

Human Rights, International Law *and* Peace in the Middle East

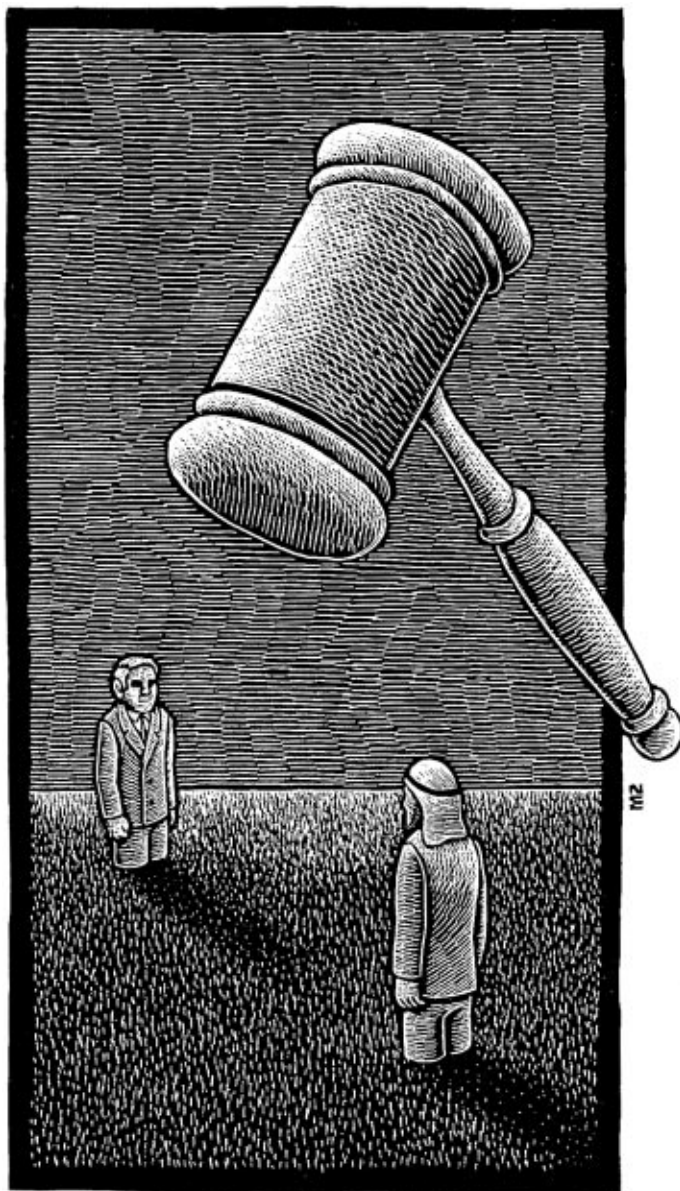
Richard Cummings

The basic premise of the Middle East peace process is erroneous. No map, plan, path, or accord is going to resolve the fundamental issues at stake in this region. Given the history of the past decade, there is no basis for believing that Israel and the Palestinian National Authority will be able to negotiate a mutually acceptable solution to the ongoing crisis. Bush's "road map" is dead. Oslo, likewise, is a corpse. The new Geneva Accord does not have the support of the Sharon government and is not likely to get it because Sharon and his cabinet see this effort as a rehash of past failures as well as a product of the Israeli left. Further, since the United States will continue to veto any Security Council resolution establishing a peace-keeping force, Sharon's implicitly restored policy of zero tolerance of violence before any negotiations can resume can never be satisfied.

At the heart of the conflict lies a clash of fundamental rights: the right of the Palestinian people to self-determination, and the right of Israel to security within defined borders. Any attempt to nullify either Israel's legitimacy or the rights of the Palestinians to their own homeland will be doomed to failure. Because Arafat and Sharon are incapable of reaching an essentially historic compromise, it becomes incumbent on the international community to reach it for them.

