

JEWISH LAW
ROOTS OF
DECLARATION OF
INDEPENDENCE
5th AMENDMENT
14th AMENDMENT
MOSHE SISESENDER
BOOK 94

The 10
commandments cite
Thou shalt not kill
Thou shalt not steal
These two
commandments
assume
The
Presumption

that every human being
is

Endowed with
Life

By God.

Life comes and ends
and belongs to God.

Life therefore is sacred.

[Radvaz commentary

Rambam laws of
Sanehdrin] ^{18:6}

regardless of
religion

Color of skin

National origin

Gender

Age

Disability .

Therefore there exists a presumption that one is innocent until proven guilty. One who attempts to effect a change is mandated to produce all the proof. One who is innocent

until proven guilty.

They can remain silent.

He/she can not be
compelled to testify.

The burden of proof
falls on the accuser.

This is based on Jewish
law “hamotze
mechvaro olov haraya.

One who [wants to change the status of a thing]and take away from an other must produce the proof.”

The law in physics of inertia states that a moving thing unless

stopped will remain in motion .

An object not moving unless propelled will remain not moving.

This principle is the same as the law of changing the status of property.

It is mandated on the mover to produce proof. With out the evidence the original holder retains ownership.

So, too, every human possesses by virtue of conception and later

birth the right to life
liberty and property .

He/she can not have
these rights abrogated
or compromised with
out a fair trial .

One's life liberty and
property belongs to the
person. This right is

absolute and God
given .

No one
no government
other person
can take away one's
life liberty or property
with out a fair trial and

the person is found guilty.

Thus the American Declaration of Independence and the 5th 14th Amendments that herald these rights have their roots in Jewish Law.

As a matter of fact
American Common
laws and Equity laws
that are based on the
English model have
roots in Jewish law .

The English Common
laws and Equity laws
are based on the

Justinian Roman Code.
This Code in turn has
Jewish law roots.

I have written several
books demonstrating
the influence of Jewish
law on the American
Constitution on the
laws of evidence on

procedure of Courts on ethical concerns of attorneys .

All of these books trace the influence of Jewish law.

It is true that many philosophers echoed the same message as

contained in the
Declaration of
Independence and the
Amendments –the bill
of rights .

However the
message they echo has
the influence and roots
of Jewish law.

I plan to make a study of all the areas of American Federal laws and demonstrate parallel Jewish laws.

True, over the many centuries there exists influences other than Jewish law that has

shaped the legislation of Roman English and American law. However Jewish law influence is very marked and can be recognized.

Ironically , because of the infinite contribution of Jews to

the legal and moral
systems of civilizations;
that very fact
has fed
resentment
jealousy
and hatred
for Jews.

The snake of anti-Semitism was born the day the Jew received the law at Mount Sinai from God 3400 years ago.

Sinai in Hebrew means hatred.

However all honest people owe a debt to Jews and the State of the Jew- Historical Israel Judea Samaria Golan old City and new City of Jerusalem.

Do not permit the lie
of “international law” -
a bastard

born out of sin

to

replace

the

Ten Commandments .

“International law”

wants to abrogate the
Ten Commandments.

They erase The

Thou shalt not kill

Thou shalt not steal.

When it relates to the
Jew.

They substitute

Thou shalt kill the Jew

Thou shalt steal from
the Jew.

First the United
Nations arrogate to
themselves the right to
steal from the Jew the
sovereignty
the right

and ownership of
historical Israel

Judea Samaria Golan
old city of Jerusalem .

They now call it

West Bank

Palestinian

land .

Israel therefore is an
“occupier”

having no rights
to exercise
sovereignty.

Therefore the poor
Palestinians are right in
rebellling against the

“occupation” and
murdering Jews.

The old snake of Jew
hatred has undergone
many face lifts over the
centuries.

Anti Semites steal
Jewish laws

Jewish ethics morals
and even
the name Israel.

For centuries
Christianity was
dubbed the “new
Israel.”

Some Dictionaries still
retain that definition.

Old prejudices survive
to day as being anti
Israel anti the state of
the Jew.

