

Laundering Delegitimization

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We are witnessing, and have been witnessing for some time, an escalation in the delegitimization and demonization of Israel and the Jewish people in the international arena. This has involved an Orwellian inversion of law, language, and morality – the whole invoking the imprimatur of international law, proceeding under the banner of human rights, and clothing itself in the protective cover of the United Nations.

Simply put, we are witnessing the laundering of the delegitimization and demonization of Israel and the Jewish people under the cloak and cover of law, legality, and legitimacy. In a world in which human rights have emerged as the new secular religion of our time, Israel, portrayed as a meta-violator of human rights, is singled out as the new anti-Christ of our time, the whole purportedly underpinned by the authority of the UN, international law, and human rights.

One important caveat must be made: none of this is intended to suggest or infer that Israel is above the law or is not responsible for violations of international human rights and humanitarian law. On the contrary, Israel, like any other state, must be held responsible for any human rights violations.

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It is not that Israel seeks to be above the law, but that Israel is systematically denied equality before the law in the international arena; it is not that human rights standards must not be applied to Israel, but that they must apply equally

to everyone else; it is not that Israel must respect human rights, which it should, but the basic rights of Israel deserve equal respect. What follows are four case studies of the delegitimization and demonization of Israel under the cover of the law to illustrate this thesis.

I

Israel has been delegitimized and singled out for differential and discriminatory treatment at the UN Human Rights Council (UNHRC), which replaced the discredited UN Human Rights Commission. This council, like its predecessor, has emerged as a repository of standard-setting in international human rights law, and has the sanctioning framework which can bring human rights violators to account. What one finds in this case is that the result, if not the intention, of the decision-making at the UNHRC is the portrayal of Israel as an international pariah, with all the attending fall-out for the perceived legitimacy of Israel in the international arena.

In the first twenty months of its operations, the UN Human Rights Council adopted sixteen resolutions condemning Israel. Not one resolution was made against any of the major human rights violators such as Sudan, Iran, or China. The alleged human rights violations of Israel are a permanent agenda item at every meeting of the UNHRC – the only country so singled-out.

In the first twenty months of its operations, the UNHRC adopted sixteen resolutions of condemnation. All sixteen indicted one member state of the international community – Israel. Not one resolution was made against any of the major human rights violators such as Sudan, Iran, or China. They continued to enjoy exculpatory immunity, while Israel was denied international due process and equality before the law. What we have here is a denial of due process in the international arena, on the one hand, and an utter culture of impunity for human rights violators, on the other.

Moreover, a dramatic illustration of the prejudicial and discriminatory singling-out of Israel and of its ongoing delegitimization is that the alleged human rights violations of Israel are a permanent agenda item at every meeting of the UNHRC – the only country so singled-out. In a word, and I witnessed this myself when attending a meeting of the UNHRC, agenda item 8 speaks of “human rights violations of Israel in the occupied territories,” while agenda item 9 speaks of human rights violations in the rest of the world. Moreover, today three more resolutions of condemnation are now before the UNHRC, initiated under the permanent agenda item, which further the delegitimization of Israel in their references to Israeli “war crimes,” “crimes against humanity,” “indiscriminate killing of civilians,” and “collective punishment in Gaza.” Yet there is no reference to Palestinian rocket attacks on Sderot or to terrorism against Israel, nor any attempt to contextualize the indictment of war crimes, crimes against humanity, collective punishment, and the like in Gaza.

As well, an election is to be held to replace John Dugard as the Permanent Special Rapporteur for human rights violations of Palestinians in the Occupied Territories – a mandate that is itself skewed in that terrorism against Israelis is not considered to be part of the mandate of the Special Rapporteur. He is to be replaced by Professor Richard Falk, an international law scholar who has ascribed to Israel “Nazi-like conduct in the Occupied Territories.”

I personally experienced this delegitimization of Israel invoking the imprimatur of international law and under the protective cover of the United Nations as follows:

Fifteen months ago a two-person fact-finding commission of inquiry was set up by the UNHRC to investigate the tragedy in Beit Hanun (where eighteen Palestinians were killed as a result of Israel’s response to a rocket attack on Sderot). I was asked by Louise Arbour, the UN High Commissioner for Human Rights, to join this commission together with Bishop Tutu. I enquired as to whether the commission would also visit Sderot, the target of daily rocket attacks from Gaza, and was informed that the visit was only to Beit Hanun.

However, Justice Arbour felt that my presence as an international human rights lawyer could provide important input to this commission of inquiry. Unfortunately, the resolution of the UNHRC which established this fact-finding commission of inquiry had already condemned Israel for war crimes, wanton killing of women and children, and violation of international law, even

before the commission had begun its work.

I declined to participate because the purported fact-finding commission of inquiry had already predetermined the outcome of its work, and condemned Israel before the investigation had been initiated.

