 shall be regarded … as a political offence or as an offence connected with a political offence or as an offence inspired by political motives."

The ICJ rules favorably on the "applicability of human rights instruments outside national territory … in the Occupied Palestinian Territory" – quoting time and again other conventions and covenants. These agreements include the International Covenant on Economic, Social and Cultural Rights, the Convention on the Rights of the Child and the Covenant on Civil and Political Rights. All are used as evidence, (without a single reference to particulars or law), to condemn Israel's abrogation of humanitarian law in building the Barrier against "... numerous indiscriminate and deadly acts of violence,"[4] but the ICJ doesn't so much as mention the *International Convention for the Suppression of Terrorist Bombing*. In fact, the term 'suicide bombers' does not appear even once, nor is the "T" word used even once in the wording of the Opinion.[5]

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[4] See ICJ's Advisory Opinion, Paragraphs 141-142.

[5] "Terrorism" appears only five times in the document, cited in brief quotes from the Israeli brief. In the actual opinion, in the name of the ICJ, the word "terrorism" doesn't appear even once.

If General Assembly Resolution 3314[6] and the *International Convention for the Suppression of Terrorist Bombings* do not make their denunciation of terrorism explicitly clear, resolutions by the Security Council – Resolution 1269[7] adopted in the wake of the first attack on the World Trade Center in 1999 and other resolutions adopted in the wake of the September 11 2001 terrorist attack on the United States by a non-State terrorist organization – do.

In Point 4 of Security Council Resolution 1269, passed in October 1999 (after the first attack on the World Trade Center), the Security Council calls upon every UN member and non-member:

> "… to take, *inter alia*, in the context of such cooperation and coordination, appropriate steps to:
>
> "cooperate with each other, particularly through bilateral and multilateral agreements and arrangements, to prevent and suppress terrorist acts, protect their nationals and other persons against terrorist attacks and bring to justice the perpetrators of such acts."

In essence, the Security Council expects every Member State to carry out this and other steps enumerated in the resolution.

Resolutions 1368,[8] 1373[9] (September 2001) and Resolution 1377[10] (November 2001) leave no room to question Israel's right to defend itself against systematic and sustained Palestinian terrorist attacks launched since September 2000 – an onslaught per capita, equivalent to 17 September 11th attacks.[11]

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6 UN General Assembly Resolution 3314 (XXIX). See: http://middleeastfacts.org/content/book/18-aggression-nm-010504.doc. (10495)

7 UN Security Council, Resolution 1269 Adopted by the Security Council at its 4053rd meeting on October 19 1999. See: http://www.un.int/usa/sres1269.htm. (11375)

8 UN Security Council Resolution 1368 (2001). See: http://www.mefacts.com/cache/pdf/un-resolutions/10574.pdf. (10574)

9 UN Security Council 1373 (2001) September 28 2001. (10838)

10 UN Security Council Resolution 1377 (2001) November 12 2001. (10837)

11 Between September 1993 (the signing of the Oslo Accords) and February 2003 (prior to completion of the first leg of the fence) more than 1,004 Israelis lost their lives to Palestinian terrorists.

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With regard to terrorism, Resolution 1368 clarifies and 1373 reconfirms in a broader form that the Security Council

> "*Reaffirms* the inherent right of individual or collective self-defence as recognized by the Charter of the United Nations as reiterated in Resolution 1368 (2001),
>
> *"Reaffirming* the need to combat by all means, in accordance with the Charter of the United Nations, threats to international peace and security caused by terrorist acts,"

The UN term "by all means" clearly includes a passive, non-lethal physical barrier to impede the movement of such perpetrators, in addition to more *forceful responses.*

Resolution 1377, passed two months later:

> "*Declares* that acts of international terrorism constitute one of the most serious threats to international peace and security in the twenty-first century,
>
> "*Reaffirms* its unequivocal condemnation of all acts, methods and practices of terrorism as criminal and unjustifiable, regardless of their *motivation*, in all their *forms* and *manifestations*, *wherever* and by *whomever* committed." [italics by author]

Terrorist attacks that blow up and destroy public buses, religious celebrations such as a Passover *seder* and bat mitzvah, young people at cafes and discos, families at supermarkets and restaurants, and that murder youth at boarding schools, school outings, and families in their homes and on the road, clearly fall within the confines of this definition. The nature of Palestinian terrorism is public knowledge. Yet the International Court of Justice claims in paragraphs 55-57 of the opinion:

> "According to Israel, if the Court decided to give the requested opinion, it would be forced to speculate about essential facts and make assumptions about arguments of law. More specifically, Israel has argued that the Court could not rule on the legal consequences of the construction of the wall without enquiring, first, into the nature and scope of the security threat to which the wall is intended to respond and the effectiveness of that response, and, second, into the impact of the construction for the Palestinians … Israel alone possesses much of the necessary information and has stated that it chooses not to address the merits."

Nevertheless, in paragraph 57 of the opinion, the ICJ claims it has ample information:

> "… the Court has at its disposal the report of the Secretary-General,[12] as well as a voluminous dossier submitted by him to the Court. … The Court notes in particular that Israel's Written Statement, although limited to issues of jurisdiction and judicial propriety, contained observations on other matters, including Israel's concerns in terms of security, and was accompanied by corresponding annexes; many other documents issued by the Israeli Government on those matters are in the public domain."

After all has been said and done,[13] how is it that *nowhere* in the opinion does the ICJ weigh Israel's security threat or even mention terrorism as a factor in the case? The ICJ did not even have to *depend* on Israeli sources. There is, for instance, a well-documented 170-page Human Rights Watch report on suicide bombings against Israelis since September 2000 – *Erased in a Moment: Suicide Bombing Attacks Against Israel Civilians* – available 'in the public domain' at the click of a computer mouse. The report, prepared by a neutral international human rights monitoring organization, concluded: "The scale and systematic nature of these [E.H. terror] attacks in 2001 and 2002 meet the definition of a *crime against humanity*."

Moreover, the Human Rights Watch report, which examines in a special section the justifications given by terrorists for their actions under the right to self-determination, places responsibility for terrorist acts directly at the Palestinian Authority's door.

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[12] The report includes the following statements: "The Government of Israel has since 1996 considered plans to halt infiltration into Israel from the central and northern West Bank, with the first Cabinet approval of such a plan in July 2001. After a sharp rise in Palestinian terror attacks in the spring of 2002 …" and "I acknowledge and recognize Israel's right and duty to protect its people against terrorist attacks." See: Report of the Secretary-General prepared pursuant to GA Res. ES-10/13. (10940)

[13] In short, the PA is competent to rule, but if it fails, Israel is to blame for not providing the relevant material … which the Court in any case rules is immaterial.

Security Council Resolution 1368, passed the day after the September 11th attack, clearly specified who was accountable for such a terrorist act and called for:

> "… bring[ing] to justice the perpetrators, organizers and sponsors of these terrorist attacks and stresses that *those responsible for aiding, supporting or harbouring* the perpetrators, organizers and sponsors of these acts *will be held accountable*" [italics by author].

The most recent Security Council Resolution 1456 – passed in January 2003 – further clarified:

> "… any acts of terrorism are criminal and unjustifiable, regardless of their motivation, *whenever and by whomsoever committed* and are to be unequivocally condemned, especially when they *indiscriminately target or injure civilians*"[14] [italics by author].

Again, the International Court of Justice sees no relevance in the definition of terrorism and culpability set forth in this Resolution despite the fact that Israel has been the target of aggression where 80 percent of the Israelis killed were non-combatants, with women and girls accounting for 31 percent of the fatal casualties,[15] including 51 American citizens and a score of foreign laborers.[16]

Another anomaly: The ICJ quotes from a host of international conventions devoted to wartime situations, including the Hague and Geneva Conventions. Is it reasonable that the ICJ was unaware of the Rome Statute[129] in force since 2002? It is unlikely. The Statute is clearly posted on the UN International Law website.[17]

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[14] UN Security Council Resolution 1456 (2003), [1/20/2003]. (10843)

[15] For a summary of the study see Don Radlauer, "The al-Aqsa Intifada – An Engineered Tragedy," January 7 2003 at: http://www.ict.org.il/articles/articledet.cfm?articleid=440. For the full study, see http://www.ict.org.il/articles/articledet.cfm?articleid=439.

[16] "Shin Bet report: 1,017 Israelis killed in intifada," *Haaretz*, September 27 2004. This report also cites 70% of the fatalities (1,017 persons) and 82% of the wounded (5,598 persons) were civilians during four years of violence (September 2000-September 2004).

[17] See http://www.un.org/law/icc/ (11130)

What does the Rome Statute say? In Section IV ("Legal Standards") in the Human Rights Watch (HRW) investigation of suicide bombings, the Rome Statute and the Draft Code Against the Peace and Security of Mankind drawn up by the International Law Commission and often quoted as a guide or yardstick in legal proceedings, albeit not yet formally adopted, are discussed at length.[18] The HRW notes:

> "The notion of 'crimes against humanity' refers to acts that, by their scale or nature, outrage the conscience of humankind. Crimes against humanity were first codified in the charter of the Nuremberg Tribunal of 1945. Since then, the concept has been incorporated into a number of international treaties, including the Rome Statute of the International Criminal Court (ICC). Although definitions of crimes against humanity differ slightly from treaty to treaty, all definitions provide that the deliberate, widespread, or systematic killing of civilians by an organization or government is a crime against humanity. Unlike war crimes, crimes against humanity may be committed in times of peace or in periods of unrest that do not rise to the level of an armed conflict."[19]

The most recent definition of crimes against humanity is contained in the Rome Statute of the ICC, which entered into force on July 1 2002.

> "The statute, in Article 7, defines crimes against humanity as the 'participation in and knowledge of a widespread or systematic attack against a civilian population,' and 'the multiple commission of [such] acts ... against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack.' The statute's introduction defines 'policy to commit such attack' to mean that the state or organization actively promoted or encouraged such attacks against a civilian population. The elements of the 'crime against humanity of murder' require that (1) 'the perpetrator killed one or more persons,' (2) '[t]he conduct was committed as part of a widespread or systematic attack directed against a civilian population,' and (3) '[t]he perpetrator knew that the conduct was part of, or intended the

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[18] See Section IV, at: http://www.hrw.org/reports/2002/isrl-pa/ISRAELPA1002-04.htm #P564_114276. (11455) See also "Element of Crimes" at the Rome Statute of the International Criminal Court, at: http://www.icc-cpi.int/library/about/officialjournal/basicdocuments/elements(e).pdf. (11456)

[19] See Human Rights Watch at http://www.hrw.org/reports/2002/isrl-pa/ISRAELPA1002-04.htm#P589_123822#P589_123822. (11455)

> conduct to be part of, a widespread or systematic attack against a civilian population.'"[20]

It is noteworthy that the Rome Statute addresses both the character of the act (deliberate "widespread or systematic" killing), *and* the nature of the perpetrator (a "State" or "organization"), and leaves no loopholes for non-State entities to escape culpability. Yet, the Rome Statute – an integral part of international law – is patently ignored by the International Court of Justice.[21]

The ICJ ignores relevant bilateral treaties, including the Oslo Accords.

In paragraph 77 of the ICJ opinion, ten years of Palestinian autonomy marked by broken promises to recognize Israel by abolishing anti-Israel clauses in the Palestinian National Covenant and to replace denunciation of terrorism with negotiation, is reduced by the ICJ to one sentence:

> "… a number of agreements have been signed since 1993 between Israel and the Palestine Liberation Organization imposing various obligations on each party."

The ICJ then takes liberties with the content of the Oslo Accords, claiming erroneously:

> "Those agreements *inter alia* required Israel to transfer to Palestinian authorities certain powers and responsibilities exercised in the Occupied Palestinian Territory by its military authorities and civil administration."

In fact, this is a 'doctored' interpretation: Had the members of the ICJ read the Accords, the Bench would have found that Israel only recognized the PLO as the representative of the Palestinian people in the exchange of letters between both sides:

> "In response to your [Arafat] letter of September 9 1993, I [Yitzhak Rabin, Prime Minister of Israel] wish to inform you that, in light of the PLO

[20] Ibid.

[21] See Article 7 (1) (a) Crime against humanity of extermination at: http://www.rk19-bielefeld-mitte.de/info/Recht/United_Nations/Strafgerichtshof/Elements_of_Crime/Article_7.htm#1. (11456)

> *commitments* included in your letter, the Government of Israel has decided to *recognize the PLO as the representative of the Palestinian people* and commence negotiations with the PLO within the Middle East peace process."[22]

Israel never recognized the claim that the autonomy to be granted Palestinians pertained to 'Occupied Palestinian Territories.' In fact, at no point in the Accords is the West Bank or Gaza labelled 'occupied territory.' The ICJ simply fabricated this and lamely concludes:

> "Such transfers have taken place, but, as a result of subsequent events, they remained partial and limited."

This abridged sentence sanitizes the history of the Oslo peace process, doesn't so much as hint what "subsequent events" disrupted the peace process – events that have taken the lives of 1366 Israeli victims of terrorism, mostly civilians.[23] Instead, the ICJ claims the only regime is Israeli!

> "… Israel exercises control in the Occupied Palestinian Territory and that, as Israel itself states, the threat which it regards as justifying the construction of the wall originates within, and not outside, that territory."

In short, a corrupt 'logic' holds that Israel is solely in charge in a said area, but it is forbidden to take any effective actions in that given area.

The ICJ blithely argued with no reference to international law:

> "The situation is thus different from that contemplated by Security Council resolutions 1368 (2001) and 1373 (2001), and therefore Israel could not in any event invoke those resolutions in support of its claim to be exercising a right of self-defence. Consequently, the Court concludes that Article 51 of the Charter has no relevance in this case."

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[22] PLO-Israel Letters of Mutual Recognition. Exchange of Letters between PLO Chairman Yasser Arafat & Israeli Prime Minister Yitzhak Rabin. September 9 1993. See: http://www.palestine-un.org/peace/p_b.html. (10420)

[23] As of December 3 2004, and since September 1993, 1,366 Jews have been murdered by Palestinian's terror. For a an updated listing by name see: http://www.masada 2000.org/oslo.html.

The ICJ's 'denial' of Israel's right to act under Resolution 1373 is particularly grave. Resolution 1373[24] was adopted by the Security Council under Chapter VII of the UN Charter ("Threats to Peace, Breaches of the Peace and Acts of Aggression") that invests the Security Council with the power to issue stringent resolutions *requiring all* nations to comply with the terms set forth in Resolution 1373, citing

> "the need to combat *by all means,* in accordance with the Charter of the United Nations, threats to international peace and security caused by terrorist acts" [italics by author].

The ICJ has no authority and no power over the Security Council to alter the resolution or exclude Israel, a Member State of the UN, from its rights and obligations under Resolution 1373.

The ICJ's position pretends that a decade of Palestinian autonomy never existed and Palestinians have no margin of control whatsoever over their lives. The threats from suicide bombers and other terrorist acts are magically transformed into an 'internal' problem, so that the Security Council Resolutions passed after September 11th, which allow countries to compromise the sovereignty of other polities to combat terrorism, become inapplicable. Elsewhere in the opinion the ICJ denies Israel the right to take anti-terrorism measures anywhere beyond the Green Line because the same territory 'belongs' to an entity called "Palestine."

Even the British judge on the Bench, Rosalyn Higgins, felt compelled to note in a separate opinion that:

> "Palestine cannot be sufficiently an international entity to be invited to these proceedings, and to benefit from humanitarian law, but not sufficiently an international entity for the prohibition of armed attack on others to be applicable."[25]

Yet this and numerous other reservations did not prevent Higgins from voting in favor of adopting the opinion as written.

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[24] UN Security Council Resolution 1373 (2001). S/RES/1373 (2001). Adopted by the Security Council at its 4385th meeting, on 28 September 2001. See: http://middleeast facts. org/content/UN-Documents/PDF/SC-res-1373-sep-28-2001.pdf. (10838)

[25] See Judge Higgins at: http://www.icj-cij.org/icjwww/idocket/imwp/imwpframe.htm.

As far as the ICJ is concerned, Palestinian society lacks any semblance of social organization or self-rule, either on a local or national level, that can be held accountable for terrorism. Yet at the same time, this same Court holds that Palestinians are such a sustainable entity as to deserve *immediate self-determination.*

The ICJ patently ignores the other clauses in Oslo II[26] which give the Palestinian Authority full responsibility for Gaza, Jericho and seven major Palestinian cities on the West Bank (Area A), including internal security and public order, a responsibility it abrogated by using control of the civil machinery in 450 towns throughout the West Bank (Area B) to incite the population, including children. It also included turning densely populated areas under full Palestinian control, such as Ramallah and Jenin, into bomb-making factories and staging areas for suicide bombers.

Human Rights Watch – merely a non-governmental organization (NGO) with limited resources equal to or less than those at the disposal of the ICJ – is far more thorough (and fair) in its report on suicide bombings *Erased in a Moment.* It doesn't gloss over Palestinian commitments (and complicity) or hide behind the Palestinian Authority's non-state status. It has the courage to say:

> "Although it is not a sovereign state, the Palestinian Authority has explicit security and legal obligations set out in the Oslo Accords, an umbrella term for the series of agreements negotiated between the government of Israel and the PLO from 1993 to 1996. The PA obligations to maintain security and public order were set out in articles XII to XV of the 1995 Interim Agreement on the West Bank and Gaza Strip. These responsibilities were elaborated further in Annex I of the interim agreement, which specifies that the PA will bring to justice those accused of perpetrating attacks against Israeli civilians. According to article II (3)(c) of the annex, the PA will

[26] The Israeli-Palestinian Interim Agreement on the West Bank And the Gaza Strip, Washington, D.C. September 28 1995. Full text see: http://www.mefacts.com/cache/html/oslo/10944.htm. (10944)

> 'apprehend, investigate and prosecute perpetrators and all other persons directly or indirectly involved in acts of terrorism, violence and incitement.'"[27]

These clauses in a landmark international accord, as well as other yardsticks examined by Human Rights Watch in their study and found to be relevant, are of no interest to the International Court of Justice.

The ICJ bases its 'conclusion' on General Assembly Resolution 58/163 that "reaffirms the right of the Palestinian people … to their independent State of Palestine."[28] The General Assembly, of course, has no authorization to 'hand out' polities any more than the ICJ has the right to give this bogus right a legal 'stamp of approval' because neither body has actual legislative or executive powers.

Under the Law of Nations, rights go hand-in-hand with responsibilities. Entitlement is irrevocably tied to accountability. The entire opinion penned by the International Court of Justice speaks time and again of Palestinian rights, but *not once* about Palestinian commitments. If Palestinians are unable to behave in a manner in keeping with the most fundamental principles of the law of nations – attacking their neighbors as opposed to peaceful negotiation of differences – then surely Israel has the right to defend such an onslaught of its national security. But, alas, the entire issue of terrorism is considered immaterial to the security barrier question, which the ICJ brands a political ploy that merely grabs Palestinian land and abridges Palestinian rights.

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[27] HUMAN RIGHTS WATCH. *Erased In A Moment: Suicide Bombing Attacks Against Israeli Civilians,* October 2002. Obligations of the Palestinian Authority and Armed Palestinian Groups, at: http://www.hrw.org/reports/2002/isrl-pa/ISRAELPA1002-4.htm#TopOfPage. (11262)

[28] UN General Assembly - 58/163. A/RES/58/163. 77th plenary meeting. December 22 2003. The right of the Palestinian people to self-determination. See: http://domino.un.org/UNISPAL.NSF/0/e5eaf52d1c576d0785256e6d0055b152?OpenDocument. (11319)

Report of the UN High-level Panel on Threats, Challenges and Change.

On December 2 2004, the UN Secretary-General released a report entitled *A more secure world: Our shared responsibility.*

This report, more than one year in the making, deals with the global threats of terrorism, and clearly contradicts the ICJ's Advisory Opinion on some of the core issues regarding terrorism and self-defence, stating that the:

> "biggest security threats we face now, and in the decades ahead, go far beyond States waging aggressive war. They extend to … terrorism … The threats are *from non-State actors* [E.H. such as the Palestinians] as well as States [E.H. such as Syria, Saudi Arabia, Iran], and to human security as well as State security" [italics by author].

The report continues to challenge the Court assertion that Resolution 1373 is not applicable to Israel [E.H. as the court did without reference to law, or other supportive source] by stating:

> "Security Council resolution 1373 (2001) imposed uniform, mandatory counter-terrorist obligations on *all States* …" [italics by author].

It proceeds to explain that the response to the use of force by a non-State has been inadequate:

> "159. The norms governing the use of force by non-State actors have not kept pace with those pertaining to States. … Legally, virtually all forms of terrorism are prohibited by one of 12 international counter-terrorism conventions, international customary law, the Geneva Conventions or the Rome Statutes. Legal scholars know this [E.H. which the ICJ seems to ignore] … The United Nations must achieve the same degree of normative strength concerning non-State use of force as it has concerning State use of force." And that "… there is *nothing* in the fact of occupation that justifies the targeting and killing of civilians [italics by author].
>
> "161. … Attacks that specifically target innocent civilians and non-combatants must be condemned clearly and unequivocally by all."

One would hope that logic, fairness and international law 'as is' will lead the UN General Assembly to follow the suggestions and recommendations of this report, leaving behind the biased Advisory Opinion of the International Court of Justice.

7 Attempts to Brand Israel the Aggressor

Using provocative words such as "belligerents," "belligerency," and "hostile," the ICJ's opinion attempts to deliver the impression that Israel is an "aggressor" who deserves no rights.[1]

In 1974, the United Nations General Assembly adopted a definition of "aggression" in the context of establishing international peace when it approved Resolution 3314.[2] The resolution reaffirms the principles of the UN Charter and the Declaration on Principles of International Law, which states that "… war of aggression constitutes a crime against the peace, for which there is responsibility under international law."

When applied to major battles between Israel and the Arab states in 1948, 1956, 1967 and 1973 and the continuing fight of self-defence against Palestinian Arab terrorism, the UN's 1974 definition of aggression clearly and unequivocally would label the Arab states and the

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1 UN General Assembly Resolution 3314 (XXIX). Definition of Aggression, December 14 1974 see: http://middleeastfacts.org/content/book/18-aggression-nm-010504.doc. (10495)

2 Ibid.

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Palestinian Arabs as the aggressors in both their direct and indirect acts of hostility against Israel.[3]

The following comments in regard to certain paragraphs of Resolution 3314, demonstrate just who is the aggressor in the Arab-Israeli conflict under international laws.