Because the two parties are themselves unable to reach agreement, what is at stake now in the Middle East is not just the rights and obligations of Israel and the Palestinian National Authority. It is the future of the international community. Can it find a way to implement the rule of law in settling disputes? Or will the international community revert to the nineteenth-century principle of balance of power and

Richard Cummings, Ph.D., served as Attorney-Advisor with U.S.A.I.D. and taught International Law at the Haile Sellassie I University in Ethiopia. He is currently writing a new book, The Road To Baghdad—The Money Trail Behind The War In Iraq.



the use of force to maintain world order? Must the entire world follow the Bush administration down the battle path?

The United Nations was founded in the aftermath of World War II, when it became clear that modern war in particular created an intolerable loss of human life and burden of human suffering. The Bush administration is relearning those lessons in the gory outcome of its attempted Pax Americana. In the last half-century, the United Nations has acted to promote, if not enforce, bloodless peace through the vehicle of its resolutions. Indeed, the history of UN resolutions on the Mideast is rich, as I will indicate below. Yet, as Stephen Zunes argued in *TIKKUN* (May/ June 2003), the credibility of the United Nations has been dramatically undermined by its inability to find a solution to the Israeli-Palestinian crisis.

Where I disagree with Zunes is with regard to his view of the United Nations. The United Nations has not failed in promulgating potential solutions; it has failed by its unwillingness to enforce those resolutions that might lead to a solution. Since the World Court, in an advisory opinion, can not only state what the law is by relying on traditional

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sources of international law set out in its charter, it can also adopt provisional remedies. Thus, it has the capacity to fill this void. Consequently, sufficient international law exists as a basis for a judicial resolution of this crisis

When parties to a dispute cannot resolve that dispute any other way, they go to court. And in the case of Israel and the Palestinians, there is a single remedy available. It is to get an advisory opinion by the International Court of Justice in the Hague that, under international law, can, in fact, be binding on the questions of law submitted to it. In what follows, I give the legislative history of the UN Resolutions concerning the Israel/Palestine conflict and show how by adopting a resolution calling on the World Court for an advisory opinion, the Court could implement them through a resolution of the crisis based on international law, including the adoption of provisional measures. By virtue of such a resolution, the Court would have jurisdiction to decide all questions of international law placed before it and could give definitive interpretations of the United Nations Resolutions as a matter of law.

I. A History of UN Resolutions

(For easy reference, all UN Resolutions mentioned in this section will appear in bold type).

During the years of the Palestine Mandate, from 1922 to 1947, large-scale Jewish immigration to what was then Palestine took place. Jews immigrated mainly from Eastern Europe, with their numbers swelling in the 1930s due to increasing Nazi persecution coupled with strict American quotas on Jewish immigration. Jewish American scholar Norman Cantor argues that were it not for the America quotas (quotas that were not lifted until 1964), Israel would never, in all likelihood, have come into existence, since European Jews fleeing Hitler and the Nazis would have gone to America.

Meanwhile, in Palestine, Palestinian demands for independence and resistance to Jewish immigration led to a rebellion in 1937, followed by continuing terrorism and violence from both sides during and immediately after World War II. Terrorism, at this time, was also directed against Jews in former British colonies in the Middle East, such as Egypt. Great Britain, which was responsible for the 1917 “Balfour Declaration” expressing support for “the establishment in Palestine of a national home for the Jewish people,” tried to implement various formulas to bring independence to a land ravaged by violence, but in a half-hearted, ambiguous fashion by not setting timetables or making a serious effort to disengage itself from Palestine. In 1947, Great Britain, frustrated with the situation in Palestine and both unable and unwilling to create a solution, turned the problem over to the United Nations.

