

The French Court Rejects Palestinian Demands

by Michael Curtis



A new sheriff arrived in town with the appointment of Nikki Haley, former Governor of South Carolina, as US Ambassador to the United Nations. In her first speech, she indicated the disproportionate contribution by the United States, 22 % of the UN budget and 28% of UN peacekeeping operations, to the world organization. The UN budget should be subject “strategic cutting,” and sometimes withholding of dues.

In picturesque language, Haley spoke of the need for a strong US role at the UN. She had already made clear during her testimony on December 25, 2016, to the Senate Foreign Relations Committee that the UN had been more consistent and more outrageous in its bias against Israel, the close ally of the US, than regarding any other country.

Implicitly, she criticized the policy of President Barack Obama regarding Israel when the US abstained on the UN Security Council Resolution 2334 of December 23, 2016 that condemned Israeli action on settlements and thus allowed the Resolution to be passed. According to President Donald Trump his administration will never abstain when the UN proposes any action that comes into direct conflict with the interests and values of the U.S., or encourages a boycott of Israel.

Political interests and international law are closely intertwined in matters affecting Israel. Condemnations of Israel almost always quote international documents to support political objectives. Ambassador Haley ought now, following a French Appeals Court (the Third Chamber of the Court of Appeal of Versailles) decision on March 22, 2013, to call into question the use of treaties and international conventions by the United Nations, the "international community" in general, and Palestinian-oriented organizations, in order to propose and pass resolutions condemning Israeli "occupation" of Palestinian territory as well as to challenge the legitimacy of the State of Israel.

That Versailles decision follows a number of previous complicated legal, largely technical, proceedings, in French courts. The legal dispute began in October 2007 when the AFPS (Association France-Palestine Solidarite) joined by the Palestinian Authority (PA) filed a lawsuit against two French companies, Alstom, the French multinational company in rail transport, and Veolia Transport, in the Tribunal de Grande Instance in Nanterre, France.

The charge concerned the two companies that had signed a contract in July 2005 to build 37 passenger coaches and more than 50 locomotives and to operate a light rail project that crosses Jerusalem to the east side of the city and the disputed territories, an area under Israeli administration since 1967.

The Palestinians argued that the project should be cancelled because it violated international law since the Israeli presence in any area of the West Bank, such as east Jerusalem, was illegal. They argued that the French companies were aiding Israel's occupation and commission of war crimes, and were violating international humanitarian law, especially the Fourth Geneva Convention of August 1949, and parts of the French Civil Code.

The Nanterre Tribunal in April 2009 ruled, and was upheld by an Appeals Court, that it had jurisdiction to hear the case, but it held the PLO could not be a co-plaintiff. The International Court of Justice has indicated that the Conventions only contain obligations for states, and individuals have no rights to claim the benefit of those obligations.

After examining the texts of international law and treaties to rule on the legality of the rail construction, the Tribunal on May 30, 2011 rejected the Palestinian claim that the contract to build the project should be cancelled. The AFPS and the PLO, that were ordered to pay costs, appealed the decision.

Work on the light rail through Jerusalem was completed in August 2011. The PLO then filed a complaint in the High Court, the Tribunal in Versailles, against the two French companies arguing that the construction was illegal because international organizations, the UN, the European Union, and others, considered that the Israeli presence in areas of the light rail, "illegally occupied Palestinian territories," was illegal. The Tribunal decided that construction of the tramway did not constitute a breach of human rights or humanitarian law. The AFPS and PLO appealed this ruling.

The Versailles Court of Appeals on March 22, 2013 ruled the suit was not admissible on the grounds that the international agreements in question were obligations between states, and not private companies. The court ordered AFPS and the PLO to

pay 30,000 euros to each of the companies for their expenses during the lawsuit.

The PLO claimed that the construction of the light rail system was illegal because international bodies had considered that Israel illegally occupies Palestinian territories. The Court however decided that the building of the light rail in Jerusalem was legal.

However, the court did not address the question of the legality of the Israeli occupation or the Israeli settlements, or allegations of violations of international humanitarian law. But it did recognize that there was nothing illegal about Israel as the occupier governing the territory, nor was Israel prohibited from constructing and operating the light rail.

Palestinians and other critics of Israel presence in the West Bank always quote Article 49 of the Fourth Geneva convention: "The occupying power shall not deport or transfer parts of its own civilian population into the territory it occupies." Instead the Court heeded Article 43 of the Fourth Hague Conventions that stated that an occupier "shall take all measures in his power to restore, and ensure, as far as possible, public order and safety, unless absolutely prevented, the laws in force in the country.

The Versailles Court rejected the various Palestinian arguments. Israel had not violated the 1907 Fourth Hague Conventions. The light rail construction had not resulted in the deportation of the Palestinian population nor the destruction of Palestinian buildings and homes. Israel had not violated the law relating to the protection of cultural property.

The Court held that Israel was entitled to ensure peace and order in the region and the light rail helped do this. The occupying power can use all activities generally exercised by state authorities. The political demands of the PLO do not

override the well-being of the inhabitants of the area. The law cannot be based solely on the PLO's assessment of a political or social situation.

The decision of the Versailles Appeals Court has no direct affect on international law but it is and ought to be considered a guide to the objective, unbiased, discussion of the disputed territories and of the behavior and role of Israel. Certainly Ambassador Haley should heed the verdict, and make plain at the UN at least two points. One is that a corporation or organization cannot be faulted for participating in an Israeli project that partly takes part in the disputed territory, and that boycotts are unjustified. The other point is that the Geneva and Hague conventions so often quoted are often misused and are not an excuse for the Palestinians to avoid entering into peaceful negotiations.