A new pretext was
created the poor
Palestinian the never
once existent people .
Since Islam made its

appearance in 640 ACE
and conquered half the
world including the
Holy land , never once
was the area the
Palestinians claim as
belonging to them exist
as Palestine.

Never once did there
exist a Palestinian
people.

Only after Israel
defeated the combined
armies of Egypt Jordan
Syria in 1967 did the
Arab league create the
Palestinian people hoax

as a political tool
weapon against Israel.

The Muslims number
1 billion . They exert
tremendous political
and economic power.

They have been
mobilized against the
Jewish state for the last

67 years since the
rebirth of modern
Israel. . The UN and all
its institutions are not
unbiased institutions.
All of them use their
leverage and create
laws called
“international laws”

To mask their theft
under the mask of
“legality.”

Thus the Palestinians
scream that Israel is an
“occupier
under international
law”

What they conceal is that the Muslims abuse their power and wealth to create “international law” not on the merits but because of their economic power that influences the greed of all the countries that

support the
Palestinians.

Therefore, all so called
“international law” is
null and void.

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"And he said in the sight of Israel: 'Sun, stand still upon Gibeon'"

Eclipse 'stopped the sun' for biblical Joshua, Israeli scientists say

Researchers claim to pinpoint the exact date — October 30, 1207 BCE — and explanation for an astounding event in the Battle in Gibeon

BY TIMES OF ISRAEL STAFF | January 16, 2017, 10:35 pm |

According to the biblical story, Joshua got help from the sun to earn the Israelites one of their most epic victories. Now, a team of Israeli scientists say they've figured out how: The battle coincided with a solar eclipse.

Using NASA data, three scientists from Beersheba's Ben Gurion University, in a newly published paper, dated the eclipse and the battle to October 30, 1207 BCE.

Chapter 10 of the Book of Joshua relates that soon after Joshua and the Israelites entered the Promised Land, they waged battle against five armies which laid siege to the Gibeonites. Joshua had promised to protect the Gibeonites, so he led an army and defeated the five kings. Joshua prayed that God help the Israelites in their battle by stopping the sun:

"Then Joshua spoke to the Lord on the day when the Lord delivered the Amorites before the children of Israel; and he said in the sight of Israel: 'Sun, stand still [*dom*] upon Gibeon; and you, Moon, in the valley of Ayalon.'" (Joshua 10:12).

The researchers noted other ancient stories where a deity stops the sun, but said the biblical story is unique because it also mentions the role of the moon. That led them to the conclusion that it referred to a solar eclipse, during which the moon passes in between the sun and the earth, blocking the sunlight.

They interpreted the word "*dom*," which only occurs one other time in the Bible (Psalms 37:7), not as "stand still," which is how it is traditionally read, but to mean "become dark."

The multi-disciplinary team, led by Dr. Hezi Yitzhak, found that there was only one total solar eclipse that occurred in the region between the years 1500-1000 BCE, when the Israelites are believed to have entered the land. The eclipse allowed them to date the battle precisely to 4:28 p.m. on October 30, 1207 BCE, in their paper, which was published in the most recent edition of *Beit Mikra: Journal for the Study of the Bible and Its World*.

They also described what they said was the precise location of the battle, and traced a 30-kilometer overnight trek that Joshua and his men made to reach Gibeon, north of Jerusalem, from their encampment in Gilgal, on the eastern edge of Jericho.

The article did not address the nature of the hailstones that, according to the biblical story, killed many people during the battle.

"Not everyone likes the idea of using physics to prove things from the Bible, and I know that it may be interpreted as if you are rationalizing your faith," Yitzhak told Haaretz on Sunday. "We

do not claim that everything written in the Bible is true or took place... but there is also a grain of historical truth that has archaeological evidence behind it."

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Why Israeli settlements are not a violation of international law

ROBERT STARK | JANUARY 3, 2017, 3:28 AM |

Critics of Israel's policy to allow its citizens to live in the regions of Judea and Samaria have two separate arguments for why the settlements are illegitimate. One is a legal argument, the other is political. In this article, I will explain why Israeli homes in the area are in fact legal under international law. In my next installment, I will address the political argument.