1. Article 1 defines "aggression" as the use of armed force against the sovereignty, territorial integrity or political independence of a State. An "Explanatory note:" follows to explains that "In this Definition the term 'State'":

"(a) is used without prejudice to questions of recognition or to whether a State is a member of the United Nations;" which means to say that acts of aggression applies [apply] also to "people," State [refers]not [only to] members of the UN, or other non-recognized States. This note is given to understand that *aggression* can apply to *any* aggressor including the Palestinian Arabs or the Palestinian Authority.

2. Article 2, 25 years after the fact, establishes that the Arab states that attacked the newly declared State of Israel in 1948 (known as the Israel War of Independence) were all aggressors.

Also, in 1967 during the Six-Day War, Jordan, who joined Egypt and initiated 'the first use of armed forces' against Israel, was clearly an aggressor.[4]

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[3] Professor, Judge Stephen M. Schwebel, *What Weight to Conquest?* in "Justice in International Law", Cambridge University Press, 1994. "As between Israel, acting defensively in 1948 and 1967, on the one hand, and her Arab neighbors, acting aggressively in 1948 and 1967, on the other, Israel has better title in the territory of what was Palestine, including the whole of Jerusalem."

[4] "In response to the Israeli attack [on Egypt], Jordanian forces launched an offensive into Israel, but were soon driven back as the Israeli forces counterattacked into the West Bank and Arab East Jerusalem." From the official website of Jordan at: http://www.mefacts.com/cache/html/jordan/10364.htm. (10364)

3. Article 3 (c) – In both 1956 and 1967, Egypt blockaded the Strait of Tiran, preventing access to Israel's southern port of Eilat, a hostile action that led to the Sinai Campaign in 1956[5] and to the Six-Day War in 1967. As defined by the UN's 1974 resolution, Egypt indisputably committed an act of aggression.

Article 3 (f) – Lebanon's acquiescence in allowing Syrian armed forces to use Lebanon as a platform to wage war against Israel by supporting Hezbollah's terrorist attacks, clearly puts Lebanon in the category of aggressor by 'lending' its territory to the Syrians.

Article 3 (g) – Under this Article, Lebanon, Syria and Iran are clearly aggressors. By allowing Hezbollah to freely launch attacks from its territory, Lebanon permits armed aggression against Israel. Syria and Iran are aggressors as they are clearly Hezbollah's greatest supporters in the region.

Article 6 – Applies when a use of force is exercised under the UN Charter's definition of self-defence and in cases in which the use of force is *lawful*.[6]

Israel's enemies unsuccessful in branding Israel the aggressor.

The following UN Draft Resolutions attempting to brand Israel as aggressor or illegal occupier as a result of the 1967 Six-Day War, were all defeated by either the UN General Assembly or the Security Council:

---

[5] The "Time 100" historical review of the Sinai Campaign, describes the principle by which Israel will agree to withdrawal from the Sinai Peninsula: "France's Premier Guy MoDd and Foreign Minister Christian Pineau arrived in Washington … Pineau submitted to Dulles a draft resolution whereby 1) Israel would withdraw unconditionally, and 2) Israel's rights would be reserved under the Charter's self-defence clause if Egypt should go back to raids and blockages against her." See: http://www.time.com/time/time100/leaders/profile/bengurion_related5.html. (11541)

[6] "Nothing in the foregoing paragraphs shall be construed as enlarging or diminishing in any way the scope of the provisions of the Charter concerning cases in which the *use of force is lawful*." [italics by author]. See Appendix D. Un Resolution 2625.

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A/L.519,[7] 19 June 1967, submitted by: the Union of Soviet Socialist Republics, "Israel, in gross violation of the Charter of the United Nations and the universally accepted principles of international law, has committed a premeditated and previously prepared aggression against the United Arab Republic, Syria and Jordan."

A/L.521,[8] 26 June 1967, submitted by: Albania "Resolutely condemns the Government of Israel for its armed aggression against the United Arab Republic, the Syrian Arab Republic and Jordan, and for the continuance of the aggression by keeping under its occupation parts of the territory of these countries."

A/L.522/REV.3*,[9] 3 July 1967, submitted by: Afghanistan, Burundi, Cambodia, Ceylon, Congo (Brazzaville), Cyprus, Guinea, India, Indonesia, Malaysia, Mali, Pakistan, Senegal, Somalia, United Republic of Tanzania, Yugoslavia and Zambia. "Calls upon Israel to withdraw immediately all its forces to the positions they held prior to 5 June 1967."

A/L.523/Rev.1,[10] 4 July 1967, submitted by: Argentina, Barbados, Bolivia, Brazil, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guatemala, Guyana, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Trinidad and Tobago and Venezuela. "Israel to withdraw all its forces from all the territories occupied by it as a result of the recent conflict."

In short, Israel did not violate the provisions of the UN Charter, is not an aggressor, and is not required to withdraw from all the territories.

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7 Union of Soviet Socialist Republics: draft resolution, A/L.519, June 19 1967, DOCUMENT A/L.519 at: http://domino.un.org/unispal.nsf/0/2795fff6b58b212c052566cd006e0900?OpenDocument. (10919)

8 Draft Resolution A/L. 521, by Albania at the Emergency Session of the General Assembly-June 26 1967, see: http://www.mefacts.com/cache/html/un-resolutions/10921.htm. (10921)

9 Document A/L.522/REV.3*, July 3 1967, Afghanistan, Burundi, Cambodia, Ceylon, Congo (Brazzaville), Cyprus, Guinea, India, Indonesia, Malaysia, Mali, Pakistan, Senegal, Somalia, United Republic of Tanzania, Yugoslavia and Zambia: Revised draft resolution. (10918)

10 A/L.523/Rev.1, July 4 1967, Fifth emergency special session Agenda item 5. Argentina, Barbados, Bolivia, Brazil, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guatemala, Guyana, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Trinidad and Tobago and Venezuela: revised draft resolution. See: http://domino.un.org/UNISPAL.NSF/0/510ef41fac855100052566cd00750ca4?OpenDocument. (10920)

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8 UN Security Council Resolutions 242 and 338

United Nations Security Council Resolution 242 was adopted unanimously by the UN Security Council in the aftermath of the 1967 Six Day War. The resolution calls for a solution to the Arab-Israeli conflict based in principle of the 'land for peace' formula.[1]

Resolution 242 and 338 never branded Israel as an "Unlawful Occupier" or an "Aggressor" and never called on Israel to withdraw from *all* the "Territories." The wording of the resolutions clearly reflect the contention that none of the Territories were occupied territories taken by force in an *unjust war.*[2]

In contrast, the International Court of Justice repeatedly reminds the readers of the "… illegality of territorial acquisition resulting from the threat or use of force," all out of context. The Court misleads the readers by concealing "the provisions of the UN Charter concerning *cases in which the use of force is lawful*," as was the case of the Six-Day War in 1967.

The minutes of the six month 'debate' over the wording of Resolution 242, as noted in the close of Chapter 8, show that draft resolution proposals that speak of "occupied territories", "aggression" and which called on Israel to "withdraw immediately all its forces to the positions they held prior to 5 June 1967," were all defeated.

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[1] See Appendix C.

[2] See Appendix D.

Professor Eugene V. Rostow, a drafter of UN Security Council Resolution 242 and an international law expert, went on record in 1991 to make this clear:

> "Resolution 242, which as Undersecretary of State of Political Affairs between 1966 and 1969, I helped to produce, calls on the parties to make peace and *allows Israel to administer the territories it occupied in 1967* until 'a just and lasting peace in the Middle East' is achieved. … Speaker after speaker made it explicit that Israel was not to be forced back to the 'fragile' and 'vulnerable' Armistice Demarcation Lines, but should retire once peace was made to what Resolution 242 called 'secure and recognized' boundaries, agreed upon by the parties"[3] [italics by author].

Former British Ambassador to the UN, Lord Caradon, the principal author of the Resolution 242 draft, indicated the same in 1974:

> "It would have been wrong to demand that Israel return to its positions of 4 June 1967. … That's why we didn't demand that the Israelis return to them and I think we were right not to."[4]

Arthur J. Goldberg,[5] the U.S. Ambassador to the UN in 1967 and a key draftee of Resolution 242, stated:

> "The notable omissions in language used to refer to withdrawal are the words *the, all,* and the *June 5, 1967, lines.* I refer to the English text of the resolution. The French and Soviet texts differ from the English in this respect, but the English text was voted on by the Security Council, and thus it is determinative. In other words, there is lacking a declaration requiring Israel to withdraw from the (or all the) territories occupied by it on and after June 5, 1967. Instead, the resolution stipulates *withdrawal from occupied*

---

[3] Eugene V. Rostow, "The Future of Palestine," Institute for National Strategic Studies, November 1993. Professor Rostow was Sterling Professor of Law and Public Affairs Emeritus at Yale University and served as the Dean of Yale Law School (1955-66); Distinguished Research Professor of Law and Diplomacy, National Defense University; Adjunct Fellow, American Enterprise Institute. In 1967 as U.S. Under-Secretary of State for Political Affairs he become a key draftee of the UN Resolution 242.

[4] Lord Caradon (Sir Hugh Foot) was the UK representative to the UN in 1967. His final draft becomes the foundation for UN Resolution 242. See Beirut Daily Star, June 12 1974, as quoted by Leonard J. Davis in Myths and Facts (Washington: Near East Report, 1989), p. 48, cited in Dan Diker, "Does the International News Media Overlook Israel's Legal Rights in the Palestinian-Israeli Conflict," JCPA, at: http://www.jcpa.org/jl/vp495.htm.

[5] Goldberg, Arthur, was a professor of law at the John Marshall Law School in Chicago. Appointed in 1962 to the U.S. Supreme Court. In 1965 he was appointed U.S. representative to the United Nations. Judge Goldberg was a key draftee of UN Resolution 242.

> *territories without defining the extent of withdrawal.* And it can be inferred from the incorporation of the words *secure and recognized boundaries* that the territorial adjustments to be made by the parties in their peace settlements could encompass less than a complete withdrawal of Israeli forces from occupied territories"[6] [italics by author].

Political figures and international jurists have discussed the existence of "permissible" or "legal occupations." In a seminal article on this question, entitled *What Weight to Conquest*, Schwebel, a former president of the International Court of Justice, wrote:

> "... a state [E.H. Israel] acting in lawful exercise of its right of self-defense may seize and occupy foreign territory as long as such seizure and occupation are necessary to its self-defense; (c) where the prior holder of territory had seized that territory unlawfully, the state which subsequently takes that territory in the lawful exercise of self-defense has, against that prior holder, *better title.*
>
> "... as between Israel, acting defensively in 1948 and 1967, on the one hand, and her Arab neighbors, acting aggressively, in 1948 and 1967, on the other, Israel has the better title in the territory of what was Palestine, including the *whole of Jerusalem*, than do Jordan and Egypt"[7] [italics by author].

Professor Stone, a leading authority on the law of nations, has concurred, further clarifying:

> "Territorial Rights Under International Law. ... By their [Arab countries] armed attacks against the State of Israel in 1948, 1967, and 1973, and by various acts of belligerency throughout this period, these Arab states flouted their basic obligations as United Nations members to refrain from threat or use of force against Israel's territorial integrity and political independence. These acts were in flagrant violation *inter alia* of Article 2(4) and paragraphs (1), (2), and (3) of the same article."[8]

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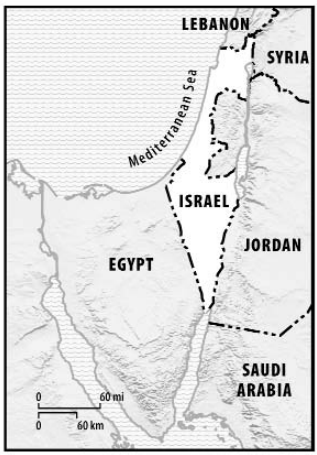
[6] Goldberg, "U.N. Resolution 242: Origin, Meaning, and Significance." National Committee on American Foreign Policy. See article at: http://www.mefacts.com/cache/html/arab-countries/10159.htm. (10159)

[7] Professor, Judge Stephen M. Schwebel, *What Weight to Conquest?* in "Justice in International Law", Cambridge University Press, 1994. Opinions quoted in this critiques are not derived from his position as a judge of the ICJ.

[8] Professor Julius Stone, "Israel and Palestine, Assault on the Law of Nations" The Johns Hopkins University Press, 1981.

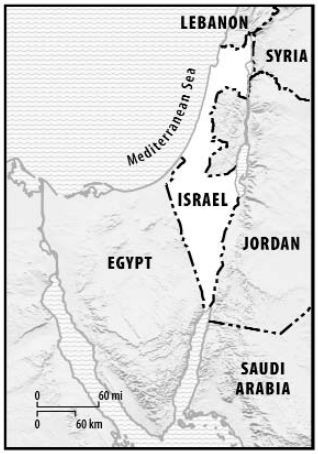
Border Changes As Arabs Initiate Wars of Aggression

In 1947 Israel accepted the UN Partition Plan that recommended a sovereign independent Jewish State. All Arab countries rejected the Partition Plan, and tried to wipe Israel off the face of the earth. Time and again Israel has returned land it gained in these Arab wars of aggression, in the hope that this will deliver peace and stability. It did not.



1949
Israel territory after Israel War of Independence.

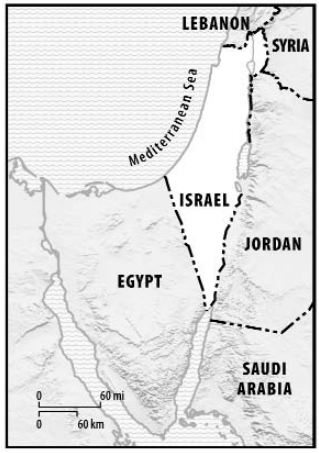
1956
Sinai Campaign: Israel gains control over the Sinai Peninsula territory.



1957
Israel agrees to withdraw its troops from the Sinai Peninsula and the Gaza Strip, handing over these territories back to Egypt.

1967
Israel boundaries following the Six Day War. Egypt, Jordan and Syria in a war of aggression, lost the territories of the Sinai Peninsula, the West Bank and the Golan Heights. For the first time Israel is in control of Jewish Mandated Palestine.

1973
Israel boundaries following the Yom-Kippur War. In a clear act of aggression Egypt and Syria attacked the State of Israel, but were driven away.



1979-present
On March 26, 1979, Israel and Egypt signed a peace treaty on the White House lawn. Israel returned the Sinai Peninsula territory to Egypt.

9 Territories – Legality of Jewish Settlements

In advising that Jewish settlements are illegal, the ICJ went beyond its own mandate from the General Assembly without being asked to do so.

In paragraph 120 of the Court's opinion, the ICJ declares:

> "The Court concludes that the Israeli settlements in the Occupied Palestinian Territory (including East Jerusalem) have been established in breach of international law."

The ICJ based its conclusion on the inappropriate use of an article of the Fourth Geneva Convention which stipulates:

> "The Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies,"

coupled with a host of anti-Israeli UN General Assembly resolutions passed in the 1990s that describe the West Bank and Gaza as "Palestinian Occupied Territories" and declare Israeli settlements – including hundreds of thousands of Jewish Jerusalemites living in numerous new neighborhoods built since 1967 – to be illegal settlers.

For example, in paragraph 19 of the opinion, the ICJ notes that in 1997 the Security Council *rejected* two one-sided draft resolutions that sought to brand Israeli settlements as *illegal* (draft S/1997/199[1] and draft S/1997/241[2]). The ICJ then proceeds to solemnly describe how "the Arab Group" maneuvered to by-pass the Security Council and to subsequently pass General Assembly Resolution ES-10/2 that "expressed its [General Assembly] conviction" and:

> "… condemned the 'illegal Israeli actions' in occupied East Jerusalem and the rest of the Occupied Palestinian Territory, in particular the construction of settlements in that territory."

The ICJ leads the reader to believe that expressing "conviction" in regard to the so-called "illegal Israeli actions in occupied East Jerusalem and the rest of the Occupied Palestinian Territory" is sufficient to make the document a source of law.

The General Assembly request of the ICJ's advisory opinion reads:

> "*Recalling in particular* relevant United Nations resolutions affirming that Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, are illegal and an obstacle to peace and to economic and social development as well as those demanding the complete cessation of settlement activities."[3]

Again, the ICJ treats its reference to "United Nations Resolutions" as if it was a source of law, all without checking its accuracy or legal standing.

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1 Rejected – UN Security Council draft resolution S/1997/199, March 7 1997. See: http://domino.un.org/UNISPAL.NSF/0/f97c162f6a30647205256531005b4e15?OpenDocument. (11379)

2 Draft SC Resolution (res no. S/S/1997/241) Vetoed by the U.S. March 21 1997. See: http://domino.un.org/UNISPAL.NSF/0/88f7fb4746687647052565310 05b7239?OpenDocument. (11380)

3 United Nations, General Assembly Resolution, A/RES/ES-10/14, "Illegal Israeli actions in Occupied East Jerusalem and the rest of the Occupied Palestinian Territory" 12 December 2003. See: http://middleeastfacts.org/content/UN-Documents/A-RES-ES-10-14.htm. (10938)

The UN Charter does not grant the General Assembly or the International Court of Justice the authority to assign or affect the 'ownership' of the Territories.

As incredulous as it may be, the ICJ chose to ignore the General Assembly's powers. A host of anti-Israel resolutions passed annually are not legally binding documents by any measure. One need only to read Article 10 of the UN Charter:

> "The General Assembly may *discuss* any questions or any matters within the scope of the present Charter or relating to the powers and functions of any organs provided for in the present Charter, and, except as provided in Article 12, *may make recommendations* to the Members of the United Nations or to the Security Council or to both on any such questions or matters" [italics by author].

Schwebel, the former president of the International Court of Justice, has written that:

> "… the General Assembly of the United Nations can only, in principle, issue 'recommendations' which are not of a binding character, according to Article 10 of the Charter of the United Nations."[4]

Schwebel also cites the (1950) opinion of Judge, Sir Hersch Lauterpacht, a former member judge of the International Court of Justice, who declared that:

> "… the General Assembly has no legal power to legislate or bind its members by way of recommendation."

Yet another former ICJ judge, Sir Gerald Fitzmaurice has been just as resolute in rejecting what he labeled the "illusion" that a General Assembly resolution can have "legislative effect."[5]

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[4] Professor, Judge Stephen M. Schwebel, *The Legal Effect of Resolutions and Codes of Conduct of the United Nations* in "Justice in International Law", Cambridge University Press, 1994. Opinions quoted in this critiques are not derived from his position as a judge of the ICJ.

[5] Cited in "Israel and Palestine, Assault on the law of nations," Professor Julius Stone, The Johns Hopkins University Press, 1981. p. 29.

Academics and renowned international law experts also agree. Professor Stone illuminates this subject by pointing out:

> "In his book *The Normative Role of the General Assembly of the United Nations and the Declaration of Principles of Friendly Relations*, Professor Gaetano Arangio-Ruiz[6] is led to conclude that the General Assembly lacks legal authority either to enact or to 'declare' or 'determine' or 'interpret' international law so as legally to bind states by such acts, whether these states be members of the United Nations or not, and whether these states voted for or against or abstained from the relevant vote or did not take part in it."[7, 8]

Certain General Assembly resolutions may be recognized as "declaratory" but no more. Among Schwebel conclusions:

> "… certain resolutions of the General Assembly – viewed as expressions of the assembled States of the world community … which treat questions of international law which are not the subject of principles found in the United Nations Charter may be recognized to be declaratory, though not creative, of international law, provided that they are:
>
> (i) adopted with the support of all assembled States, or, at any rate, of all the groups of States represented in the General Assembly, including major States that are not members of a group, such as the United States of America and China."

The Territories and the war of words.

One can easily trace the General Assembly's attempts to *legislate* changes in the status of the Territories. How the definition of the status of the Territories was 'doctored' is well documented on the website of the Palestinian delegation to the United Nations that posts landmark pro-Palestinian decisions. Examination reveals how over the years UN

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6 Professor Gaetano Arangio-Ruiz "The United Nations declaration on friendly relations and the system of the sources of international law" Publisher: Alphen aan den Rijn, The Netherlands; Germantown, Md.: Sijthoff & Noordhoff, 1979. ISBN: 902860149X.

7 Ibid, p. 40. Professor Julius Stone – another eminent scholar of international law – labeled Ruiz's work "perhaps the most comprehensive and up-to-date treatise on this matter".

8 See the Hague Academy of International Law, at: http://www.ppl.nl/bibliographies/all/showresults.php?bibliography=recueil&keyword1ppn=076252078&keyword=General%20Assembly.

General Assembly resolutions and the wording of resolutions by sub-committees moves from "territories" to "occupied territories" to "Occupied Territories" and "Arab territories" to "occupied Palestinian territories" to "Occupied Palestinian Territory" and "occupied Palestinian territory, including Jerusalem":

- Resolution 3236 (XXIX)[9] passed in November 1974 speaks of "the question of Palestine";

- Resolution 38/58[10] in December 1983 speaks of "Arab territories" and "occupied territories";

- Resolution 43/176[11] passed in December 1988 expresses sentiments suggesting Palestinian entitlement – speaking of "the Palestinian people['s] right to exercise their sovereignty over their territory occupied since 1967";

- Resolution 51/133[12] passed in December 1996 adds Jerusalem in particular – speaking of "occupied Palestinian territory, including Jerusalem, and the occupied Syrian Golan";

- Resolution 52/250[13] passed in July 1998 fully "assigns title" – speaking of "Occupied Palestinian Territory," a designation that is frequently used in subsequent resolutions.

None of these terms have a legal foundation any more than declaring "the world is flat" makes it so. Yet the International Court of Justice cites these terms as if they were *legal* documents, all in violation of the Court's Statute.

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[9] See: http://domino.un.org/UNISPAL.NSF/0/025974039acfb171852560de00548bbe?OpenDocument. (11382)

[10] See: http://domino.un.org/UNISPAL.NSF/0/2fdd47753d2ae353852560d8006ca36b?OpenDocument. (11383)

[11] See: http://domino.un.org/UNISPAL.NSF/0/8ff8af940beaf475852560d60046f73f?OpenDocument. (11384)

[12] See: http://domino.un.org/UNISPAL.NSF/0/4080cb55ac61c2658025646c002a89a3?OpenDocument. (11385)

[13] See: http://daccessdds.un.org/doc/UNDOC/GEN/N98/773/11/PDF/N9877311.pdf?OpenElement. (11386)

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It should be noted: The coining of the term "Occupied Palestinian Territory" by the General Assembly, and all the more so its 'adoption' by the International Court of Justice, is contrary to, and *totally incompatible* with, Article 12 of the UN Charter which states:

> "While the Security Council is exercising in respect of any dispute or situation the functions assigned to it in the present Charter, the General Assembly *shall not make any recommendation with regard to that dispute or situation unless the Security Council so requests*" [italics by author].