After looking at various possibilities, the UN proposed in General Assembly Resolution **181 (II)** of 1947, partitioning Palestine into two independent States, one Palestinian Arab

and the other Jewish, with Jerusalem internationalized. Following the passage of this Resolution, one of the two states envisioned in the partition plan proclaimed its independence as Israel, notwithstanding that General Assembly Resolutions are generally consultative and not legislative in nature. The Arab states considered Israel’s Unilateral Declaration of Independence to be illegal, much as the International Court of Justice declared the later Rhodesian Unilateral Declaration of Independence illegal, because it bypassed the majority of the population. However, the Arab States were unable to obtain an advisory opinion from the World Court against this action—after all, a General Assembly that adopted the partition resolution was not likely to adopt a further resolution calling on the International Court of Justice to declare Israel’s actions based on the first resolution a violation of international law. The Arab states canvassed the General Assembly and concluded that the votes were not there to get the required resolution requesting the advisory opinion by the World Court and ceased to pursue this approach. No individual Arab state could go directly to the court in a suit against Israel, because it would have lacked standing, since none were directly affected by Israel’s actions. Only the Palestinians could have done that, but as they did not constitute a state, and only states that have accepted the Court’s charter can be parties to disputes before the Court (apart from the mechanism of advisory opinions, in which, technically, no state is a party), there was no role for the World Court at that time.

The result of Resolution **181 (II)** and Israel’s Declaration was that war broke out in 1948. Israel won that war, and expanded to occupy 77 percent of the territory of Palestine. Israel also occupied the larger part of Jerusalem. Over half the indigenous Palestinian population fled or was expelled. Jordan and Egypt occupied the other parts of the territory assigned by the partition to the Palestinian Arab State, which did not come into being.

On December 11, 1948, the General Assembly adopted 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.” Israel has repeatedly rejected General Assembly Resolution **194**, citing the United Nations Charter, which makes such resolutions non-binding. Yet it steadfastly relies on General Assembly Resolution **181 (II)** as the legal justification for its Unilateral Declaration of Independence.

An episode in the history of the Middle East followed that reinforced Arab fears that Israel would prove to be an outpost of French and British colonialism, and not a Middle Eastern State. Following Egyptian President Abu Nasser’s nationalization of the Suez Canal in 1956, Israel, its

forces led by Colonel Ariel Sharon, joined with Britain and France to invade Egypt, which had previously been a British fiefdom. Only decisive action by President Eisenhower, who sent U.S. naval forces to intercept the British and French fleets, prevented a takeover of Egypt, in what would have been a regressive colonial occupation. (It should be noted that Eisenhower was capable of neo-colonial acts through the covert action of the CIA, which he used to overthrow Mossadegh in Iran and to restore the Shah to the throne, thus returning the nationalized Anglo-Iranian oil company to British control, but he was opposed to blatant, overt acts such as Suez, which fed into the hands of the Soviet Union.) It is not unreasonable to conclude that the Suez action led inevitably to the war of 1967.

Convinced that Egypt, Syria, and Jordan were going to strike it first, Israel attacked them in 1967. In the ensuing "Six Day War," Israel occupied the remaining territory of Palestine, now known as the West Bank and Gaza Strip, which until then had been under Jordanian and Egyptian control. This territory included the remaining part of Jerusalem, which was subsequently annexed by Israel. The war also brought about a second exodus of Palestinians from Israel, estimated at half a million. During that same war Israel also annexed the Egyptian Sinai Peninsula, which was later returned to Egypt in the land for peace deal brokered by President Jimmy Carter, and the Syrian Golan Heights, over which Israel still retains control.

On November 22, 1967, 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 Israel armed forces from (the) territories occupied in the recent conflict." (There is a subtle difference between the English and French texts (both official) which refer to withdrawal "from territories occupied" and "des territoires occupés" (from *the* territories occupied.) The former English phrase leaves it open as to which territories were actually occupied, while the latter French phrase makes it clear that specific territories are involved.

Israel did not return those territories, of course. In response to this intransigence in light of UN demands, the Security Council passed yet another milestone Resolution, number **338**, on October 22, 1973. This resolution "Calls upon the parties concerned to start ... the implementation of Security Council resolution **242** (1967) in all of its parts."