Recently there was a big noise made over a U.N. Security Council resolution that declared Israeli homes, built in the region of Judea and Samaria, a "flagrant violation of international law." The resolution does not break any new ground, as far as the international community is concerned, because President Jimmy Carter allowed the Security Council to pass a resolution that stated Israeli homes built in Judea/Samaria have "no legal validity."

Both of these resolutions, although they make a bold and stark statement about the legality of the so called "settlements", are merely political statements. As I explained at the bottom of a previous article, these resolutions are non-binding under international law. Furthermore, these resolutions are not consistent with objective legal analysis of the subject by world experts on international law.

In order to find Israel's settlements to be a violation of international law, first, Israel must be considered an occupier of foreign territory. Yet, Israel's legal claim to the territory in question was recognized by the international community on several occasions. First, the land on both sides of the river Jordan were recognized as part of the Jewish National Home by the 1920 San Remo Conference. This was endorsed by the League of Nations (predecessor to the United Nations) in the 1922 League of Nations Mandate to Britain, and affirmed by article 80 of the United Nations charter in 1945. When Israel's leaders declared sovereignty in all territory relinquished by England on May 15, 1948 (including the territory that anti-Israel people call the "West Bank") it was recognized to be the State of Israel by both the General Assembly and Security Council in November 1948.

Jordan invaded (along with four other Arab states) and conquered this specific territory in 1949, annexed it in 1950, and gave it a new name: "West Bank" (of the river Jordan). Only two countries in the entire world recognized Jordan's annexation (England and Pakistan) and not a single Arab country recognized this annexation.

Furthermore, article 2 of the UN charter forbids the acquisition of territory through war. Thus, Jordan's acquisition and annexation of the territory was illegal under international law.

In 1967, Jordan again initiated war against Israel (along with two other Arab states) but Jordan was pushed out of the territory (back to Jordan's recognized boundaries on the east bank of the Jordan river) by Israel. This re-acquisition of the territory by Israel was legal because article 51 of the U.N. charter permits a nation to defend itself from attack. It is understood that national self-defense often necessitates control of any territory from which the initial aggression was launched.

If the territory would have been recognized as within the borders of the State of Jordan by either Israel or the international community between 1949 and 1967, then it would have meant Israel's return to the territory was an occupation, regardless of previous title. But Jordan's annexation was not recognized by the international community, nor did the Jordan-Israel ceasefire agreement represent acquiescence to new borders by either side:

No provision of this Agreement shall in any way prejudice the rights, claims and positions of either Party hereto in the ultimate peaceful settlement of the Palestine question, the provisions of this Agreement being dictated exclusively by military considerations." GENERAL ARMISTICE AGREEMENT BETWEEN ISRAEL AND JORDAN – APRIL 3, 1949.

Given the fact that Israel had legal title to the territory that was recognized by the international community and Israel's final control of the territory was a result of self-defense rather than aggression, while Jordan's control of the territory was never recognized as legitimate by the international community, common sense shows that Israel merely won back territory that legitimately belonged to it in the first place.

This is a strong legal argument for why Israel has superior title to the territory, in a legal chain that was never legitimately broken, therefore Israel can't be an occupier on territory that belongs to it in the first place.

This position is shared by Judge Schwebel, former President of the International Court of Justice, in his book on the subject "What Weight to Conquest? Aggression, Compliance, and Development" pg. 521-526.

For a fuller explanation on why Israel can't be an occupier, see my previous article on the subject.

But, for the sake of argument, let us play devil's advocate and assume Israel had no legal title to the territory in 1967. In that case, would Israel's settlements be a violation of international law?

The answer is no, here is why:

The Fourth Geneva Convention provides the international law as relates to occupied territory, and is the basis of any legal argument against Israel on the subject of Israeli settlements. Therefore, in order to make the conclusion that Israel's settlements are illegal under international law, one must be able to apply this convention to Israel's presence in the area. And then, one must show that Israel is in violation of one of the provisions of the convention.