International law allows for "just wars" and "lawful occupation."

Resolutions 242 and 338 (discussed in Chapter 9) are the cornerstones for how a "just and lasting peace" should be achieved. The term 'Occupied Palestinian Territory' does not appear in either, not even the term 'occupied territory.' Resolution 242 affirms that:

> "… fulfillment of the Charter principles requires the establishment of a just and lasting peace in the Middle East which should include the application of both the following principles: Withdrawal of Israeli armed forces from territories occupied in the recent conflict; Termination of all claims or states of belligerency and respect for and acknowledgement of the sovereignty, territorial integrity and political independence of every State in the area and their right to live in peace within secure and recognized boundaries free from threats or acts of force."

The ICJ ignores that there is such a quality as a "lawful occupation." In essence the ICJ seeks to *overturn* Security Council Resolutions 242 and 338, and to de-legitimize Israel's right to claim any territory, over the Green Line, even for self-defence.

In paragraph 74 of the opinion, the ICJ prefers a highly questionable *abridged* rendition of these two core documents in a way that makes it appear as if Israel was an aggressor:

> "On 22 November 1967, the Security Council unanimously adopted resolution 242 (1967), which emphasized [E.H. Principle I] the inadmissibility of acquisition of territory by war and [E.H. Principle II]

> called for the 'Withdrawal of Israel armed forces from territories occupied in the recent conflict,' and [E.H. Principle III] 'Termination of all claims or states of belligerency.'"

ICJ selective writing falsifies historical documents.

The ICJ misleads the readers by simply *removing* from the second principle [Principle II above] the need, as stated in Resolution 242, for "secure and recognized boundaries" that will not invite aggression. In any case, the ICJ cannot override Security Council resolutions nor can it *edit* or *fix* them. Such doctored use of "the inadmissibility of the acquisition of territory by force" is disingenuous.

It is impossible to believe that the ICJ was unfamiliar with the basic rules governing the workings of the UN that are most relevant in understanding the meaning of the Security Council's power and the two types of resolutions it may adopt:

Resolutions adopted under Chapter VI – Recommending "Pacific Resolution of Dispute":

> Resolutions the Security Council adopts under Chapter VI are intended to be followed and implemented via negotiated settlements between concerned parties. One of the UN resolutions adopted under Chapter VI of the UN Charter is Resolution 242, adopted in 1967 after the Six-Day War. It calls on Israel and its Arab neighbours to accept the resolution through negotiation, arbitration and conciliation. Under Chapter VI of the UN Charter, the recommendations of UN Resolution 242 cannot *be imposed* on the parties concerned, as Arab leaders often argue. In fact, the title of Chapter VI also offers a clue to its nature, for it deals with "Pacific Resolution of Disputes."

Resolutions adopted under Chapter VII – Dealing with the "Threats to Peace …":

> In contrast, resolutions adopted by the Security Council under Chapter VII invest the Security Council with power to issue stringent resolutions that *require* nations to comply with the terms set forth in the resolution. This leaves no room to negotiate a settlement with the affected parties. Thus, Chapter VII deals with "Threats to Peace, Breaches of the Peace and Acts of Aggression."

When Iraq invaded Kuwait in 1990, the Security Council adopted resolutions under Chapter VII that only required the aggressor, Iraq, to comply.[14]

Had Israel been an aggressor – where the territories were "occupied territories" taken by force in an *unjust* war – Resolution 242 would have been adopted under Chapter VII of the UN Charter, *requiring Israel to comply* … and not under Chapter VI.

In paragraph 26 of its opinion, the ICJ notes that Chapter VII empowers the Security Council to "require enforcement by coercive action," thus *implying* that this Chapter is somehow relevant to this proceedings. Chapter VI isn't even mentioned in the ICJ's opinion – not in general and not with regard to Resolutions 242 or 338, although the Bench cites "242 (1967)" no less than seven times, providing ample opportunity to clarify that 242 adopted under Chapter VI of the UN Charter is intended to be followed and implemented via negotiated settlements between the concerned parties and *not by this Court*.

Ignoring just wars and legal occupation.

It is important to note here that the ICJ refuses to even acknowledge the existence of scholarly literature that addresses the issue of seizure of territory in *just wars* written by internationally respected, former members of the ICJ. The ICJ simply turns a blind eye to the fact that some wars are *just wars* and *not all* occupations are *illegal* – as in the Israeli case, so clearly reflected by the unanimous adoption of UN Security Council Resolution 242 under Chapter VI.

As noted earlier, Lauterpacht pointed out in a 1968 article (which was also cited by Schwebel in his writings):

> "… territorial change cannot properly take place as a result of the 'unlawful' use of force. But to omit the word 'unlawful' is to change the substantive

[14] UN Security Council Resolution 678, S/RES/0678 (1990), November 29 1990. See: http://www.mefacts.com/cache/html/icj/11446.htm. (11446)

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> content of the rule and to turn an important safeguard of legal principle into an aggressor's charter. For if force can never be used to effect lawful territory change, then, if territory has once changed hands as a result of the unlawful use of force, the illegitimacy of the position thus established is sterilized by the prohibition upon the use of force to restore the lawful sovereign. This cannot be regarded as reasonable or correct."[15]

This argument, which is widely recognised, goes unnoticed or is consciously and purposely ignored.

The ICJ's sweeping 'adoption' of the General Assembly's resolutions – as if they were legally binding or a source of international law, and the ICJ's unauthorized 'illegal transfer' of unallocated disputed territories to one of the sides in the conflict, is all the more ironic in light of the ICJ's main contention: that Israel's actions are primarily political and not security motivated, and that these actions constitute a *fait accompli.* In paragraph 121 of the opinion the ICJ declares:

> "The Court considers that the construction of the wall and its associated régime create a 'fait accompli' on the ground that could well become permanent, in which case, and notwithstanding the formal characterization of the wall by Israel, it would be tantamount to de facto annexation."

This begs the question: Are the ICJ's own actions in arbitrarily handing over ownership and *title* to all territories beyond the Green Line to the Palestinians – including East Jerusalem – not tantamount to unlawful *de facto* annexation?

Professor Stone cites in his writings that in 1975 the ICJ has been:

> "insistent, not least as regards [to] questions of *territorial title,* that the rules and concepts of international law have to be interpreted 'by reference to the law in force' and 'the State practice' at the relevant period [italics by author].
>
> "Judge de Castro in his Separate Opinion (ibid., 127, at 168 ff.) declared the principle *tempus regit factum* as a recognized principle of international law.

[15] Professor, Judge Sir Elihu Lauterpacht, "Jerusalem and the Holy Places," Pamphlet No. 19 (London, Anglo-Israel Association, 1968).

He continued (p. 169): 'Consequently, the creation of ties with or titles to a territory must be determined according to the law in force at the time. ... The rule *tempus regit factum* must also be applied to ascertain the legal force of new facts and their impact on the existing situation.' He went on to illustrate this influence of 'new facts and new law' by reference to the impact on the suppression of the colonial status of Western Sahara by the principles concerning non-self-governing territories emanating from the United-Nations Charter and the later application to them of the principle of Self-determination (pp. 169-71). This limiting rider has reference to the appearance of new principles of international law, overriding the different principles on which earlier titles are based. But, of course, it can have no application to vested titles based, as was the very territorial allocation between the Jewish and Arab peoples, on the principle of self-determination itself."[16]

If the so-called West Bank and Gaza were indeed occupied territory – belonging to someone else and unjustly seized by force – there could be no grounds for negotiating new borders, as UN Security Council Resolution 242 implies.

The ICJ charges that Jewish settlements in the West Bank are populated by settlers 'deported by force.'

Once the ICJ has 'established evidence' that the West Bank and Gaza are unlawfully occupied territories, it then applies this *status* to the Fourth Geneva Conference[17] *de jure,* stating in paragraph 120 of the opinion that:

"As regards these settlements, the Court notes that Article 49, paragraph 6, of the Fourth Geneva Convention provides: 'The Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies.'

"In this respect, the information *provided to the Court* shows that, since 1977, Israel has conducted a policy and developed practices involving the establishment of settlements in the Occupied Palestinian Territory, contrary to the terms of Article 49, paragraph 6, just cited" [italics by author].

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[16] Majority Opinion in the Western Sahara case, I.C.J. Reports, 1975, p. 12, esp. at 38-39) as cited by Professor Julius Stone, "Israel and Palestine, Assault on the Law of Nations." The Johns Hopkins University Press, 1981, p. 127.

[17] Geneva Convention relative to the Protection of Civilian Persons in Time of War. See: http://www.unhchr.ch/html/menu3/b/92.htm. (10356)

One can hardly believe this baseless ICJ assertion that Israel used "deportation" and "forced transfer" of its own population into 'occupied territories.'

The Court attempts to 'broaden the definition of Article 49 to possibly 'fit' some wrong doing on the part of the State of Israel, all with no reference to law, adding:

> "That provision prohibits not only deportations or forced transfers of population such as those carried out during the Second World War, but also any measures taken by an occupying Power in order to organize or encourage transfers of parts of its own population into the occupied territory."

In the above conclusion, the ICJ fails to disclose the content of the "information provided" (information the Court based its decision on), and the *anonymous* 'authorities' that provided such. Anyone interested in the subject at hand is aware of the difficulties the Israeli Government faces in its decision to relocate some Israeli settlements *out* of the "Territories," *a fact* that seems to be contrary to the "information provided" to the ICJ.

Professor Stone touches on the applicability of Article 49 of the Geneva Convention. Writing on the subject in 1980:

> "… that because of the *ex iniuria* principle, Jordan never had nor now has any legal title in the West Bank, nor does any other state even claim such title. Article 49 seems thus simply not applicable. (Even if it were, it may be added that the facts of recent voluntary settlements seem not to be caught by the intent of Article 49 which is rather directed at the forced transfer of the belligerent's inhabitants to the occupied territory, or the displacement of the local inhabitants, for other than security reasons.) The Fourth Geneva Convention applies only, according to Article 2, to occupation of territory belonging to 'another High Contracting Party'; and Jordan cannot show any such title to the West Bank, nor Egypt to Gaza."

Support to Stone's assertion can be found in Lauterpacht's writing in 1968:

> "Thus Jordan's occupation of the Old City–and indeed of the whole of the area west of the Jordan river–entirely lacked legal justification; and being defective

> in this way could not form any basis for Jordan validly to fill the sovereignty vacuum in the Old City [and whole of the area west of the Jordan river]."[18]

Rostow concludes that the Convention is not applicable to Israel's legal position and notes:

> "The opposition to Jewish settlements in the West Bank also relied on a legal argument – that such settlements violated the Fourth Geneva Convention forbidding the occupying power from transferring its own citizens into the occupied territories. How that Convention could apply to Jews who already had a legal right, protected by Article 80 of the United Nations Charter, to live in the West Bank, East Jerusalem, and the Gaza Strip, was never explained."[19]

It seems that the International Court of Justice "never explained" it either.

By default, ICJ support of the "Mandate for Palestine" suggests it is actually supporting Jewish settlement in Palestine. Is the ICJ confused?

The ICJ concluded that under the Fourth Geneva Conference, Jewish settlements in the "Territories" are illegal, which brings up the need to reconcile two of the ICJ's conflicting positions:

The first, as noted above, is the ICJ opinion regarding the *illegal Jewish settlements* in the "Territories."

The second, refers to the ICJ 'adoption' of the "Mandate for Palestine" – a document which under Article 6 testifies to the legality of Jewish settlements in Palestine and does:

> "*encourage*, in co-operation with the Jewish agency referred to in Article 4, [building] *close settlement by Jews* on the land, including State lands and waste lands not required for public purposes"[20] [italics by author].

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[18] Professor, Judge Sir Elihu Lauterpacht, "Jerusalem and the Holy Places," Pamphlet No. 19 (London, Anglo-Israel Association, 1968).

[19] Professor Eugene V. Rostow, see: http://www.law.yale.edu/outside/pdf/Public_Affairs/ylr50-2/Rostow.pdf.

[20] See Appendix A. "Mandate for Palestine."

The ICJ ignores that under international convention[21] and Article 80 of the UN Charter, all of western Palestine is legally open to settlement by Jews and at best the West Bank and Gaza are unallocated territory left over from the British Mandate to which there are two claimants.

Paragraph 88 of the Court's opinion stated that:

> "… the ultimate objective of the sacred trust" referred to in Article 22, paragraph 1, of the Covenant of the League of Nations "was the self-determination … of the peoples concerned."

The ICJ seems confused. It attempts to links the "sacred trust" to the wrong "people concerned"!

UN Charter and Article 80.

International law, the UN Charter, and specifically Article 80 of the UN Charter implicitly recognize the "Mandate for Palestine" of the League of Nations. This Mandate granted Jews the *irrevocable* right to settle in the area of Palestine, anywhere between the Jordan River and the Mediterranean Sea. Rostow explains:

> "This right is protected by Article 80 of the United Nations Charter. The Mandates of the League of Nations have a special status in international law, considered to be trusts, indeed 'sacred trusts.'
>
> "Under international law, neither Jordan nor the Palestinian Arab 'people' of the West Bank and the Gaza Strip have a substantial claim to the sovereign possession of the occupied territories."[22]

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[21] Ibid.

[22] Eugene V. Rostow, "The Future of Palestine" from the paper delivered at the American Leadership Conference on Israel and the Middle East in Arlington, Virginia. October 10 1993. See: http://middleeastfacts.org/content/book/The%20Future%20of%20Palestine.htm. (10509)

It is interesting to learn how Article 80 made its way into the UN Charter. Professor Rostow recalls:

> "I am indebted to my learned friend Dr. Paul Riebenfeld, who has for many years been my mentor on the history of Zionism, for reminding me of some of the circumstances which led to the adoption of Article 80 of the Charter. Strong Jewish delegations representing differing political tendencies within Jewry attended the San Francisco Conference in 1945. Rabbi Stephen S. Wise, Peter Bergson, Eliahu Elath, Professors Ben-Zion Netanayu and A. S. Yehuda, and Harry Selden were among the Jewish representatives. Their mission was to protect the Jewish right of settlement in Palestine under the mandate against erosion in a world of ambitious states. Article 80 was the result of their efforts."

The ICJ ignores the history of Jewish life in the area called Palestine.

The ICJ also ignores that Jews who had settled in these areas during almost 30 years of "Mandate" government and, in fact, for thousands of years in areas such as Hebron and the Old City of Jerusalem (in so-called "East Jerusalem"), in Kfar Darom in Gaza or the Etzion Bloc near Hebron, were either killed or driven out by the Arabs during the 1948 War. All areas of western Palestine that remained under Arab control were rendered racially cleansed of Jews – by Jordanian and Egyptian invaders, an act that in today's parlance would be labeled "ethnic cleansing." Even the 2,000 Jewish inhabitants of the Jewish Quarter of the Old City [of Jerusalem], who lived adjacent to the holiest site to Judaism, the Western Wall in the shadow of the Temple Mount, were an intolerable presence to Arabs.

While the ICJ opinion mentions Jerusalem 54 times, all references are in relation to Palestinian rights of free access to holy sites, while the ICJ ignores that not one Jew was allowed to reside or even visit the West Bank and the Old City of Jerusalem for 19 years of illegal Jordanian rule. Between 1949 and 1967, Jordanian military personnel overran and razed Jewish settlements to the ground, trashed some 58 synagogues,

and used headstones from the Mount of Olives cemetery to build roads.[23] After the 1967 Six-Day War, Jews *reestablished* their legal right to settle anywhere in western Palestine – an entitlement unaltered in international law since 1920 and valid to this day.

Invoking the Fourth Geneva Convention to make any Jewish presence in the West Bank, including the Old City of Jerusalem, 'illegal' is hardly applicable – neither from an historical, nor from a legal standpoint.

Where Jews are and are not permitted to settle.

The ICJ chooses to ignore the content of the "Mandate for Palestine" and accompanying legally binding international accords that set the boundaries of the Jewish mandate and delineates where Jews are and are not permitted to settle.

The Court opinion cites in paragraph 70 – almost parenthetically, that

> "The territorial boundaries of the Mandate for Palestine were laid down by various instruments, in particular on the eastern border by a British memorandum of 16 September 1922 and an Anglo-Transjordanian Treaty of 20 February 1928."

The reader is left in the dark as to what these "instruments" say or to what the text refers. No wonder. The ICJ does not quote the content of these two key international treaties and ignores the relevant clauses of the Mandate itself vis-à-vis the status of western Palestine, because citing these treaties and clauses would collapse the foundations of the commonly-held assumption that Israeli settlements are 'illegal'. It is important to set the record straight. The "eastern border" the ICJ chose not to discuss was the Jordan River.

At first, the six page "Mandate" document did not set the borders – leaving this for the Mandator to stipulate in a binding appendix to the

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[23] Jeff Jacoby, "When Jerusalem was divided," see: http://www.mefacts.com/cache/html/territories/11304.htm. (11304)

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document in the form of a memorandum, but Article 6 of the Mandate says clearly:

> "The Administration of Palestine, while ensuring that the rights and position of other sections of the population are not prejudiced, shall facilitate Jewish immigration under suitable conditions and shall encourage, in co-operation with the Jewish agency referred to in Article 4, *close settlement by Jews on the land, including State lands and waste lands not required for public purposes*" [italics by author].

Article 25 of the "Mandate for Palestine" entitled the Mandatory to change the terms of the Mandate in the part of the Mandate *east* of the Jordan River. That is, it gave the Mandatory an 'escape clause' that was not applicable to western Palestine:

> "In the territories lying between the Jordan and the eastern boundary of Palestine as ultimately determined, the Mandatory shall be entitled, with the consent of the Council of the League of Nations, to postpone or withhold application of such provision of this Mandate as he may consider inapplicable to the existing local conditions, …"[24]

Great Britain activated this option in the above-mentioned memorandum of September 16 1922, which the Mandatory sent to the League of Nations and which the League subsequently approved – making it a legally binding integral part of the Mandate.

Thus the "Mandate for Palestine" brought to fruition a fourth Arab state *east* of the Jordan River, realized in 1946 when the Hashemite Kingdom of Trans-Jordan was granted independence from Great Britain. All the clauses concerning a Jewish homeland would not apply to this part (Trans-Jordan) of the original Mandate, stating clearly:

> "The following provisions of the Mandate for Palestine are not applicable to the territory known as Trans-Jordan, which comprises all territory lying to the east of a line drawn from … up the centre of the Wady Araba, Dead Sea and River Jordan. … His Majesty's Government accept[s] full responsibility as Mandatory for Trans-Jordan."

[24] See: Appendix A. "Mandate for Palestine."

The creation of an Arab state in eastern Palestine (today Jordan) on 77 percent of the land mass of the original Mandate for Jews, in no way changed the status of Jews west of the Jordan River and their right to settle anywhere in western Palestine, between the Jordan River and the Mediterranean Sea.

These documents are the last legally binding documents regarding the status of what is commonly called "the West Bank and Gaza."

The memorandum (regarding Article 25) is also the last modification of the Mandate on record[25] by the League of Nations or by its legal successor – the United Nations – in accordance with Article 27 of the Mandate that states unequivocally:

> "The consent of the Council of the League of Nations is required for any modification of the terms of this mandate."

But to note or to quote these documents would 'spoil' the ICJ's charge that Israeli settlements are "illegal" and that Israel is an unlawful "Occupying Power" of land that 'belongs' to Palestinian Arabs.

The ICJ even uses its own opinions in a selective manner. Under the mistaken assumption that Palestinian self-determination was 'set in stone' by the international community in 1922 by the Mandate for Palestine, the Bench quotes a previous opinion on Namibia that addresses the fate of League of Nations' mandates, stating in paragraph 70 of the opinion:

> "…two principles were considered to be of paramount importance: the principle of non-annexation and the principle that the well-being and development of … peoples [not yet able to govern themselves] form[ed] 'a sacred trust of civilization.'"[26]

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[25] Ibid.

[26] The latter – a quote from Article 73 of the UN Charter that recognized the League of Nation's mandates as 'non-self-governing territories.'

The term "sacred trust" quoted by the ICJ is borrowed from the United Nations Charter Article 73[27] which recognizes the UN's commitments of its predecessor – the League of Nations – and promises to carry through to fruition the mandate system the League of Nations created, enshrined in Article 22 of the League of Nations Charter. Thus, the Bench quotes from its own 1950 opinion when it believes it supports the Palestinian cause, but the Bench also fails to mention that in the same case under the ICJ Advisory Opinion of 21 June 1971, the ICJ says:

> "…The International Court of Justice has consistently recognized that *the Mandate survived the demise of the League [of Nations]"* [italics by author].

In other words, neither the ICJ nor the General Assembly can arbitrarily change the status of *Jewish settlement* as set forth in the "Mandate for Palestine," an international accord that was never amended.

All of western Palestine, from the Jordan River to the Mediterranean Sea, including the West Bank and Gaza, remains open to Jewish settlement under international law until a legally binding document – in Israel's case, a peace treaty between Arabs and Jews that was called for in Security Resolution 242 and 338, changes this.

Rostow's position concurred with the ICJ's opinion as to the "sacredness" of such trusts:

> "A trust" – as in Article 80 of the UN Charter (which the Court avoids to mention) – "does not end because the trustee dies" … "the Jewish right of settlement in the whole of western Palestine – the area West of the Jordan – survived the British withdrawal in 1948." … "They are parts of the mandate territory, now legally occupied by Israel with the consent of the Security Council."[28]

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[27] Charter of the United Nations at: http://middleeastfacts.org/content/UN-Documents/UN_Charter_One_Document.htm. (11032)

[28] Professor Eugene V. Rostow was Sterling Professor of Law and Public Affairs Emeritus at Yale University and served as the Dean of Yale Law School (1955-66); In 1967 as U.S. Under-Secretary of State for Political Affairs he become a key draftee of UN Resolution 242. http://www.mefacts.com/cache/html/bio/10956.htm. (10956)

The Oslo Accords and the Gaza-Jericho agreements recognize Israel legal presence in the "Territories."

