The Challenge to Israel’s Legitimacy: Trends and Implications

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Looking at recent developments, there is a dangerous global shift occurring with respect to Israel’s international standing which must be urgently addressed. Over the last decade, former Israeli officers have been threatened with arrest for alleged war crimes if they visit certain European countries, especially the UK. From Oslo to London there is increasing talk of boycotts against Israeli universities. There is more talk about trade sanctions, as well. European media outlets from France-2 to the BBC spread complete fabrications about Israeli behavior, like the famous case of the 2001 killing of the boy Muhammad al-Dura, that often come from politicized reporters and by agenda-driven non-governmental organizations. The imbalanced conclusions adopted in the report by Justice Richard Goldstone for the UN Human Rights Council may have been discredited in Israel, but it only reinforced many of these negative trends in Europe and elsewhere.

The cumulative impact of these developments is the creation of an increasingly hostile environment for Israel, as every negative report about Israeli policy is accepted at face value. The tremendous risks for peace that Israel itself undertook in the last seventeen years – from implementing the 1993 Oslo Agreements with the Palestinians to withdrawing unilaterally from the Gaza Strip in 2005 – are completely ignored. In this milieu, Israeli diplomats find themselves accosted in European universities and even attacked by mobs, as was the case in Manchester in 2010. In political terms, members of European parliaments from the UK and Ireland discussed suspending the EU-Israel Association Agreement, signed in 1995. Already, the planned upgrading of the agreement was suspended in December 2008. As a consequence, in many Western intellectual circles there is more talk today questioning the very legitimacy of the Jewish state, as well as its fundamental rights.

The Irony of the Legitimacy Struggle

The assault on Israel’s legitimacy is ironic. Israel is a unique country in the world community by virtue of the fact that it is the only member state of the United Nations whose right to exist was recognized by both the League of Nations and the UN itself. It is a country with deep national roots and a more than two-thousand-year-old history. Looking back to the period after the First World War when the victorious Allied powers formally recognized the rights of the Jewish people to reconstitute their national homeland, the European powers did not create that right but rather acknowledged what they viewed as a pre-existing right. For Western civilization, it was axiomatic that the Jewish people had a legitimate right to their ancient homeland. Yet what was axiomatic a century ago is no longer the case today. It is not just the circumstances that Israel faces which have caused this shift, but also intellectual and political changes in the West. The results of this shift are deeply disturbing. It is rare to
find a university debate over the legitimacy of France or Italy, yet such debates over Israel have been held at British universities. And while many states in Africa and Asia owe their origins to arbitrary borders drawn by colonial powers a century ago, it is not acceptable to question their validity as nation-states even though their boundaries artificially cross ethnic or tribal lines, making national cohesiveness very difficult. But denying the validity of Israel’s borders is common.

A major theme used by those seeking to delegitimize Israel is to make false analogies between the Jewish state and apartheid South Africa. Unlike South African blacks under the apartheid regime, the Israeli-Arab population is represented in the Knesset – the Israeli Parliament, is treated in the same hospitals alongside the Jewish population, and attends the same universities with Israeli Jews. Yet these facts do not prevent Israel’s adversaries from using the apartheid label. They have an additional interest in reinforcing the image of Israel as having been created by a colonial-settler movement, like the Afrikaners, backed by Western imperialism, with no authentic connection to the land which it claimed. Israel’s case against this defamation is very strong, but unfortunately this anti-Israel narrative is often voiced with no effective opposition.

How do we know delegitimization is occurring? The challenge to Israel’s legitimacy centers on the denial of Israel’s international rights – the very same rights granted to every member state of the UN. When delegitimization sets in, Israel cannot even get a fair hearing. As former British Prime Minister Tony Blair noted this year during an address at the Lauder School of Government in Herzliya, delegitimization entails a refusal in certain quarters to accept that Israel has a legitimate point of view. When this occurs, Israeli diplomats have no traction to make their arguments in their country’s defense. Under such circumstances, it becomes far more difficult for Israel to protect its interests.