In order for a territory to be recognized as occupied by the Fourth Geneva Convention, a territory must have changed hands in a conflict in which one country takes control of foreign territory. In Israel's case, the only other country that controlled the territory in question was Jordan. Yet, Jordan relinquished all claims to the territory in 1988 and recognized the territory as part of Israel in a peace treaty signed in 1994.

Thus, even if Israel's capture of the territory in 1967 is considered an occupation, the fact that Jordan later relinquished all its claims and then recognized the territory as part of the State of Israel means any such occupation is long over.

But for argument's sake let us play devil's advocate and assume Israel is still an occupier to this day, as some might argue, despite the lack of an international conflict. Then, are the settlements illegal?

The answer is still no, here is why:

The convention only applies to States that are a party to the convention itself. Thus, either the occupier or the occupied must be a signatory to the convention in order for it to apply. Since the Arab residents of the West bank are not residents of a state that is bound by the Convention, and Israel is not a signatory either, therefore the Fourth Geneva Convention does not apply to this conflict. This position is shared by Professor Julius Stone, one of the 20th century's leading authorities on international law, "Israel and Palestine, Assault on the Law of Nations" discourse 2, pg. 177.

This was also the position of a French Court of Appeals which stated: neither the Palestinian Authority nor Israel is a party to the Fourth Geneva Convention and therefore the convention does not apply to them. For the full text in the original French, [click here](#). For a google translated text, [click here](#).

But let us once again play devil's advocate and put this technical, yet decisive, issue aside. Let us imagine the Fourth Geneva Convention applies despite the fact that neither Israel nor the Palestinian Authority is a party to the convention. Then, are the settlements illegal?

In that case, the answer is still no, here is why:

Those who claim the settlements are illegal point to Article 49 of the convention, which states that to be an illegal occupier the occupying power must do one of two things:

1. Forcibly transfer the population under occupation to outside the occupation zone, either inside the controlling country or to another country.
2. Transfer the population of the occupier from its own country to the occupied zone.

No one among Israel's critics is claiming that Israel is absorbing the Arab-Palestinian population into Israel proper, nor is anyone claiming Israel is deporting entire populations from the territory to somewhere else. So the first provision does not apply.

As for the second provision, it requires a wild stretch of the imagination to describe the voluntary choice made by free acting persons to migrate to the area as "persons being deported or transferred by their government". Especially when one considers the authoritative, and official, commentary to article 49 states that this provision was:

Intended to prevent a practice adopted during the Second World War by certain Powers, which transferred portions of their own population to occupied territory for political and racial reasons or in order, as they claimed, to colonize those territories. Such transfers worsened the economic situation of the native population and endangered their separate existence as a race."

There is simply no legitimate comparison between Israeli citizens' vote, through their wallet and their feet, and the millions of Germans and others who were actively required by their own government to move from their country into newly occupied zones elsewhere.

This position is shared by various international law scholars such as Professor Eugene Rostow (former Under Secretary of State, former dean of Yale Law School, and author of Security Council Resolution 242) who wrote:

[T]he Convention prohibits many of the inhumane practices of the Nazis and the Soviet Union during and before the Second World War – the mass transfer of people into and out of occupied territories for purposes of extermination, slave labor or colonization, for example... The Jewish settlers in the West Bank are most emphatically volunteers. They have not been "deported" or "transferred" to the area by the Government of Israel, and their movement involves none of the atrocious purposes or harmful effects on the existing population it is the goal of the Geneva Convention to prevent." *American Journal of International Law*, Vol. 84, 1990, p. 719.

And Professor Julius Stone, one of the 20th century's leading international law experts, who wrote:

Irony would...be pushed to the absurdity of claiming that Article 49(6), designed to prevent repetition of Nazi-type genocidal policies of rendering Nazi metropolitan territories *judenrein*, has now come to mean that...the West Bank...must be made *judenrein* and must be so maintained, if necessary by the use of force by the government of Israel against its own inhabitants. Common sense as well as correct historical and functional context excludes so tyrannical a reading of Article 49 (6).” “Israel and Palestine, Assault on the Law of Nations” discourse 2, pg. 179-181.