Even the Oslo Accords do not forbid either Israeli (i.e., Jewish) or Arab settlement activity. Likewise, the ICJ does not consider it relevant that the propriety of a *security fence around Gaza* was written into the Gaza-Jericho agreement, between Israel and the PLO, signed in Cairo, May 4 1994, and that Israel retained the right to provide for security, including the security of Israeli settlers.

> "The Parties agree that, as long as this Agreement is in force, the *security fence erected by Israel around the Gaza Strip* shall remain in place and that the line demarcated by the fence, as shown on attached map No. 1, shall be authoritative only for the purpose of this Agreement"[29] [italics by author].

The ICJ's narrative of how the Territories came into the possession of Israel is void of any context and sanitized of any trace of past and present Arab aggression.

The backdrop to the 1967 Six-Day War – the expulsion by Egypt of UN peace-keepers from the Sinai Peninsula, Egypt's illegal blockade of an international waterway, the massing of Egyptian troops on Israel's borders, and Jordan attacking the Israeli-held part of Jerusalem – mysteriously disappears. The ICJ jumps from the signing of the 1948 armistice agreements that established the Green Line as a temporary border, to the aftermath of the 1967 Six-Day War in *one* step. Paragraph 72 of the opinion recount how:

> "By resolution 62 (1948) of 16 November 1948, the Security Council decided that 'an armistice shall be established in all sectors of Palestine' and called upon the parties directly involved in the conflict to seek agreement to this end. … The Demarcation Line was subject to such rectification as might be agreed upon by the parties."[30]

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[29] Gaza-Jericho agreement. See: http://www.mefacts.com/cache/html/arab-peace-agreements/11371.htm (11371)

[30] UN Security Council Resolution of November 16 1948. See: http://domino.un.org/UNISPAL.NSF/0/1a2b613a2fc85a9d852560c2005d4223?OpenDocument. (11381)

Paragraph 73 of the Court's opinion immediately follows, saying:

> "In the 1967 armed conflict, Israeli forces occupied all the territories which had constituted Palestine under British Mandate (including those known as the West Bank, lying to the east of the Green Line)."

Readers might think that Israel just woke up one morning and out of the blue attacked its neighbors and occupied part of their territory without provocation. In fact, both the events and UN resolutions of the period substantiate and recognize that Israel's presence in the West Bank and Gaza is a *legal* occupation.

10 The Supreme Court of the State of Israel

The ICJ does not follow the directive in its mandate that requires it to use the most qualified and valued writing of law of other nations – in this case Israel. The Bench ignores the rulings of the Supreme Court of the State of Israel that could directly contribute to its own investigation of legality *and* proportionality.

The ICJ's Statute[1] requires it "to decide in accordance with international law" and to apply "… the most highly qualified publicists of the various nations." In this Case the relevant writings of the Supreme Court of the State of Israel should have been applied "as subsidiary means for the determination of the rules of law."

The ICJ's evaluation of the validity of supporting evidence appears to be carefully tailored to support forgone conclusions. It is the ICJ's own rules that the Bench seems to ignore. Article 38, rule 1(d) of the Court Statute requires that the Court:

> "Shall apply: … Judicial decisions and the teachings of the most highly qualified publicists of the various nations [to] determine rules of law."

[1] Statute of The International Court of Justice at: http://www.icj-cij.org/icjwww/ibasicdocuments/ibasictext/ibasicstatute.htm. (10485)

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The Bench even ignores the writings of former members of its own Bench, including a past president of the Court, as well as a host of other eminent jurists and academic scholars of international law.

In his writing on *Government Legal Advising in the Field of Foreign Affairs* about what influences and makes international laws, the former president of the International Court of Justice, Judge Schwebel, writes:

> "International law is largely the creation of Governments. In that creative process, those who render legal advice to Governments play a critical part (in present case the Supreme Court of the State of Israel). The forces which shape international law, like the forces which shape international affairs, are many and complex. But what is singular and clear is that those who advise Governments on what international law is and should be exert a particular, perhaps at times a paramount, influence on the formation of international law."[2]

United States Supreme Court Justice Stephen G. Breyer has said that:

> "the United States could learn from compromises Israeli courts have struck to *balance* terrorism and human rights concerns"[3] [italics by author].

At first glance, it would seem that the ICJ recognizes this fact. Closer examination reveals that when convenient, this same Court relies on the Israel Supreme Court to reach a conclusion that *fits* its thinking, but it sees nothing improper in ignoring the most relevant decisions to this case by the Israeli Supreme Court when its findings differ from the ICJ's. Thus, the ICJ supports the applicability of the Hague and Geneva Conventions by citing in paragraph 100 of the ICJ opinion, a May 30 2004, ruling by the Supreme Court of the State of Israel sitting as a High

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[2] Professor, Judge Stephen M. Schwebel, *Government Legal Advising in the Field of Foreign Affairs* in "Justice in International Law", Cambridge University Press, 1994. Opinions quoted in this critiques are not derived from his position as a judge of the ICJ.

[3] "Justice: Israeli courts could teach U.S. something about compromise," Associated Press, September 13 2003. See: http://www.mefacts.com/cache/html/human-rights/10308.htm. (10308)

Court of Justice.[4] The ICJ noted that Israel's highest court of justice ruled that:

> "… the military operations of the [Israeli Defense Forces] in Rafah, to the extent they affect civilians, are governed by Hague Convention IV Respecting the Laws and Customs of War on Land 1907 … and the Geneva Convention Relative to the Protection of Civilian Persons in Time of War 1949."[5]

Yet when it comes to a far more fundamental question – the purpose of the security fence and whether it is justified in light of the injury it causes Palestinians[6] – the expertise and experience of the Supreme Court of the State of Israel are no longer deemed valid. In paragraph 140 of the ICJ opinion, the Bench declares:

> "… In the light of the material before it, the Court is not convinced that the construction of the wall along the route chosen was the only means to safeguard the interests of Israel against the peril which it has invoked as justification for that construction."

What is the highly qualified material before the ICJ – or to be more precise: Is there highly relevant material that the ICJ arbitrarily judged to be immaterial?

If the Israeli Supreme Court can contribute to the case, why is there no mention whatsoever of a ruling handed down by the Supreme Court of the State of Israel in the case of Beit Sourik Village Council v. 1. The Government of Israel, (HCJ 2056/04) dated June 30 2004,[7] that also recognizes the applicability of the Hague and Geneva Conventions and is also *directly* connected to the security barrier issue?

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4 In Hebrew Baggatz.

5 HCJ 4764/04, May 30 2004, "Physicians for Human Rights v. Commander of the IDF Forces in the Gaza Strip," at: http://www.mefacts.com/cache/pdf/icj/11387.pdf. (11387)

6 The wording of the Advisory Opinion does not ask what its ramifications for Israelis are…

7 HCJ 2056/04, June 30 2004, "Beit Sourik Village Council v. 1.The Government of Israel," at: http://www.mefacts.com/cache/html/israel/10926.htm. (10926)

The Case is not hard to find in the online archive of the Israeli Court. In addition, the decision received worldwide exposure, reported internationally in most major media outlets.[8] Moreover, the Israeli Court's Judge Aaron Barak notes in the *opening* paragraph of the second case, the June 30 2004 ruling: "The question before us is whether the orders and the Fence are legal."

Examination of the Israeli Court's ruling reveals why the ICJ *preferred* to quote a ruling that deals with alleged lack of access to medical treatment for civilians in Rafiah in the Gaza Strip in the midst of Israel Defense Forces (IDF) military operations, rather than a ruling that addresses the legality of the *security barrier*, which is on the West Bank, directly relevant to the case.

The Israeli Supreme Court devoted *seven* court sessions to hearing the appeal of *one* Palestinian village that felt it had been wronged by seizure of some of its land to construct the security barrier. The June 30 2004 judgment is 22,000 words long. The Israeli Court describes at length both the all-pervasive and insidious character of Palestinian terrorism and the injury to Palestinian civilians caused by the security barrier. It concludes in paragraph 28:

> "We examined petitioners' arguments and have come to the conclusion, based upon the facts before us, that the *Fence is motivated by security concerns.* As we have seen in the government decisions concerning the construction of the Fence, the government has emphasized, numerous times, that '*the Fence, like the additional obstacles, is a security measure.* Its construction does not express a political border, or any other border.' (Decision of June 23 2002).
>
> "The obstacle that will be erected pursuant to this decision, like other segments of the obstacle in the Seam Area, is a security measure for the prevention of terror attacks and does not mark a national border or any other border" (Government of Israel, decision of October 1 2003) [italics by author].

[8] See for example *The New York Times*, "Israeli Court Orders Changes to Barrier in West Bank," June 30 2004, at: http://www.mefacts.com/cache/html/icj/11388.htm. (11388)

The Israeli Supreme Court's ruling doesn't even rate a rebuttal in the ICJ's opinion. It simply does not exist, or it is judged to be immaterial to the case.

It is clear there is *another* reason why the ICJ chose not to highlight this case. On the surface, from the ICJ's point of view, the judgment by the Israeli Court is just as good. The Israeli judgment says clearly in paragraph 23:

> "The authority of the military commander flows from the provisions of public international law regarding belligerent occupation. These rules are established principally in the Regulations Concerning the Laws and Customs of War on Land, The Hague, 18 October 1907 [hereinafter – the Hague Regulations]. These regulations reflect customary international law. The military commander's authority is also anchored in IV Geneva Convention Relative to the Protection of Civilian Persons in Time of War 1949 [hereinafter – the Fourth Geneva Convention]."[9]

But the judgment goes beyond this. The Israeli ruling also *explains* how the Israeli Court views adjudication of appeals for protection under the Hague and Geneva Conventions. In a very lengthy and thoughtful discussion of the challenges facing *any* court, the president of the Israeli Supreme Court says in paragraph 36:

> "The problem of balancing security and liberty is not specific to the discretion of a military commander of an area under belligerent occupation. It is a general problem in the law, both domestic and international. Its solution is universal. It is found deep in the general principles of law, which include reasonableness and good faith. … One of these foundational principles, which balance the legitimate objective with the means for achieving it, is the principle of proportionality. According to this principle, the liberty of the individual can be limited (in this case, the liberty of the local inhabitants under belligerent occupation), on the condition that the restriction is proportionate. This approach applies to all types of law."

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[9] Israel Supreme Court, ruling HCJ 2056/04, June 30 2004, "Beit Sourik Village Council v. 1.The Government of Israel," at: http://www.mefacts.com/cache/html/israel/10926.htm. (10926)

In paragraph 44, the Israeli Supreme Court adds:

> "The key question regarding the route of the Fence is: Is the route of the Separation Fence proportionate? The proportionality of the Separation Fence must be decided by the three following questions … First, does the route pass the 'appropriate means' test? ... The question is whether there is a rational connection between the route of the Fence and the goal of the construction of the Separation Fence. Second, does it pass the test of the 'least injurious' means? The question is whether, among the various routes which would achieve the objective of the Separation Fence, is the chosen one the least injurious. Third, does it pass the test of proportionality in the narrow sense? The question is whether the Separation Fence route, as set out by the military commander, injures the local inhabitants to the extent that there is no proper proportion between this injury and the security benefit of the Fence."

In a subsequent case: Alfei Menashe, HCJ 7957/04, September 15 2005, the Supreme Court of Israel held that according to international law regarding belligerent occupation, erecting a separation fence that minimizes the impediment of the local population in order to protect the lives and safety of Israeli settlers in the Judea and Samaria (West Bank) area is legal.[10]

The International Court of Justice distorts the Israeli court's intention.

For the ICJ to simply quote the Israeli court as 'accepting the applicability of the Hague and Geneva Conventions dealing with behavior towards civilians in wartime' while avoiding explaining what the Israeli court actually means by this, hardly does justice to the Israeli Supreme Court. In fact, such conduct by the ICJ warps the true position of the Israeli court, which demonstrates just how *difficult* it really is to weigh the merits of such a case where the 'right to life' of potential victims of Palestinian terrorism must be balanced against non-lethal injury to Palestinian non-combatants. Such input would be welcome in

[10] For a summary of the Judgment on the Fence Surrounding Alfei Menashe – HCJ 7957/04. See: http://elyon1.court.gov.il/heb/dover/html/hodaot_hanhalat.htm#msg4863. (11542)

any fair and judicious Court, but the ICJ, which lacks any military and security experience, and never experienced life under constant terrorism, was not interested in struggling with this issue.

In paragraph 100 of the ICJ opinion, the Bench mischaracterized the Supreme Court of Israel's limited acceptance of the applicability of Geneva Convention, warping the Israel court's intention and misleading the reader with selective use. The Supreme Court of the State of Israel did not rule that the West Bank and Gaza are 'Occupied Palestinian Territories' and never suggested that the Geneva Convention applies to the legal status of Israeli settlers. Israel signed the Fourth Geneva Convention on August 12 1949, and ratified it on July 6 1951. Since then, including after the 1967 war, Israel has not denounced the Convention, as permitted by the convention's Article 158.

As articulated in 1971 by then Attorney General of Israel, Meir Shamgar (who in 1983 became President of the Supreme Court), Israel *voluntarily* abides by the humanitarian provisions of the Geneva Convention in the West Bank and Gaza Strip, despite pointing out that Israel and other world renowned experts of international law believe that the Convention does not apply to these territories *de jure.*

11 Arab Consistent Behavior and Precedent for Fencing

The ICJ ignores the remarkably consistent Arab behavior in mandated Palestine that is documented in the Mandator's reports to the League of Nations – a role that parallels a UN Special Rapporteur today. Such primary documents contain precedents for security fences and testify to their non-political nature.

The International Court of Justice shows an avid interest in the "Mandate for Palestine" and uses the Mandate document to openly champion a Palestinian state, but the ICJ also chooses to ignore evidence of the 'un-readiness' of Palestinian Arabs for independence – a political maturity that it quotes in the opinion is a prerequisite for political independence under Article 22 of the League of Nations. Far more crucial to the case, such documents note the necessity of security barriers in the past and demonstrate that in the context of the Arab-Israeli conflict, indeed, security barriers are temporary in nature. This statement undermines the Bench's opinion that Israel's security fence is political and illegal.

The Bench finds it convenient to ignore that the mandate system speaks of readiness for independence in terms of signs of local responsible

governance. Article 22 of the League of Nation's Charter speaks of reaching "a stage of development" that is provisional "until such time as they are able to stand alone." This yardstick was applied to Lebanon, Iraq, and Syria. By contrast, this ICJ considers Palestinian statehood to be a 'given' – irrespective of Palestinian political behavior.

Ironically, the same political behavior (the use of terrorism as a political instrument) that the ICJ chooses to ignore as irrelevant, is chronicled in official reports to the Council of the League of Nations filed by the British Government during its nearly three-decade rule over Palestine's Arab and Jewish inhabitants.[1] Such reports from the British Government to the Council of the League of Nations were *required* of the Mandator in the terms of the "Mandate for Palestine" in Article 24 it requires that:

> "The Mandatory shall make to the Council of the League of Nations an annual report to the satisfaction of the Council as to the measures taken during the year to carry out the provisions of the mandate. Copies of all laws and regulations promulgated or issued during the year shall be communicated with the report."[2]

Logically, such documents and other special reports to the League by the Mandator should be of equal weight, in terms of standing and credibility, with the reports by the UN special Rapporteur today, such as the one upon which the ICJ opinion says it relies. These reports, as well as the findings of international commissions such as the Anglo-American Committee of Enquiry,[3] could have provided a valuable perspective for the ICJ and placed the current terrorism dilemma in its appropriate historical context.

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1 Report by His Majesty's Government in the United Kingdom of Great Britain and Northern Ireland to the Council of the League of Nations on the Administration of Palestine, and by the "Palestine Royal Commission" 1936-1937.

2 See: Appendix A. "Mandate for Palestine."

3 Report of the Anglo-American Committee of Enquiry Regarding the Problem of European Jewry and Palestine. Lausanne, April 20 1946.

Is the Fence a Security measure?

All the more important, the reports are highly relevant in determining whether the fence is a security measure or a political ploy. The ICJ could have learned something about the need for a *security fence* from the Mandate Report of 1930 (p. 169) which noted, after Arabs razed the Jewish farming village of Beer-Tuvia to the ground and attacked ancient Jewish communities in Hebron, Safed and elsewhere in 1929:

> "For the greater security of exposed Jewish *settlements*, the [Jewish] Agency, in co-operation with the [British] Administration, has allotted £P.36,500 to roads, telephones, central buildings and *fencing*" [italics by author].

Seventeen years later, in 1946, the Anglo-American Committee of Enquiry described again the need for security fences in the face of renewed Arab violence against Jews in 1936-39:

> "The sudden rise of [Jewish] immigration after the Nazi seizure of power had as its direct result the three and a half years of Arab revolt, during which the Jew had to train himself for *self-defence*, and to accustom himself to the life of a pioneer in an armed stockade. … The high barbed wire and the watchtowers, manned by the settlement police day and night, strike the eye of the visitor as he approaches every collective [Jewish] colony. … The Jews in Palestine are convinced that Arab violence paid. Throughout the Arab rising, the Jews in the National Home, despite every *provocation, obeyed the orders of their leaders and exercised a remarkable self-discipline*. They shot, *but only in self-defence;* they rarely took reprisals on the Arab population"[4] [italics by author].

Thus, two historical precedents in 1929 and 1936-39 support the Israeli claim that its fencing is not necessarily political or permanent but is a temporary measure prompted by legitimate security needs. Indeed, the stockade walls and watchtowers that surrounded isolated civilian Jewish settlements in the latter part of the 1930s and protected them from attacks were dismantled when the 1936-39 Arab Revolt subsided.

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[4] Ibid.

This challenges the Court's conclusion that the fence is "political" "de facto annexation" and unilaterally changes the status of parts of the West Bank, all without any reference to law.

The Report by His Majesty's Government in the United Kingdom of Great Britain and Northern Ireland to the Council of the League of Nations on the Administration of Palestine and the Palestine Royal Commission 1936-1937 testifies to the fact that there is no linkage between terrorism and "occupation" and the use of violence that required building security fences is not new. Unfortunately, these are salient features on the landscape that repeat themselves due to the violence deeply embedded in Palestinian political culture. The only difference is that the 'shoe is on the other foot' in terms of 'who is fenced in,' the potential victims or the perpetrators.

The above Mandator's report definitively cites its corroborative evidence:

> "There were similar assaults [by the Arabs] on the persons and property of the Jews, conducted with the same reckless ferocity. Women and children were not spared. ... In 1936 this was still clearer. Jewish lives were taken and Jewish property destroyed. ... The word 'disturbances' gives a misleading impression of what happened. It was an open rebellion of the Palestinian Arabs, assisted by fellow Arabs from other countries, against British Mandatory rule. Throughout the strike the Arab press indulged in unrestrained invective against the [British] Government. The [British] Government imprisons and demolishes [houses] and imposes extortionate fines in the interests of imperialism."[5]

The British report to the League of Nations had no problem using the 'T' word or acknowledging the sustaining character of political violence in Palestinian Arab culture – internal and external, noting:

> "The ugliest element in the picture remains to be noted. Arab nationalism in Palestine has not escaped infection with the foul disease which has so often defiled the cause of nationalism in other lands. Acts of 'terrorism' in various

[5] British National Archive, Palestine Royal Commission report, July 1937, Chapter IV, p. 104.

> parts of the country have long been only too familiar reading in the newspapers. As in Ireland in the worst days after the War or in Bengal, intimidation at the point of a revolver has become a not infrequent feature of Arab politics. Attacks by Arabs on Jews, unhappily, are no new thing. The novelty in the present situation is attacks by Arabs on Arabs. For an Arab to be suspected of a lukewarm adherence to the nationalist cause is to invite a visit from a body of 'gunmen.'"[6]

The British report to the League of Nations noted Palestinian Arabs' "refusal to negotiate."

> "The Arab leaders had refused to co-operate with us [E.H. British] in our search for a means of settling the [E.H. Arab-Jewish] dispute."[7]

The British report to the League of Nations noted the hate that fueled Palestinian Arab political culture:

> "… Palestine Arab nationalism is inextricably interwoven with antagonism to the Jews. ... That is why *it is difficult to be an Arab patriot and not to hate the Jews*" [italics by author].

> "…We [E.H. The British] find ourselves reluctantly convinced that no prospect of a lasting settlement can be founded on moderate Arab nationalism. At every successive crisis in the past that hope has been entertained. In each case it has proved illusory"[8] [italics by author].

The British report to the League of Nations noted the destructive role of Palestinian Arab leadership:

> "If anything is said in public or done in daylight against the known desires of the Arab Higher Committee, it is the work not of a more moderate, but a *more full-blooded nationalism* than theirs [AHC]"[9] [italics by author].

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6 Ibid. Chapter V, Paragraph 45, p. 135.

7 Ibid. Chapter V, "The Present Situation", Paragraph 1, p. 113.

8 Ibid. Chapter V, "3. Arab Nationalism", Paragraph 37, p. 131.

9 Ibid. Chapter V, Paragraph 39, p. 132.

12 Self-Determination

Does the democratic and free world need a rogue state that:

> "… puts a high priority on subverting other states and sponsoring non-conventional types of violence against them. It does not react predictably to deterrence or other tools of diplomacy and statecraft."[1]

The ICJ opinion cites the right to self-determination as a fundamental right almost two dozen times, always in the Palestinian context, never in the Jewish framework.

The Bench even takes the liberty to *interpret* what Israel's recognition of "Palestinian rights" in a legally-binding accord (Camp David) meant, all with no reliance on law. The ICJ says in paragraph 118:

> "The Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip of 28 September 1995 also refers a number of times to the Palestinian people and its 'legitimate rights' … The Court considers that those rights include the right to self-determination, as the General Assembly has moreover recognized on a number of occasions (see, for example, resolution 58/163 of 22 December 2003)."

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[1] Barry Rubin, "US Foreign Policy and Rogue States," MERIA, September 1999, at: http://www.biu.ac.il/SOC/besa/meria/journal/1999/issue3/jv3n3a7.html.(11389)

Again, the ICJ turns General Assembly *recognition* – this time a December 2003 Resolution recognizing "The right of Palestinian people to self-determination"[2] – into the basis for a legal opinion, ignoring the powers vested (or not vested, as the case may be) in the General Assembly under the UN Charter.

It is instructive to compare such 'instant recognition' to the way the Jewish people's right to self-determination, totally ignored by the ICJ, was anchored in a series of *genuine* international accords.