Why does this happen to Israel in particular? Because international rights are not protected by a well-institutionalized international legal system, grounded in the principle of equality before the law, Israel’s position in the world community is exposed to the vagaries of international politics. In fact, Israel is uniquely vulnerable to international political campaigns against it, particularly within the UN General Assembly where it is not protected by a regional grouping, like the European Union or ASEAN, which could “circle the wagons” to protect it. The delegitimizers have their own motivations from old anti-Semitism to convenient political alliances between the European far left and European Islamists. But regardless of why they undertake these campaigns, Israel’s ability to block these moves has been weakened, especially as more mainstream bodies adopt this agenda and not just extremist groups at the periphery of society.

During the last decade, the campaign to delegitimize Israel has been reinvigorated and given new momentum through several repeating themes:
1. Denying Israel’s Fundamental Right to Self-Defense

Using the automatic majority which the Arab states can marshal in the main bodies of the UN system, the PLO and its allies have successfully exploited international law to dilute Israel’s right of self-defense. This began to acquire momentum when the Arab bloc pushed through the UN General Assembly a resolution calling on the International Court of Justice (ICJ) to issue a nonbinding advisory opinion on the legality of Israel’s security fence. Following the terms of reference it was given by the UN General Assembly, the ICJ questioned the legality of the fence without considering the waves of suicide bombing attacks on Israeli civilians that caused Israel to build the fence in the first place. And the ICJ went so far as to question whether the right of self-defense, enshrined in Article 51 of the UN Charter, applied to the terrorist threat Israel faced in the West Bank and Gaza.

More recently, on May 31, 2010, the Israeli Navy stopped a Turkish flotilla of six ships that sought to run Israel’s blockade of the Gaza Strip, which was instituted in response to the repeated rocket fire launched by Hamas at Israeli civilian targets since 2001. Permitting unrestricted access to Gaza by sea would have undoubtedly led to far more significant deliveries of heavy rockets and other weaponry from Iran to the arsenals of the terrorist organizations waging war against Israel. When Israeli naval commandos boarded the *MV Marmara*, they were violently attacked. As a result, the Israelis, acting in self-defense, opened fire on a group of operatives from the militant group IHH that led the flotilla. Despite these circumstances, there was widespread condemnation of Israel’s response and of Israel’s naval blockade.

The international reaction was ironic. Naval blockades are not an outmoded form of self-defense from the Napoleonic Wars. NATO put Yugoslavia under a naval blockade during the Bosnian War. Moreover, after Saddam Hussein invaded Kuwait in 1990, the UN Security Council placed a naval blockade on Iraq. Yet Israel found itself condemned by senior EU officials, like Catherine Ashton, who called on Israel to lift its blockade. Israel’s blockade was also severely criticized by the German Bundestag.

While various UN bodies insisted on a commission of inquiry being formed to investigate Israeli actions, Israel’s right to prevent the emergence of an Iranian port in Gaza City was simply set aside, while it was denied the same legal rights to self-defense that the leading powers of the world used for themselves just two decades earlier. This double standard in international behavior towards Israel is characteristic of the present delegitimization campaign.

In parallel, on the diplomatic side there has been an international effort to replace UN Security Council Resolution 242 – which in November 1967 recognized Israel’s right to
“secure and recognized boundaries” – with alternative UN resolutions which, as distinct from Resolution 242, would require Israel to withdraw completely from the territories it captured in the 1967 Six-Day War. Up until today, Resolution 242 has served as the only agreed basis for all Arab-Israeli peace agreements, yet there is a growing desire to erode it because of the rights it granted to Israel after the Six-Day War.

2. Unfairly Portraying Israel as an International Criminal

When Israel was forced to eliminate the centers of terrorism in the West Bank in 2002 that were located in areas under the jurisdiction of the Palestinian Authority, UN officials, taking their cue from Palestinian spokesmen, repeated unsubstantiated allegations that Israel had committed a massacre of Palestinian civilians in the Jenin refugee camp, which was quickly disproven. The truth was the opposite of what was being alleged, for rather than uprooting the terrorist infrastructure in Jenin with airpower or artillery, Israel sent in ground forces who engaged in house-to-house combat in a densely populated area, resulting in the loss of 22 Israeli soldiers.

Again in 2009, at the initiative of Cuba, Pakistan and Egypt, the UN Human Rights Council called for a fact-finding inquiry into Israel’s military operations in Gaza that sought to expose improper actions by the Israel Defense Forces, without even looking at the eight years during which Hamas fired mortars and rockets at the civilian communities of southern Israel from the Gaza Strip. This became the famous Goldstone Report. The Palestinian Authority joined this effort when its Minister of Justice, Ali Kashan, turned to the International Criminal Court to involve it retroactively in the Arab-Israeli conflict.