But, let us play devil’s advocate, and assume the Israeli government’s allowance of its citizens to live and build within its borders is a violation of article 49. Then, are the settlements illegal under international law?

The answer is still no, here is why:

Any question of legal validity under international law should be resolved by the fact the Palestinian-Authority, under Yasser Arafat, signed the Oslo Accords with Israel. This was an internationally recognized agreement to divide jurisdiction of the territory between Israel and the newly created Palestinian Authority. Under this agreement, Israelis have full jurisdiction to live and build on the designated 60% of the territory. Therefore, any building in this territory is completely legitimate under international law through the Oslo Agreement.

So there you have it, in all the possible stages of the legal argument:

Israel can’t be an occupier because it likely has superior title to the territory in the first place. Even if it had no title to the territory, the Fourth Geneva Convention can’t apply here. And even if it could apply here, Israel would be a legal occupier rather than an illegal one, since Israel hasn’t violated the provisions of the Fourth Geneva Convention (making the settlements legal rather than illegal). Lastly, even if Israel’s settlements were a violation of article 49 of the Fourth Geneva Convention, the Oslo Accords have given both Israel and the Palestinian Authority the right to live and build in their allotted jurisdictions.

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Israel, Occupation and International Law: Part II – A Response

ROBERT STARK | NOVEMBER 3, 2013, 2:51 AM |

In my previous article, I laid out Israel's claim to the territory known as Judea/Samaria (or West Bank to the anti-Israel crowd), I then proceeded to explain the position of the International Committee of the Red Cross, and showed how their logic to the status of the territory is circular and severely faulty even according to their own interpretation of International Law. I then concluded with a fact that remains, regardless of who may be right, that stated the territory can no longer be considered occupied because the signing of the Oslo Accords gave the population of the territory self rule and control over their day to day civil and security affairs. I also included a criticism of the International Committee of the Red Cross which stated the organization, though required to be impartial to the conflicts in which it operates, has allowed itself to become biased and as a result inconsistent with its application of international law even according to its own interpretations of when a location is occupied.

The head of the Red Cross's delegation to Israel, responded to my article. In his response, he argued that a place is considered occupied simply from the moment that one party forcibly takes control of the location regardless of any legal history involved. This very logic is what my previous article presented on behalf of the Red Cross, and then my article proceeded to refute this approach using the Red Cross's own writings on the issue. The delegate offered no retort to my refutation of that argument.

However, he posited that my conclusion that the territory is no longer occupied due to the Oslo Accords is not true. According to him my perception of the Oslo Accords, as analogous to the U.S. Interim Agreement with Iraq, is a false analogy. According to the official, the Oslo Accords are nothing more than a rubber stamp for Israeli control and therefore not analogous to the U.S. Interim Agreement.

However, even if we all agree for the sake of argument that the Oslo Accords are nothing more than a rubber stamp for Israel, it appears this would support my analogy. After all, there is very little reason to seriously say that the U.S. Interim Agreement with Iraq was anything other than a rubber stamp for U.S. control and ultimate supervision over Iraq. Yet, that did not stop the Red Cross from considering the occupation of Iraq as ceased. Again, the inconsistency is glaring.

There was not much to the delegate's response, in the way of argument, other than appeals to various institutions like the Israeli Supreme Court, the World Court, the United Nations General Assembly, and United Nations Security Council. In essence, the delegate resorted to Aristotle's example of the logical fallacy of an "appeal to authority". After all, if an important physics professor says time travel is possible, it must be absolutely true, right!?

As it turns out, the very same appeals to authority that were made in response to my article are the ones I intended to discuss in this installment. The institutions mentioned above are the remaining pillars of the anti-Israel crowd's argument that Israel is an occupier. So let's analyze the arguments and begin with the Israeli Supreme Court.

