

# PALESTINIAN MANIPULATION OF THE INTERNATIONAL COMMUNITY



Ambassador Alan Baker (ed.)

Jerusalem Center for Public Affairs  
המרכז הירושלמי לענייני ציבור ומדינה (ע"ר)



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Edited by Amb. Alan Baker

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ISBN: 978-965-218-117-6

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# Overview: Palestinian Manipulation of the International Community

Amb. Alan Baker

## Background of the Israeli-Palestinian Dispute

The lengthy and continuing conflict between Israel and the Palestinians has evolved, over the years, through various phases or cycles of terror on the one hand, and attempts at peace-making on the other.

These cycles have ranged from sporadic, individual, and organized acts of violence, terror, and armed conflict by the various Palestinian terror organizations, individually or collectively. They have included organized, centrally orchestrated, and systematic military action by shelling of Israeli towns and villages by Hamas, Islamic Jihad, and other terrorist organizations based in, and emanating from, the Gaza Strip. Similarly, these cycles have often evolved into periods of outright low and medium-intensity armed conflict, with reaction by Israel to the Palestinian terror attacks, in defense of its towns, villages, and civilian population.

On the other hand, there have also been phases and cycles that have included periodic attempts, at the behest of, and with the active involvement of, the international community, to seek a solution to the conflict through negotiations and attempts at reconciliation and bon-voisinage between the two sides and the two peoples.

The backdrop to all these cycles includes a panoply of issues ranging from conflicting historic and legal claims to the territory, uncompromising religious fanaticism to the exclusion of any possibility of reconciliation and coexistence, mutual and conflicting claims to self-determination and sovereign rights, issues of physical control and authority, and external influence and pressures from regional and international players generated by partisan political and economic interests.

## The International Community

To this backdrop there must be added another major and increasingly influential factor in the complex equation: the international community, its institutions, and its basic perceptions.

Clearly, all the abovementioned issues relate to an area that has, since time immemorial, captured the imagination, the emotions, and the interests of almost the entire world, with the home of the three monotheistic religions. As such, this area is considered to be an arena in which citizens of the world, and virtually all members of the international community, consider that they have an intimate interest and concern.

This deep and complex involvement by the international community and its penchant for active intervention and for advancing its own political and economic interests, serves to render it wide open to manipulation, with the aim of utilizing its power, influence, the weight of its public opinion, its economic clout, and its strategic interests, in order to tip the negotiating scales and thereby influence the outcome of the issues in dispute between Israel and the Palestinians. As such, the various bodies and organizations within the international community find themselves ripe for manipulation by the Palestinian propaganda machinery. International organizations, whether inter-governmental, non-governmental or social-society bodies, are theoretically and logically expected to function according to, and within the framework of, their professional mandates or constitutional instruments. The term “specialized agencies” is indicative of the fact that each such “specialized agency” within the UN system has its specific field of expertise.<sup>1</sup>

However, as is evident from many of the politically generated resolutions adopted by such organizations within and outside the UN system (such as UNESCO, World Heritage Organization, ILO, ICAO, and for many years, the International Red Cross and Red Crescent Movement), these organizations are being abused and manipulated into adopting political resolutions that bear little or no relevance to their specialized professional fields of concern. This is the result of the weight of political pressures applied by their constituent-state members and observers, political NGOs, and through the UN voting system of block, regional voting.

Such activity is rarely out of genuine concern or regard for the substantive legal rights at issue, or as part of the professional purpose or mandate upon which the organizations exist and function, nor are they out of a regard for genuine norms of justice.

In so permitting themselves to be politically manipulated and abused, such international organizations in fact lose the professional credibility, relevance, and the very purpose for which they were established.

## The Peace Negotiating Process

In any genuine and sincere peace negotiation process, the basic assumption would be that both negotiating parties entertain an earnest, serious, and *bona fide* intention and desire to reach agreement and to establish a solid, sustainable,

and peaceful relationship between them on all levels, including governmental, economic, social, and people-to-people, with a view to achieving normal, peaceful relations and viable *bon-voisinage*.

However, the ongoing, intense, and concerted actions by the Palestinian leadership, media, clergy, academia, and others to manipulate virtually every international institution and organization in order to delegitimize Israel, to enhance commercial and cultural boycotts and sanctions, and to incite the public and younger generations to hate Israel and Jews, cannot, in any circumstances be deemed compatible with peace negotiations.

Those who seek to sow hatred of Israel and Jews through distortion of the precepts of Islam, through incitement of Christian communities in the West to deny the very historic foundations of Judaism, to take hostage the UN, international courts, and other international organs, in order to vilify Israel, to abuse foreign states' criminal justice systems in order to target Israeli leaders, to cynically use children and forms of trickery in order to manipulate media sympathy, to distort norms and terms of international law in order to single out Israel – **those who engage in such activities are not genuinely intent on seeking peaceful relations. They come with unclean hands.**

The international community in general, and especially those leaders who are so actively involved in pressing for a solution to the Israel-Palestinian dispute and actively participating in the peace process, must take note of this situation, rather than delude themselves into thinking that there exists a genuine will among the Palestinians to make peace with Israel.

## The Chapters of This Book

The aim of this book is to expose the extent and the lengths to which the Palestinian leadership and institutions have manipulated, and continue to actively manipulate, the institutions and the very perceptions of the international community with the aim of influencing them and their actions by forcing a very selective, partisan, misleading, and patently false narrative.

In presenting such an extensive picture of Palestinian manipulation in all spheres of international community life – political, economic, social, legal, and religious – this book is intended to serve as a vital tool for all those involved in attempting to find a solution to the Israeli-Palestinian dispute, in the hope that they will face such manipulation head-on, in its true light.

Following is a brief description and summary of each chapter in the book, each one analyzing Palestinian manipulation of the international community from a unique and specific angle.

**Professor Robbie Sabel** of the Hebrew University of Jerusalem, in his opening chapter entitled “Manipulating International Law as Part of Anti-Israel ‘Lawfare,’” traces the ongoing phenomenon within the international community, at the inspiration of the Palestinians, of manipulating international law in a way that invents, distorts, and misinterprets commonly accepted rules and terminology that are applied only *vis-a-vis* Israel and are not applied to other states or in other situations.

Prof. Sabel cites examples such as the deliberate misinterpretation, distortion, and selective application of classical and long-held concepts and terms of international law, only *vis-à-vis* Israel, such as occupation, “right of return,” proportionality, laws of armed conflict, self-defense, fact-finding missions, and the cynical use of UN Security Council and General Assembly resolutions.

He concludes that the systematic practice of devising tailor-made rules of international law for application only where Israel is concerned, in effect undermines international law itself and can have an insidious and corrosive effect on the rule of law generally.

**Dr. Rephael Ben-Ari**, in his chapter entitled “Universal Jurisdiction: Learning the Costs of Political Manipulation the Hard Way,” traces the way in which Palestinians and pro-Palestinian groups since the late 1990s have abused the concept of universal jurisdiction as part of their “lawfare” against Israel, in the national courts in various countries.

With the noble aim of enhancing the outreach of global criminal justice, several countries, mostly Western, enabled their courts to hear claims against foreign persons, alleging war crimes carried out abroad, based on the principle of universal jurisdiction. This brought about a flood of claims that practically turned certain European capitals into self-appointed international criminal courts. The concomitant harassment caused to accused officials, the headlines reporting such an investigation, and the political embarrassment intended, were designed to have an immediate impact on international public opinion, as well as to impact the bilateral relations between the forum state and that of the suspected official, all this without any substantial basis for a prosecution.

Dr. Ben-Ari reviews the various proceedings initiated against Israeli officials in the legal systems of Belgium, Spain, and the United Kingdom, pointing to the dangers of its unrestrained application, as well as the lack of consensus surrounding its implementation. He concludes that the intensive manipulation of universal jurisdiction against Israel has resulted in a counter-reaction in which those states affected found it necessary to modify their legislation so as to limit such abuse of their courts. As such, he concludes that the “lawfare” against Israel through abusing the *bona fides* of national legal systems has in fact set back the cause of international global justice.

