

Why the ICJ's advisory opinion on Israel is wrong - opinion

The advisory opinion of the ICJ is a travesty, which starts with its very title: "Legal consequences arising from the policies and practices of Israel in the occupied Palestinian territory."

By [EMMANUEL NAVON](#) JULY 28, 2024 00:56

The advisory opinion of the International [Court of Justice \(ICJ\)](#) published on July 19 is a travesty, which starts with its very title: "Legal consequences arising from the policies and practices of Israel in the occupied Palestinian territory, including east Jerusalem."

This is a travesty because, in order to be occupied, a territory must have had a previous and recognized sovereign. From 1949 to 1967, the Gaza Strip was controlled by Egypt, and the West Bank by Jordan. Both Jordan and Egypt had illegally conquered territories where no sovereign existed as of the 15th of May 1948, and where Israel could legally claim sovereignty based on the principle of *uti possidetis juris*.

Jordan annexed [the West Bank](#) and east Jerusalem in 1950, but that annexation did not gain international recognition. Only the UK and Pakistan recognized Jordanian sovereignty over the West Bank, although the UK did not apply that recognition to east Jerusalem. Jordan was not an internationally-recognized sovereign in the West Bank before Israel took control of that territory by exercising its right of self-defense from Arab aggression in June 1967.

By taking control of the West Bank (known as "Judea and Samaria" in Hebrew) in 1967, Israel recuperated a territory that had been designated for Jewish national self-determination by the San Remo Conference of 1920 and by the League of Nations Mandate of 1922. Israel also reunited with its historical homeland, where a millennium of Jewish sovereignty was ended by the Roman Empire in the first century, followed by the colonial conquests of the Arabs in the 7th century, of the Crusaders in the 12th century, of the Mamluks in the 13th century, and of the Turks in the 16th century.

The West Bank is therefore not, legally and historically, an occupied territory. It is, at most, disputed. But since when is it Palestinian?

PALESTINE IS a British colonial invention. Under the Ottoman Empire, there were administrative districts –called Sanjaks— named after Jerusalem, Acre, and Beirut. The British and the French dismantled the Ottoman Empire after World War One by dividing the Middle East along straight and arbitrary borders. They established new, artificial and incoherent entities such as Iraq, Syria, Lebanon, and Palestine.

The newly created Palestine was designated for Jewish national self-determination. The Arab nation ended up realizing its right to self-determination in 22 states.

In 1947, the UN suggested partitioning the British Mandate between a Jewish state and an Arab state. [The UN](#) proposal did not mention a "Palestinian state" because nobody at the time had ever heard of a "Palestinian people."

When Jordan conquered the West Bank in 1949 and annexed it in 1950, it called it Cis-Jordan (“on this side of the River Jordan”) which referred to the territory west of the Jordan River, controlled by Trans-Jordan (“over the River Jordan” – today’s country of Jordan) on the east side. Indeed, in French that western territory is still called “Cisjordanie.”

The outcome of the PLO's influence

Even the UN itself didn’t call that territory “Palestinian” at the time. Between 1967 and 1976, UN General Assembly resolutions would refer to the West Bank and Gaza as “occupied Arab territories.” Only in 1977 did UN resolutions start using the expression “occupied Palestinian territories.”

This was the outcome of the PLO’s growing influence at the UN, thanks in part to the Soviet Union –the same Soviet Union that established the PLO in 1964, three years before the West Bank and Gaza came under Israeli control. The very invention of a “Palestinian people” by Soviet propoganda was meant precisely to conceal and to legitimize the PLO’s true aims.

IN 1974, the PLO adopted its “phased plan” meant to agree to the establishment of a PLO state in the West Bank and Gaza as a first step for the “liberation” of all of Palestine. Yasser Arafat declared shortly after signing the Oslo Agreement with Israel in 1993 that he was implementing the Phased Plan for the “liberation of Palestine.” This was confirmed by Faisal Husseini who said in Al Arabi in 2001 that the Oslo Agreements were a “Trojan horse” aimed at “liberating Palestine from the River to the Sea.”

Meanwhile, all territories vacated by Israel since 1993 (including the unilateral withdrawal from Gaza in 2005) have turned into terror launch pads supported by Iran. Six peace plans submitted by Israel and the United States since July 2000 have been rejected by the PLO precisely because they entailed an end to the conflict and would leave a Jewish nation-state in place.

Yet the ICJ writes in its decision that “Israel has an obligation to bring an end to its presence in the Occupied Palestinian territories as rapidly as possible.” This is what Israel did in Gaza in 2005, and the eventual outcome was the building of a terror state with Qatari money and Iranian weapons, which brought about October 7.

As ICJ Vice President Judge Julia Sebutinde wrote in her dissenting opinion: “The Court has misapplied the law of belligerent occupation and has adopted presumptions implicit in the question of the General Assembly without a prior critical analysis of relevant issues.”

The PLO and its allies may have made a tactical gain with the ICJ’s non-binding opinion. But they have also further discredited international law, politicized UN institutions, and undermined the trust of Israelis in an honest partner for peace.

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