The British objectives in 'mentoring a national home for the Jewish people' under the Mandate for Palestine were not based solely on the 1917 Balfour Declaration. While international support for the establishment of a Jewish homeland in Palestine was set in motion by this landmark British policy statement, international intent rested on a solid consensus, expressed in a series of accords and declarations that reflected the 'will' of the international community, hardly the product or whim of a colonial empire with its own agenda.

The Mandate itself notes this intent when it cites that the Mandate is based on the agreement of *the Principal Allied Powers* and declares:

> "*Whereas recognition has therefore been given* to the historical connection of the Jewish people with Palestine and *to the grounds for* reconstituting their national home in that country" [italics by author].

A June 1922 letter from the British Secretary of State for the Colonies, Winston Churchill, reiterated that:

> "…the [Balfour] Declaration of 1917 [was] re-affirmed by the Conference of the Principle Allied Powers at San Remo and again in the Treaty of Sevres … the Jewish people … is in Palestine as a right and not on sufferance. That is the reason why it necessary that the existence of a Jewish National Home in Palestine should be internationally guaranteed, and that it should be formally recognized to rest upon ancient historical connection."

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[2] UN General Assembly – 58/163. A/RES/58/163. 77th plenary meeting. December 22 2003. The right of the Palestinian people to self-determination. See: http://www.mefacts.com/cache/html/un-resolutions/11319.htm. (11319)

In the first Report of The High Commissioner on the Administration of Palestine 1920-1925 to the Secretary of State for the Colonies, published in April 1925, the most senior official of the Mandate for Palestine, the High Commissioner for Palestine, underscored how "international guarantee[s]" for the existence of a Jewish National Home in Palestine were achieved:

> "The Declaration was endorsed at the time by several of the Allied Governments; it was reaffirmed by the Conference of the Principal Allied Powers at San Remo in 1920; it was subsequently endorsed by unanimous resolutions of both Houses of the Congress of the United States; it was embodied in the Mandate for Palestine approved by the League of Nations in 1922; it was declared, in a formal statement of policy issued by the Colonial Secretary in the same year, 'not to be susceptible of change'; and it has been the guiding principle in their direction of the affairs of Palestine of four successive British Governments. The policy was fixed and internationally guaranteed."

One may also note the Report of The High Commissioner on the Administration of Palestine to the Right Honourable L. S. Amery, M.P., Secretary of State for the Colonies' Government Offices in April 22 1925, describing Jewish peoplehood:

> "During the last two or three generations the Jews have recreated in Palestine a community, now numbering 80,000, of whom about one-fourth are farmers or workers upon the land. This community has its own political organs, an elected assembly for the direction of its domestic concerns, elected councils in the towns, and an organisation for the control of its schools. It has its elected Chief Rabbinate and Rabbinical Council for the direction of its religious affairs. Its business is conducted in Hebrew as a vernacular language, and a Hebrew press serves its needs. It has its distinctive intellectual life and displays considerable economic activity. This community, then, with its town and country population, its political, religious and social organisations, its own language, its own customs, its own life, has in fact 'national' characteristics.
>
> "When it is asked what is meant by the development of the Jewish National Home in Palestine, it may be answered that it is not the imposition of a Jewish nationality upon the inhabitants of Palestine as a whole, but the further development of the existing Jewish community, with the assistance of Jews in other parts of the world, in order that it may become a centre in which the Jewish people as a whole may take, on grounds of religion and

> race, an interest and a pride. But in order that this community should have the best prospect of free development and provide a full opportunity for the Jewish people to display its capacities, it is essential that it should know that it is in Palestine as of right and not on sufferance. That is the reason why it is necessary that the existence of a Jewish National Home in Palestine should be internationally guaranteed, and that it should be formally recognised to rest upon ancient historic connection."

Eleven successive British governments, Labor and Conservative, from David Lloyd George (1916-1922) through Clement Attlee (1945-1952) viewed themselves as duty-bound to fulfill the "Mandate for Palestine" placed in the hands of Great Britain by the League of Nations.[3]

This is a far cry from the *instant approval* noted in the UN's General Assembly upon which the ICJ bases its findings, totally ignoring that at no point in the "Mandate for Palestine" is there any granting of *political* rights to non-Jewish entities (i.e., Arabs), only *civil* and *religious* rights (discussed in Chapter 2), because political rights to self-determination as a polity for Arabs were guaranteed in three other parallel mandates for Arab peoples, initially in Lebanon, Syria, and Iraq. The area east of the Jordan River was later cut away from the area of historical Palestine to create an additional Arab state, Trans-Jordan, known today as Jordan.

There is one more point that should be mentioned at this juncture: the ICJ's highly irregular perception of peoplehood, eligibility and readiness for self-determination. In paragraph 118 the ICJ says:

> "As regards the principle of the right of peoples to self-determination, the Court observes that the existence of a 'Palestinian people' is no longer in issue. … The Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip of 28 September 1995 (Oslo II Accords) also refers a number of times to the Palestinian people and its 'legitimate rights.'"

Making its judgment, the ICJ concludes:

> "The Court considers that those rights include the right to self-determination, as the General Assembly has moreover recognized on a number of occasions."

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[3] See http://www.direct.gov.uk/Homepage/fs/en.

Historically, before the Arabs fabricated the 'Palestinian people' as an exclusively Arab phenomenon, no such group existed. This is substantiated in countless official British Mandate vintage documents that speak of 'the Jews' and 'the Arabs' of Palestine – not 'Jews and Palestinians.' Even the United Nations' 1947 Partition Plan recommended the establishment of "Arab and Jewish states" not a 'Palestinian' and Jewish states.

In fact, the first Article of the PLO Charter makes it clear that 'Palestinian people' are just ordinary Arabs:

> "**Article 1:** Palestine is the homeland of the Arab Palestinian people; it is an *indivisible part of the Arab homeland,* and the *Palestinian people are an integral part of the Arab nation*" [4] [italic by author].

Professor Rostow, examining the claim for Palestinian's self-determination on the bases of law, concludes:

> "… the mandate implicitly denies Arab claims to national political rights in the area in favor of the Jews; the mandated territory was in effect reserved to the Jewish people for their self-determination and political development, in acknowledgment of the historic connection of the Jewish people to the land. Lord Curzon, who was then the British Foreign Minister, made this reading of the mandate explicit. There remains simply the theory that the Arab inhabitants of the West Bank and the Gaza Strip have an inherent 'natural law' claim to the area.
>
> Neither customary international law nor the United Nations Charter acknowledges that every group of people claiming to be a nation has the right to a state of its own."[5]

[4] See Appendix G. The PLO Charter.

[5] Eugene V. Rostow, "The Future of Palestine," Institute for National Strategic Studies, November 1993. See also his writing: "Are Israel's Settlements Legal?" *The New Republic*, October 21 1991.

13 The International Court of Justice's Mandate

Article 38 of the ICJ's own Statute instructs the Bench what input is to be applied in adjudicating cases in its Docket.[1] Article 38 clarifies:

> "1. The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply:
>
> "a. international conventions, whether general or particular, establishing rules expressly recognized by the contesting states;
>
> "b. international custom, as evidence of a general practice accepted as law;
>
> "c. the general principles of law recognized by civilized nations;
>
> "d. subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law."

[1] Statute of the International Court of Justice. See http://www.icj-cij.org/icjwww/ibasicdocuments/ibasictext/ibasicstatute.htm. (10485)

Throughout this critique of the ICJ's performance of its duties, the Bench has been found time after time to be biased in its application of the above-mentioned foundations of international law.

1(a) *International Conventions:* The Bench applies international conventions that are applicable and inapplicable, while ignoring others that are highly relevant, demonstrating a total disregard of the UN's own legal machinery by treating General Assembly resolutions as if they were legally valid and/or legally binding documents.

It is not even clear whether international conventions are admissible as evidence in an Advisory Opinion: The wording of Article 38 views as admissible only "international conventions, whether general or particular … expressly recognized by the contesting states." This seems to indicate that in terms of *fair use,* the ICJ is mandated only to use general conventions such as the Hague and Geneva Conventions and the human rights conventions cited by the ICJ (as well as equally relevant ones the ICJ chose not to cite) *only* in cases where the ICJ *is sitting in the capacity of an arbitrator between two sides where both sides* have accepted its jurisdiction. Therefore, use of general conventions might *not apply* when the ICJ has been asked for an advisory opinion – all the more so because Israel, the only "state" in the case, clarified in its brief to the ICJ that it did not accept the court's jurisdiction.

1(b) *International Custom:* The Bench often perverts the general principles of law – the core elements which include reasonableness, good faith and the principle of proportionality, components that are highly relevant to the case at hand, which pits Palestinian rights against Israeli rights.

Furthermore, the rules of war enshrined in the Hague (1907) and Geneva Conventions (1949) did not envision terrorism as a major form of warfare.[2] Until a comprehensive use of convention or protocol on terrorism is established and takes force, countries like America that respect the rule of law have taken the lead to fill the void by defining a new category for such terrorists – 'illegal combatants.' This category, the United States argues, recognizes that one cannot abridge all the rules of warfare by targeting civilians and then expect to enjoy the privileges of POWs under the same conventions. The ICJ prefers to rigidly stick to outdated definitions that hardly reflect current realities about terrorism.

Security barriers in other disputed territories.

Moreover, Israel is not the only country in the world with a security barrier in disputed territory. If the ICJ has been requested to examine the legality and the ramifications of the Israeli barrier and if realities in South West Africa (Namibia) are considered by the ICJ to be relevant to the case at hand, then logically the legality and ramifications of a barrier just up the coast in Western Sahara and also built inside disputed territory would be relevant to the case. Israel is not only *singled out* in the General Assembly request, but also by the ICJ, which exhibits no interest in even noting the existence of precedents or using them as a yardstick of proportionality. For example, the two most outstanding cases are Morocco in the disputed territory of the Western Sahara and India in the disputed territory of Kashmir. In 1982, Morocco began building a 1,500 kilometer-long defensive wall to protect its settlers and military personnel against Polisario guerrillas – members of the Saharawi tribes who claimed title to the Western Sahara and demanded self-determination. Morocco claims the Western Sahara is an integral part of

[2] Amnon Straschnov, "Israel's Commitment to Domestic and International Law in Times of War," JCPA, October 10 2004, at: http://www.jcpa.org/brief/brief4-5.htm. (11390)

pre-colonial Morocco. The barrier consists of a series of berms (3 meter high sand walls) deep inside the disputed territory – each between 300 – 670 kilometers in length, seeded with an estimated 200,000 to one million[3] anti-personal and anti-vehicle mines planted in a 100 meter-wide strip on the 'enemy' side of Morocco's security barrier.[4]

In the late 1980s, India began building a security fence to protect itself from Sikh separatists supported by Pakistan; the barrier runs the full length of India's Rajasthan and Punjab states. In 2003, in the wake of cross-border attacks into the Indian sector of the disputed territory of Kashmir by Islamic terrorists, India began extending the existing 8-foot high mud wall with a 3-tier maze of barbed-wire[5] into the disputed territory, along a route that runs deep inside Kashmir. The planned 1,800 mile security fence, like Israel's, is non-lethal – comprised of steel posts set into concrete blocks and strung up with concertina wire.

1(c) *General Principles of Law of Civilized Nations:* It is hard to justify the ICJ's failing to even discuss crimes against humanity, such as systematic targeting of civilians by suicide bombers, or the Court's failure to consider the human rights conventions it quotes as being equally applicable to Jews and Arabs.

The instructions to the ICJ that it apply the "general principles of law of civilized nations" raises a far more fundamental question, a matter of propriety. Common decency should have led this ICJ Bench to at least bar those with blood on their hands from participating in such a procedure.

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3 Estimates vary between 200,000 and one million mines. See "Landmines – A Threat Still Lingering," at: http://wsahara.net/landmines.html. (11391)

4 "Desert Dreams, Saharan Nightmares: Morocco, Polisario and the Struggle for Western Sahara" at: http://www.wibemedia.com/sahara.html (11392) for general information and use of mining as a part of the barrier see: http://www.icbl.org (11393) and http://www.icbl.org/lm/2002/western_sahara/. (11394)

5 Rama Lakshmi, "India's Border Fence Extended to Kashmir," Washington Post, July 30 2003 at: http://www.washingtonpost.com/ac2/wp-dyn?pagename=article&node=&contentId=A64700-2003Jul29&notFound=true. (11464)

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Legal scholar Professor Stone, writing about Palestinian attempts to *resurrect* the 'Partition Plan' (discussed in Chapter 4), wrote:

> "… there are also certain other legal grounds, rooted in basic notions of justice and equity, on which the Arab states (and the Palestinians whom they represented in these matters) should not, in any case, be permitted, after so lawless a resort to violence against the plan, to turn around decades later, and claim legal entitlements under it. More than one of 'the general principles of law' acknowledged in Article 38(1)(c) of the Statute of the International Court of Justice seem to forbid it. Such claimants do not come with 'clean hands' to seek equity; their hands indeed are mired by their lawlessly violent bid to destroy the very resolution and plan from which they now seek equity …"[6]

If this is so, it is hard to ignore the relevance of "clean hands" in the eligibility of Palestine to seek redress from the ICJ, or at least for bodies such as the PLO, Fateh, the Arab League and the Conference of Islamic States who champion and sanction violence, to aid the ICJ by "furnishing it with information." If this doesn't violate "basic notions of justice and equity," than barring Israeli victims from testifying surely does.

The ICJ did not consider it fitting and proper to invite the Organization of Casualties of Terror Acts in Israel (Almagor) to present evidence under the 'catch-all' Article 66 Clause 2 of its Charter invoked to listen to the Arab League. A request on the part of Israeli terror victims' families to participate in oral hearings was rejected by the ICJ on the grounds that the families do not represent a country and therefore should not take part in the hearings.[7]

1(d) *Judicial decisions:* "Judicial decisions and the teachings of the most highly qualified publicists of the various nations," … [to] determine rules of law.

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[6] Professor Julius Stone, "Israel and Palestine, Assault on the Law of Nations" The Johns Hopkins University Press, 1981, p. 127.

[7] "ICJ rejects terror victim's families participation," *The Jerusalem Post*, February 21 2004 at: http://www.jpost.com/servlet/Satellite?pagename=JPost/JPArticle/Printer&cid=1077351468319. (11486)

The Bench not only ignores the relevant rulings of the Supreme Court of the State of Israel that truly could contribute to its own investigation of legality *and* proportionality, but even ignores the writings of former members of its own Bench, Judge Schwebel, who wrote specifically to this omission:

> "International law is largely the creation of Governments. In that creative process, those who render legal advice to Governments play a critical part (in present case the Supreme Court of the State of Israel). The forces which shape international law, like the forces which shape international affairs, are many and complex. But what is singular and clear is that those who advise Governments on what international law is and should be exert a particular, perhaps at times a paramount, influence on the formation of international law."[8]

The International Court of Justice is prohibited from considering declarations and resolutions of the General Assembly in its opinions.

To understand what the ICJ cannot do, it is instructive to review the language used during the debate of the defeated draft resolution that attempted to allow the ICJ to consider *declarations* and *resolutions* of the UN General Assembly as if they were customary international law:

> "Complete imbalance" is what Professor Stone describes as "arising from the entry of scores of new states into the United Nations who promote resolutions in the General Assembly reflecting political, economic, or sociological aspirations rather than a responsible assessment of the relevant legal issues and considerations. It would greatly enhance the dangers inherent in this imbalance in the United Nations if the above illusion were thoughtlessly indulged."

[8] Professor, Judge Stephen M. Schwebel, *Government Legal Advising in the Field of Foreign Affairs* in "Justice in International Law", Cambridge University Press, 1994. Opinions quoted in this critiques are not derived from his position as a judge of the ICJ.

Professor Stone continues to describe the 1974 rejected attempt to *over-empower* the ICJ:

> "At the 1492d meeting of the General Assembly's Sixth Committee, on November 5, 1974. … The Committee had before it a draft resolution on the role of the International Court of Justice, the preamble of which referred vaguely in its eighth paragraph to the possibility that the court might take into consideration declarations and resolutions of the General Assembly. A wide spectrum of states, including Third World, Soviet bloc, and Western states, rejected even this indecisive reference. It was, some said, an attempt at 'indirect amendment' of Article 38 of the Statute of the International Court, a 'subversion of the international structure of the United Nations.'"[9]

An ICJ that welcomed the arguments of a master terrorist such as Yasser Arafat, but gives no weight to the words and opinions of former members of the Court and turns a deaf ear to Israeli victims of terror, and that cites declarations and resolutions of the General Assembly as a source of customary international law, can only be held in contempt of its own mandate.

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[9] (Mr. Sette Camara [Brazil] United Nations General Assembly [U.N.G.A.] A/C6/SR1492, p. 166, with whom U.S. representative Rosenstock agreed on this point). It contradicted the U.N. Charter and the court Statute, so that on a separate vote the Soviet Union would not have supported it (Mr. Fedarov, Union of Soviet Socialist Republics, ibid., p. 167). It was capable of meaning that "General Assembly resolutions could themselves develop international law" (Mr. Steel, for United Kingdom, ibid., p. 167). It was "inappropriate in the light of Article 38" of the Court's Statute (Mr. Guney, Turkey, ibid., p. 168). It was subject to "serious doubts" (Mrs. Ulyanova, Ukraine, ibid., p. 168). It was an attempt to "issue directives regarding the sources of law," departing from his delegation's view that resolutions and declarations of the General Assembly are "essentially recommendations and not legally binding" (Mr. Yokota, Japan, ibid., p. 168). Mr. Rasoloko, Byelorussia, declared roundly (ibid., p. 169) that "declarations and resolutions of the General Assembly could not be sources of international law"; and Mr. Prieto, Chile (ibid., p. 169) added that they could not be so considered "particularly in view of their increasing political content which was often at variance with international law." The eighth paragraph, it was also objected, attributed to the General Assembly "powers which were not within its competence" (Mr. Foldeak, Hungary, ibid., p. 169). Also, the preambular paragraph in question had already been amended at the instance of Mexico in a sense explained as in no way altering or introducing any new source of international law to those enumerated in Article 38 of the Statute of the International Court of Justice (A/C6/L 989).

When rendering an Advisory Opinion, the International Court of Justice has no authority to issue a directive to Member States, a function reserved only to the Security Council.

In paragraph 163 (3)D, the Opinion states:

> "All States are under an obligation not to recognize the illegal situation resulting from the construction of the wall and not to render aid or assistance in maintaining the situation created by such construction; all States parties to the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949 have in addition the obligation, while respecting the United Nations Charter and international law, to ensure compliance by Israel with international humanitarian law as embodied in that Convention;"

Such a directive goes beyond the authority of the Court on three counts. First, no directive was requested of the Court by the UN General Assembly. The Court decided on its own to 'rule' on the legality of Jewish settlements in Section 120 (see Chapter 9). Secondly, the Court's powers under its own mandate do not include the right to issue directives to enforce its Advisory Opinion. Just as General Assembly's resolutions are only recommendations, the Court's Advisory Opinion is also void of any legislative or coercive power and is no more than counsel or advice. Thirdly, adoption and enforcement of the ICJ's advice is solely the prerogative of the Security Council, the only UN organ with the power under the UN Charter to 'direct' or 'obligate' Member States on how to act.

Here again, the Court's behaviour seems to be a sheer 'power grab' reflecting the Bench's own aspirations to assume prerogatives reserved solely for the Security Council, in order to bring the ICJ's own powers into parity with those of the Security Council.

At all too many junctures it appears that the ICJ's conclusions are based solely on 'gut feelings' and unsubstantiated assumptions – almost taking a leap of faith based on a mixture of personal and collective prejudice and popular opinion.

14 Epilogue

The International Court of Justice ignored not only its own Statute but also the writings of eminent jurists and academic scholars of international law, members of its *own* Bench, including a past president of the ICJ, all of whom are uniquely qualified and experienced on the subject at hand. Among them: Professor and Judge Stephen M. Schwebel, past president of the ICJ; Sir Gerald Fitzmaurice, former ICJ judge; Judge Sir Hersch Lauterpacht, a former member judge of the International Court; Judge Sir Elihu Lauterpacht, judge ad hoc of the International Court of Justice; former British Ambassador to the UN, Lord Caradon, principal author of draft Resolution 242; Professor Julius Stone, one of the twentieth century's leading authorities on the Law of Nations; Professor Eugene V. Rostow, dean of the Yale Law School, U.S. Under-Secretary of State for Political Affairs, and a key draftee of UN Resolution 242; Professor and Jurist Arthur J. Goldberg, member of the U.S. Supreme Court, and U.S. Ambassador to the UN in 1967 and a key draftee of Resolution 242; and Professor George P. Fletcher, faculty member of the Columbia University School of Law, who recently wrote that Kofi Annan's use of the phrase "'illegal occupation' is a perilous threat to the diplomatic search for peace."[1]

[1] Professor George Fletcher, an expert in international law at Columbia University School of Law and author of "Romantics at War: Glory and Guilt in the Age of Terrorism." See "Annan's Careless Language," *The New York Times*, March 21 2002. (1032

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In contradiction to international law, scholarly judgment, and common sense, the International Court of Justice handed down an 'Advisory Opinion' that is:

So sloppy that it wants the reader to believe that the League of Nations document – the 1922 "Mandate for Palestine" that laid down the *Jewish* legal right to settle anywhere in the area between the Jordan River and the Mediterranean Sea, an entitlement unaltered in international law and valid to this day – was the founding document for Palestinian self-determination. It seems that the members of the Court didn't even bother to read the six-page legally-binding Mandate for Palestine document.

So biased that it found terrorist activities to be irrelevant to its judicial investigation. The ICJ that cites the Secretary-General's Report as a key document and a major source of information for its opinion, skips the part of the same UN Report that labeled the Palestinian actions "*terror,*" clearly stating the cause for building a security barrier.

So incompetent that it demonstrates a total disregard of the UN's own legal machinery by arbitrarily treating numerous General Assembly Resolutions and Declarations as a source of law, contradicting the UN Charter and the Court's Statute.[2]

So devious that it erases all Arab aggression during the British Mandate period (1922-1948), the 1948, 1956, 1967 and 1973 wars, and Israel's continuing fight of self-defence against Palestinian terrorism.

So manipulative that it denied Israel's rights to battle terrorism as directed by Security Council Resolution 1373 that was adopted under Chapter VII of the UN Charter and required *all* nations to comply with the terms set forth in Resolutions 1373, 1368, and 1269. The ICJ does not have the authority or the power over the Security Council to alter the resolution or wrongly and illegally exclude Israel, a Member State of the UN, from its rights and obligations under such Security Council Resolutions.