**Attorney Hillel Neuer, Esq.**, Executive Director of UN Watch, Geneva, in his chapter “The Demonization of Israel at the United Nations in Europe – Focus on the Human Rights Council and the UN Specialized Agencies,” analyzes the politicization and abuse of UN Specialized Agencies and human rights bodies, examining specifically the situation at the Human Rights Council, the most prominent UN body in Geneva, as well as at three other Europe-based UN agencies: the World Health Organization (WHO) and the International Labor Organization (ILO) in Geneva, and the UN Educational, Social and Cultural Organization (UNESCO) in Paris. He also discusses the blatantly anti-Israel functioning of the UN Special Rapporteur on the Palestinian Territories and the UN High Commissioner for Human Rights.

Attorney Neuer details the manner in which these organizations and personalities systematically and willfully single out Israel, above all other activities, in stark violation of their constitutive instruments, thereby prejudicing their own professional credibility as well as that of the UN as a whole.

**Professor Gerald Steinberg**, President of NGO Monitor, in a chapter entitled “The Role of NGOs in the Palestinian Political War Against Israel,” exposes the extent of manipulation and abuse by the Palestinian political machinery of various international non-governmental organizations aimed at influencing “social society” and waging a damaging political war against Israel. He traces the development of the attempts to delegitimize Israel to the 1991 infamous Durban UN racism conference. He exposes the extent of governmental involvement in financing NGO activities and indicates how many of the political advocacy NGOs are funded by foreign governments, primarily by the European Union (EU), European governments, the US and Australia, as well as private foundations, many providing millions of dollars and euros annually.

Prof. Steinberg traces the influence of politically oriented NGOs in the development and drafting of such UN resolutions as that on the establishment of the Goldstone UN fact-finding mission into the Gaza fighting, Israel’s security barrier, and others. He covers the activity of NGOs in influencing the actions of the UN Human Rights Council and in influencing European governmental policies. He brings as examples the activities of Amnesty International and Human Rights Watch as leading NGOs in the campaign against Israel.

**Professor Eugene Kontorovich** of Northwest University and the Hebrew University of Jerusalem, in his chapter entitled “Politicizing the International Criminal Court,” shows the extent to which Palestinian diplomatic and political efforts are attempting to turn the International Criminal Court into a bargaining chip in negotiations, and a significant weapon in the “lawfare” campaign against Israel.

The constant threats to institute politicized prosecutions, including a recent attempt by Turkey to refer Israel to the court through a complaint by Comoros regarding the Turkish flotilla issue, serve both to flout the rules that established the Court, as well as to further the institution’s politicization and trivialization.

**Ambassador Dr. Dore Gold**, President of the Jerusalem Center for Public Affairs, in a chapter entitled “Degrading International Institutions: The United Nations Goldstone Report,” analyzes the way in which the UN Human Rights Council, on the basis of false media and other reports, was manipulated into establishing a UN fact-finding mission headed by South African Judge Richard Goldstone, to study the Gaza Conflict, with a mandate that determined in advance Israel’s guilt.

Amb. Gold explains how the Hamas terror organization manipulated the activities of the fact-finding mission by blatantly distorting facts presented to the members of the mission. The questionable methodology used by the mission, the prejudiced and biased views of some of its members, as well as the selective use of data and information fed to them by Hamas to the exclusion of widely known facts, all indicate the extent to which the fact-finding mission, the UN Human Rights Council and the good name of the UN itself, were manipulated and abused.

**Ms. Sinem Tezyapar**, of the Foundation for the Preservation of National Values (Turkey), an expert in the role of religion in diplomacy, in her chapter “The Abuse of Islam as Part of the Demonization of Israel,” examines the religious manipulation and abuse by extreme and fanatical Islamic bodies and personalities, of some of the most fundamental and basic precepts of Islam, as part of the demonization of Israel and the Jewish people.

She reviews the use and effect of ideological hate propaganda and the question of how basic misconceptions, misinformation, and distortion, on the part of some Muslims, and the deliberate misinterpretation of the Qur’an, serve to demonize Israel and dehumanize Jews.

She analyzes various oft-repeated allegations and insults against the Jewish people, Holocaust denial by leading Islamic officials and clerics, distortion of Quranic precepts such as *jihad*, *qital*, incitement to suicide bombing, and anti-Semitism.

**Dr. Dexter Van Zile**, Christian Media Analyst for the Committee for Accuracy in Middle East Reporting in America (CAMERA), in his chapter “Palestinian Christian Abuse of Christian Organizations in the West,” reviews the manipulation and abuse by Arab Christian activists and bodies, of Christian church organizations and communities both in the Middle East and in the West, as a further weapon in the anti-Israel arsenal of the Palestinian leadership.

He analyzes the supersessionist and anti-Semitic motivation and messaging behind such basic and rabid Christian anti-Israel instruments as the “Kairos Palestine Document,” the Church of Scotland document and the policies of the United Church of Canada, and the extent to which they oppose, negate, and run *ultra vires* to scriptural texts, historical presence, and theological discourse, all intended to negate the legitimacy of the existence of a Jewish state among Christian communities in the West, and specifically in Canada and the United States.

He points to some of the manipulative tactics of such personalities as the Rev. Naim Ateek, founder of Sabeel Ecumenical Liberation Theology Center, and South African Archbishop Desmond Tutu, patron and sponsor of Sabeel, in encouraging Christian communities to view the Palestinians as the modern-day Jesus and the Israelis as if they are crucifying the Palestinians.

**Dr. Rephael Ben-Ari**, in his chapter entitled “UNRWA,” studies the way in which the United Nations Relief and Works Agency (UNRWA) has during the last few decades been manipulated into crossing the lines of relief and humanitarianism for which it was established, deep into the political realm, and has in fact become involved in an intensive, world-embracing lobbying effort, tailored to attract international public attention to the *political* problem of Palestinian refugees and a powerful tool within anti-Israel propaganda campaigns.

By UNRWA’s very nature, aimed at upholding of the concept of a Palestinian “right of return,” its determined policy of inflating the number of refugees, and its breeding of an atmosphere of hatred and violence among Palestinian youth through *inter alia* glorification in its schools of terrorists activity, one may wonder whether it is not abusing the aims behind its initial establishment and is being used as a weapon of Palestinian propaganda.

In large part, this is the outcome of the fact that UNRWA lacks meaningful outside control, and receives hardly any political guidance from any of the relevant international bodies that are in a position to provide direction, thus effectively enjoying wide authority and freedom of action. This situation allows UNRWA's leadership, as well as interested parties – first and foremost the Palestinian leadership and extremist groups, and some Arab (host) countries – to manipulate a vast UN machinery sponsored by the international taxpayers' good-will contributions, using it as a tool for the promotion of certain political agendas.

Finally, **Philippe Assouline, Esq.**, UCLA International Relations Dept., lawyer, and commentator on media issues, in his chapter “Manufacturing and Exploiting Compassion – Abuse of the Media by Palestinian Propaganda,” examines the manner in which skillful and well-oiled Palestinian manipulation of the international media manufactures public compassion and hostility to Israel.

He analyzes the deliberate Palestinian use of children as weapons of mass deception, staged media propaganda and news deception, manipulative use of Western narratives of injustice, and control and manipulation of journalists and correspondents.

#### **About the editor:**

Ambassador Alan Baker, director of the Institute for Contemporary Affairs at the Jerusalem Center for Public Affairs, is one of Israel's leading international law experts. He served as the legal adviser and deputy director-general of the Israel Foreign Ministry from 1996 to 2004, followed by four years (2004 – 2008) as Israel's ambassador to Canada. In addition to his membership in the Israel Bar, Ambassador Baker is a member of the International Law Association, the International Institute of Humanitarian Law, and the International Association of Jewish Lawyers and Jurists, and serves as a member of Israel's panel of arbitrators at the Permanent Court of Arbitration (The Hague). His website is: [www.ambassadoralanbaker.com](http://www.ambassadoralanbaker.com).

## Notes

- 1 See Articles 55 and 57 of the United Nations Charter which set out the principles that serve as the basis for the functioning of the Specialized Agencies, including “solutions of international economic, social, health and related problems; and international cultural and educational cooperation” – as defined in their basic instruments.



# Manipulating International Law as Part of Anti-Israel “Lawfare”

Prof. Robbie Sabel

The attempts to brand Israel as a state that violates rules of international law have become a recurrent feature of the “lawfare” being waged against Israel. Although no state has a perfect record in this regard, Israel’s record of compliance with international law is remarkably strong. Israeli courts enforce customary international law as part of the “law of the land,” and in a long series of decisions, the Israeli High Court has ordered the Israeli government, army, and security services to change policies that, in the court’s view, were in violation of customary international law. Perhaps uniquely among national court systems, the court has even intervened in actual combat situations. The Israeli government has a near-impeccable record of complying with such court orders.