The UN Human Rights Council appeared to have forgotten that Israel had completely pulled out from the Gaza Strip in 2005 and received a 500 percent increase in rocket fire on its civilian population centers, launched from the very Gaza territory from which it had withdrawn. When Israel legitimately responded to these attacks in late 2008, it found itself under a UN investigation. The Goldstone Report charged that Israeli soldiers “deliberately” killed Palestinian civilians in the Gaza operation, even though it did not produce a shred of evidence to prove that Israel had a policy of intentionally killing civilians.

In fact, these charges were contradicted by the unprecedented use of multiple warnings to civilians, by telephone and text messages, if their residences were used to store rockets and other munitions, and were thus determined to be legitimate military targets. The Goldstone Report fully criticized Israel and yet refused, in its conclusions, to blame Hamas by name. The effect of the Goldstone Report was to remind Israelis that if they decide to
exercise their legitimate right of self-defense in the future, they are likely to come under another international investigation.

The UN has become the traditional theater in which the Palestinians and their supporters seek to brand Israel as a war criminal and to thereby isolate it internationally. Even at the height of Arab-Israeli peace negotiations, the Palestinians kept up the pressure in this regard by trying to draw attention to allegations about Israeli violations of international humanitarian law, and getting UN bodies to repeatedly adopt one-sided resolutions. More recently, in 2010 the Palestinian Authority leadership sought to prevent Israel’s membership in the OECD, arguing that Israel was obstructing the peace process.

The campaign to depict Israel as a criminal state includes the active support of extremist non-governmental organizations that exploit legal loopholes in Western legal systems in order to initiate legal measures against Israeli officers visiting Europe, accusing them of having violated international law. Using universal jurisdiction, they have tried to have leading Israelis arrested in the UK – from Foreign Minister Tzipi Livni to Defense Minister Ehud Barak. Oftentimes, radical Islamist groups like Hamas and the Muslim Brotherhood are behind these initiatives, which could be applied equally to American, British, or German officers who fought in Afghanistan.

This legal campaign entails the abuse of universal jurisdiction, which the West originally adopted in order to bring to justice real perpetrators of genocide and crimes against humanity, even though their crimes were committed outside the country whose courts might decide to act.

3. Attacking the Historical Connection between the Jewish People and Their Historical Homeland, Including Jerusalem

The third form of delegitimization was witnessed at the end of the July 2000 Camp David peace negotiations when PLO Chairman Yasser Arafat denied that there ever was a Jewish Temple in Jerusalem. This contention has been reasserted by most of the leading Palestinian figures, from Saeb Erekat to Yasser Abd Rabbo to Mahmoud Abbas. The destruction of pre-Islamic artifacts during the unauthorized removal of tons of debris from the Temple Mount by the Palestinian Islamic authorities served as further evidence of an effort to eradicate Jewish history in Jerusalem.
When Palestinian Prime Minister Salam Fayyad spoke at an inter-religious gathering at the UN in late 2008, he mentioned Muslim and Christian ties to Jerusalem, but failed to say even a word about the Jewish connection to the Holy City. In the Palestinian discourse, it is conveniently forgotten that Jerusalem had a Jewish majority already in the nineteenth century; the British Consulate in Jerusalem determined that a Jewish majority existed in the city in 1863.

In 2010 there were many more cases of an effort to deny the Jewish historical connection to the Land of Israel. On March 7, 2010, Turkish Prime Minister Tayyip Erdogan told the Saudi daily *al-Watan* that the Cave of the Patriarchs in Hebron and Rachel’s Tomb outside of Bethlehem “were not and never will be Jewish sites, but Islamic sites.” UNESCO gave this view partial support when it declared on October 21, 2010, that Rachel’s Tomb was also the “Bilal ibn Rabah Mosque.” This was actually a recent claim voiced for the first time in 1996 by the Palestinian Authority. Previously, it was generally though that Bilal ibn Rabah, who was the Prophet Muhammad’s Ethiopian slave and the first muezzin of Islam, was buried in Damascus.