The anti-Israel crowd claims that Israel's Highest Court has ruled the territory's status is legally occupied first in a 2004 case called *Beit Sourik Village Council v. The Government of Israel*. However, the reality is that the Israeli Supreme Court has never had to deliberate what the status of the territory actually is because the Israeli government has taken the political position ever since 1967 that, although the government considers the status of the territory as unclear and thus "disputed", it will provide the humanitarian protections found in international law relating to occupation as a kindness and as closely as possible to the Fourth Geneva Convention with exceptions only for issues of security.

Thus, the Israeli Supreme Court has never had to discuss the question of whether occupation is the proper legal definition for the territory and thus whether Israel is in fact **obligated** to provide those protections. This is a significant subtlety the anti-Israel crowd chooses not to see.

The Israeli Supreme Court has never actually decided whether the territory in question is occupied. The Israeli Supreme Court has merely been restating the position of the Israeli Government itself as a premise before any legal analysis rather than concluding the status of the territory.

As for references to the territory in question as "occupied", the key is whether the Court writes this in the "holding" part of the legal opinion, or elsewhere known as "dictum". The "holding" of a case states the "rule of the case", meaning, it has been decided ("held") to favor one side or the other because of the rule. A "dictum" refers to just about anything else mentioned in the opinion of the court that made the ruling, but does not establish a rule itself. The quotes used by the anti-Israel crowd are dictum.

The first quote you can point to in that case is found not in the holding of the case but in what the opinion itself terms the "background" information where obviously everything is dictum as it is merely a necessary background before the legal analysis even begins.

The second, and last possible quote, one can point to is a statement that makes my point all the clearer: "the general point of departure of all parties – which is also our point of departure – is that Israel holds the area in belligerent occupation". Notice, it's their premise before any legal analysis of any question in the case, not their conclusion from any legal analysis. Again, they can begin their premise there because the government already applies the protections of the Fourth Geneva Convention to the territory as an official policy. Thus, the quotes are in keeping with a political government position, and not the conclusion of any legal analysis of the question itself.

7

To repeat the main point, there is not a single case where the Israeli Supreme Court has examined the legal issue itself, considered pro and con arguments over it, and come to the legal conclusion that the West Bank is belligerently occupied territory. The Court simply follows the government's policy of interacting with the territory as closely as possible through the humanitarian protections of the Fourth Geneva Convention and Hague Regulation 1907. Thus, not only has the Israeli Supreme Court never in its history ruled on the status of the territory in question, even the Red Cross has acknowledged the fact on their website.

"The de facto acceptance by the [Israeli] authorities that the applicable law in the OT [Occupied Territories] was the law of belligerent occupation freed the Court from having to decide what the constituent elements of occupation are." <http://www.icrc.org/eng/assets/files/review/2012/irrc-885-kretzmer.pdf>

So, I am rather flabbergasted that a high ranking official from the Red Cross would use the Israeli Supreme Court as an institution advocating his position. Perhaps this is yet another sign of the bias which clouds the organization's very important work.

Another pillar used by the anti-Israel crowd to point the finger of occupation at Israel is an advisory opinion by the World Court concerning Israel's construction of a barrier in the territory. This too was thrown at me, in the comments to Part I, by the head of the Red Cross delegation to Israel.

First of all, advisory opinions from the World Court do not make international law. They are not even binding conflict adjudication. They are merely a marker of how the Court was thinking at the time, made at the request of the General Assembly. It is reasonable and common for the Court to rule differently in actual adjudication from how it saw things in an advisory opinion.

In this advisory opinion the Court indeed saw Israel as an occupier. However, the entire legal proceedings through which the Court received relevant documents about the question of occupation were entirely without any representation from Israel.

Israel did not participate because it was following the custom of most Sovereign States in the world. This custom is seen in most Sovereign States in the world, as most states have not signed on to accept the jurisdiction of the World Court, because they are concerned it may be a reduction in the jurisdiction of their own governments. This customary concern among most, if not all Sovereign States, is why only about a third of the world's sovereign states have signed on, while the signed clause itself remains optional and those same signatories may at any time "opt out" just as the United States "opted out" after having already signed.