In a personal vein, this author can attest to a not-very-friendly senior Egyptian negotiator telling him in a private conversation that although negotiating with Israel was “hell,” he was aware that once agreement was reached, Israel had a very good record of complying with its undertakings.

Perhaps because Israel’s detractors are aware of this reality, they have undertaken a process of manipulating international law in a way that invents rules that are applied only to Israel and not to other states or in other situations. Blatant examples of such manipulation include:

## UN General Assembly Resolutions

According to the UN Charter, UN General Assembly resolutions have the status of recommendations to states and are not binding. They do not create international law and no state can be “guilty” of violating such a resolution. Such resolutions are political statements dictated by whatever group of states can muster a majority vote on a given issue at a given time. A prime example is UN General Assembly Resolution 194 (II) of 1948, which proposed measures to resolve the Arab-Israeli dispute including the issue of refugees.<sup>2</sup> All the Arab states that were UN members at the time voted against the resolution, as they objected to any recognition of Israel.<sup>3</sup> The General Assembly has subsequently readopted the part of the resolution concerning the refugees.<sup>4</sup>

The Palestinian legal position is that this article has thus miraculously been turned into a binding rule of international law. The legal reality is, however, that even where the General Assembly reiterates such a resolution, it nevertheless remains nonbinding. In the words of a leading French jurist, “Neither is there any warrant for considering that by dint of repetition, non-normative resolutions can be transmuted into positive law through a sort of incantatory effect.”<sup>5</sup> No state is on record stating that it accepts General Assembly resolutions, as such, as binding on itself. Nevertheless, the claim is frequently heard that Israel is “violating” General Assembly resolutions. Apparently there is an interpretation of the UN Charter that is applicable only to Israel.

## UN Security Council Resolutions

Those anti-Israeli lawfare tacticians who are aware that UN General Assembly resolutions are not binding try to charge Israel with violating UN Security Council resolutions. Here again the critics ignore the explicit rules set out in the UN Charter. Security Council resolutions are only binding where the council, acting in accordance with Chapter VII of the charter, declares that there has been an act of aggression by a state or that a state’s action is a threat to world peace or security.<sup>6</sup>

The Security Council has never made such a declaration regarding Israel, nor for that matter has it ever made such a declaration regarding Arab aggression against Israel. Like the General Assembly, the Security Council is a political body and its resolutions are political statements and not legal judgments. Members of the UN have undertaken to implement Security Council resolutions only when they are decisions adopted under Chapter VII. Nevertheless, this stipulation of the charter has not prevented Israel from being charged with “violating” nonbinding Security Council resolutions.

## “Illegal” Military Occupation

There is a legitimate debate as to whether the West Bank is indeed the territory of an enemy sovereign state and hence subject to the rules of military occupation. Beyond this debate, though, the bon mot used by nearly all anti-Israeli publicists is that Israeli military occupation is illegal as such.<sup>7</sup> However, in an armed conflict, international law clearly permits military occupation. It is interesting to note that the UN Security Council has never declared Israeli occupation to be illegal. The Security Council’s reticence in condemning Israeli occupation as illegal is not necessarily derived from sympathy with Israel’s policies but presumably from the awareness that occupation is perfectly legal in case of armed conflict.<sup>8</sup>

The permanent members of the council no doubt recall the Allied occupation of Germany and Japan after World War II, clearly legal in accordance with the laws of armed conflict. More recently, US occupation of Iraq after the First Gulf War was universally considered a legal act and its legality even received explicit confirmation by the Security Council.<sup>9</sup> Applying the laws of military occupation to the West Bank may not have earned Israel much public relations kudos, but it is legal and the alternative, namely, applying Israel law, could have been

deemed to be annexation. The fact that Israel was acting legally has not, however, deterred its detractors from attempts to attach to Israeli activity the invented new international legal concept of “illegal occupation.”

## **The “Right of Return” of Arab Refugees**

In accordance with international law, a state must allow its nationals into its territory and hence it is possible to speak of a “right of return” of nationals to the state of their nationality. International treaties, to which Israel is a party, refer to the right, with some restrictions, of persons to return to “their own country.”<sup>10</sup> The major regional human rights treaties explicitly clarify the phrase “their own country” as applying only to nationals of the country.<sup>11</sup> Some academicians believe such a right should also apply to permanent residents,<sup>12</sup> but, apparently, no state has adopted such a position and governments interpret the rule as meaning that the right applies only to nationals.

The manipulation of the rule as proposed by the Arab states, however, is that there is “a well-established norm in international law and practice” – namely, the right of all Palestinian Arab refugees to “return” to Israel, even though they are neither nationals nor permanent residents of Israel.<sup>13</sup>

The interpretation of the phrase “Palestinian refugees” in this context has, moreover, been extended to include all direct descendants. The Arab claim is now that even though the person involved was born in another country as were his parents and grandparents, and they may be nationals of another state and permanent residents of another state, nevertheless international law grants them a right to “return” to Israel. It is estimated that under such a definition over five million persons could claim a “right of return” to Israel. No such interpretation of the term “refugee” or “right of return” has been held applicable in any situation other than the Israeli-Palestinian dispute. It should be added that Palestinian negotiators’ adherence to their demand that Israel recognize such a “right” has made it very difficult to reach a pragmatic solution to the problem.

## **“Apartheid Wall”**

There is a clear attempt to smear Israel with the abhorrent phenomenon of racism and apartheid by describing Israel’s security barrier as an “apartheid wall.”<sup>14</sup> Any border fence serves to separate areas and one may hope for a world with no borders. However, for so long as Israel has to face terrorist acts, it is legitimate for it, as it is for other states, to erect a barrier to prevent terrorist attacks and illegal crossings.<sup>15</sup> Those calling the fence the “apartheid wall” make frequent reference to the advisory opinion of the International Court of Justice on the issue.<sup>16</sup> They fail to point out that, in this opinion, the International Court of Justice made no reference whatsoever to “apartheid” or analogy with “apartheid.” Furthermore, although the court criticized the route of the “wall” as being beyond the 1949 “Green” Armistice Line,<sup>17</sup> the court was careful not to deny Israel’s right in principle to build such a security fence.

Apartheid has been defined as a “social and political policy of racial segregation and discrimination enforced by white minority governments in South Africa from 1948 to 1994.”<sup>18</sup> A dictionary definition is “racial segregation; *specifically*: a former policy of segregation and political and economic discrimination against non-European groups in the Republic of South Africa.”<sup>19</sup> Among the prominent features of the South African apartheid policies were: prohibition of marriages between white people and people of other races;<sup>20</sup> prohibition of extramarital sexual relations between white and black people;<sup>21</sup> prohibiting a black person from performing any skilled work in urban areas except in those sections designated for black occupation;<sup>22</sup> prohibiting strike action by blacks;<sup>23</sup> preventing Africans from receiving an education that would lead them to “aspire to positions they wouldn’t be allowed to hold in society.”<sup>24</sup> Black students were banned from attending major white universities.<sup>25</sup> In all public amenities, such as restaurants, swimming pools, and public transport, “Europeans Only” and “Non-Europeans Only” signs were put up to enforce this legislation.<sup>26</sup> Even Israel’s most virulent detractors presumably must feel uncomfortable in claiming this is the situation in Israel.

Aware that accusations of actual apartheid in modern Israel lack any credence, the accusation is made that the very fact that Israel is a Jewish state proves that there is an “apartheid-like” situation.<sup>27</sup> One website writes that “apartheid began and is rooted in the very establishment of the colonial Jewish State.”<sup>28</sup> The crux of the accusation against Israel lies in the often-repeated charge that its racism “is symbolized most clearly in Israel’s Jewish flag, anthem and state holidays.”<sup>29</sup> The accusers have not a word of criticism against the tens of liberal democratic states that have Christian crosses incorporated in their flags, nor against the numerous Muslim states with the half-crescent symbol of Islam as their state symbol. Again, there appears to be a special legal definition of apartheid where Israel is concerned.

Perhaps the most chilling indication of the real purpose behind the “Israel is apartheid” campaign is revealed in one of the most active websites promoting it. They write that among the goals of “prosecution for the crime of apartheid” is to “enable the true majority to return to power over their own lands, while protecting the rights of ethnic minorities.”<sup>30</sup> In other words, the real goal behind the apartheid campaign is the denial of the legitimacy of the State of Israel and the determination that the only situation the Jewish population in Israel can hope for is that of a “protected” ethnic minority in an Arab Palestinian state.