In 1974, the General Assembly reaffirmed the inalienable rights of the Palestinian people to self-determination, national independence, and sovereignty, and also their right as refugees to return to property they had left behind in Israel. The following year, the General Assembly established the Committee on the Exercise of the Inalienable Rights of the Palestinian People. The General Assembly conferred on the PLO the status of observer in the



Assembly and in other international conferences held under United Nations auspices.

Israel still did not respond to UN dictates. So on March 1, 1980, the Security Council adopted Resolution **465**, a measure designed to secure Palestinian rights which affirms "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 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." The resolution reaffirmed both Resolutions **446** and **452**, which, in turn, reaffirmed the Fourth Geneva Convention prohibiting an occupying power from transferring its civilian population onto lands seized by military force. As Zunes points out, Article 7 of Resolution **465** "forbids all member states from facilitating Israel's colonization drive."

With regards to the status of Jerusalem, the Security Council passed Resolutions **476** and **478** to reaffirm earlier resolutions **262** and **267** calling on Israel to rescind its annexation of Arab East Jerusalem and surrounding areas, seized in the aftermath of the Six Day war. Article 5 of Resolution **478** specifically requires member states of the UN to accept the terms of this resolution, which is the reason that most nations do not maintain embassies in Jerusalem, despite the fact that Israel refers to Jerusalem as its capital city.

II. *Treating for Peace*

With the support of the 1974 Resolution conveying international recognition to the PLO, that organization grew in stature. In response, in June 1982, Israel, led again by Ariel Sharon, invaded Lebanon with the declared intention to eliminate the PLO. A cease-fire was arranged. PLO troops withdrew from Beirut and were transferred to neighboring countries after guarantees of safety were provided for thousands of Palestinian refugees left behind. Subsequently, a large-scale massacre of refugees took place in the Camps of Sabra and Shatila by the Lebanese Christian Militia, for which Sharon was held indirectly responsible by the Israeli Supreme Court, which ordered his removal from his post as Defense Minister. Resentful of the Maronite Christians and their Phalange Party that had long ruled Lebanon with French support, the Shiites formed Hesbollah

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to wage armed struggle against Israel's occupation of southern Lebanon and its alliance with the Christian militia.

In September 1983, the International Conference on the Question of Palestine, which was widely attended, adopted *inter alia* the Geneva Declaration containing the following principles: the need to oppose and reject the establishment of settlements in the Occupied Territory and actions taken by Israel to change the status of Jerusalem; the right of all States in the region to existence within secure and internationally recognized boundaries, with justice and security for all the people; and the attainment of the legitimate, inalienable rights of the Palestinian people.

With Israel still showing no sign of evacuating the territories, the PLO began the first Palestinian Intifada in 1987. While Israelis say that these Intifadas show the Palestinians are terrorists and provide grounds for revoking their claims, there remains the question of the underlying legal issues with regard to the Occupation. If Israel is arguing that it must remain in control of the Territories as a means of self-defense against terrorism, that is precisely the sort of issue that needs to be adjudicated in an advisory opinion by the World Court. Presumably the Court could find Palestinian means to be crimes against mankind, while still finding that the Occupation is not legal. Perpetrators of such crimes could be arrested and sent to the Hague to be tried before the International Criminal Court as separate and distinct legal matters.

In the 1990s, partially in response to the Intifada, Israel made its first legal acknowledgement of the possible validity of some of the many UN Resolutions concerning the status of the Palestinian people and their rights as a people. In the aftermath of the successful 1991 Madrid Conference between Israel and the PLO, the two entities signed the Declaration of Principles on Interim Self-Government Arrangements on September 13, 1993. This Declaration made, in pursuit of a "just and lasting peace," led to the Oslo peace agreements. The Oslo agreements clearly accepted that there could be no substitute to UN resolutions 242 and 338, the "land for peace" proposals. Article I of the Madrid Declaration states that "the negotiations on the permanent status [of Palestine] will lead to the implementation of Security Council Resolutions 242 and 338."