In late November 2010 yet another attempt was undertaken by the Palestinian Authority to question the connection of the Jewish people to their land. The Deputy Information Minister of the Palestinian Authority, al-Mutawakil Taha, released a report on a Palestinian governmental website denying any Jewish historical connection to the Western Wall. Instead he asserted that it was an Islamic site known as the al-Buraq Wall. The arguments against Jewish historical ties to the Western Wall were only the latest example of Temple denial that was started by Yasser Arafat.

Finally, some of these trends also have appeared in mainstream Christian churches. True, Pope John Paul II came to Jerusalem in March 2000 and placed a note in the Western Wall referring to the Jewish people today as “the people of the Covenant.” The Vatican formally published the language of the note. Yet ten years later at a special meeting of the Synod of Bishops on the Middle East, the Archbishop for Greek Melkites, Archbishop Cyril Salim Bustros, declared that the biblical concept of a promised land “cannot be used as a basis for the return of the Jews to Israel.” He added that the original promise to the children of Israel “was nullified by Christ.” The Vatican issued a clarification that this “individual” statement did not reflect the view of the entire Synod – yet Pope Benedict XVI did not denounce Bustros’ remarks. In a meeting with the leadership of the World Jewish Congress on December 10, 2010, Pope Benedict stated that the Church recognizes the deep historical connection of the Jewish people to their ancient homeland. But the statement coming from the Synod of Bishops on the Middle East sounded like a throwback to the days before Vatican II in 1965, when ideas about Christianity superseding Judaism were still prevalent.
Similar disturbing statements came out of Protestant institutions as well. The Anglican Church in the UK came under the influence of the Episcopal Church in the Middle East, adopting divestment proposals in 2006 and replacement theology that saw “oppressed Palestinians” as the new Israel. At the initiative of the World Council of Churches, a statement by Protestants and Catholics was issued in 2008 that instructed Christians to understand all biblical references to Israel only metaphorically. The upshot of all these statements is to theologically cut off the rise of modern Israel from its roots in biblical Israel and thereby undermine the legitimacy of the claims of the Jewish people to their ancestral homeland.

Why is this occurring? Many elements of the delegitimization campaign have been seen before. Right after the 1967 Six-Day War, the Soviet Union and its allies tried to portray Israel as an aggressor, refusing to acknowledge its right to self-defense. Israel has faced harsh UN resolutions for decades, including the 1975 “Zionism is Racism” resolution (which was essentially overturned in 1991). Anti-Israel propaganda from the Arab states since 1948 has refused to recognize the Jews as a people with historical rights. And when Israel was created, the Vatican was hardly enthusiastic, though Christian Zionists were pivotal in helping gain international support for the idea of Jewish statehood.

What has changed is that the present assault on Israel may originate from peripheral groups in the West, like radical Islamic organizations such as the Muslim Brotherhood working with far-left parties such as the Trotskyite Socialist Workers Party in Britain, but it manages to enter the mainstream of political discourse in Western societies through universities, the electronic and print media, as well as the Internet. Melanie Phillips has shown how a Hamas supporter, Faisal Bodi, who wrote that Israel had no right to exist, gained access to the Guardian and hosted a radio program on the BBC. Changing demographics in Europe, especially in the UK, have given some of the organizations backing delegitimization political power and access to the political establishment and to labor unions, which they did not have a decade ago. Hizb ut-Tahrir, a Muslim Brotherhood offshoot, may be illegal in Egypt, Jordan, and Pakistan, but nonetheless was given permission to make a presentation in a side room of the British House of Commons. The old delegitimization came out of the Soviet Union and its allies. The new delegitimization comes out of Western Europe itself.

Since 1993, it was commonly believed in Israel that advances in the peace process would offset this challenge and therefore Israel’s own public diplomacy (hasbara) was less necessary than in the past. However, even though Israel signed new agreements with its neighbors in the 1990s, the assault on the Jewish state at the UN continued unabated. Indeed, three months and one day after the Oslo Accords were signed on September 13, 1993, the UN General Assembly resumed its yearly ritual of adopting roughly 20 anti-Israel resolutions. In the UN Human Rights Commission in Geneva, the number of
resolutions condemning Israel remained roughly the same as it was before the Oslo Accords were signed.