[2] "… at the 1492d meeting of the General Assembly's Sixth Committee, on November 5 1974." See footnote 9 on page 145.

Challenging the Power of the Security Council.

In another odd conclusion, the ICJ 'found' in this case a "failure of the Security Council to discharge its responsibilities"[3] [E.H. without any reference to law] then in defiance of the limited powers delegated to it by the UN Charter, by-passed the Security Council's powers and responsibilities.

Bypassing the Security Council is part of a broader campaign that should *alarm* all members of the Security Council, and the United States in particular. Nabil Elaraby, the Egyptian member of the ICJ Bench, openly advocated two main vehicles for institutionalizing it:

> "The United Nations membership should, in my view, address ways and means to render the Security Council (a) accountable to the General Assembly, and (b) subject to the possibility, however remote, of a judicial review process."[4]

And according to Gregory Khalil, the PLO legal advisor in the security barrier case, the ICJ consciously sought to engage the

> "… United States in a tango of mutual deterrence" and "chart a path for the international community to counter the United States' veto power." The significance of the ruling cannot be overstated, he underscores: It challenges the power of the veto and the Security Council's management of "threats to world peace," using the International Court of Justice's interpretations of the rule of international law in matters of 'threats to world peace' coupled with claims that the international community is obliged to support its rulings and calling for sanctions – decisions that under Chapter VII of the UN Charter is the sole prerogative of the Security Council. Khalil calls this strategy "vetoing the veto."[5]

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[3] The Court cites UN GA Resolution 377 of November 3 1950 as its license to assume the Security Council Power. [E.H. The UN Charter vests no such power in GA Resolutions.] (11399)

[4] Nabil Elaraby, "Some Reflections on The Role of the Security Council and the Prohibition of the Use of Force in International Relations: Article 2(4) Revisited in Light of Recent Developments," 2003, at http://edoc.mpil.de/fs/2003/eitel/41_elaraby.pdf. (11449) Not a lone voice, the same sentiments are echoed in Ahmad Faiz bin Abdul Rahman, "The ICJ on Trial" at: http://www.iol.ie/~afifi/BICNews/Afaiz/afaiz21.htm, (11448) who in 1998 took the ICJ to task for not "practice[ing] its powers of judicial review to the fullest extent" in the case brought by Libya against the UK and the United States regarding jurisdiction in the Lockerbie case.

[5] See Gregory Khalil, "Just Say No to Vetoes," New York Times, July 19 2004, at http://www.pngo.net/publications/articles/gregory_khalil190704en.htm. (11450)

The 'Advisory Opinion' signed by the Court's president, Shi Jiuyong,[6] constitutes "a profound corruption of its mission and one with seismic implications for the future of international law."[7] It threatens the security of America and its allies on three levels: first, in its ground-breaking attack on the 'right to self-defence,' proscribing an almost blanket prohibition of use of *lawful force.* Second, it erroneously adopts the exclusive powers granted to the Security Council by the United Nations Charter, a move that will render the Security Council ineffective, and third, in the willingness of the Bench to allow its chambers to become a *political instrument* and to abandon all semblance of fairness or professionalism, all for political gain.

The threats to the free and democratic states consequently demand a far more serious, systematic and frank response – including a willingness to *challenge the competence* of this Court. Attempts to shield the International Court of Justice from this disgrace out of concern for its perceived reputation and effectiveness are short-sighted. Until then we need to 'rein in' the appetite of the General Assembly and for the International Court of Justice to step beyond its mandate, and to respect and obey international laws as set forth in the United Nations Charter.

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6 "The court president, Shi Jiuyong, hails from China, one of the more dictatorial regimes in the world … continues to deny basic political and religious rights, with large numbers of dissidents held in prisons and labor camps for 'crimes' such as advocating free elections or practicing the Falun Gong religion. Israel, needless to say, has complete freedom of speech and religion. And, while Israel wants to annex only a small sliver of the West Bank, China has grabbed all of Tibet. But, with its veto power at the U.N. Security Council, Beijing is able to shield itself from well-deserved international obloquy." See: Andrew McCarthy, "The End of the Right of Self-Defense: Israel, the World Court, and the War on Terror," Commentary, November 1 2004 at: http://www.defenddemocracy.org/in_the_media/in_the_media_show.htm?doc_id=245738. (10447)

7 Ibid.

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LEAGUE OF NATIONS.

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MANDATE FOR PALESTINE,

TOGETHER WITH A

NOTE BY THE SECRETARY-GENERAL RELATING TO ITS APPLICATION

TO THE

TERRITORY KNOWN AS TRANS-JORDAN,

under the provisions of Article 25.

= =

Presented to Parliament by Command of His Majesty, December, 1922

= =

LONDON:
PUBLISHED BY HIS MAJESTY'S STATIONARY OFFICE.

MANDATE FOR PALESTINE,
together with a Note by the Secretary-General relating to its application to the Territory known as TransJordan, under the provisions of Article 25.

MANDATE FOR PALESTINE.

The Council of the League of Nations :

Whereas the Principal Allied Powers have agreed, for the purpose of giving effect to the provisions of Article 22 of the Covenant of the League of Nations, to entrust to a Mandatory selected by the said Powers the administration of the territory of Palestine, which formerly belonged to the Turkish Empire, within such boundaries as may be fixed by them; and

Whereas the Principal Allied Powers have also agreed that the Mandatory should be responsible for putting into effect the declaration originally made on November 2nd, 1917, by the Government of His Britannic Majesty, and adopted by the said Powers, in favor of the establishment in Palestine of a national home for the Jewish people, it being clearly understood that nothing should be done which might prejudice the civil and religious rights of existing non-Jewish communities in Palestine, or the rights and political status enjoyed by Jews in any other country; and

Whereas recognition has thereby been given to the historical connection of the Jewish people with Palestine and to the grounds for reconstituting their national home in that country; and

Whereas the Principal Allied Powers have selected His Britannic Majesty as the Mandatory for Palestine; and

Whereas the mandate in respect of Palestine has been formulated in the following terms and submitted to the Council of the League for approval; and

Whereas His Britannic Majesty has accepted the mandate in respect of Palestine and undertaken to exercise it on behalf of the League of Nations in conformity with the following provisions; and

Whereas by the afore-mentioned Article 22 (paragraph 8), it is provided that the degree of authority, control or administration to be exercised by the Mandatory, not having been previously agreed upon by the Members of the League, shall be explicitly defined by the Council of the League of Nations;

confirming the said Mandate, defines its terms as follows:

Article 1.

The Mandatory shall have full powers of legislation and of administration, save as they may be limited by the terms of this mandate.

Article 2.

The Mandatory shall be responsible for placing the country under such political, administrative and economic conditions as will secure the establishment of the Jewish national home, as laid down in the preamble, and the development of self-governing institutions, and also for safeguarding the civil and religious rights of all the inhabitants of Palestine, irrespective of race and religion.

Article 3.

The Mandatory shall, so far as circumstances permit, encourage local autonomy.

Article 4.

An appropriate Jewish agency shall be recognised as a public body for the purpose of advising and co-operating with the Administration of Palestine in such economic, social and other matters as may affect the establishment of the Jewish national home and the interests of the Jewish population in Palestine, and, subject always to the control of the Administration to assist and take part in the development of the country.

The Zionist organization, so long as its organization and constitution are in the opinion of the Mandatory appropriate, shall be recognised as such agency. It shall take steps in consultation with His Britannic Majesty's Government to secure the co-operation of all Jews who are willing to assist in the establishment of the Jewish national home.

Article 5.

The Mandatory shall be responsible for seeing that no Palestine territory shall be ceded or leased to, or in any way placed under the control of the Government of any foreign Power.

Article 6.

The Administration of Palestine, while ensuring that the rights and position of other sections of the population are not prejudiced, shall facilitate Jewish immigration under suitable conditions and shall encourage, in co-operation with the Jewish agency referred to in Article 4, close settlement by Jews on the land, including State lands and waste lands not required for public purposes.

Article 7.

The Administration of Palestine shall be responsible for enacting a nationality law. There shall be included in this law provisions framed so as to facilitate the acquisition of Palestinian citizenship by Jews who take up their permanent residence in Palestine.

Article 8.

The privileges and immunities of foreigners, including the benefits of consular jurisdiction and protection as formerly enjoyed by Capitulation or usage in the Ottoman Empire, shall not be applicable in Palestine.

Unless the Powers whose nationals enjoyed the afore-mentioned privileges and immunities on August 1st, 1914, shall have previously renounced the right to their re-establishment, or shall have agreed to their non-application for a specified period, these privileges and immunities shall, at the expiration of the mandate, be immediately reestablished in their entirety or with such modifications as may have been agreed upon between the Powers concerned.

Article 9.

The Mandatory shall be responsible for seeing that the judicial system established in Palestine shall assure to foreigners, as well as to natives, a complete guarantee of their rights.

Respect for the personal status of the various peoples and communities and for their religious interests shall be fully guaranteed. In particular, the control and administration of Wakfs shall be exercised in accordance with religious law and the dispositions of the founders.

Article 10.

Pending the making of special extradition agreements relating to Palestine, the extradition treaties in force between the Mandatory and other foreign Powers shall apply to Palestine.

Article 11.

The Administration of Palestine shall take all necessary measures to safeguard the interests of the community in connection with the development of the country, and, subject to any international obligations accepted by the Mandatory, shall have full power to provide for public ownership or control of any of the natural resources of the country or of the public works, services and utilities established or to be established therein. It shall introduce a land system appropriate to the needs of the country, having regard, among other things, to the desirability of promoting the close settlement and intensive cultivation of the land.

The Administration may arrange with the Jewish agency mentioned in Article 4 to construct or operate, upon fair and equitable terms, any public works, services and utilities, and to develop any of the natural resources of the country, in so far as these matters are not directly undertaken by the Administration. Any such arrangements shall provide that no profits distributed by such agency, directly or indirectly, shall exceed a reasonable rate of interest on the capital, and any further profits shall be utilised by it for the benefit of the country in a manner approved by the Administration.

Article 12.

The Mandatory shall be entrusted with the control of the foreign relations of Palestine and the right to issue exequaturs to consuls appointed by foreign Powers. He shall also be entitled to afford diplomatic and consular protection to citizens of Palestine when outside its territorial limits.

Article 13.

All responsibility in connection with the Holy Places and religious buildings or sites in Palestine, including that of preserving existing rights and of securing free access to the Holy Places, religious buildings and sites and the free exercise of worship, while ensuring the requirements of public order and decorum, is assumed by the Mandatory, who shall be responsible solely to the League of Nations in all matters connected herewith, provided that nothing in this article shall prevent the Mandatory from entering into such arrangements as he may deem reasonable with the Administration for the purpose of carrying the provisions of this article into effect; and provided also that nothing in this mandate shall be construed as conferring upon the Mandatory authority to interfere with the fabric or the management of purely Moslem sacred shrines, the immunities of which are guaranteed.

Article 14.

A special commission shall be appointed by the Mandatory to study, define and determine the rights and claims in connection with the Holy Places and the rights and claims relating to the different religious communities in Palestine. The method of nomination, the composition and the functions of this Commission shall be submitted to the Council of the League for its approval, and the Commission shall not be appointed or enter upon its functions without the approval of the Council.

Article 15.

The Mandatory shall see that complete freedom of conscience and the free exercise of all forms of worship, subject only to the maintenance of public order and morals, are ensured to all. No discrimination of any kind shall be made between the inhabitants of Palestine on the ground of race, religion or language. No person shall be excluded from Palestine on the sole ground of his religious belief.

The right of each community to maintain its own schools for the education of its own members in its own language, while conforming to such educational requirements of a general nature as the Administration may impose, shall not be denied or impaired.

Article 16.

The Mandatory shall be responsible for exercising such supervision over religious or eleemosynary bodies of all faiths in Palestine as may be required for the maintenance of public order and good government. Subject to such supervision, no measures shall be taken in Palestine to obstruct or interfere with the enterprise of such bodies or to discriminate against any representative or member of them on the ground of his religion or nationality.

Article 17.

The Administration of Palestine may organist on a voluntary basis the forces necessary for the preservation of peace and order, and also for the defence of the country, subject, however, to the supervision of the Mandatory, but shall not use them for purposes other than those above specified save with the consent of the Mandatory. Except for such purposes, no military, naval or air forces shall be raised or maintained by the Administration of Palestine.

Nothing in this article shall preclude the Administration of Palestine from contributing to the cost of the maintenance of the forces of the Mandatory in Palestine.

The Mandatory shall be entitled at all times to use the roads, railways and ports of Palestine for the movement of armed forces and the carriage of fuel and supplies.

Article 18.

The Mandatory shall see that there is no discrimination in Palestine against the nationals of any State Member of the League of Nations (including companies incorporated under its laws) as compared with those of the Mandatory or of any foreign State in matters concerning taxation, commerce or navigation, the exercise of industries or professions, or in the treatment of merchant vessels or civil aircraft. Similarly, there shall be no discrimination in Palestine against goods originating in or destined for any of the said States, and there shall be freedom of transit under equitable conditions across the mandated area.

Subject as aforesaid and to the other provisions of this mandate, the Administration of Palestine may, on the advice of the Mandatory, impose such taxes and customs duties as it may consider necessary, and take such steps as it may think best to promote the development of the natural resources of the country and to safeguard the interests of the population. It may also, on the advice of the Mandatory, conclude a special customs agreement with any State the territory of which in 1914 was wholly included in Asiatic Turkey or Arabia.

Article 19.

The Mandatory shall adhere on behalf of the Administration of Palestine to any general international conventions already existing, or which may be concluded hereafter with the approval of the League of Nations, respecting the slave traffic, the traffic in arms and ammunition, or the traffic in drugs, or relating to commercial equality, freedom of transit and navigation, aerial navigation and postal, telegraphic and wireless communication or literary, artistic or industrial property.

Article 20.

The Mandatory shall co-operate on behalf of the Administration of Palestine, so far as religious, social and other conditions may permit, in the execution of any common policy adopted by the League of Nations for preventing and combating disease, including diseases of plants and animals.

Article 21.

The Mandatory shall secure the enactment within twelve months from this date, and shall ensure the execution of a Law of Antiquities based on the following rules. This law shall ensure equality of treatment in the matter of excavations and archaeological research to the nationals of all States Members of the League of Nations.

(1)

"Antiquity" means any construction or any product of human activity earlier than the year A. D. 1700.

(2)

The law for the protection of antiquities shall proceed by encouragement rather than by threat.

Any person who, having discovered an antiquity without being furnished with the authorization referred to in paragraph 5, reports the same to an official of the competent Department, shall be rewarded according to the value of the discovery.

(3)

No antiquity may be disposed of except to the competent Department, unless this Department renounces the acquisition of any such antiquity.

No antiquity may leave the country without an export licence from the said Department.

(4)

Any person who maliciously or negligently destroys or damages an antiquity shall be liable to a penalty to be fixed.

(5)

No clearing of ground or digging with the object of finding antiquities shall be permitted, under penalty of fine, except to persons authorised by the competent Department.

(6)

Equitable terms shall be fixed for expropriation, temporary or permanent, of lands which might be of historical or archaeological interest.

(7)

Authorization to excavate shall only be granted to persons who show sufficient guarantees of archaeological experience. The Administration of Palestine shall not, in granting these authorizations, act in such a way as to exclude scholars of any nation without good grounds.

(8)

The proceeds of excavations may be divided between the excavator and the competent Department in a proportion fixed by that Department. If division seems impossible for scientific reasons, the excavator shall receive a fair indemnity in lieu of a part of the find.

Article 22.

English, Arabic and Hebrew shall be the official languages of Palestine. Any statement or inscription in Arabic on stamps or money in Palestine shall be repeated in Hebrew and any statement or inscription in Hebrew shall be repeated in Arabic.

Article 23.

The Administration of Palestine shall recognise the holy days of the respective communities in Palestine as legal days of rest for the members of such communities.

Article 24.

The Mandatory shall make to the Council of the League of Nations an annual report to the satisfaction of the Council as to the measures taken during the year to carry out the provisions of the mandate. Copies of all laws and regulations promulgated or issued during the year shall be communicated with the report.

Article 25.

In the territories lying between the Jordan and the eastern boundary of Palestine as ultimately determined, the Mandatory shall be entitled, with the consent of the Council of the League of Nations, to postpone or withhold application of such provisions of this mandate as he may consider inapplicable to the existing local conditions, and to make such provision for the administration of the territories as he may consider suitable to those conditions, provided that no action shall be taken which is inconsistent with the provisions of Articles 15, 16 and 18.

Article 26.

The Mandatory agrees that, if any dispute whatever should arise between the Mandatory and another member of the League of Nations relating to the interpretation or the application of the provisions of the mandate, such dispute, if it cannot be settled by negotiation, shall be submitted to the Permanent Court of International Justice provided for by Article 14 of the Covenant of the League of Nations.

Article 27.

The consent of the Council of the League of Nations is required for any modification of the terms of this mandate.

Article 28.

In the event of the termination of the mandate hereby conferred upon the Mandatory, the Council of the League of Nations shall make such arrangements as may be deemed necessary for safeguarding in perpetuity, under guarantee of the League, the rights secured by Articles 13 and 14, and shall use its influence for securing, under the guarantee of the League, that the Government of Palestine will fully honour the financial obligations legitimately incurred by the Administration of Palestine during the period of the mandate, including the rights of public servants to pensions or gratuities.

The present instrument shall be deposited in original in the archives of the League of Nations and certified copies shall be forwarded by the Secretary-General of the League of Nations to all members of the League.

Done at London the twenty-fourth day of July, one thousand nine hundred and twenty-two.

Certified true copy:

FOR THE SECRETARY-GENERAL,
RAPPARD,
Director of the Mandates Section.

NOTE.

———

GENEVA,
September 23rd, 1922.

ARTICLE 25 OF THE PALESTINE MANDATE.
Territory known as Trans-Jordan.
NOTE BY THE SECRETARY-GENERAL.

The Secretary-General has the honour to communicate for the information of the Members of the League, a memorandum relating *to* Article 25 of the Palestine Mandate presented by the British Government to the Council of, the League on September 16th, 1922.

The memorandum was approved by the Council subject to the decision taken at its meeting in London on July 24th, 1922, with regard to the coming into force of the Palestine and Syrian mandates.

———————

MEMORANDUM BY THE BRITISH REPRESENTATIVE.

1. Article 25 of the Mandate for Palestine provides as follows:-

"In the territories lying between the Jordan and the eastern boundary of Palestine as ultimately determined, the Mandatory shall be entitled, with the consent of the Council of the League of Nations, to postpone or withhold application of such provision of this Mandate as he may consider inapplicable to the existing local conditions, and to make such provision for the administration of the territories as he may consider suitable to those conditions, provided no action shall be taken which is inconsistent with the provisions of Articles 15, 16 and 18."

2. In pursuance of the provisions of this Article, His Majesty's Government invite the Council to pass the following resolution: -

"The following provisions of the Mandate for Palestine are not applicable to the territory known as Trans-Jordan, which comprises all territory lying to the east of a line drawn from a point two miles west of the town of Akaba on the Gulf of that name up the centre of the Wady Araba, Dead Sea and River Jordan to its junction with the River Yarmuk ; thence up the centre of that river to the Syrian Frontier."

Preamble.- Recitals 2 and 3.

Article 2. - The words "placing the country under such political administration and economic conditions as will secure the establishment of the Jewish national home, as laid down in the preamble, and".

Article 4.

Article 6.

Article 7.- The sentence "The shall be included in this law provisions framed so as to facilitate the acquisition of Palestinian citizenship by Jews who take up their permanent residence in Palestine."

Article 11.- The second sentence of the first paragraph and the second paragraph.

Article 13.

Article 14.

Article 22.

Article 23.

In the application of the Mandate to Trans-Jordan, the action which, in Palestine, is taken by the Administration of the latter country, will be taken by the Administration of Trans-Jordan under the general supervision of the Mandatory.

3. His Majesty's Government accept full responsibility as Mandatory for Trans-Jordan, and undertake that such provision as may be made for the administration of that territory in accordance with Article 25 of the Mandate shall be in no way inconsistent with those provisions of tile Mandate which are not by this resolution declared inapplicable.