In other words, the only side present at that time was the side that doesn't have any sovereignty to worry about, the Palestinian side (and their friends) who had free reign to submit any documents and to make any claims, unchecked by any opposition. One can't say that Israel had its day in court here.

As many of the World Court's judges noticed, the Israeli side of the picture went unrepresented and untold:

"Indeed, there is ample material, in particular, about the humanitarian and socio-economic impacts of the construction of the wall. Their authenticity and reliability are not in doubt. What seems to be wanting, however, is the material explaining the Israeli side of the picture,

4
especially in the context of why and how the construction of the wall as it is actually planned and implemented is necessary and appropriate.” -Separate Opinion of Judge Owada
<http://www.icjci.org/docket/files/131/1691.pdf>

Imagine a court of law needed to assess your situation, yet you were not present in court to hand relevant documents during the process of assessment. Moreover, your opposition was present to do exactly that. Could you expect a fair and just assessment from the judge if you were not there to make sure the information regarding yourself was accurate, and to defend your positions and correct the falsehoods and exaggerations from the other side? Without being present, you would certainly call any conclusion in that scenario a farce of the law.

This advisory opinion is a farce of the law. Sadly, a farce of the law is enough for the anti-Israel crowd. But most tragically, if not surprisingly, it is apparently enough for the International Committee of the Red Cross. After all, its delegate to Israel cited this very advisory opinion as proof of the Red Cross's accurate assessment of the territory in question.

Aside from the Beit Surik case, and the World Court advisory opinion, the head of the Red Cross delegation to Israel also pointed to resolutions of the General Assembly, and Security Council as an appeal to authority for how the Red Cross defines the territory as occupied. It is rather unfortunate the official does not see the difference in nature between his organisation as an impartial and apolitical animal tasked with interpreting humanitarian law and the United Nations' bodies he cited, which are purely political animals, that operate along purely political sensibilities rather than legal rigidities.

Of course you'll be able to find a General Assembly resolution condemning Israel for practically anything, its merely a matter of votes. In a numbers game, Israel will rarely if ever win. Its rival, the Arab League, consists of over 20 countries. Meanwhile, the Muslim countries which are natural allies of the Arab League in all matters Israel related, amount to over 50 votes. Each of these countries need ask only one friendly country, each, and they instantly command a majority vote in the General Assembly. And this is even before we factor in their tremendous political sway through oil. This is also how some of the worst human rights violators in the world sit on the human rights council at the United Nations.

That a supposedly impartial and high ranking official would seriously point to the General Assembly on any extremely controversial matter relating to Israel, betrays any semblance of impartiality in this conflict.

The anti-Israel crowd, and the official from the Red Cross, point to the Security Council as having used the term "Arab Territory" in the past as a defense for the Red Cross to use the phrase "Occupied Palestinian Territory". As in resolution 446, and those that follow it, which states the Security Council sees Israel's presence in the territory as an occupation, condemns settlement building, and establishes a committee to monitor the situation.

True, the Security Council commands more integrity than the General Assembly, but it is still a purely political animal which operates according to political interests rather than any rigid legal views. Like all things political, nothing here is black and white. This is because Security Council Resolutions have their own rules and subtleties that are conveniently ignored by the anti-Israel crowd when they cite the Security Council.

Its important to understand that Security Council resolutions are either filed under Chapter VI of the U.N. Charter, which is a legally non-binding classification under international law, or under chapter VII of the UN charter which is a legally binding classification.

“Under Chapter VI the Security Council can only make non-binding recommendations. However, if the Security Council determines that the continuance of the dispute constitutes a threat to the peace, or that the situation involves a breach of the peace or act of aggression it can take action under Chapter VII of the Charter. Chapter VII gives the Security Council the power to make decisions which are binding on member states, once it has determined the existence of a threat to the peace, breach of the peace, or act of aggression.” – Hillier, Timothy, Taylor & Francis Group. Sourcebook on Public International Law, Cavendish Publishing, 1998, P. 568.