A series of other negotiations during this same period culminated in the mutual recognition between the Government of the State of Israel and the PLO, the partial withdrawal of Israeli forces from the territories occupied in 1967, the election of the Palestinian council and the president of the Palestinian Authority, the partial release of Palestinian prisoners, and the establishment of a functioning administration in the areas under Palestinian self-rule. Following the 1993 Declaration of Principles, the General Assembly reaffirmed that "the United Nations has a permanent responsibility with respect to the question of Palestine until the question is resolved in all its aspects in a satisfactory manner in accordance with international legitimacy."

Through this period, the outlook for a negotiated solution continued to improve. Oslo I and II provided for two-track negotiations between Israel and the Palestinians and Israel and its Arab neighbors: they provided for mutual recognition between Israel and the PLO, limited Palestinian self-rule, and a promise of a future settlement, presumably establishing a Palestinian state. As a result of these accords, Jordan and Israel reached a peace agreement, and Israel and the Palestinians continued to work towards full implementation, gradually expanding Palestinian self-rule. But a radical Jewish extremist assassinated Israeli Prime Minister Yitzhak Rabin in 1995 and rightist Benjamin Netanyahu's victory in the subsequent election slowed the process, though Netanyahu did agree to the Wye River Memorandum, which proposed steps for the transfer of lands in exchange for security guarantees.

Peace activists hoped for more from Labor Party leader Ehud Barak, who defeated Netanyahu. Barak did finally pull Israeli troops out of Lebanon, but he was unable to continue the peace process outlined in Oslo and Wye—his "generous offer" to PLO leader Yassir Arafat was widely criticized by the Israeli Right as a capitulation to PLO demands, and by the Palestinians as "too little, too late" [For extensive discussions of Barak's offer, see TIKKUN's January/February 2001 and May/June 2001 issues, available at www.tikkun.org]. Barak was defeated by Ariel Sharon in 2001.

Shortly before his election as Prime Minister, Sharon made a provocative visit to Al-Haram al-Sharif, the sacred Islamic mosque on the Temple Mount, which resulted in the start of the Second Intifada. On October 7, 2000, the Security Council adopted Resolution 1322 condemning Israel's "excessive use of force against Palestinians, resulting in injury and loss of human life." And on October 19, 2000, the United Nations Human Rights Commission adopted a Resolution entitled "Grave and Massive Violations of the Human Rights of the Palestinian People by Israel," which condemned Sharon's visit to Al-Haram al-Sharif, "which triggered the tragic events that followed in occupied East Jerusalem and the other territories, resulting in a high number of deaths and injuries among Palestinian civilians."

The two Intifadas have led Israel to rethink all its prior treaties and agreements, including Oslo I and II, the Wye River Memorandum, and the Declaration of Principles of 1993. Israel now takes the position that its military actions, including assassinations and the expansion of settlements, are acts of self-defense, and that all United Nations resolutions must be interpreted in light of this right. Israeli points to the Iranian shipment of arms it intercepted on its way to the PLO as an indication of the threat Israel faces.

Since 2000, there have been many proposed peace plans—the Mitchell plan, the Tenet plan, a plan from the Crown Prince Abdullah of Saudi Arabia, President Bush's "road map," and the recent, non-official Geneva Accords negotiated by out-of-power Israeli and Palestinian politicians. None

of them shows any sign that it is likely to succeed. An analysis of each of these plans would require its own article, but one only needs to look at how quickly one plan has succeeded the other to see that signs of success are slim. Israelis now are in a state of fear, believing they are faced with a new Hitlerian mentality that seeks to destroy them: Palestinians likewise believe they are fighting the last and most ferocious battle against their historic enemy, colonialism.

IV. The World Court

At this juncture, we are faced with a choice. Do we lapse back into the primitive balance of power approach that has always broken down and led to wider wars, or do we accept the legitimacy of Woodrow Wilson's vision of a just international order under the rule of international law? I would suggest that it is time to revive Wilson's legacy and turn to the International Court of Justice, which was brought into existence at the birth of the United Nations.