## **The Legal Status of an Armistice Demarcation Line**

An Israeli government may have to decide whether to adopt the 1949 Israel-Jordan Armistice Demarcation Line, known colloquially as the “Green Line,” as the negotiating basis for a border between Israel and a future Palestinian state. This issue, however, is often presented manipulatively as a legal axiom that the Green Line already has the status of a legally binding border.

The 1949 Israel-Jordan Armistice Agreement states that the Green Line is an Armistice Demarcation Line,<sup>31</sup> and that it should not be “interpreted as prejudicing, in any sense, an ultimate political settlement between the Parties.”<sup>32</sup> The Armistice Agreement then continues explicitly to determine that: “The Armistice Demarcation Lines...are agreed upon by the Parties without prejudice

to future territorial settlements or boundary lines or to claims of either party relating thereto.”<sup>33</sup> Neither Israel nor Jordan ever designated the Green Line as their international border. Before 1967, Jordan and other Arab states refrained from recognizing the Green Line as a border because of their reluctance to accept the legitimacy of Israel even within the Green Line.

By signing a peace agreement, Israel and Jordan have now mutually acknowledged the termination of the Armistice Agreement.<sup>34</sup> In accordance with international law, international boundaries survive the demise of the treaties that established them. This, however, is not true of ceasefire or armistice-demarkation lines. The temporary nature of a ceasefire or armistice line is such that their validity expires with the expiration of the ceasefire or armistice. Therefore, formally, there is no longer any legal validity to the Green Line.

UN Security Council Resolution 242, accepted by all the parties to the dispute as an agreed framework for peace negotiations, makes no reference to the Green Line. The Israel-Jordan Peace Treaty refers to the “boundary definition under the Mandate” in defining the Israeli-Jordanian border; again, no reference was made to the Green Line.<sup>35</sup>

The UN General Assembly Resolution requesting an International Court of Justice Advisory Opinion on “Legal Consequences of Constructing a Wall in the Occupied Palestinian Territory” made no reference to the Green Line. The written statement of the League of Arab States addressed to the International Court in this case refers to “the Armistice line that now marks the boundary between Palestine and Israel.” The statement goes on, however, to observe: “The purpose of the armistice was not to establish or recognize any territorial, custodial or other rights, claims or interests of any party.”<sup>36</sup> The Jordanian judge AlKhasawneh, in his separate opinion, wrote that “There is no implication that the Green Line is to be a permanent frontier.”<sup>37</sup> Even the final court advisory opinion, which strongly criticizes Israel for the route of the “Wall,” explicitly states that its advisory opinion “involves no implication that the Green Line is to be a permanent frontier.”<sup>38</sup>

Nevertheless, the claim continues to be heard that as far as Israel is concerned, a temporary armistice line has the legal status of a permanent boundary.

## **Commissions of Inquiry**

When the United States or the United Kingdom or other democratic states set up judicial committees of inquiry on issues involving their armed forces, world opinion tends to see it as a reflection of the democratic nature of the states concerned. This author has failed to find instances of international demand that such commissions must include foreign nationals.

Israel has a well-earned reputation for its independent and impartial judiciary. Nevertheless, when Israel sets up such a judicial commission of inquiry, it nearly automatically encounters demands that the commission must include non-Israeli participation. Thus, apparently, there is one international rule for Israeli commissions of inquiry and a different one for the rest of the world.

## “Occupied” Gaza

Since the 2005 Israeli unilateral withdrawal from Gaza, there has been no Israeli control of the Gaza area. The area is administered by Hamas. There is no Israeli military government in Gaza. The laws in Gaza, both criminal and civilian, are Hamas laws. Hamas controls the economy, the taxes, the courts, the police, and the prisons. It has its own, heavily armed, militias. The Hamas government palpably was not appointed by Israel and is not subservient to Israel. By any accepted legal standard, Gaza is not under Israeli occupation. Israel maintains a blockade in an attempt to prevent arms shipments from entering Gaza; this, however, does not constitute “occupation.” Furthermore, Gaza has a land border with Egypt, over which Israel has no control whatsoever.

International law requires that, for an area to be considered as under occupation, the territory must be “actually placed under the authority of the hostile army.”<sup>39</sup> The International Court of Justice gave its opinion that “territory is considered occupied when it is actually placed under the authority of the hostile army, and the occupation extends only to the territory where such authority has been established and can be exercised.”<sup>40</sup> In a later case, the court reconfirmed its position, stating that “Occupation required the exercise of *actual* authority by the foreign forces” (emphasis added).<sup>41</sup> Even the International Committee of the Red Cross (ICRC) report on the subject reached the conclusion that “occupation could not be established or maintained solely through the exercise of power from beyond the boundaries of the occupied territory; a certain number of foreign ‘boots on the ground’ were required.”<sup>42</sup> The ICRC report refers to “the traditional rules about occupation with their strong emphasis on the factual basis of a continuing presence on the ground.”<sup>43</sup>

For political reasons the PLO wants to retain Gaza’s status as “occupied” territory.<sup>44</sup> What is more surprising, however, is that the International Committee of the Red Cross continues to maintain that Gaza is under Israeli occupation.<sup>45</sup> Again, there appears to be a unique definition of “occupation” applicable only to Israel.

## Laws of Armed Conflict

The laws of armed conflict are among the better-established rules of international law and many of the treaties on the issue are regarded as reflecting customary international law. Democratic states, including Israel, incorporate these rules into the standing instructions and military manuals of their armed forces. However, regarding Israel there has been a recent attempt to invent two new rules:

### – Proportionality in combat

The law of armed conflict recognizes the requirement of proportionality in two contexts. First, it is prohibited to attack a military target if it will cause civilian casualties that are excessive in relation to the military advantage to be obtained.<sup>46</sup> Second, measures of self-defense must be proportionate to the threat.<sup>47</sup> However, regarding Israel a new rule seems to have been developed: that in actual combat Israel must not use weapons that are not proportionate to

the weapons used by terrorist groups. Regarding other states, there is no such rule; on the contrary, all armies try to concentrate superior forces and arms against enemy positions and forces. This universal military practice, however, does not prevent Israel from being accused of using “disproportionate” force in actual combat situations.

#### – **Civilian casualties**

Civilian casualties are, unhappily, a common feature of armed conflicts. This is particularly true where an enemy places its weapons among civilians, as do Hamas in Gaza and Hizbullah in Lebanon. It is a violation of the laws of armed conflict to deliberately target civilians, and a state may be liable for reckless or negligent targeting. However, as far as Israel is concerned, any enemy civilian casualties are presented as the result of a “war crime,” even though it is acknowledged that Israel takes immense steps to try to prevent and minimize civilian casualties.<sup>48</sup>

### **Self-Defense Only against Attacks from States**

Perhaps the most flagrant attempt to manipulate international law against Israel was the International Court’s majority decision that Israel had no right of self-defense against terrorists operating from the territories under control of the Palestinian Authority. The court decided that it would not even examine whether Israel’s security barrier was a legitimate act of self-defense against acts of terrorism. The court based its decision on its interpretation of Article 51 of the UN Charter, which recognizes the “inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations.” The court interpreted Article 51 as requiring that an attack must emanate from a foreign state, although there is no mention in the UN Charter of such a requirement.

The court consequently brusquely determined that “Article 51 of the Charter has no relevance in this case.”<sup>49</sup> Its conclusion was that Israel had no right of self-defense whatsoever against terrorist acts emanating from territories under the control of the Palestinian Authority. The British, Dutch, and US judges on the court were the only ones who refused to concur with this startling ruling.<sup>50</sup> This strange dictum of the court has not been followed by other states, and one academic writer notes that “State practice strongly suggests that the international community has recognized a right to use force in self-defense targeting nonstate actors in foreign territory to the extent that the foreign state cannot be relied on to prevent or suppress terrorist activities.”<sup>51</sup>

## Conclusion

Israel has a strong record of complying with international law and its judicial system ensures that it will continue to do so. The essence of any legal system, however, is that law applies equally to all. This principle is being undermined by the attempts of Israel's foes and detractors to manipulate international law as part of their lawfare against Israel. Devising tailor-made rules of international law for application only where Israel is concerned undermines international law and can have an insidious and corrosive effect on the rule of law in general.

