

February 24, 2004

A BRIEF TO THE INTERNATIONAL COURT

Over the next several days, the International Court of Justice (ICJ) will hold hearings so it can render a legal opinion on Israel's security fence. But the court has already indicated what its verdict is likely to be.

In a letter addressed to the Israeli authorities the ICJ refers blandly to the case of Israel's building a wall in the 'occupied Palestinian lands.' It is as if, at the opening of a trial, the judge were to announce 'this is the case of the thief Mr. X.'

The 'occupied Palestinian lands' is indeed the term used by the General Assembly of the United Nations in its request to the International Court of Justice to present a legal opinion. This is the common language of Arab anti-Israel propaganda, a part of the Arabs' fictional history, which it has succeeded in disseminating throughout the whole wide world.

Its use by the UN, no mean participant in the propaganda war on Israel, is not surprising. The name ICJ, however, denotes a juridical body completely free of political leanings. The ICJ can surely not be blind to the fact that there are two sides to the dispute in Palestine, and that Israel rejects absolutely the notion that it is illegally holding 'Palestinian lands.' Israel has a very valid claim to these lands, and to its right to do what it is doing there.

It is a claim backed not only by historical fact - which a modern judge may well ignore - but by substantial modern legal and historical testimony.

Regrettably, the court has already shown a sign of bias, apart from echoing the UN's 'Palestinian lands.'

Responding to Israel's objections to one of its members who had in the past made anti-Israel statements, and its request that he consequently recuse himself, the court made it clear that the opinions he expressed did not matter to the court because he made them before he became a member of the court.

The source usually quoted in support of the charge of illegality in Israeli occupation of Judea and Samaria is the Fourth Geneva Convention. The charge, however, is not upheld by the text of the Fourth Geneva Convention. To the contrary, the convention is simply irrelevant to the issue. It is, after all, a document containing a text, easy to read and understand, and this is what it says in Clause Two:

'The present Convention shall apply to cases of partial or total occupation of the territory of a High Contracting Party.'

The territory wrested from Jordan by Israel (in a war of defense) was not territory of a High Contracting Party. Transjordan, Eastern Palestine, which was renamed Jordan after its invasion of Western Palestine and its illegal occupation of the provinces of Samaria and Judea, including the Old City of Jerusalem, did not thereby become their sovereign possessor - it was not a High Contracting Party at all, but an illegal occupier as a result of its aggressive war in 1948. It had no title whatsoever to land across the River Jordan.

We must go back a little to complete the picture - a task which should have been the first step by the ICJ before accepting the task of forming an opinion. After World War II, in 1948, Britain had to relinquish its Mandate for Palestine, which had been promulgated in 1922 for the express purpose of laying the groundwork for the Jewish National Home.

The United Nations - successor and heir to the League of Nations - decided to recommend the partition of Palestine into two states, one Jewish and one Arab. The Jews accepted this recommendation.

HAD THE Arabs - the League of Arab States - accepted the UN recommendation, they could have set up an Arab state at once. They did not do so. Instead, they invaded the territory of the Jewish state. They proclaimed that their objective was to destroy it.

They believed the infant state, alone and very poorly armed, would not be able to withstand the attack by five well-armed states - Egypt, Iraq, Syria, Lebanon and Transjordan - with their armies and their arsenals. It would be destroyed in short order. The surviving Jews would be subjected to Arab rule over the whole of Palestine.

Hence the call of the Arab League to the Palestinian Arabs to leave home - and get out of the way of the invading armies. They would be able to return to their homes in a few weeks, they were told, and take over the property of the defeated Jews.

This proved wrong. After fierce battles and heavy casualties Israel survived, and the deluded Arabs who had left their homes could not return. But Transjordan retained the lands of Judea and Samaria and the Jordan Valley.

Even then an additional Arab state could have been set up in the territories occupied by Jordan. Jordan did not try - it even annexed them; nor did the other Arab states sponsor such a state.

As for the Arab inhabitants, the Palestinians - who did not yet call themselves Palestinians - cheerfully accepted and held Jordanian citizenship.

In 1967 the Arab states once again made war, once again believing Israel could be defeated - indeed, the Egyptian leader of the combined Arab forces, Abdel Nasser, publicly promised Israel's annihilation. They lost, and it was then that the territory that had been occupied by Jordan for 19 years was taken by Israel.

Amazingly, a third chance was now given the Arabs, after their defeat, to declare another Arab state: Israel offered, in exchange for an overall peace with the Arabs, to return all the territory it had just won back.

The reply of the League (from a conference in Khartoum) was a resounding NO - no recognition of Israel, no negotiations with Israel, no peace with Israel.

Soon afterwards the Arabs achieved, with the help of their friends in the media, what was to be arguably their greatest propaganda success. The Security Council, after a long debate on the outcome of the Six Day War, passed Resolution 242, which called for Israel to withdraw from territories captured in the war to 'secure and recognized boundaries.'

This resolution manifestly meant that the sides - Israel and Jordan - would have to negotiate where those boundaries should be. A counter-resolution by the Arabs' friends on the council was submitted, adding the word 'the' to territories, which meant that Israel, which had suffered the attack, been threatened with destruction, and had yet won the war, must accept defeat.

The counter-resolution was defeated - but no negotiations between Israel and Jordan based on Resolution 242 ever took place.

The Arabs' propaganda, using the defeated resolution as though it were Resolution 242, has persuaded many people that the falsified resolution justifies their claim that the Jewish presence beyond the Green Line in Judea and Samaria is illegal. It is thus on the basis of that falsification of Resolution 242 that the UN General Assembly requested a 'legal' opinion from the ICJ.

There is no need for a new opinion.

The true facts of the matter enshrined in the original UN and League of Nations documents are quite clear. The General Assembly of the UN is not an educational institution and its proposal to the ICJ is patently political.

The ICJ should not - for the sake of its own standing - let itself become complicit in this purely political manipulation.