In the United Nations Charter, Article 92 provides for such a court: "The International Court of Justice shall be the principal judicial organ of the United Nations. It shall function in accordance with the annexed Statute, which is based on the Statute of the Permanent Court of International Justice and forms and integral part of the present Charter."

Its companion article, Article 96, states that "The General Assembly or the Security Council may request the International Court of Justice to give an advisory opinion on any legal question."

Article 65(1) of the Statute of the International Court of Justice provides that "The court may give an advisory opinion on any legal question at the request of whatever body may be authorized by or in accordance with the charter of the United Nations to make such a request." Four organs of the UN and sixteen specialized United Nations agencies are authorized to seek advisory opinions. They are the General Assembly, Security Council, Economic and Social Council, Trusteeship Council, Interim Committee of the General Assembly, and the Committee on Applications for Review of Administrative Tribunal Judgements, all of the United Nations. Other agencies that can bring matters before the Court are the International Labour Organisation (ILO), the Food and Agriculture Organization of the United Nations (FAO), the United Nations Educational, Scientific and Cultural Organization (Unesco), the World Health Organization (WHO), the International Bank for Reconstruction and Development (IBRD), the International Finance Corporation (IFC), the International Development Association (IDA), the International Monetary Fund (IMF), the International Civil Aviation Organization (ICAO), the International Telecommunication Union (ITU), the World Meteorological Organization (WMO), the International Maritime Organization (IMO), the World Intellectual



Property Organization (WIPO), the International Fund for Agricultural Development (IFAD), the United Nations Industrial Development Organization (UNIDO), and the International Atomic Energy Agency (IAEA)

One prominent Palestinian American has already suggested that an opinion from the International Court would be the best way out of the current impasse. In an article titled "Has Israeli Occupation Become Legal in the Twenty-First Century?" (in he June 4, 2001, Media Monitor Network, www.mediamonitors.net/sambahour4

.html), Sam Bahour argues that "International Law must be defined by the world institutions that were established for the 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, on all matters of law regarding the rights of the Palestinian people and the Israeli actions in the Occupied Territories."

Unlike the International Criminal Court in the Hague, individual countries and organizations cannot bring claims to the International Court of Justice. The only bodies at present authorized to request advisory opinions of the court are the five organs of the United Nations and sixteen specialized agencies of the United Nations family listed above.

That means, in principle, the Court's advisory opinions are consultative in character and are therefore not binding as such on the requesting bodies. Certain instruments or regulations can, however, provide in advance that the advisory opinion shall be binding. Such an instrument is a General Assembly resolution requesting the International Court of Justice to give a binding advisory opinion on a particular matter.

Since 1946, the court has given twenty-four advisory opinions, considering *inter alia* admission to United Nations membership, reparations for injuries suffered in the service of the United Nations, territorial status of South-West Africa (Namibia) and western Sahara, judgments rendered by administrative tribunals, expenses of certain United Nations operations, applicability of the United Nations Headquarters Agreement, the status of human rights rapporteurs (observers), and the legality of the threat or use of nuclear weapons.

Bahour points out that an advisory opinion of the Court would carry much more weight than all the UN Resolutions combined if the General Assembly resolves, in bringing the case to the Court, that the opinion that issues from the case will be binding. He writes: "Unlike United Nations (Security Council) 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

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to 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 [such as the PLO]. Thus, failure to adhere to the Advisory Opinion decision on any matter of law decided can result in appropriate action in the General Assembly.”

Failure by a United Nations member or entity with observer status to adhere to the advisory opinion on any matter of law could specifically give rise to a suspension by the General Assembly of its voting rights or cause the entity with observer status, such as the PLO, to lose that status. Such an example is when South Africa was in violation of an advisory opinion of the World Court and lost its voting rights.