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## Notes

- 1 "Except for certain internal matters, such as the budget, the Assembly cannot bind its members. It is not a legislature in that sense, and its resolutions are purely recommendatory." "The Assembly is essentially a debating chamber." Malcolm Shaw, *International Law*, sixth edition (2008), p. 1212.
- 2 UNGA Resolution 194 (III), UN GAOR, 3<sup>rd</sup> session, part I, 1948, *Resolutions*, pp. 21-24.
- 3 Israel was not a member of the UN at the time.
- 4 Article 11 of UNGA Resolution 194 (III), UN GAOR, 3<sup>rd</sup> session, part I, 1948, *Resolutions*, pp. 21-24.
- 5 Prosper Weil, "Towards Relative Normativity in International Law," 77 *American Journal of International Law* 413 (1983).
- 6 "Most Council resolutions contain only exhortations or recommendations." "A Chapter VII resolution has therefore become shorthand for a legally binding measure." Anthony Aust, *Handbook of International Law* 2005 (2009), p. 214.
- 7 For example, "Europe is ultimately taking part in the subjugation of the Palestinians by funding Israel's illegal occupation." <http://www.counterpunch.org/2013/03/13/funding-and-denouncing-israeli-occupation>
- 8 In a case submitted by the PLO against the French company that built the Jerusalem light rail, the French Court of Appeal recently reconfirmed that occupation is legal. <http://fr.slideshare.net/fullscreen/yohanntaieb3/decision-de-lacourdappel/1>; : <http://www.israel-flash.com/2013/04/la-cour-dappel-de-versailles-olp-c-alstom-et-veolia-conclut-que-loccupation-par-israel-nest-pas-illegale/#ixzz2QWVjg6eB>
- 9 S/RES/1483 (2003). <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N03/368/53/PDF/N0336853.pdf?OpenElement>
- 10 Article 5-(d)(ii), *Convention for the Elimination of All Forms of Racial Discrimination* 1965, entered into force 4 January 1969, 660 UNTS 195; Article 12(4), *International Convention on Civil and Political Rights* 1966, entered into force 23 March 1976, 999 UNTS 171.
- 11 *American Convention on Human Rights* 1969, entered into force 18 July 1978, 9 ILM 673 (1970); *European Convention for the Protection of Human Rights and Fundamental Freedoms* 1950, entered into force 3 September 1953, 213 UNTS 221; *Protocol No. 4 to the European Convention for the Protection of Human Rights and Fundamental Freedoms* 1963, entered into force 2 May 1968, ETS 46. That the right of return is restricted to nationals is also reflected in the "Declaration of Principles of International Law on Mass Expulsion," 62 *International Law Association Conference Report* 13 (ILA 1986), Articles 1, 2, 3, 7.
- 12 See, e.g., Oriol Casanovas, "La Protection Internationale des Réfugiés et des Personnes Déplacées dans les Conflits Armés," 306 *Recueil des Cours* 2003 (2005) 86.
- 13 *Refugees Background*, Palestine Liberation Organization, Negotiations Affairs Department, Permanent Status Issues. <http://www.nad-plo.org/permanent/refugees.html>
- 14 Those criticizing the construction tend to use the word "wall" and call it a "separation wall" though in fact only a tiny fraction of the total length of the barrier (less than 3 percent) is actually a thirty-foot-high concrete wall. One organization has published a three-hundred-page treatise "proving" that Israel is applying apartheid. *Occupation, Colonialism, Apartheid? A re-assessment of Israel's practices in the occupied Palestinian territories under international law*, Democracy and Governance Programme of the Human Sciences Research Council of South Africa. [http://www.hsrc.ac.za/Media\\_Release-378.phtml](http://www.hsrc.ac.za/Media_Release-378.phtml)
- 15 For examples of other democratic states that have built similar fences see: <http://www.jewishvirtuallibrary.org/jsourc/Peace/fence.html>

- 16 ICJ Advisory Opinion, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, 9 July 2004.
- 17 See this author's critique of the court's ruling on the issue, R. Sabel, "The International Court of Justice Decision on the Separation Barrier and the Green Line," *Israel Law Review* 38, 1-2 (2005), p. 316.
- 18 <http://www.africanaencyclopedia.com/apartheid/apartheid.html>  
The Statute of the International Criminal Court defines apartheid as one of the crimes against humanity, being "inhumane acts....committed in the context of an institutionalized regime of systematic oppression and domination by one racial group over any other racial group or groups and committed with the intention of maintaining that regime" (Article VII of the Statute of the ICC).
- 19 <http://www.merriam-webster.com/dictionary/apartheid>
- 20 Prohibition of Mixed Marriages Act, Act No. 55 of 1949.
- 21 South African Immorality Amendment Act, Act No. 21 of 1950; amended in 1957 (Act 23).
- 22 South African Bantu Building Workers Act, Act No. 27 of 1951.
- 23 South African Native Labour (Settlement of Disputes) Act of 1953.
- 24 South African Bantu Education Act, Act No. 47 of 1953.
- 25 South African Extension of University Education Act, Act No. 45 of 1959.
- 26 South African Reservation of Separate Amenities Act, Act No. 49 of 1953.
- 27 "Israel has made itself into a white colonial settler state, mimicking South Africa before the end of apartheid." Lisa Rofel, Anthropology, UC Santa Cruz. <http://www.arabicnews.com/ansub/Daily/Day/060609/2006060907.html>
- 28 The Palestinian grassroots Anti-Apartheid Wall Campaign. <http://www.stopthewall.org/downloads/pdf/4PageFactSheetOctober9.pdf>
- 29 Daryl J. Glaser, "Zionism and Apartheid: a moral comparison," *Ethnic and Racial Studies* 26, 3 (2003), pp. 403-421, 403, 408.
- 30 <http://www.geocities.com/savepalestinenow/internationallaw/studyguides/sgil3k.htm>
- 31 1949 Hashemite Jordan Kingdom-Israel General Armistice Agreement, 656 UNTS 304, Article III, paragraph 2.
- 32 Article VI, paragraph 8, *ibid.*
- 33 Article VI, paragraph 9, *ibid.* Article 5(2) of the Israeli-Egyptian Armistice Agreement has an even more explicit disclaimer, which states: "it is not to be construed in any sense as a political or territorial boundary and is delineated without prejudice to rights, claims and positions of either Party to the Armistice as regards ultimate settlement of the Palestine question."
- 34 While the Israel-Jordan Peace Agreement does not explicitly state that it supersedes the Armistice Agreement, the two agreements are patently incompatible.
- 35 Article 3(1), 1994 Treaty of Peace between the State of Israel and the Hashemite Kingdom of Jordan. Annex I (a) Article 2 (A)(7) of the treaty provides that the section of the boundary separating Jordan from the West Bank is marked on the map as an "administrative boundary between Jordan and the territory which came under Israeli Military government control in 1967."
- 36 Written Statement of the League of Arab States, January 2004, paragraphs 1.2, 5.15.
- 37 Separate Opinion, Judge AlKhasawneh, paragraphs 10, 11.
- 38 C/2004/03, paragraph 35.
- 39 Article 42 of the 1907 Hague Regulations.
- 40 ICJ Advisory Opinion, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, 9 July 2004, paragraph 78.
- 41 ICJ, *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, decision of 19 December 2005, Para.173.
- 42 ICRC, *Occupation and Other Forms of Administration of Foreign Territory, Report prepared and edited by Tristan Ferraro Legal adviser, ICRC*, Summary, Article 1. <http://www.icrc.org/eng/resources/documents/publication/p4094.htm>
- 43 ICRC, *Occupation and Other Forms of Administration of Foreign Territory, Report prepared and edited by Tristan Ferraro Legal adviser, ICRC*, p. 48. <http://www.icrc.org/eng/resources/documents/publication/p4094.htm>
- 44 See on this issue Dore Gold, "Legal Acrobatics: The Palestinian Claim that Gaza is Still 'Occupied' Even After Israel Withdraws." <http://www.icjs-online.org/indarch.php?eid=490&ICJS=2394&article=536>
- 45 See, e.g., <http://www.icrc.org/eng/where-we-work/middle-east/israel-occupied-territories/index.jsp>
- 46 Article 51 (5) (b) of 1977 Additional Protocol I to the Geneva Conventions of 12 August 1949 and Relating to the Protection of Victims of International Armed Conflicts.
- 47 *The Caroline Case*, J. Moore, Digest of International Law 2, p. 412 (1906).
- 48 See, e.g., the Report of the UN Fact Finding Mission on the Gaza Conflict (A/HRC/12/48) (2009) The "Goldstone" Report.
- 49 ICJ Advisory Opinion, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, 9 July 2004, paragraph 139.
- 50 Separate opinions of Judges Higgins, Buergenthal, and Owada, ICJ Advisory Opinion, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, 9 July 2004.
- 51 Kimberly N. Trapp, "Back to Basics: Necessity, Proportionality and the Right of Self-Defence Against Non-State Terrorist Actors," 56 *International and Comparative Law Quarterly*, pp. 141, 156 (2007).



