

Has Israeli Occupation Become Legal in the 21st Century?

By Sam Bahour

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This past eight months of bloodletting between Israelis and Palestinians is no more than an additional, exhausting chapter in a decades old conflict that seems today more polarized than ever. When Israel invaded the West Bank, Gaza Strip, and East Jerusalem in 1967, the occupation of Palestine was born. With this birth came a second Palestinian Diaspora (the first was in 1948 when Israel was established) and the reality that an entire population—1.2 million Palestinians—would become totally controlled by the Israeli military. Over three decades later, no one expected to see the occupation enduring, or to see Palestinians still able to resist.

When it became apparent that the world was turning a blind eye to the Palestinian catastrophe, the Palestinians created the Palestine Liberation Organization (PLO) to serve as the organizational mechanism to coordinate their political, military, social, and economic efforts to liberate Palestine. Initially, the PLO was tasked with the liberation of Historic Palestine—from the Mediterranean to the Jordan River. This represented the efforts of an indigenous people struggling against the colonization of their homeland. In 1988, the highest political body of the PLO, the Palestine National Council, made the strategic and pragmatic decision to formally recognize Israel's existence on 78% of Historic Palestine, but maintained its demand for the return of lands that, until today, remain internationally recognized as illegally occupied by Israel.

As the conflict ensued, the State of Israel proceeded with a multitude of unilateral actions—the most outrageous being the building of Jewish-only settlements in the midst of occupied lands. Settlement building, a policy of deporting Palestinians, a policy of imprisoning Palestinians, a policy of torturing Palestinian prisoners, a policy of house demolitions, among a whole series of other flagrant violations of human rights and international law have complicated the issue. To add insult to injury, Palestinians are now being requested to be "just a little more flexible."

From the outset, the world community was aware of the seriousness of the Israeli-caused Palestinian dispossession. Hence, the Arab-Israeli conflict, as it has been termed, was brought to the venue of the United Nations multiple times.

On 11 December 1948, only a few months after the creation of the State of Israel, the General Assembly passed Resolution 194 which "Resolves that the refugees wishing to return to their homes and live at peace with their neighbors should be permitted to do so at the earliest practicable date, and that compensation should be paid for the property of those choosing not to return and for loss of or damage to property which, under principles of international law or in equity, should be made good by the Governments or authorities responsible."

On 22 November 1967, now only months after Israel occupied the West Bank, Gaza Strip, and East Jerusalem, the Security Council passed

Resolution 242, which explicitly calls for, "Withdrawal of Israeli armed forces from [the (1)] territories occupied in the recent conflict."

With Israeli intransigence challenging the world, the Security Council passed yet another milestone Resolution, number 338, on 22 October 1973. This resolution "Calls upon the parties concerned to start ... the implementation of Security Council resolution 242 (1967) in all of its parts."

Furthermore, on 1 March 1980, prior to the first and second Intifada, the Security Council adopted Resolution 465 which states, "Affirming once more that the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949 is applicable to the Arab territories occupied by Israel since 1967, including Jerusalem." In the same resolution it was determined that, "all measures taken by Israel to change the physical character, demographic composition, institutional structure or status of the Palestinian and other Arab territories occupied since 1967, including Jerusalem, or any part thereof, have no legal validity and that Israel's policy and practices of settling parts of its population and new immigrants in those territories constitute a flagrant violation of the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War and also constitute a serious obstruction to achieving a comprehensive, just, and lasting peace in the Middle East."

On 13 September 1993, in pursuit of that "just and lasting peace," the PLO and Israel signed the Declaration Of Principles On Interim Self-Government Arrangements, which led to the Oslo peace agreements. Here, it was clearly accepted that there would be no substitute to UN

resolutions 242 and 338. In Article I of this Declaration, it is stated that, "the negotiations on the permanent status will lead to the implementation of Security Council Resolutions 242 and 338."

Throughout this conflict, and in addition to all of these absolutely clear international resolves, there have also been numerous UN Security Council and General Assembly resolutions confirming the applicability of the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War upon the Israeli occupation. Israel is a signatory to this Convention but refuses to apply it to the occupied Palestinian lands. The Israeli position that the occupied territories are "disputed" so the 1949 Geneva Convention does not apply, is sophistry.

Israel has arrogantly disregarded all of these attempts to equitably solve the conflict in favor of demanding that the oppressed and the oppressor negotiate a bilateral solution. Sadly, the U.S. has joined in this chorus as well. When the PLO accepted engagement with Israel in an historic concession, they only faced more Israeli demands and the claim that international law is secondary to Israel's security and protection of its citizens and its settlers.

Only a few years ago, on 24 September 1998, former Israeli Prime Minister Benjamin Netanyahu declared at the podium of the United Nations that, "It can no longer be claimed that the Palestinians are occupied by Israel." Thirty-four years after the storming of the West Bank, Gaza Strip, and East Jerusalem, occupation is still alive and well. Whereas the will of the international community, stated time and again, was to place occupation in the same category as that of South African Apartheid,

Israel has chosen otherwise. As the Oslo peace agreements unravel with the passing of every Palestinian funeral, the Government of Israel has begun a concentrated public relations campaign to legitimize its occupation, its settlements, and Israel's unilateral actions to undermine Palestinian human and political rights.

International law must be defined by the world institutions that were established for that purpose—and not by the existing superpower or the party to the conflict that can hire the better public relations firm. The time has come for the General Assembly to request the International Court of Justice, based in The Hague, to make a definitive Advisory Opinion (2), on all matters of law regarding the rights of the Palestinian people and the Israeli actions in the occupied territories. The Advisory Opinion mechanism is an established Court procedure, open solely to international organizations. This may serve as a way out of the currently failing peace process.

Unlike United Nations Resolutions, which are only quasi-legislative in nature, the opinion of the Court would be binding on the United Nations and affiliated international organizations as to the matters of law that it decides. As a result, the opinion defines the rights and obligations of member states to the United Nations and entities with observer status. Thus, failure to adhere to the Advisory Opinion decision on any matter of law decided can result in appropriate action by the General Assembly, i.e. suspension of the voting rights of a member state and even its expulsion. Since any such action would take place in the General Assembly, there would be no veto power to nullify it.

This Advisory Opinion procedure is actively engaged from countries from around the world, including America, to clarify what is legal and what is not as it relates to international law. Such an opinion would not call into question the right of Israel to exist within fixed borders. Instead, it calls on the Court to decide matters of law pertaining to Israel's violations of fundamental norms of international law binding on all members of the international community.

To renew the already established principle that occupation, in all its forms, is illegal may provide Israel and the United States with a twenty-first century confirmation that toying with the English language to legitimize any form of occupation is a

waste of time, effort, and lives—both Palestinian and Israeli.

Armed with an International Court of Justice Advisory Opinion, the General Assembly can once and for all move to make their opinion binding on the parties involved. It would thereby bypass the historically blind Security Council veto that the U.S. invokes every time Israel's violations are brought to the forefront.

The clear and unequivocal end to Israeli occupation, in all of its forms, has the power to bring justice, security, and stability to a region on the verge of self-destruction.

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Footnotes:

- (1) There is a subtle difference between the English and the French texts (both official) referring to withdrawal “from territories occupied” and “des territoires occupés” (from the territories occupied) respectively.
- (2) This strategy has been initiated by International Law expert Dr. Richard Cummings and is currently being prepared for action. Dr. Cummings may be reached at <cummings01@earthlink.net>.

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