Even binding resolutions, like those filed under chapter VII of the UN Charter, are only binding in their command statements rather than any statements made in their background. Moreover, it depends what kind of operative language the Security Council used in its command statements, meaning statements that use operative words like “shall” as opposed to “should”, “recommend” as opposed to “demand”, etc. As the World Court explained:

“It has also been contended that the relevant Security Council resolutions are couched in exhortatory rather than mandatory language and that, therefore, they do not purport to impose any legal duty on any State nor to affect legally any right of any State. The language of a resolution of the Security Council should be carefully analysed before a conclusion can be made as to its binding effect. In view of the nature of the powers under Article 25, the question whether they have been in fact exercised is to be determined in each case, having regard to the terms of the resolution to be interpreted, the discussions leading to it, the Charter provisions invoked and, in general, all circumstances that might assist in determining the legal consequences of the resolution of the Security Council” – Legal Consequences For States of the Continued Presence of South Africa in Namibia (South West Africa) Notwithstanding Security Council Resolution 276 (1971), International Court of Justice.

Thus Resolution 446, and those resolutions that follow up on it, do not make international law because they fall under either non-binding Chapter VI resolutions (made for the Security Council to show its opinion at the time without obligating a party) or the clauses concerning “occupation” are in the non-binding background of Chapter Seven resolutions. In some cases, the Security Council left their intention dubious enough so that it is not even clear where some of these relevant resolutions should be filed.

Thus the Security Council, being a political body, can say what ever they like in relation to Israel since they have responsibly made sure the statements made wouldn't change the legal situation under international law as the resolutions usually fall under Chapter VI or non-command statements in Chapter VII. It would appear the Security Council wisely left legal issues to the legal realm. Being the political animal that it is, the Security Council made a mess but purposely didn't make anything dirty. Sadly the Red Cross did not catch this subtlety.

The Red Cross, being an apolitical organization that is a defacto authority on humanitarian provisions of international law, shouldn't make such political statements especially since such statements have no solid basis in law. It is simply irresponsible.

The Red Cross official ended with a thought I agree with, that international humanitarian law is misunderstood in the Israel/Palestinian conflict. But then went on to imply that there is really only one way to understand the law involved, the anti-Israel way. It would appear the Red Cross is ignoring or grossly unaware of the many respected jurists of international law who take the very positions I have presented in my previous article. Some of these jurists have spent an enormous part of their lives studying the questions involved here.

Like Jacques Gauthier, after studying the legal status of Jerusalem for 20 years became the foremost expert on the subject, concluded Jerusalem (including East Jerusalem) belongs squarely to Israel. Other distinguished individuals who would argue similarly as I have are:

Judge Schwebel (former President of the World Court):

"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." – In "What Weight to Conquest? Aggression, Compliance, and Development", pg. 521-526.

Professor Julius Stone (one of the 20th century's leading authorities on International Law):

"...the West Bank at present held by Israel does not belong to any other State, the Convention would not seem to apply to it at all. This is a technical, though rather decisive, legal point. – ISRAEL AND PALESTINE, Assault on the Law of Nations, By Julius Stone, Discourse 2, Page 177.

Eugene Rostow (Former dean of Yale Law School and co-author of Security Council resolution 242): "The Jewish right of settlement in the area is equivalent in every way to the right of the existing Palestinian population to live there." – Eugene Rostow, New Republic, April 23, 1990

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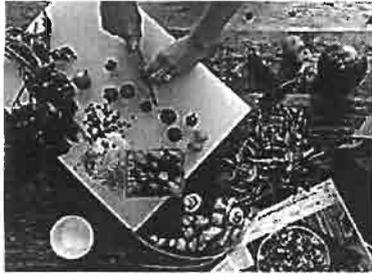
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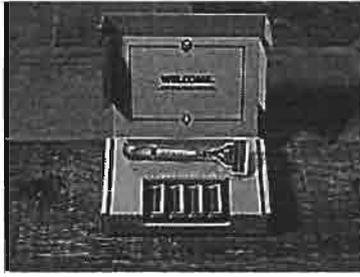


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