# Universal Jurisdiction: Learning the Costs of Political Manipulation the Hard Way

Dr. Rephael Ben-Ari

## 1. The Complex Vision of International Criminal Justice

The last two decades have witnessed an unprecedented and rapid development in the field of international criminal law.<sup>1</sup> With the end of the stagnancy and pessimism that characterized the Cold War era, the way was opened for a new “post-modern” era, underlined by the notions of globalization, de-territorialization and interconnectedness, as well as the upholding of the human interest, which supposedly supersedes national interests.<sup>2</sup> Against this background, the quest for the establishment of a global system of international justice was loudly and enthusiastically heard within diplomatic, academic, and civil-society circles.<sup>3</sup> This intellectual and political atmosphere facilitated the establishment of several *ad hoc* international criminal tribunals, such as the ICTY and the ICTR,<sup>4</sup> as well as the adoption of the Rome Statute and the formation of the International Criminal Court (ICC) – a long-awaited major achievement.<sup>5</sup> It also encouraged renewed interest in the concept of universal jurisdiction, expected to become a cornerstone of a multilateral endeavor – indeed a vision – to create a comprehensive system to ensure that perpetrators of the “most serious crimes of international concern”<sup>6</sup> would not find safe haven, and to deter potential perpetrators – mostly leaders, high-ranking officials and commanders – from materializing their atrocious schemes.<sup>7</sup>

Universal jurisdiction is by no means a new concept.<sup>8</sup> Nevertheless, despite recurring attempts by various forums to outline the doctrine,<sup>9</sup> it is still difficult to find a broadly accepted definition that describes the legal notion of the principle of universal jurisdiction.<sup>10</sup> Clearly, this is one of the main reasons for the substantial confusion surrounding this usage.

The 2009 African Union-European Union (AU-EU) joint Expert Report on the Principle of Universal Jurisdiction suggests that:

universal criminal jurisdiction is the assertion by one state of its jurisdiction over crimes allegedly committed in the territory of another state, by nationals of another state, against nationals of another state, where the crime alleged poses no direct threat to the vital interests of the state asserting jurisdiction.<sup>11</sup>

In other words, universal jurisdiction amounts to an exceptional extraterritorial claim by a state to prosecute crimes in circumstances where none of the traditional criminal jurisdictional links that rely on a territorial or national nexus<sup>12</sup> exist at the time of the commission of the alleged offence.<sup>13</sup> It is the heinousness of the alleged offence – indeed an *international* crime<sup>14</sup> – that theoretically justifies the assertion of jurisdiction by national judges, supposedly acting on behalf of the interests of the “international community as a whole.”<sup>15</sup>

Universal jurisdiction is not the only international legal doctrine that enables states to assert jurisdiction over foreign nationals with regard to crimes that have not been committed on their soil. Numerous international treaties *oblige* signatory states to exercise their criminal jurisdiction over the crimes defined in those treaties,<sup>16</sup> or to extradite the alleged offender to states that will prosecute them;<sup>17</sup> this obligation materializes only when the suspect is *present* in the territory of the forum state. Unlike this form of *treaty-based* extraterritorial jurisdiction, universal jurisdiction is regulated by *customary* international law. States thus largely accept that customary law *permits*<sup>18</sup> them to exercise their criminal jurisdiction over certain categories of international crimes (such as genocide, crimes against humanity, certain war crimes, piracy, etc.).<sup>19</sup> However, national legislation, jurisprudence, and practice are far from being conclusive regarding the definition of categories of international crimes justifying the assertion of universal jurisdiction.<sup>20</sup> Furthermore, it is unclear whether a state can exercise universal jurisdiction *in absentia*, without the accused being in the custody of the forum state.<sup>21</sup> Another controversial question, which remains open, is the scope of universal jurisdiction *vis-à-vis* the immunity recognized for certain high-ranking officials under international law.<sup>22</sup>

## 2. The Inherent Potential for Manipulation and Abuse

Unlike the general doctrine of universal jurisdiction, the ICC and the *ad hoc* criminal tribunals are international institutions that act on the basis of broad consensus reflected in constituent international treaties and binding resolutions of the UN Security Council. These documents outline a comprehensive scheme of jurisdictional checks and balances. Universal jurisdiction, on the other hand, is implemented by *national* authorities; its application and interpretation is therefore subjected to the discretion of national prosecution and judicial authorities, and the conceptions of politicians regarding the interests of the international community.<sup>23</sup> In view of the above, although the modern idea of universal jurisdiction was much discussed after the Nuremberg and Tokyo trials and the judgment of the Israel Supreme Court in the *Eichmann* case,<sup>24</sup> until two decades ago, states were reluctant to implement it. The high political costs and the risks of infringing upon the sovereignty of other states deterred national authorities from legislating this vague customary doctrine. Nevertheless, in the late 1990s, several countries, mostly Western-European – led by Belgium and Spain, which were probably motivated by the adoption of the Rome Statute of the ICC and the heated discussions on the future of the international rule of law in view of the dreadful events in Kosovo, Rwanda, Congo, and other places – started to adopt relevant laws that enabled their courts to hear claims based on the principle of universal jurisdiction.<sup>25</sup> Such claims, submitted by foreign individuals, mostly victims of atrocities, and various international non-governmental organizations (INGOs), on the basis of national

legislation that broadly interpreted the principle of universal jurisdiction, brought about a massive number of claims that practically turned certain European capitals into self-appointed international criminal courts.<sup>26</sup> Eventually, only very few of these claims matured into convictions. This, however, has not prevented numerous claimants and interested parties to issue complaints against top foreign officials and political leaders, having discovered the possibility of abusing universal jurisdiction-based proceedings as a powerful tool for the promotion of political agendas.

The record of Palestinian and pro-Palestinian groups in this regard has been highly significant. Their intensive manipulation of universal jurisdiction in the last few years, within the framework of the so-called “lawfare” campaign against Israel,<sup>27</sup> can take much credit for the fact that, within less than a decade, most of the leading countries that had recognized an unqualified national version of universal jurisdiction had to modify their legislation so as to limit the ability of foreign interest groups and individuals to initiate proceedings that abused their courts.

Clearly, the potential for abuse and politicization of the universality principle is great. It was mainly for this reason that universal jurisdiction was sharply described by one commentator as a “waking giant” that might brutally threaten to smash the already fragile web of interstate relations.<sup>28</sup> As interest groups soon discovered, the costs of initiating a claim are relatively low, while the potential for political and media gains are enormous. Since universal jurisdiction-based proceedings are the exclusive domain of national, rather than international, judicial authorities, in most cases it is sufficient to find a low-level, like-minded judge who is willing to begin an investigation into a case, or worse, to issue an arrest warrant against some senior foreign official.<sup>29</sup> Regardless of the fact that in most cases such a warrant would be revoked, the harassment caused to the official, the headlines that such an investigation would produce, and the political embarrassment that would follow, would have an immediate impact on international public opinion. It would also impact the bilateral relations between the forum state and that of the suspected official; if the latter retaliates, the two governments could very soon find themselves in the eye of an international political storm that could easily get out of hand. For these reasons, bringing suspected perpetrators of international crimes to justice has turned, at best, into a secondary goal; the golden opportunity to interfere in the normal course of interstate relations has become a prominent incentive to filing complaints against foreign officials in third states.

\* \* \*

In the following sections, we will review the proceedings initiated against Israeli officials in Belgium, Spain, and the United Kingdom, within the last few years. Lawsuits against Israeli officials were also initiated in other countries.<sup>30</sup> However, abuse of universal jurisdiction proceedings in these particular states was the most far-reaching and thus exemplified the high costs involved in “universal jurisdiction campaigns.”