One ruling of the International Court of Justice is particularly applicable to the Israel/Palestine impasse. On March 9, 1988, the Court was asked by the General Assembly (via Resolution **42/229B**) to offer an advisory opinion on whether the United Nations Headquarters Agreement preempted the United States Anti-Terrorist Act of 1987, which came into force on March 21, 1988. Using the Anti-Terrorist Act, the United States attempted to shut down the PLO Mission to the United Nations in New York City, claiming that the PLO constituted “a terrorist organization and a threat to the interests of the United States, its allies and to international law and should not benefit from operating in the United States.” The Court was asked to adjudicate between the laws of the United States, which as the host of the United Nations claimed the right to protect its land and people and implement its national laws, and the United Nations itself, as an international body. In its opinion, the Court found that the United States was obliged to enter into arbitration with the United Nations.

Of particular interest was a related ruling on whether the Court could also suggest “provisional measures,” that is, remedies to address the matters of law submitted to it. The court noted that the General Assembly Resolution requesting the advisory opinion did not “constitute a formal request for the indication of provisional measures.” However, the Court, in observing that “it is not appropriate in the circumstances of the case, for the Court to consider whether or not provisional measures may be indicated in a request for an advisory opinion,” went on to adopt provisional measures as it deemed appropriate based on General Assembly resolution **42/229A** “by which it ‘Calls upon the host country to abide by its treaty obligations under the Agreement and to provide assurances that no action will be



taken that would infringe on the current arrangements for the official functions of the Permanent Observer Mission of the Palestine Liberation Organization to the United Nations of New York.” (Applicability of the Obligation to Arbitrate Under Section 21 of the United Nations Headquarters Agreement of 26 June 1947, 1988 I.C.J. 3, Request for an Advisory Opinion, March 9). Implicit in this ruling is that the Court recognized the legitimacy of adopting provisional measures in an advisory opinion where appropriate.

If the UN did authorize the Court to suggest provisional measures, that would give the Court leeway to intervene in a significant way in the current situation. For example, one such provisional measure could be to instruct the General Assembly that the establishment of a peacekeeping force would be appropriate. In the past, the UN has tried to establish such a force but has been prevented from doing so by virtue of a continuing American veto of any such resolution. However, an opinion from the Court would be sufficient to override such a veto, under the provisions of Article 14, which provides that “the General Assembly may recommend measures for the peaceful adjustment of any situation, regardless of origin, which it deems likely to impair the general welfare or friendly relations among nations, including situations resulting from a violation of the provisions of the present Charter setting forth the Purposes and Principles of the United Nations.” That is, if the Court had ruled that a peacekeeping force was necessary to counter a violation of UN Purposes or Principles, then a Security Council veto could not prevent such a recommendation from proceeding, if the Court’s decision were backed up by a Uniting for Peace Resolution by the General Assembly, as a way of enforcing the opinion. While it would be possible to go directly to the General Assembly for a Uniting for Peace Resolution, without an advisory opinion such a resolution could not be definitive on matters of international law. With the advisory opinion in hand, the General Assembly would be in a much stronger position.

Indeed, the United States would be hard-pressed to object to this strategy. When, during the Korean war, the Soviet Union ceased its boycott of the Security Council and vetoed resolutions that would have continued United Nations support for the multinational force, the United States successfully obtained a “Uniting for Peace” resolution in the General Assembly to support the force, under Article 14 (UN General Assembly Resolution **377A**, November 3, 1950). In this case, because the initial action had been authorized by the Security Council in the Soviet Union’s absence, the subsequent Uniting for Peace Resolution had sufficient force in law. As the United States would continue to veto any peace keeping force in the Security Council, the advisory

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opinion would remedy the deficiency of a previous Security Council resolution, which, unlike General Assembly resolutions, have a quasi-legislative nature.

The advisory opinion procedure is actually engaged from countries around the world including the United States, through the authorized United Nations organs and specialized agencies, to clarify what is legal and what is not as it relates to international law. Such a motion for a resolution in the General Assembly would not call into question the right of Israel to exist within fixed borders. Neither would it compel a right of return that would undermine the Jewish character of Israel, since this could be settled realistically through negotiations. Instead, it would call on the Court to decide matters of law pertaining to the Middle East conflict of fundamental norms of international law binding on all members of the international community, including entities with observer status to the General Assembly, such as the PLO. Attempts by militant states to introduce a counter-resolution with such provisions could easily be defeated by a coalition of countries seeking a legitimate, legal solution. Obviously, this would require a sophisticated strategy in the drafting process to assure that there would be sufficient support for the more moderate resolution. As moderate Arab states have indicated that they are prepared not to press for the right of return, the possibility of a Syrian or Iranian supported resolution becomes highly unlikely.

