

August 4, 2004

UNSETTLING THOUGHTS ON OCCUPATION

Some 30 years ago Abba Eban, Israel's foreign minister, commenting on the heavy bias the Arabs enjoy in the UN General Assembly, declared that if the Arabs were to propose to the UN a resolution that the earth was flat, it would be passed by an overwhelming majority.

Nothing has changed since then in the UN, and nobody expected that body to upset the judgment against Israel of the International Court of Justice at The Hague. Indeed, it is safe to say that it was in order to evoke a judicial-sounding opinion delegitimizing Israel's status in 'the territories' that the UN asked the court for an opinion in the first place.

Too bad that international law didn't play a role in the judges' decision.

Israel's hold on Judea and Samaria is emphatically not in contravention of international law. The law in question, The Fourth Geneva Convention, is simply not relevant to Israel. The convention, after all, defines its own scope in clear and simple language.

Clause 2 reads: 'The present Convention should apply to cases of partial or total occupation of the territory of a High Contracting Party.'

Israel captured the territory in question, Judea and Samaria (together with the Jordan Valley), from the Kingdom of Jordan in a war of defense in 1967. Jordan, far from being a High Contracting Party, was an illegal occupier of the territory, and had been ever since its illegal invasion of western Palestine in 1948.

That crucial piece of information is conspicuously not discernible in the Hague judgment.

Indeed, once the judges did undertake a case of this nature they could be expected to delve into the unique history of the Palestinian question, and the juridical aspects of that history. There is no sign that they made any such investigation.

Let us take a close look.

The last sovereign ruler of Palestine was the Ottoman Turkish Empire, which was defeated in World War I. Substantial areas of land in the Middle East fell into the hands of the victorious Allies, Britain and France. Under the auspices of the League of Nations (set up after the war), allocations of lands were made to the Arabs and to the Jews.

These lands were to be administered by mandatory powers until they were deemed ripe for self-government: Britain over Palestine and Mesopotamia (which is Iraq); and France over Syria and Lebanon.

The terms of the Mandate for Palestine were unique. Its preamble establishes that the Mandatory Power was to put into effect the British Declaration of 1917 favoring the establishment of a national home for the Jewish people in Palestine.

The preamble goes on to explain that '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 Palestine.'

This recognition lends stress to the additional fact that, throughout the dynasties that ruled Palestine over the centuries, no people except the Jews presented a national claim to Palestine.

Later in the body of the text the Mandate lays on the administration the obligation to 'encourage,' in the projected Jewish National Home, close settlement of the land, including state Lands and waste lands.'

ON THE eve of the Mandate's ratification, the British mandatory power excluded from the provisions on Palestine three-quarters of the territory (all of Palestine east of the Jordan) and handed them over to the Arabs. This territory ultimately became the Kingdom of Transjordan.

In 1947 the United Nations decided to recommend the partition of Palestine between Jews and Arabs, offering the Arabs a part of the land which had been designated for the Jewish national home. The Jews, however reluctantly (this was two years after the Holocaust), accepted the recommendation, and set up the State of Israel.

The League of Arab States rejected the proposal. Instead, they launched war on Israel with the declared intent of destroying the newborn state. They did not succeed in this purpose, but the Kingdom of Transjordan captured Judea and Samaria and their surroundings. It held on to them and even annexed them, granting citizenship to the Arabs living there. Here was undoubtedly a case of illegal belligerent occupation.

Nineteen years later, the Arab alliance, led by president Nasser of Egypt, and including Jordan (the new name for Transjordan) again launched war, invading Israel once more. By this time, Israel was strong enough to repel the invaders' second attempt, and took the lands the Kingdom of Jordan had invaded.

These, again, were the lands the Arabs had refused to accept when offered them by the United Nations in 1947. Again, these were part of the lands originally allocated for the Jewish National Home.

By what inversion and distortion of international law, then, could the Hague Court have come to the conclusion that Israel was an illegal occupier of these lands?

After Israel's victory in the Six Day War of Arab aggression in 1967, the government (some would say, foolishly; some would say, quixotically) offered to hand over the lands it had won to the Arabs. To this offer, the reply was brusquely negative: no negotiations with Israel, no peace with Israel, no recognition of Israel.

It was then, after that refusal, in the early Seventies, that Israel allowed Jews to come and settle in the land that had indeed been designated internationally for their settlement.

Whatever the future may hold, whatever political decisions may be taken, the Hague Court decision is a travesty of justice.

The Jewish presence in the whole of western Palestine, the Land of Israel, can be much more closely described as a historic act of restitution.