



Inappropriate Use of the Fourth Geneva Convention by the International Court of Justice in its Advisory Opinion of July 9 2004

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In advising that Jewish settlements are illegal, the International Court of Justice (ICJ) went beyond its own mandate from the General Assembly without being asked to do so.

In paragraph 120 of the Court's opinion, the ICJ declares:

"The Court concludes that the Israeli settlements in the Occupied Palestinian Territory (including East Jerusalem) have been established in breach of international law."

The ICJ based its conclusion on the inappropriate use of an article of the Fourth Geneva Convention which stipulates:

"The Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies."

Once the ICJ has 'established evidence' that the West Bank and Gaza are unlawfully occupied territories, it then applies this *status* to the Fourth Geneva Conference *de jure*, stating in paragraph 120 of the opinion that:

"As regards these settlements, the Court notes that Article 49, paragraph 6, of the Fourth Geneva Convention provides: 'The Occupying Power **shall not deport or transfer parts of its own civilian population into the territory it occupies.**'"

"In this respect, the information *provided to the Court* shows that, since 1977, Israel has conducted a policy and developed practices involving the establishment of settlements in the Occupied Palestinian Territory, contrary to the terms of Article 49, paragraph 6, just cited" [italics by author].

One can hardly believe this baseless ICJ assertion that Israel used "deportation" and "forced transfer" of its own population into "occupied territories."

The Court attempts to broaden the definition of Article 49 to possibly 'fit' some wrong doing on the part of the State of Israel, all with no reference to law, adding:

“That provision prohibits not only deportations or forced transfers of population such as those carried out during the Second World War, *but also any measures taken by an occupying Power in order to organize or encourage transfers of parts of its own population into the occupied territory.*”

In the above conclusion, the ICJ fails to disclose the content of the “information provided” (information the Court based its decision on), and the *anonymous* ‘authorities’ that provided such. Anyone interested in the subject at hand is aware of the difficulties the Israeli Government faces in its decision to relocate some Israeli settlements *out* of the “Territories,” *a fact* that seems to be contrary to the “information provided” to the ICJ.

Professor Stone touches on the applicability of Article 49 of the Geneva Convention. Writing on the subject in 1980:

“That because of the *ex iniuria* principle, Jordan never had nor now has any legal title in the West Bank, nor does any other state even claim such title. Article 49 seems thus simply not applicable. (Even if it were, it may be added that the facts of recent voluntary settlements seem not to be caught by the intent of Article 49 which is rather directed at the forced transfer of the belligerent’s inhabitants to the occupied territory, or the displacement of the local inhabitants, for other than security reasons.) The Fourth Geneva Convention applies only, according to Article 2, to occupation of territory belonging to ‘another High Contracting Party’; and Jordan cannot show any such title to the West Bank, nor Egypt to Gaza.”

Support to Stone’s assertion can be found in Lauterpacht’s writing in 1968:

“Thus Jordan’s occupation of the Old City—and indeed of the whole of the area west of the Jordan river—entirely lacked legal justification; and being defective in this way could not form any basis for Jordan validly to fill the sovereignty vacuum in the Old City [and whole of the area west of the Jordan River].”

Rostow concludes that the Convention is not applicable to Israel’s legal position and notes:

“The opposition to Jewish settlements in the West Bank also relied on a legal argument – that such settlements violated the Fourth Geneva Convention forbidding the occupying power from transferring its own citizens into the occupied territories. How that Convention could apply to Jews who already had a legal right, protected by Article 80 of the United Nations Charter, to live in the West Bank, East Jerusalem, and the Gaza Strip, was never explained.” It seems that the International Court of Justice “never explained” it either.