UN Security Council Resolution 1269

19 October 1999

The Security Council,

Deeply concerned by the increase in acts of international terrorism which endangers the lives and well-being of individuals worldwide as well as the peace and security of all States,

Condemning all acts of terrorism, irrespective of motive, wherever and by whomever committed,

Mindful of all relevant resolutions of the General Assembly, including resolution 49/60 of 9 December 1994, by which it adopted the Declaration on Measures to Eliminate International Terrorism,

Emphasizing the necessity to intensify the fight against terrorism at the national level and to strengthen, under the auspices of the United Nations, effective international cooperation in this field on the basis of the principles of the Charter of the United Nations and norms of international law, including respect for international humanitarian law and human rights,

Supporting the efforts to promote universal participation in and implementation of the existing international anti-terrorist conventions, as well as to develop new international instruments to counter the terrorist threat,

Commending the work done by the General Assembly, relevant United Nations organs and specialized agencies and regional and other organizations to combat international terrorism,

Determined to contribute, in accordance with the Charter of the United Nations, to the efforts to combat terrorism in all its forms,

Reaffirming that the suppression of acts of international terrorism, including those in which States are involved, is an essential contribution to the maintenance of international peace and security,

1. Unequivocally condemns all acts, methods and practices of terrorism as criminal and unjustifiable, regardless of their motivation, in all their forms and manifestations, wherever and by whomever committed, in particular those which could threaten international peace and security;

2. Calls upon all States to implement fully the international anti-terrorist conventions to which they are parties, encourages all States to consider as a matter of priority adhering to those to which they are not parties, and encourages also the speedy adoption of the pending conventions;

3. Stresses the vital role of the United Nations in strengthening international cooperation in combating terrorism and, emphasizes the importance of enhanced coordination among States, international and regional organizations;

4. Calls upon all States to take, inter alia, in the context of such cooperation and coordination, appropriate steps to:

- cooperate with each other, particularly through bilateral and multilateral agreements and arrangements, to prevent and suppress terrorist acts, protect their nationals and other persons against terrorist attacks and bring to justice the perpetrators of such acts;

- prevent and suppress in their territories through all lawful means the preparation and financing of any acts of terrorism;

- deny those who plan, finance or commit terrorist acts safe havens by ensuring their apprehension and prosecution or extradition;

- take appropriate measures in conformity with the relevant provisions of national and international law, including international standards of human rights, before granting refugee status, for the purpose of ensuring that the asylum-seeker has not participated in terrorist acts;

- exchange information in accordance with international and domestic law, and cooperate on administrative and judicial matters in order to prevent the commission of terrorist acts;

5. Requests the Secretary-General, in his reports to the General Assembly, in particular submitted in accordance with its resolution 50/53 on measures to eliminate international terrorism, to pay special attention to the need to prevent and fight the threat to international peace and security as a result of terrorist activities;

6. Expresses its readiness to consider relevant provisions of the reports mentioned in paragraph 5 above and to take necessary steps in accordance with its responsibilities under the Charter of the United Nations in order to counter terrorist threats to international peace and security;

7. Decides to remain seized of this matter.

UN Security Council resolution 1368

12 September 2001

The Security Council,

Reaffirming the principles and purposes of the Charter of the United Nations,

Determined to combat by all means threats to international peace and security caused by terrorist acts,

Recognizing the inherent right of individual or collective self-defence in accordance with the Charter,

1. Unequivocally condemns in the strongest terms the horrifying terrorist attacks which took place on 11 September 2001 in New York, Washington, D.C. and Pennsylvania and regards such acts, like any act of international terrorism, as a threat to international peace and security;

2. Expresses its deepest sympathy and condolences to the victims and their families and to the people and Government of the United States of America;

3. Calls on all States to work together urgently to bring to justice the perpetrators, organizers and sponsors of these terrorist attacks and stresses that those responsible for aiding, supporting or harbouring the perpetrators, organizers and sponsors of these acts will be held accountable;

4. Calls also on the international community to redouble their efforts to prevent and suppress terrorist acts including by increased cooperation and full implementation of the relevant international anti-terrorist conventions and Security Council resolutions, in particular resolution 1269 (1999) of 19 October 1999;

5. Expresses its readiness to take all necessary steps to respond to the terrorist attacks of 11 September 2001, and to combat all forms of terrorism, in accordance with its responsibilities under the Charter of the United Nations;

6. Decides to remain seized of the matter.

UN Security Council Resolution 1373

September 28, 2001

The Security Council,

Reaffirming its resolutions 1269 (1999) of 19 October 1999 and 1368 (2001) of 12 September 2001,

Reaffirming also its unequivocal condemnation of the terrorist attacks which took place in New York, Washington, D.C., and Pennsylvania on 11 September 2001, and expressing its determination to prevent all such acts,

Reaffirming further that such acts, like any act of international terrorism, constitute a threat to international peace and security,

Reaffirming the inherent right of individual or collective self-defence as recognized by the Charter of the United Nations as reiterated in resolution 1368 (2001),

Reaffirming the need to combat by all means, in accordance with the Charter of the United Nations, threats to international peace and security caused by terrorist acts,

Deeply concerned by the increase, in various regions of the world, of acts of terrorism motivated by intolerance or extremism,

Calling on States to work together urgently to prevent and suppress terrorist acts, including through increased cooperation and full implementation of the relevant international conventions relating to terrorism,

Recognizing the need for States to complement international cooperation by taking additional measures to prevent and suppress, in their territories through all lawful means, the financing and preparation of any acts of terrorism,

Reaffirming the principle established by the General Assembly in its declaration of October 1970 (resolution 2625 (XXV)) and reiterated by the Security Council in its resolution 1189 (1998) of 13 August 1998, namely that every State has the duty to refrain from organizing, instigating, assisting or participating in terrorist acts in another State or acquiescing in organized activities within its territory directed towards the commission of such acts,

Acting under Chapter VII of the Charter of the United Nations,

1. Decides that all States shall:

(a) Prevent and suppress the financing of terrorist acts;

(b) Criminalize the wilful provision or collection, by any means, directly or indirectly, of funds by their nationals or in their territories with the intention that the funds should be used, or in the knowledge that they are to be used, in order to carry out terrorist acts;

(c) Freeze without delay funds and other financial assets or economic resources of persons who commit, or attempt to commit, terrorist acts or participate in or facilitate the commission of terrorist acts; of entities owned or controlled directly or indirectly by such persons; and of persons and entities acting on behalf of, or at the direction of such persons and entities, including funds derived or generated from property owned or controlled directly or indirectly by such persons and associated persons and entities;

(d) Prohibit their nationals or any persons and entities within their territories from making any funds, financial assets or economic resources or financial or other related services available, directly or indirectly, for the benefit of persons who commit or attempt to commit or facilitate or participate in the commission of terrorist acts, of entities owned or controlled, directly or indirectly, by such persons and of persons and entities acting on behalf of or at the direction of such persons;

2. Decides also that all States shall:

(a) Refrain from providing any form of support, active or passive, to entities or persons involved in terrorist acts, including by suppressing recruitment of members of terrorist groups and eliminating the supply of weapons to terrorists;

(b) Take the necessary steps to prevent the commission of terrorist acts, including by provision of early warning to other States by exchange of information;

(c) Deny safe haven to those who finance, plan, support, or commit terrorist acts, or provide safe havens;

(d) Prevent those who finance, plan, facilitate or commit terrorist acts from using their respective territories for those purposes against other States or their citizens;

(e) Ensure that any person who participates in the financing, planning, preparation or perpetration of terrorist acts or in supporting terrorist acts is brought to justice and ensure that, in addition to any other measures against them, such terrorist acts are established as serious criminal offences in domestic laws and regulations and that the punishment duly reflects the seriousness of such terrorist acts;

(f) Afford one another the greatest measure of assistance in connection with criminal investigations or criminal proceedings relating to the financing or support of terrorist acts, including assistance in obtaining evidence in their possession necessary for the proceedings;

(g) Prevent the movement of terrorists or terrorist groups by effective border controls and controls on issuance of identity papers and travel documents, and through measures for preventing counterfeiting, forgery or fraudulent use of identity papers and travel documents;

3. Calls upon all States to:

(a) Find ways of intensifying and accelerating the exchange of operational information, especially regarding actions or movements of terrorist persons or networks; forged or falsified travel documents; traffic in arms, explosives or sensitive materials; use of communications technologies by terrorist groups; and the threat posed by the possession of weapons of mass destruction by terrorist groups;

(b) Exchange information in accordance with international and domestic law and cooperate on administrative and judicial matters to prevent the commission of terrorist acts;

(c) Cooperate, particularly through bilateral and multilateral arrangements and agreements, to prevent and suppress terrorist attacks and take action against perpetrators of such acts;

(d) Become parties as soon as possible to the relevant international conventions and protocols relating to terrorism, including the International Convention for the Suppression of the Financing of Terrorism of 9 December 1999;

(e) Increase cooperation and fully implement the relevant international conventions and protocols relating to terrorism and Security Council resolutions 1269 (1999) and 1368 (2001);

(f) Take appropriate measures in conformity with the relevant provisions of national and international law, including international standards of human rights, before granting refugee status, for the purpose of ensuring that the asylum seeker has not planned, facilitated or participated in the commission of terrorist acts;

(g) Ensure, in conformity with international law, that refugee status is not abused by the perpetrators, organizers or facilitators of terrorist acts, and that claims of political motivation are not recognized as grounds for refusing requests for the extradition of alleged terrorists;

4. Notes with concern the close connection between international terrorism and transnational organized crime, illicit drugs, money-laundering, illegal arms-trafficking, and illegal movement of nuclear, chemical, biological and other potentially deadly materials, and in this regard emphasizes the need to enhance coordination of efforts on national, subregional, regional and international levels in order to strengthen a global response to this serious challenge and threat to international security;

5. Declares that acts, methods, and practices of terrorism are contrary to the purposes and principles of the United Nations and that knowingly financing, planning and inciting terrorist acts are also contrary to the purposes and principles of the United Nations;

6. Decides to establish, in accordance with rule 28 of its provisional rules of procedure, a Committee of the Security Council, consisting of all the members of the Council, to monitor implementation of this resolution, with the assistance of appropriate expertise, and calls upon all States to report to the Committee, no later than 90 days from the date of adoption of this resolution and thereafter according to a timetable to be proposed by the Committee, on the steps they have taken to implement this resolution;

7. Directs the Committee to delineate its tasks, submit a work programme within 30 days of the adoption of this resolution, and to consider the support it requires, in consultation with the Secretary-General;

8. Expresses its determination to take all necessary steps in order to ensure the full implementation of this resolution, in accordance with its responsibilities under the Charter;

9. Decides to remain seized of this matter.

UN Security Council resolution 1377

12 November 2001

The Security Council,
Decides to adopt the attached declaration on the global effort to combat terrorism.

Annex

The Security Council,

Meeting at the Ministerial level,

Recalling its resolutions 1269 (1999) of 19 October 1999, 1368 (2001) of 12 September 2001 and 1373 (2001) of 28 September 2001,

Declares that acts of international terrorism constitute one of the most serious threats to international peace and security in the twenty-first century,

Further declares that acts of international terrorism constitute a challenge to all States and to all of humanity,

Reaffirms its unequivocal condemnation of all acts, methods and practices of terrorism as criminal and unjustifiable, regardless of their motivation, in all their forms and manifestations, wherever and by whomever committed,

Stresses that acts of international terrorism are contrary to the purposes and principles of the Charter of the United Nations, and that the financing, planning and preparation of as well as any other form of support for acts of international terrorism are similarly contrary to the purposes and principles of the Charter of the United Nations,

Underlines that acts of terrorism endanger innocent lives and the dignity and security of human beings everywhere, threaten the social and economic development of all States and undermine global stability and prosperity,

Affirms that a sustained, comprehensive approach involving the active participation and collaboration of all Member States of the United Nations, and in accordance with the Charter of the United Nations and international law, is essential to combat the scourge of international terrorism,

Stresses that continuing international efforts to broaden the understanding among civilizations and to address regional conflicts and the full range of global issues, including development issues, will contribute to international cooperation and collaboration, which themselves are necessary to sustain the broadest possible fight against international terrorism,

Welcomes the commitment expressed by States to fight the scourge of international terrorism, including during the General Assembly plenary debate from 1 to 5 October 2001, *calls on* all States to become parties as soon as possible to the relevant international conventions and protocols relating to terrorism, and encourages Member States to take forward work in this area,

Calls on all States to take urgent steps to implement fully resolution 1373 (2001), and to assist each other in doing so, and *underlines* the obligation on States to deny financial and all other forms of support and safe haven to terrorists and those supporting terrorism,

Expresses its determination to proceed with the implementation of that resolution in full cooperation with the whole membership of the United Nations, and *welcomes* the progress made so far by the Counter-Terrorism Committee established by paragraph 6 of resolution 1373 (2001) to monitor implementation of that resolution,

Recognizes that many States will require assistance in implementing all the requirements of resolution 1373 (2001), and *invites* States to inform the Counter-Terrorism Committee of areas in which they require such support, *In that context*, invites the Counter-Terrorism Committee to explore ways in which States can be assisted, and in particular to explore with international, regional and subregional organizations:

• the promotion of best-practice in the areas covered by resolution 1373 (2001), including the preparation of model laws as appropriate,

• the availability of existing technical, financial, regulatory, legislative or other assistance programmes which might facilitate the implementation of resolution 1373 (2001),

• the promotion of possible synergies between these assistance programmes, *Calls on* all States to intensify their efforts to eliminate the scourge of international terrorism.

UN Security Council Resolution 242

22 November 1967

The Security Council,

Expressing its continuing concern with the grave situation in the Middle East,

Emphasizing the inadmissibility of the acquisition of territory by war and the need to work for a just and lasting peace in which every State in the area can live in security,

Emphasizing further that all Member States in their acceptance of the Charter of the United Nations have undertaken a commitment to act in accordance with Article 2 of the Charter,

1. Affirms that the fulfilment of Charter principles requires the establishment of a just and lasting peace in the Middle East which should include the application of both the following principles:

(i) Withdrawal of Israel armed forces from territories occupied in the recent conflict;

(ii) Termination of all claims or states of belligerency and respect for and acknowledgment of the sovereignty, territorial integrity and political independence of every State in the area and their right to live in peace within secure and recognized boundaries free from threats or acts of force;

2. Affirms further the necessity

(a) For guaranteeing freedom of navigation through international waterways in the area;

(b) For achieving a just settlement of the refugee problem;

(c) For guaranteeing the territorial inviolability and political independence of every State in the area, through measures including the establishment of demilitarized zones;

3. Requests the Secretary-General to designate a Special Representative to proceed to the Middle East to establish and maintain contacts with the States concerned in order to promote agreement and assist efforts to achieve a peaceful and accepted settlement in accordance with the provisions and principles in this resolution;

4. Requests the Secretary-General to report to the Security Council on the progress of the efforts of the Special Representative as soon as possible.

Adopted unanimously at the 1382nd meeting

Charter of the United Nations
Article 2

The Organization and its Members, in pursuit of the Purposes stated in Article 1, shall act in accordance with the following Principles.

1. The Organization is based on the principle of the sovereign equality of all its Members.

2. All Members, in order to ensure to all of them the rights and benefits resulting from membership, shall fulfill in good faith the obligations assumed by them in accordance with the present Charter.

3. All Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered.

4. All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.

5. All Members shall give the United Nations every assistance in any action it takes in accordance with the present Charter, and shall refrain from giving assistance to any state against which the United Nations is taking preventive or enforcement action.

6. The Organization shall ensure that states which are not Members of the United Nations act in accordance with these Principles so far as may be necessary for the maintenance of international peace and security.

7. Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter Vll.

UN Security Council Resolution 338

22 October 1973

The Security Council

1. *Calls* upon all parties to the present fighting to cease all firing and terminate all military activity immediately, no later than 12 hours after the moment of the adoption of this decision, in the positions they now occupy;

2. *Calls* upon the parties concerned to start immediately after the cease-fire the implementation of Security Council resolution 242 (1967) in all of its parts;

3. *Decides* that, immediately and concurrently with the cease-fire, negotiations shall start between the parties concerned under appropriate auspices aimed at establishing a just and durable peace in the Middle East.

Adopted at the 1747th meeting
by 14 votes to none.

1/ One member (China) did not participate in the voting.

UN Security Council Resolution 1515

19 November 2003

The Security Council,

Recalling all its previous relevant resolutions, in particular resolutions 242 (1967), 338 (1973), 1397 (2002) and the Madrid principles,

Expressing its grave concern at the continuation of the tragic and violent events in the Middle East,

Reiterating the demand for an immediate cessation of all acts of violence, including all acts of terrorism, provocation, incitement and destruction,

Reaffirming its vision of a region where two States, Israel and Palestine, live side by side within secure and recognized borders,

Emphasizing the need to achieve a comprehensive, just and lasting peace in the Middle East, including the Israeli-Syrian and Israeli-Lebanese tracks,

Welcoming and encouraging the diplomatic efforts of the international Quartet and others,

1. Endorses the Quartet Performance-based Roadmap to a Permanent Two-State Solution to the Israeli-Palestinian Conflict (S/2003/529);

2. Calls on the parties to fulfil their obligations under the Roadmap in cooperation with the Quartet and to achieve the vision of two States living side by side in peace and security;

3. Decides to remain seized of the matter.

UN General Assembly Resolution 2625

24 October 1970
(Selective Applicable Paragraphs)

2625 (XXV). Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations.

The General Assembly,

… Having considered the principles of international law relating to friendly relations and co-operation among States,

1. Solemnly proclaims the following principles:

The principle that States shall refrain in their International relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations

Every State has the duty to refrain in its international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations. Such a threat or use of force constitutes a violation of international law and the Charter of the United Nations end shall never be employed as a means of settling international issues.

A war of aggression constitutes a crime against the peace, for which there is responsibility under international law.

In accordance with the purposes and principles of the United Nations, States have the duty to refrain from propaganda for wars of aggression.

Every State has the duty to refrain from the threat or use of force to violate the existing international boundaries of another State or as a means of solving international disputes, including territorial disputes and problems concerning frontiers of States.

Every State likewise has the duty to refrain from the threat or use of force to violate international lines of demarcation, such as armistice lines, established by or pursuant to an international agreement to which it is a party or which it is otherwise bound to respect. Nothing in the foregoing shall be construed as prejudicing the positions of the parties concerned with regard to the status and effects of such lines under their special regimes or as effecting their temporary character.

States have a duty to refrain from acts of reprisal involving the use of force.

Every State has the duty to refrain from any forcible action which deprives peoples referred to in the elaboration of the principle of equal rights and self-determination of their right to self-determination and freedom and independence.

Every State has the duty to refrain from organizing or encouraging the organization of irregular forces or armed bands, including mercenaries, for incursion into the territory of another State.

Every State has the duty to refrain from organizing, instigating, assisting or participating in acts of civil strife or terrorist acts in another State or acquiescing in organized activities within its territory directed towards the commission of inch acts, when the acts referred to in the present paragraph involve a threat or use of force.

The territory of a State shall not be the object of military occupation resulting from the use of force in contravention of the provisions of the Charter. The territory of a State shall not be the object of acquisition by another State resulting from the threat or use of force. No territorial acquisition resulting from the threat or use of force shall be recognized as legal. Nothing in the foregoing shall be construed as affecting:

(a) Provisions of the Charter or any international agreement prior to the Charter regime and valid under international law; or

(b) The powers of the Security Council under the Charter.

All States shall pursue in good faith negotiations for the only conclusion of a universal treaty on general and complete disarmament under effective international control and strive to adopt appropriate measures to reduce international tensions and strengthen confidence among States.

All States shall comply in good faith with their obligations under the generally recognized principles and rules of international law with respect to the maintenance of international peace and security, and shall endeavour to make the United Nations security system based on the Charter more effective.

Nothing in the foregoing paragraphs shall be construed as enlarging or diminishing in any way the scope of the provisions of the Charter concerning cases in which the use of force is lawful.

The principle that States shall settle their international disputes by peaceful means in such a manner that International peace and security and justice are not endangered

Every State shall settle its international disputes with other States by peaceful means in such a manner that international peace and security and justice are not endangered. …

…**The principle of equal rights and self-determination at peoples**

By virtue of the principle of equal rights and self-determination of peoples enshrined in the Charter of the United Nations, all peoples have the right freely to determine, without external interference, their political status and to pursue their economic, social and cultural development, and every State has the duty to respect this right in accordance with the provisions of the Charter.

Every State has the duty to promote, through joint and separate action, realization of the principle of equal rights and self-determination of peoples, in accordance with the provisions of the Charter, and to render assistance to the United Nations in carrying out the responsibilities entrusted to it by the Charter regarding the implementation of the principle, in order:

(a) To promote friendly relations and co-operation among States; and

(b) To bring a speedy end to colonialism, having due regard to the freely expressed will of the peoples concerned;

and bearing in mind that subjection of peoples to alien subjugation, domination and exploitation constitutes a violation of the principle, as well as a denial of fundamental human rights, and is contrary to the Charter.

Every State has the duty to promote through joint and separate action universal respect for and observance of human rights and fundamental freedoms in accordance with the Charter.

The establishment of a sovereign and independent State, the free association or integration with an independent State or the emergence into any other political status freely determined by a people constitute modes of implementing the right of self-determination by that people.

Every State has the duty to refrain from any forcible action which deprives peoples referred to above in the elaboration of the present principle of their right to self-determination and freedom and independence. In their actions against, and resistance to, such forcible action in pursuit of the exercise of their right to self-determination, such peoples are entitled to seek and to receive support in accordance with the purposes and principles of the Charter.

The territory of s colony or other Non-Self-Governing Territory has, under the Charter, a status separate and distinct from the territory of the State administering it; and such separate and distinct status under the Charter shall exist until the people of the colony or Non-Self-Governing Territory have exercised their right of self-determination in accordance with the Charter, and particularly its purposes and principles.

Nothing in the foregoing paragraphs shall be construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States conducting themselves in compliance with the principle of equal rights and self-determination of peoples as described above and thus possessed of a government representing the whole people belonging to the territory without distinction as to race, creed or colour.

Every State shall refrain from any action aimed at the partial or total disruption of the national unity and territorial integrity of any other State or country. …

GENERAL PART

2. Declares that:

In their interpretation and application the above principles are interrelated and each principle Should be construed in the context of the other principles.

Nothing in this Declaration shall be construed as prejudicing in any manner the provisions of the Charter or the rights and duties of Member States under the Charter or the rights of peoples under the Charter, taking into account the elaboration of these rights in this Declaration.

3. Declares further that:

The principles of the Charter which are embodied in this Declaration constitute basic principles of international law, and consequently appeals to all States to be guided by these principles in their international conduct and to develop their mutual relations on the basis of the strict observance of these principles.

UN General Assembly Resolution 3314

14 December 1974
(Definition of Aggression)

The General Assembly,

Having considered the report of the Special Committee on the Question of Defining Aggression, established pursuant to its resolution 2330 (XXII) of 18 December 1967, covering the work of its seventh session held from 11 March to 12 April 1974, including the draft Definition of Aggression adopted by the Special Committee by consensus and recommended for adoption by the General Assembly, Deeply convinced that the adoption of the Definition of Aggression would contribute to the strengthening of international peace and security,

1. Approves the Definition of Aggression, the text of which it annexed to the present resolution;

2. Expresses its appreciation to the Special Committee on the Question of Defining Aggression for its work which resulted in the elaboration of the Definition of Aggression;

3. Calls upon all States to refrain from all acts of aggression and other uses of force contrary to the Charter of the United Nations and the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations;

4. Calls the attention of the Security Council to the Definition of Aggression, as set out below, and recommends that it should, as appropriate, take account of that Definition as guidance in determining, in accordance with the Charter, the existence of an act of aggression.

ANNEX
DEFINITION OF AGGRESSION

The General Assembly,

Basing itself on the fact that one of the fundamental purposes of the United Nations is to maintain international peace and security and to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace.

Recalling that the Security Council, in accordance with Article 39 of the Charter of the United Nations, shall determine the existence of any threat to the peace, breach of the peace or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security.