II

Between nineteen and twenty-two resolutions against Israel are passed every year by the General Assembly in a three-month-long ritual of delegitimization. These resolutions exceed all the resolutions passed against the other 190 members of the international community combined. Again, this comprehensive indictment, where the resolutions are anchored in the language of human rights and the canons of international law, flagrantly denies Israel international

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due process and provides exculpatory immunity to human rights violators.

Two examples demonstrate this particular adverse fall-out for the perceived legitimacy of Israel. The UN General Assembly has adopted to date some 850 resolutions on the Middle East, the predominant number of which are resolutions of indictment against Israel. There have also been over 130 resolutions concerning Palestinian refugees, yet not one resolution has addressed the question of Jewish refugees from Arab countries. For sixty years, since the Partition Resolution of November 29, 1947, those refugees have been expunged and eclipsed from the international peace and justice agenda. This has not only distorted the narrative of the Middle East, but contributed to the ongoing delegitimization of Israel.

The UN holds an annual International Day of Solidarity with the Palestinian people on November 29, to commemorate the partition resolution. This, in itself, is understandable. However, it leaves the disturbing inference that Israel

was itself responsible for the plight of Palestinian refugees, while no reference is made to the plight of Jewish refugees from Arab lands in consequence of the resolution sixty years ago. Simply put, while the Jewish leadership at the time accepted the resolution, the Arab and Palestinian leadership did not and, by their own acknowledgment, launched a war of aggression against the nascent State of Israel, while turning upon the Jewish nationals in their respective Arab countries. The result of this double aggression was two sets of refugees; yet a culture of impunity has attended this “double *Nakba*” over the last sixty years.

A further contribution to the delegitimization of Israel is the UN General Assembly resolution referring the matter of Israel’s security fence to the International Court of Justice (ICJ) for an advisory opinion. Indeed, while minister of justice, I said that, in my view, the ICJ did not have jurisdiction in this matter, because the UN General Assembly, in referring this issue to the ICJ, had already predetermined the outcome. It was a seriously flawed resolution, and again Israel was denied a fair hearing.

III

Delegitimization is also being laundered under the banner of the struggle against racism, which takes on its own particular sophistication, since everyone wants to be anti-racist. In particular, the clarion call of the Durban conference was effectively that the struggle against racism in the twentieth century required the dismantling of South Africa as an apartheid state; and the struggle against racism in the twenty-first century requires the dismantling of Israel as an apartheid state. The invitation to the international community to be part of the struggle against racism and the attribution to Israel of the epithets of “apartheid” and “Nazi” are not accidental. Rather, they impute to Israel the two great evils of the twentieth century, both of which are characterized as crimes against humanity under international law. Simply put, Israel, as an apartheid and Nazi state, constitutes in itself a crime against humanity; such a state has no right to exist, and indeed, it is a moral imperative to dismantle that state. This demonizing of Israel ends up even serving as a warrant for its dismantling, and for the delegitimization of its supporters who are purportedly engaged in support of a crime against humanity.

IV

All of the above come together in the fourth case study:

The teaching of contempt and the demonizing of the other finds expression in state-sanctioned incitement to genocide. At the epicenter of this phenomenon today is Mahmoud Ahmadinejad's Iran. One would have thought that Ahmadinejad's Iran would be, unlike in the cases above, utterly without any cover of international law. Indeed, state-sanctioned incitement to genocide constitutes the ultimate assault on the UN Charter and a violation of the Genocide Convention. The Genocide Convention itself, as well as the treaty for the International Criminal Court, prohibit "the direct and public incitement to commit genocide." One would hope that the international community and individual states, particularly those that are parties to the Genocide Convention, with a responsibility to enforce it, would invoke the remedies under the UN Charter and the Genocide Convention to hold Ahmadinejad's Iran to account.

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On the contrary. Ahmadinejad's visit to the UN, the U.S., and Columbia University was a case study in the theater of the absurd. His visit itself was legitimated under the rule of law, when in reality it flagrantly disregarded this concept. Ahmadinejad should have been excluded by the U.S. as an inadmissible person – American domestic law denies entry to any person who has incited terrorism. And there is precedent for the exclusion of a visiting head of state – the case of Austrian President Kurt Waldheim.

Ahmadinejad's podium at Columbia University was justified under the notion of academic freedom and free speech – yet no academic freedom can justify giving a podium to those who would incite to genocide. Moreover, under the Genocide Convention, direct incitement to genocide is prohibited speech, not protected speech. Ahmadinejad should not have been a welcome guest at the UN General Assembly, but rather in the docket of the accused on charges of incitement to genocide, complicity in crimes against humanity, the pursuit of the most destructive weaponry (in violation of UN Security Council resolutions), and massive repression of human rights in Iran, all of which assault the basic tenants of the UN Charter.

The theme of this essay has been the laundering of delegitimization under the cover of law, human rights, and the UN. An assault is underway on international law, human rights, the UN Charter, fidelity to the rule of law, and the culture of accountability. The time has come not just to lament what is happening, but indeed to sound the alarm and to act, not only on Israel's behalf, but on behalf of international peace and security. It is time to restore fidelity to the rule of law and to end the culture of impunity.