### 3. The Proceedings in Belgium

The pilot case brought by Palestinian plaintiffs under national universal jurisdiction legislation was the so-called “Sharon Case.” Although this case did not result in a conviction, the public, political, and legal turmoil that it caused, and which lasted for several years, motivated Palestinians and pro-Palestinian groups to initiate many additional proceedings in various countries in Europe.

In June 2001, 24 individuals of Palestinian or Lebanese origin filed a complaint against the then-acting prime minister of Israel, Ariel Sharon, and Amos Yaron, the director-general of the Israeli Ministry of Defense, for genocide, crimes against humanity, and war crimes;<sup>31</sup> the two top government officials were accused of being responsible for the Sabra and Shatila massacres.<sup>32</sup> Clearly, the claimants were encouraged by the 2001 landmark ruling of the House of Lords in *ex parte Pinochet*<sup>33</sup> that allowed, for the first time, the extradition of a former head of state, the Chilean dictator, Augusto Pinochet, from Britain to Spain, following a request made by a Spanish investigating judge on the basis of the Spanish universal jurisdiction law.<sup>34</sup> The very supportive public and academic atmosphere that surrounded the Pinochet proceedings gave the impression that legal history was being made, and that victims would finally find redress under the doctrine of universal jurisdiction.<sup>35</sup> It gave reason to believe that similar proceedings in other countries against acting top officials could be highly successful and attract excessive public attention. It was therefore decided to take advantage of the 1993 Belgian law (as amended in 1999) establishing the universal jurisdiction of the Belgian courts, which related to the prosecution of gross violations of international humanitarian law, genocide, and crimes against humanity.<sup>36</sup>

#### 3.1 Malicious Forum Shopping

The Belgian forum was chosen after careful examination of the various possibilities in a number of Western systems.<sup>37</sup> The law had already been applied once, which led to the conviction in June 2001 – just a few days before the Palestinian complaint was filed<sup>38</sup> – of four Rwandan defendants who resided in Belgium, and who were found guilty of participating in the 1994 Rwandan genocide.<sup>39</sup> The “Rwandan trial” led to a stream of complaints filed in Belgium<sup>40</sup> against high-ranking foreign government officials.<sup>41</sup> Some of these complaints, however, did not have any link whatsoever to Belgium.<sup>42</sup> Eventually, this led Belgian politicians and jurists to call for amendments to the law that would limit

its unqualified application.<sup>43</sup> The Palestinian complaint that was filed in the midst of this domestic debate politicized the drafting efforts, by provoking politicians – who were intensively lobbied – as well as NGOs, to take a harsher public stance in favor of an extension of Belgian jurisdiction.<sup>44</sup>

The political nature of the complaint was obvious: none of the complainants was residing in Belgium. More significantly, none of the Lebanese citizens directly responsible for the massacres was mentioned in the complaint.<sup>45</sup> The crime of genocide was highlighted, giving the impression that the defendants were involved in a comprehensive genocidal scheme, and bearing the potential for further allegations against other officials involved in the Lebanon War. The timing of the filing of the complaint was strategically chosen, tailored to fit the delicate political circumstances. It was only three months after Prime Minister Sharon was elected (March 2001) and just before Belgium was to assume the Presidency of the European Union (July–December 2001).

### 3.2 A Universal Jurisdiction Campaign

The complaint was accompanied by a well-orchestrated press campaign. On the eve of filing the complaint, the BBC aired its Panorama program *The Accused*, investigating the role of Sharon in the Sabra and Shatila massacres, of which counsels for the victims had been informed two weeks in advance through an Amnesty International friend.<sup>46</sup> The lengthy text of the complaint was distributed at a press conference held immediately after it had been formally filed, and was later posted on the Internet and translated into six languages.<sup>47</sup> A special website dedicated exclusively to the case launched the “International Campaign for the Victims of Sabra and Shatila,”<sup>48</sup> while supportive “Sabra and Shatila committees” sprang up across the world.<sup>49</sup> All this attracted massive media attention, as well as the active involvement of academics and human-rights activists.<sup>50</sup> Massive financial support and the backing of leading INGOs, including Amnesty International, Human Rights Watch, and *Avocats sans Frontières*, were assured in advance,<sup>51</sup> coloring the proceedings as a battle, pitting Israel against universal jurisdiction and the global “fight against impunity.”<sup>52</sup> Family members of the victims were flown to Belgium; together with Palestinian students, they loudly protested against the Israeli officials in front of the press within the court corridors, both before and after the sessions. Belgian politicians were also motivated to get involved in the proceedings. A group of Belgian senators intervened several times before the Prosecution Chamber; a delegation of senators, headed by the head of the Justice Commission at the Belgian Senate, along with leading journalists, even flew to Lebanon to meet with Elias Hobeika, the leader of the Phalangist forces who had been accused of directing the massacre in the camps.<sup>53</sup> A meeting with victims of the massacres was organized at the Belgian Senate following a hearing before the Prosecution Chamber. During the hearing, invitations to journalists were distributed to attend a press conference at the Senate.<sup>54</sup>

### 3.3 Legal Turmoil and Political Embarrassment

From the moment that the Belgian prosecution invited the investigating magistrate to begin the examining procedure, and the State of Israel got involved in the proceedings, challenging the legality of the unqualified Belgian law under international law, the “Sharon affair” evolved rapidly, encompassing many twists and turns. The critical issues about whether the presence of the accused was a precondition for the application of universal jurisdiction by national judges, and whether an incumbent prime minister was entitled to procedural immunity under international law,<sup>55</sup> were reviewed by the full chain of Belgian courts, as well as the most senior prosecution officials, reaching the Supreme Court in 2003 (following an appeal by the plaintiffs).<sup>56</sup> Much of the sting of the case was removed once the International Court of Justice (ICJ) ruled in the *Arrest Warrant* case<sup>57</sup> in 2002 that a prime minister, while in office, was entitled to procedural-personal (*ratione personae*) immunity from any criminal proceedings under customary international law.<sup>58</sup> Later, although the Appeals Court ruled that the presence of the accused in Belgium was required in order to allow the proceedings, the *Cour de Cassation* overruled the decision, allowing the proceedings against Amos Yaron to proceed, rejecting the position of Israel and upholding the position that the application of the Belgian universal jurisdiction law was indeed unlimited. In light of this development, and after intensive legal and diplomatic efforts, Israel recalled its ambassador from Brussels.<sup>59</sup>

It was only the complaint that was filed against former president of the United States, George H.W. Bush, and other high-ranking American officials, by several Iraqi families, preceding the second war against Iraq,<sup>60</sup> and the threats by the American administration to take far-reaching political steps in response, including, in particular, the closure of the NATO headquarters in Brussels, that almost immediately “convinced” the Belgian authorities to introduce significant amendments to their law on universal jurisdiction, so as to limit its scope and proceedings.<sup>61</sup> The amended law essentially required a link between the victim or the accused to Belgium, and invested the Federal Prosecutor with wide authority to oversee the proceedings, thus effectively barring foreign individuals and interest groups from filing abusive complaints.<sup>62</sup> Israel’s main argument before the Belgian courts – that the initial unqualified version of the law was designed to grant Belgium “virtual and surrealistic jurisdiction over all offences against international humanitarian law in the world,”<sup>63</sup> thus diverting from the scope of universal jurisdiction under customary law, and allowing manifestly political claims to proceed – became obvious. Eventually, the “Sharon saga” showed the international community that,

[U]niversal jurisdiction does not operate in a vacuum. The process raises interstate tensions in ways that even the most vociferous criticism by one state of another’s human rights practices does not...[W]hen justice becomes personal, so does foreign policy. And when private prosecutors are part of the mix, the match can get very ugly.<sup>64</sup>

Unfortunately, although the Sharon case could serve as a laboratory for the future of universal jurisdiction by highlighting the myriad of international actors who had a direct interest in these laws and the steps they would take to advance their claims,<sup>65</sup> some states had yet to learn the lesson.