Recalling also the duty of States under the Charter to settle their international disputes by peaceful means in order not to endanger international peace, security and justice,

Bearing in mind that nothing in this Definition shall be interpreted as in any way affecting the scope of the provisions of the Charter with respect to the functions and powers of the organs of the United Nations,

Considering also that, since aggression is the most serious and dangerous form of the illegal use of force, being fraught, in the conditions created by the existence of all types of weapons of mass destruction, with the possible threat of a world conflict and all its catastrophic consequences, aggression should be defined at the present stage,

Reaffirming the duty of States not to use armed force to deprive peoples of their right to self-determination, freedom and independence, or to disrupt territorial integrity,

Reaffirming also that the territory of a State shall not be violated by being the object, even temporarily, of military occupation or of other measures of force taken by another State in contravention of the Charter, and that it shall not be the object of acquisition by another State resulting from such measures or the threat thereof,

Reaffirming also the provisions of the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations,

Convinced that the adoption of a definition of aggression ought to have the effect of deterring a potential aggressor, would simplify the determination of acts of aggression and the implementation of measures to suppress them and would also facilitate the protection of the rights and lawful interests of, and the rendering of assistance to, the victim,

Believing that, although the question whether an act of aggression has been committed must be considered in the light of all the circumstances of each particular case, it is nevertheless desirable to formulate basic principles as guidance for such determination,

Adopts the following Definition of Aggression:

Article 1

Aggression is the use of armed force by a State against the sovereignty, territorial integrity or political independence of another State, or in any other manner inconsistent with the Charter of the United Nations, as set out in this Definition.

Explanatory note: In this Definition the term "State":

(a) Is used without prejudice to questions of recognition or to whether a State is a Member of the United Nations;

(b) Includes the concept of a "group of States" where appropriate.

Article 2

The first use of armed force by a State in contravention of the Charter shall constitute prima facie evidence of an act of aggression although the Security Council may, in conformity with the Charter, conclude that a determination that an act of aggression has been committed would not be justified in the light of other relevant circumstances, including the fact that the acts concerned or their consequences are not of sufficient gravity.

Article 3

Any of the following acts, regardless of a declaration of war, shall, subject to and in accordance with the provisions of article 2, qualify as an act of aggression:

(a) The invasion or attack by the armed forces of a State of the territory of another State, of any military occupation, however temporary, resulting from such invasion or attack. or any annexation by the use of force of the territory of another State or part thereof;

(b) Bombardment by the armed forces of a State against the territory of another State or the use of any weapons by a State against the territory of another State;

(c) The blockade of the ports or coasts of a State by the armed forces of another State;

(e) The use of armed forces of one State which are within the territory of another State with the agreement of the receiving State, in contravention of the conditions provided for in the agreement or any extension of their presence in such territory beyond the termination of the agreement;

(f) The action of a State in allowing its territory, which it has placed at the disposal of another State, to be used by that other State for perpetrating an act of aggression against a third State;

(g) The sending by or on behalf of a State of armed hands, groups, irregulars or mercenaries, which carry out acts of armed force against another State of such gravity as to amount to the acts listed above, or its substantial involvement therein.

Article 4

The acts enumerated above are not exhaustive and the Security Council may determine that other acts constitute aggression under the provisions of the Charter.

Article 5

1. No consideration of whatever nature, whether political, economic, military or otherwise, may serve as a justification for aggression.

2. A war of aggression is a crime against international peace. Aggression gives rise to international responsibility.

3. No territorial acquisition or special advantage resulting from aggression is or shall be recognized as lawful.

Article 6

Nothing in this Definition shall be construed as in any way enlarging or diminishing the scope of the Charter, including its provisions concerning cases in which the use of force is lawful.

Article 7

Nothing in this Definition, and in particular article 3, could in any way prejudice the right to self-determination, freedom and independence, as derived from the Charter, of peoples forcibly deprived of that right and referred to in the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, particularly peoples under colonial and racist regimes or other forms of alien domination; nor the right of these peoples to struggle to that end and to seek and receive support, in accordance with the principles of the Charter and in conformity with the above-mentioned Declaration.

Article 8

In their interpretation and application the above provisions are interrelated and each provision should be construed in the context of the other provisions.

EXPLANATORY NOTES FROM THE REPORT OF THE SPECIAL COMMITTEE ON THE QUESTION OF DEFINING AGGRESSION UN GAOR 29th Sess., Supp. No. 19.

1. With reference to article 3, paragraph (b), the Special Committee agreed that the expression "any weapons" is used without making a distinction between conventional weapons, weapons of mass destruction and any other kind of weapon.

2. With reference to article 5, paragraph 1, the Committee had in mind, in particular, the principle contained in the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charger of the United Nations according to which "No State or group of States has the right to intervene, directly or indirectly for any reason whatever, in the internal affairs of any other State".

3. With reference to article 5, paragraph 2, the words "international responsibility" are used without prejudice to the scope of this term.

4. With reference to article 5, paragraph 3, the Committee states that this paragraph should not be construed so as to prejudice the established principles of international law relating to the inadmissibility of territorial acquisition resulting from the threat or use of force.

General Assembly
30 April 1947

QUESTION OF PALESTINE
ARTICLE 22 OF THE COVENANT OF THE LEAGUE OF NATIONS

1. To those colonies and territories which as a consequence of the late war have ceased to be under the sovereignty of the States which formerly governed them and which are inhabited by peoples not yet able to stand by themselves under the strenuous conditions of the modern world, there should be applied the principle that the well-being and development of such peoples form a sacred trust of civilization and that securities for theperformance of this trust should be embodied in this Covenant.

2. The best method of giving practical effect to this principle is that the tutelage of such peoples should be entrusted to advanced nations who by reason of their resources, their experience or their geographical position can best undertake this responsibility, and who are willing to accept it, and that this tutelage should be exercised by them as Mandatories on behalf of the League.

3. The character of the mandate must differ according to the stage of the development of the people, the geographical situation of the territory, its economic condition and other similar circumstances.

4. Certain communities formerly belonging to the Turkish Empire have reached a stage of development where their existence as independent nations can be provisionally recognized. subject to the rendering of administrative advice and assistance by a Mandatory until such time as they are able to stand alone. The wishes of these communities must be a principal consideration in the selection of the Mandatory.

5. Other peoples, especially those of Central Africa, are at such a stage that the Mandatory must be responsible for the administration of the territory under conditions which will guarantee freedom of conscience and religion, subject only to the maintenance of public order and morals, the prohibition of abuses such as the slave trade, the arms traffic and the liquor traffic, and the prevention of the establishment of fortifications or military and naval bases and of military training of the natives for other than police purposes and the defence of territory, and will also secure equal opportunities for the trade and commerce of other Members of the League.

6. There are territories, such as South West Africa and certain of the South Pacific Islands, which, owing to the sparseness of their population, or their small size, or their remoteness from the centres of civilization, or their geographical contiguity to the territory of the Mandatory, and other circumstances, can be best administered under the laws of the Mandatory as integral portions of its territory, subject to the safeguards above mentioned in the interests of the indigenous population.

7. In every case of mandate, the Mandatory shall render to the Council an annual report in reference to the territory committed to its charge.

8. The degree of authority, control, or administration to be exercised by the Mandatory shall, if not previously agreed upon by the Members of the League, be explicitly defined in each case by the Council.

9. A permanent Commission shall be constituted to receive and examine the annual reports of the Mandatories and to advise the Council on all matters relating to the observance of the mandates.

Palestinian National Authority
The Official Web Site السلطة الوطنية الفلسطينية

http://www.pna.gov.ps/Government/gov/plo_Charter.asp. - As of July 19 2005

PLO CHARTER

Also known as "the Palestinian National Charter" or "the Palestinian Convenant". Adopted by the Palestine National Council, July 1-17, 1968:

Article 1: Palestine is the homeland of the Arab Palestinian people; it is an indivisible part of the Arab homeland, and the Palestinian people are an integral part of the Arab nation.

Article 2: Palestine, with the boundaries it had during the British Mandate, is an indivisible territorial unit.

Article 3: The Palestinian Arab people possess the legal right to their homeland and have the right to determine their destiny after achieving the liberation of their country in accordance with their wishes and entirely of their own accord and will.

Article 4: The Palestinian identity is a genuine, essential, and inherent characteristic; it is transmitted from parents to children. The Zionist occupation and the dispersal of the Palestinian Arab people, through the disasters which befell them, do not make them lose their Palestinian identity and their membership in the Palestinian community, nor do they negate them.

Article 5: The Palestinians are those Arab nationals who, until 1947, normally resided in Palestine regardless of whether they were evicted from it or have stayed there. Anyone born, after that date, of a Palestinian father – whether inside Palestine or outside it - is also a Palestinian.

Article 6: The Jews who had normally resided in Palestine until the beginning of the Zionist invasion will be considered Palestinians.

Article 7: That there is a Palestinian community and that it has material, spiritual, and historical connection with Palestine are indisputable facts. It is a national duty to bring up individual Palestinians in an Arab revolutionary manner. All means of information and education must be adopted in order to acquaint the Palestinian with his country in the most profound manner, both spiritual and material, that is possible. He must be prepared for the armed struggle and ready to sacrifice his wealth and his life in order to win back his homeland and bring about its liberation.

Article 8: The phase in their history, through which the Palestinian people are now living, is that of national (watani) struggle for the liberation of Palestine. Thus the conflicts among the Palestinian national forces are secondary, and should be ended for the sake of the basic conflict that exists between the forces of Zionism and of imperialism on the one hand, and the Palestinian Arab people on the other. On this basis the Palestinian masses, regardless of whether they are residing in the national homeland or in diaspora (mahajir) constitute – both their organizations and the individuals – one national front working for the retrieval of Palestine and its liberation through armed struggle.

Article 9: Armed struggle is the only way to liberate Palestine. Thus it is the overall strategy, not merely a tactical phase. The Palestinian Arab people assert their absolute determination and firm resolution to continue their armed struggle and to work for an armed popular revolution for the liberation of their country and their return to it. They also assert their right to normal life in Palestine and to exercise their right to self-determination and sovereignty over it.

Article 10: Commando action constitutes the nucleus of the Palestinian popular liberation war. This requires its escalation, comprehensiveness, and the mobilization of all the Palestinian popular and educational efforts and their organization and involvement in the armed Palestinian revolution. It also requires the achieving of unity for the national (watani) struggle among the different groupings of the Palestinian people, and between the Palestinian people and the Arab masses, so as to secure the continuation of the revolution, its escalation, and victory.

Article 11: The Palestinians will have three mottoes: national (wataniyya) unity, national (qawmiyya) mobilization, and liberation.

Article 12: The Palestinian people believe in Arab unity. In order to contribute their share toward the attainment of that objective, however, they must, at the present stage of their struggle, safeguard their Palestinian identity and develop their consciousness of that identity, and oppose any plan that may dissolve or impair it.

Article 13: Arab unity and the liberation of Palestine are two complementary objectives, the attainment of either of which facilitates the attainment of the other. Thus, Arab unity leads to the liberation of Palestine, the liberation of Palestine leads to Arab unity; and work toward the realization of one objective proceeds side by side with work toward the realization of the other.

Article 14: The destiny of the Arab nation, and indeed Arab existence itself, depend upon the destiny of the Palestine cause. From this interdependence springs the Arab nation's pursuit of, and striving for, the liberation of Palestine. The people of Palestine play the role of the vanguard in the realization of this sacred (qawmi) goal.

Article 15: The liberation of Palestine, from an Arab viewpoint, is a national (qawmi) duty and it attempts to repel the Zionist and imperialist aggression against the Arab homeland, and aims at the elimination of Zionism in Palestine. Absolute responsibility for this falls upon the Arab nation – peoples and governments – with the Arab people of Palestine in the vanguard. Accordingly, the Arab nation must mobilize all its military, human, moral, and spiritual capabilities to participate actively

with the Palestinian people in the liberation of Palestine. It must, particularly in the phase of the armed Palestinian revolution, offer and furnish the Palestinian people with all possible help, and material and human support, and make available to them the means and opportunities that will enable them to continue to carry out their leading role in the armed revolution, until they liberate their homeland.

Article 16: The liberation of Palestine, from a spiritual point of view, will provide the Holy Land with an atmosphere of safety and tranquility, which in turn will safeguard the country's religious sanctuaries and guarantee freedom of worship and of visit to all, without discrimination of race, color, language, or religion. Accordingly, the people of Palestine look to all spiritual forces in the world for support.

Article 17: The liberation of Palestine, from a human point of view, will restore to the Palestinian individual his dignity, pride, and freedom. Accordingly the Palestinian Arab people look forward to the support of all those who believe in the dignity of man and his freedom in the world.

Article 18: The liberation of Palestine, from an international point of view, is a defensive action necessitated by the demands of self-defense. Accordingly the Palestinian people, desirous as they are of the friendship of all people, look to freedom-loving, and peace-loving states for support in order to restore their legitimate rights in Palestine, to re-establish peace and security in the country, and to enable its people to exercise national sovereignty and freedom.

Article 19: The partition of Palestine in 1947 and the establishment of the state of Israel are entirely illegal, regardless of the passage of time, because they were contrary to the will of the Palestinian people and to their natural right in their homeland, and inconsistent with the principles embodied in the Charter of the United Nations, particularly the right to self-determination.

Article 20: The Balfour Declaration, the Mandate for Palestine, and everything that has been based upon them, are deemed null and void. Claims of historical or religious ties of Jews with Palestine are incompatible with the facts of history and the true conception of what constitutes statehood. Judaism, being a religion, is not an independent nationality. Nor do Jews constitute a single nation with an identity of its own; they are citizens of the states to which they belong.

Article 21: The Arab Palestinian people, expressing themselves by the armed Palestinian revolution, reject all solutions which are substitutes for the total liberation of Palestine and reject all proposals aiming at the liquidation of the Palestinian problem, or its internationalization.

Article 22: Zionism is a political movement organically associated with international imperialism and antagonistic to all action for liberation and to progressive movements in the world. It is racist and fanatic in its nature, aggressive, expansionist, and colonial in its aims, and fascist in its methods. Israel is the instrument of the Zionist movement, and geographical base for world imperialism placed strategically in the midst of the Arab homeland to combat the hopes of the Arab nation for liberation, unity, and progress. Israel is a constant source of threat vis-a-vis peace in the Middle East and the whole world. Since the liberation of Palestine will destroy the Zionist and imperialist presence and will contribute to the establishment of peace in the Middle East, the Palestinian people look for the support of all the progressive and peaceful forces and urge them all, irrespective of their affiliations and beliefs, to offer the Palestinian people all aid and support in their just struggle for the liberation of their homeland.

Article 23: The demand of security and peace, as well as the demand of right and justice, require all states to consider Zionism an illegitimate movement, to outlaw its existence, and to ban its operations, in order that friendly relations among peoples may be preserved, and the loyalty of citizens to their respective homelands safeguarded.

Article 24: The Palestinian people believe in the principles of justice, freedom, sovereignty, self-determination, human dignity, and in the right of all peoples to exercise them.

Article 25: For the realization of the goals of this Charter and its principles, the Palestine Liberation Organization will perform its role in the liberation of Palestine in accordance with the Constitution of this Organization.

Article 26: The Palestine Liberation Organization, representative of the Palestinian revolutionary forces, is responsible for the Palestinian Arab people's movement in its struggle – to retrieve its homeland, liberate and return to it and exercise the right to self-determination in it – in all military, political, and financial fields and also for whatever may be required by the Palestine case on the inter-Arab and international levels.

Article 27: The Palestine Liberation Organization shall cooperate with all Arab states, each according to its potentialities; and will adopt a neutral policy among them in the light of the requirements of the war of liberation; and on this basis it shall not interfere in the internal affairs of any Arab state.

Article 28: The Palestinian Arab people assert the genuineness and independence of their national (wataniyya) revolution and reject all forms of intervention, trusteeship, and subordination.

Article 29: The Palestinian people possess the fundamental and genuine legal right to liberate and retrieve their homeland. The Palestinian people determine their attitude toward all states and forces on the basis of the stands they adopt vis-a-vis to the Palestinian revolution to fulfill the aims of the Palestinian people.

Article 30: Fighters and carriers of arms in the war of liberation are the nucleus of the popular army which will be the protective force for the gains of the Palestinian Arab people.

Article 31: The Organization shall have a flag, an oath of allegiance, and an anthem. All this shall be decided upon in accordance with a special regulation.

Article 32: Regulations, which shall be known as the Constitution of the Palestinian Liberation Organization, shall be annexed to this Charter. It will lay down the manner in which the Organization, and its organs and institutions, shall be constituted; the respective competence of each; and the requirements of its obligation under the Charter.

Article 33: This Charter shall not be amended save by [vote of] a majority of two-thirds of the total membership of the National Congress of the Palestine Liberation Organization [taken] at a special session convened for that purpose.

Fateh Online

http://www.fateh.net/e_public/constitution.htm. As of July 19 2005

FATEH Constitution – Chapter One
Principles... Goals.... Methods
The Movement's Essential Principles

Article (1) Palestine is part of the Arab World, and the Palestinian people are part of the Arab Nation, and their struggle is part of its struggle.

Article (2) The Palestinian people have an independent identity. They are the sole authority that decides their own destiny, and they have complete sovereignty on all their lands.

Article (3) The Palestinian Revolution plays a leading role in liberating Palestine.

Article (4) The Palestinian struggle is part and parcel of the world-wide struggle against Zionism, colonialism and international imperialism.

Article (5) Liberating Palestine is a national obligation which necessities the materialistic and human support of the Arab Nation.

Article (6) UN projects, accords and reso, or those of any individual cowhich undermine the Palestinian people's right in their homeland are illegal and rejected.

Article (7) The Zionist Movement is racial, colonial and aggressive in ideology, goals, organisation and method.

Article (8) The Israeli existence in Palestine is a Zionist invasion with a colonial expansive base, and it is a natural ally to colonialism and international imperialism.

Article (9) Liberating Palestine and protecting its holy places is an Arab, religious and human obligation.

Article (10) Palestinian National Liberation Movement, "FATEH", is an independent national revolutionary movement representing the revolutionary vanguard of the Palestinian people.

Article (11) The crowds which participate in the revolution and liberation are the proprietors of the Palestinian land.

Goals

Article (12) Complete liberation of Palestine, and eradication of Zionist economic, political, military and cultural existence.

Article (13) Establishing an independent democratic state with complete sovereignty on all Palestinian lands, and Jerusalem is its capital city, and protecting the citizens' legal and equal rights without any racial or religious discrimination.

Article (14) Setting up a progressive society that warrants people's rights and their public freedom.

Article (15) Active participation in achieving the Arab Nation's goals in liberation and building an independent, progressive and united Arab society.

Article (16) Backing up all oppressed people in their struggle for liberation and self-determination in order to build a just, international peace.

Method

Article (17) Armed public revolution is the inevitable method to liberating Palestine.

Article (18) Entire dependence on the Palestinian people which is the pedestal forefront and on the Arab Nation as a partner in the fight, and realising actual interaction between the Arab Nation and the Palestinian people by involving the Arab people in the fight through a united Arab front.

Article (19) Armed struggle is a strategy and not a tactic, and the Palestinian Arab People's armed revolution is a decisive factor in the liberation fight and in uprooting the Zionist existence, and this struggle will not cease unless the Zionist state is demolished and Palestine is completely liberated.

Article (20) Achieving mutual understanding with all the national forces participating in the armed struggle to attain the national unity.

Article (21) Revealing the revolutionary nature of the Palestinian identity at the international level, and this does not contradict the everlasting unity between the Arab Nation and the Palestinian people.

Article (22) Opposing any political solution offered as an alternative to demolishing the Zionist occupation in Palestine, as well as any project intended to liquidate the Palestinian case or impose any international mandate on its people.

Article (23) Maintaining relations with Arab countries with the objective of developing the positive aspects in their attitudes with the proviso that the armed struggle is not negatively affected.

Article (24) Maintaining relations with all liberal forces supporting our just struggle in order to resist together Zionism and imperialism.

Article (25) Convincing concerned countries in the world to prevent Jewish immigration to Palestine as a method of solving the problem.

Article (26) Avoiding attempts to exploit the Palestinian case in any Arab or international problems and considering the case above all contentions.

Article (27) "FATEH" does not interfere with local Arab affairs and hence, does not tolerate such interference or obstructing its struggle by any party.

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The Truth May Not Always Win, But it is Always Right.

Reply

Even the most sacred precepts of international law can be manipulated to pervert the truth. In its Advisory Opinion of 9 July 2004, the UN's International Court of Justice ruled that Israel's security fence to protect civilian populations from barbarous terror was in violation of international law.

The ICJ ruled that the inconvenience of the fence for Palestinians was more serious than the lives of Jewish children systematically murdered by Palestinian terrorists.

An informed "Reply" to this jurisprudential mockery by the World Court has been prepared by Eli Hertz of New York City. Not a lawyer, Hertz applied his considerable intellectual talents to a meticulously researched and academically refined rejoinder - one that should be read not only by the members of the Court and other UN officials, but also by the broader community of international law scholars.

Eli Hertz has prepared an important and valuable document for all who would seek justice and fairness in our corrupted legal universe. It deserves a wide and very careful reading.

Louis Rene Beres
(Ph.D., Princeton University, 1971, International Law)
Professor of International Law, Purdue University

The ICJ advisory opinion on Israel's security fence was a legal travesty denying the people of Israel their inherent right to self-defense and, at the same time, ignoring their historical national rights that the UN and the League of Nations once readily recognized. Eli Hertz has done an enormous service by providing a cogent point-by-point rebuttal and, by doing so, not letting this terrible document stand without a reply.

Ambassador Dore Gold
Former Permanent Representative of Israel to the United Nations

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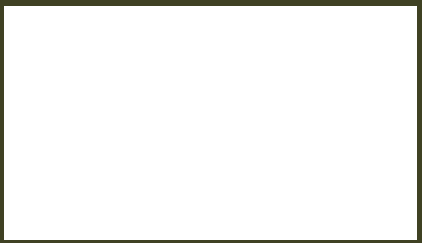
About the author

Eli Hertz is the President of Myths and Facts, Inc. a nonprofit organization devoted to research and publication of information regarding U.S. global interests - particularly in the Middle East. Hertz published and sponsored books and articles regarding the Arab-Israeli conflict. Most notably are "Partners for Change, How U.S.-Israel Cooperation Can Benefit America" (1993), "Myths and Facts, a Guide to the Arab-Israeli conflict" (September, 2001 edition), and "Who is Humiliating Whom." A new volume on the Arab-Israeli conflict "Negotiating Over Quicksand - A Realistic Look at the Arab-Israeli Conflict," is scheduled for release shortly.

Hertz is also a recognized pioneer in the personal computer industry. He has authored and published many technology-related articles and books. *Marketing Computers*, an *ADWEEK* magazine, stated "Hertz is a barometer for the future." Hertz is actively involved in numerous international, industry and community associations and panels, and devotes a great deal of time and resources to charity.



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