Who would call for such an advisory opinion? One logical party would be the European Union, which has a stake in the quick settlement of the conflict. If the European Union acted affirmatively in support of such a resolution, it would overcome its image as an increasingly anti-Semitic continent. The E.U. poll that found Israel to be the greatest threat to world peace would be discredited by a shifting of the conflict to the most important, non-partisan international legal tribunal. Certainly, the United States would oppose a General Assembly resolution calling for the advisory opinion, but this would give Europe a chance to act affirmatively in support of such a resolution defining the Geneva Accord as the basis of a solution to the seemingly endless crisis. Israel is a tiny country. That Europeans consider it the greatest threat to world peace borders on farce. The challenge for Europe is to act constructively, not to point and criticize while doing nothing. By leading the General Assembly in adopting the resolution calling for an advisory opinion based on the Geneva Accord, it can give legitimacy to its goal of being a world leader independent from American imperial ambitions, without making Israel a scapegoat.

The ghost that haunts Europe is no longer Communism. It is the ghost of anti-Semitism, as Jean-Paul Sartre understood. In his final interviews with Benny Levy, who turned from Marxism to Messianic Judaism (collected in the 1996 book, *Hope Now*), Sartre insisted that the basis for all politics must be an enlightened ethics that define the relation-

ship between individuals. So it must be between Israelis and Palestinians. The great Jewish tradition is the rule of law based on ethics. The reality of a Jewish experience in a hostile world can be translated into a vision of hope based on the rule of law, a model for the settlement of international disputes which are bound to occur in the future.

By leading the General Assembly in adopting the resolution calling for an advisory opinion based on the Geneva Accord, the European Union would give legitimacy to its goal of being a world leader independent from American imperial ambitions, without making Israel a scapegoat. Armed with an International Court of Justice advisory opinion, the General Assembly could once and for all move to make its opinions binding on the parties involved, thus bypassing the Security Council that is perpetually blocked by the veto of the United States, which it invokes in pursuance of its own agenda unrelated to the needs of the rest of the world. To quote Sam Bahour, “the clear and unequivocal end to Israeli occupation, in all its forms, has the power to bring justice, security and stability to a region on the verge of self-destruction.”

V. Conclusion

The United States’ willingness to trample UN interests in Iraq, and its disregard for UN rulings about steel, may make it seem implausible that it would listen to a Geneva Court or a Uniting for Peace resolution of the UN. With the Bush administration’s reliance on military might and with Israel holding the atomic bomb, changing Israeli policy represents a substantial policy challenge. However, an International Court strategy could galvanize the Israeli peace movement by giving the authority of international law to the Geneva Accord without undermining its momentum as a grass roots movement.

The very detailed Geneva Accord, based primarily on UN Resolutions 242 and 338, would be strengthened considerably by an advisory opinion, since both Resolutions have been interpreted by both sides to differing conclusions. Once the World Court has said what the law actually is, in the spirit of *Marbury versus Madison*, there may be a lessening of fear by many Israelis, who lost faith in the United Nations when the General Assembly infamously equated Zionism with racism. Since many leaders of the Israeli peace movement are Zionists and look to a two-state solution, the eradication of this fear is essential in restoring trust in the United Nations. The memory of Arab opposition to Jewish refugees coming to Palestine lingers as a serious obstacle to negotiations between the parties. Once the World Court, in an advisory opinion, declares the two-state solution to be a matter of international law, serious negotiations based on the Geneva Accord will be possible, lifting the fear of a terrible past from the consciousness of Israel, while permitting the Arab world an honorable basis for the rejection of that past. □