The lack of correlation between the peace process and the delegitimization efforts are evident elsewhere. The groups proposing to boycott Israeli products in recent years have not distinguished between the West Bank and pre-1967 Israel. The various branches of the Muslim Brotherhood in Great Britain, which have been pivotal in these anti-Israel efforts, do not accept Israel within any borders. In his monumental work on British anti-Semitism, Anthony Julius also details that the far-left leadership of the UK’s “Stop the War Coalition” also has insisted that Israel must be dismantled as well. Thus, the present boycott, divestment, and sanctions initiatives being undertaken by both Islamist and far-left organizations in the UK are directed at Israel as a whole. Delegitimization is not about the peace process, but rather about Israel’s right to exist at all.

The International Political Context of Delegitimization: The Palestinians’ Drive for Unilateralism

These growing efforts at the delegitimization of Israel have occurred within a very specific international political context: at a minimum, they seek to advance the Palestinian goal of establishing an independent state in the West Bank and Gaza without any negotiations with Israel. Palestinian unilateralism is borrowing from other international cases, like in the Balkans. For example, just like Kosovo emerged from the abuses of the Serbian Army, the new delegitimization campaign requires that Israel lose international standing and support in order to serve the Palestinians’ political agenda.

At the extreme, the new delegitimization takes a page out of the anti-apartheid campaign against South Africa by seeking to internationally condemn and isolate the Jewish state, perhaps with the hope of even undermining its continued existence. Indeed, the organizations advancing a delegitimization agenda do not confine themselves to issues related to the West Bank and Gaza alone, but rather seek to boycott anything having to do with Israel. Many advance a “one-state” solution that seeks to eliminate the Jewish state. In order to advance their agenda, they also tend to back the rights of Palestinian refugees to move en masse into Israel. This is the most transparent indication that they ultimately seek Israel’s elimination regardless of the location of its eventual borders.
The Security Implications of the Delegitimization Campaign

The danger to Israel from this delegitimization campaign is not just economic or political. It affects national security as well. The most obvious connection between delegitimization and national security is evident in the efforts to bring charges against Israeli soldiers in European courts under universal jurisdiction laws. Hamas, which often supplies information in these cases through its legal arm, al-Tawthiq, seeks to tie the hands of the Israel Defense Forces while maintaining its right to wage a war of resistance, muqawama, which is essentially terror against Israeli civilians.

There are other links between delegitimization and security. Israel's adversaries in the Middle East, led by Iran, carefully calibrate the use of force on the basis of how the international community responds. Deterrence of Iran from making good on its repeated threats to “wipe Israel off the map” will be influenced by how the Iranians calculate the response of the West. Historically, Middle Eastern states have used chemical weapons when they assumed that the international community would not react: Egypt employed chemical weapons in Yemen in 1962 because few would notice their use in an isolated area, while Iraq massively employed chemical weapons against Iran in the 1980s because the Islamic Republic was seen as a pariah by the Western powers, who wanted to block the export of its Islamic Revolution.

Today, if Israel is increasingly portrayed as a pariah state, then Middle Eastern states might be more prone to allow themselves certain liberties that they would not have adopted before. For example, the current Iranian leadership, and its regional allies like Hizbullah and Syria, will be less concerned about international reaction to their use of clearly escalatory weapons systems with greater destructive force. In a period in which Iran is coming closer to crossing the nuclear threshold, and Hizbullah is obtaining thousands of heavy rockets, the implications of a successful delegitimization campaign against Israel can potentially affect the lives of thousands of Israeli citizens if a war breaks out in the future.

It must not be forgotten that major legal authorities in the world, like former Canadian Justice Minister Irwin Cotler, believe that the statements of the Iranian leadership toward Israel contain clear signs of genocidal intent. Historically, genocide is preceded by the delegitimization and demonization of the target population: the Jews of inter-war Germany were called “vermin,” the Tutsis of Rwanda were called “cockroaches,” while the Marsh Arabs of Saddam Hussein’s Iraq were called “monkey-faced people.” Iran calls the Israelis today “microbes” or “a cancer.” Delegitimization of Israel serves their security interests.

This is the harshest context of the delegitimization effort, but, nevertheless, it would be a cardinal mistake for the West to ignore it.
The Jerusalem Center for Public Affairs is a leading independent research institute specializing in public diplomacy and foreign policy. Founded in 1976, the Center has produced hundreds of studies and initiatives by leading experts on a wide range of strategic topics. Dr. Dore Gold, Israel’s former ambassador to the UN, has headed the Jerusalem Center since 2000.

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