## 4. The Proceedings in Spain

The Belgian experience, while failing to reach the stage of a court trial, proved to be very fruitful in terms of its political and propaganda impact. Once the Belgian door was closed, it was therefore only a matter of time before further proceedings were initiated in countries that still allowed their legislation to be manipulated by foreign complainants. As was revealed by a report issued by the UK-based *Friends of Al-Aqsa*, filing lawsuits against Israeli officials was very high on the priorities of Palestinian activists:

The momentum is growing and resistance is mounting. Each of us who participates in the Palestinian cause is part of that resistance. Thus far, thousands of us have risen up and taken action. We are working to file arrest warrants for war crimes and crimes against humanity against Israeli military personnel in every jurisdiction around the world that allows it.<sup>66</sup>

Spain, the leading country at the time in terms of promoting the notion of an unlimited universal jurisdiction,<sup>67</sup> was an obvious option.<sup>68</sup>

### 4.1 The Tyranny of Interested Judges and Activists' Groups

Although the Spanish law on universal jurisdiction, first enacted in 1985, was not as broad as the initial Belgian law,<sup>69</sup> it was still interpreted as allowing investigations against foreign defendants to be held *in absentia*,<sup>70</sup> without any link to Spain. This gave the investigating judges of the *Audiencia Nacional* (National Audience)<sup>71</sup> expansive jurisdictional power to hear complaints brought by various human rights organizations and private litigants against foreign officials, and to open criminal investigations accordingly. Such was the case with the *Pinochet* affair, which brought world fame to the Spanish investigating judge Baltasar Garzón, who, in 1998, demanded the extradition from Britain of the former dictator within his investigations into the mass atrocities that had taken place in Chile.<sup>72</sup> Clearly, Garzón set an example for other judges of the *Audiencia*, who were encouraged by various INGOs and human rights purists to continue their “crusade to vindicate gross human rights violations” in Spanish courts.<sup>73</sup> Nevertheless, much like the case in Belgium, and despite the success of the *Pinochet* case, the zealous atmosphere and the fact that several states whose citizens were being prosecuted protested vehemently against the violation of their sovereignty,<sup>74</sup> provoked a public debate in Spain. Pragmatists warned against the adoption of a “radical form of universal jurisdiction devoid of strong procedural footing that could violate international customary law and harm diplomatic relations.”<sup>75</sup> This debate was followed by a clash between Spain’s two high courts – the Supreme Court and the Constitutional Tribunal – over the correct interpretation of the Spanish law regarding universal jurisdiction.<sup>76</sup> In 2005, the Constitutional Court eventually overruled the decision of the Supreme Court, thus upholding the unqualified version of the Spanish law. This effectively provided the judges of the *Audiencia* a carte blanche to initiate unrestrained investigations *in absentia*, without having to wait for an alleged culprit to enter Spain’s territory.<sup>77</sup>

As in Belgium, the Palestinian and pro-Palestinian lawyers took advantage of the loud public debate over the scope of universal jurisdiction that was ongoing in Spain, to bring in a controversial complaint against former Israeli officials. In June 2008, the Palestinian Center for Human Rights (PCHR)<sup>78</sup> filed a complaint before *Audiencia* Judge Fernando Andreu Merelles against seven high-ranking officials for suspected “crimes against humanity” for their involvement in the targeted killing of Salah Shehadeh, the commander of the military wing of Hamas in Gaza, in July 2002.<sup>79</sup> The PCHR, acting on behalf of some of the families of civilian casualties, hoped that “universal jurisdiction would become a real avenue for Palestinians to seek redress for Israeli crimes” following this case.<sup>80</sup> To this end, the PCHR hired the services of the notorious Spanish “human rights lawyer” Gonzalo Boyé – a Marxist revolutionary who had served a 10-year sentence in a Spanish prison for collaborating with the Basque terrorist group ETA, and was involved in most of the universal jurisdiction lawsuits that were filed in Spain, including those against American officials.<sup>81</sup> By the end of January 2009, following Boyé’s petition, the Spanish magistrate, Merelles, who probably identified an opportunity to follow his colleague Garzón<sup>82</sup> and gain international publicity, issued a decision to open a criminal investigation against Binyamin Ben-Eliezer, former Minister of Defense; Dan Halutz, former Commander of the Israeli Air Force; Moshe Ya’alon, former Chief of Staff of the IDF; Avraham Dichter, former Director of the General Security Service; Doron Almog, former General of the Southern Command of the IDF; Giora Eiland, former Chairman of the National Security Council and National Security Advisor; and Michael Herzog, former Military Secretary of the Israel Minister of Defense. Merelles determined that “the events may and *must* be investigated by the Spanish courts” as the evidence suggested that Israel had engaged in a “disproportionate attack,” based on the Spanish law on universal jurisdiction as interpreted by the Constitutional Tribunal to provide an absolute jurisdiction.<sup>83</sup>

#### 4.2 A War on the “War on Terror”

As in Belgium, the timing of the filing of this particular lawsuit was carefully calculated, leaving no doubt as to its political nature: Operation Cast Lead, the IDF’s ground invasion of the Gaza Strip (December 2008 – January 2009) had ended a few days before Judge Merelles released his decision to open an investigation into the case. World attention was focused on the Gaza Strip.<sup>84</sup> Israel was desperately “trying to fend off foreign censure over the civilian death toll” during that operation.<sup>85</sup> Heated discussions regarding the IDF’s operation were held at the UN Human Rights Council, calling for an international fact-finding mission to investigate the conduct of Israel,<sup>86</sup> while a network of European lawyers and pro-Palestinian activists were preparing a list with the names and personal data of some 200 Israeli soldiers, which was made available on a special website called “Israeli war criminals.”<sup>87</sup> Clearly, a complaint dealing with an alleged war crime, amounting to a “crime against humanity,” that would lead to a foreign criminal investigation into the conduct of the IDF in the Gaza Strip in the past, was a perfect legal ambush that could set a significant precedent and focus maximum international attention that would put Israel under heavy public and diplomatic pressure at home and abroad.<sup>88</sup> Furthermore, unlike the complaint against Sharon and Yaron in Belgium, the specific context of the current complaint was meant to showcase the role of international criminal law in reviewing the

legality of counter-terrorism measures employed by states involved in the “War on Terror” led by the United States and Israel.<sup>89</sup> The application of universal jurisdiction as a “weapon” to review counter-terrorism strategies<sup>90</sup> was meant to attract the sympathy and support of human-rights activists and INGOs as part of an “anti-Western globalism” movement that used international law to eat away at national sovereignty.<sup>91</sup> In this respect, an unfolding investigation would send a clear message that a state’s response to terrorist attacks represented a more serious violation of international law than the original act of terrorism.<sup>92</sup>

### 4.3 Delegitimizing Israeli Proceedings

Most importantly, the complaint filed in Spain was filed while proceedings in Israel regarding the Shehadeh affair were still pending. The Israeli High Court of Justice (HCJ), which determined that targeted killing operations were not forbidden as such,<sup>93</sup> nevertheless recommended the establishment of a special, independent examination committee, with a mandate to examine the collateral damage caused by the killing of Shehadeh, and its possible implications. The committee that was authorized to recommend disciplinary or criminal proceedings had yet to conclude its investigation when the complaint in Spain was filed. In fact, just a few days before the submission of the lawsuit by the PCHR in Madrid, the HCJ rejected a petition calling for a criminal investigation of the Shehadeh affair, due to the fact that the examination committee was still investigating the matter.<sup>94</sup> Obviously, the PCHR was trying to bypass the Israeli legal system by inviting an unprecedented foreign scrutiny of, and possible intervention in, its proceedings. Aside from establishing a dangerous precedent, a court trial in Spain would have implied that Israeli authorities were “unable or unwilling genuinely”<sup>95</sup> to handle the matter, while at the same time focusing public attention on the examination committee and exerting considerable pressure on its members.

As was expected, once Judge Merelles decided to take on the investigation, matters unfolded rapidly, attracting a great deal of international attention and causing political turbulence in and outside of Spain. The day after Merelles’s preliminary decision, Spanish Foreign Minister Miguel Angel Moratinos, being aware of the far-reaching implications of the decision against American officials also, was quick to declare that the Spanish government would consider a proposal to amend the law on universal jurisdiction.<sup>96</sup> Merelles, backed by other prominent politicians who upheld Spanish judiciary’s absolute independence,<sup>97</sup> was determined, however, to continue the official investigation into the case.<sup>98</sup> Israeli politicians protested in strong language, against what they considered a conspicuous intervention by the Spanish court in the ongoing legal proceedings in Israel. They were further outraged by the “ridicule and absurdity” of “accusing a democracy legitimately protecting itself against terrorists and war criminals,” instead of going after the terrorists themselves;<sup>99</sup> in addition, they were outraged by the possibility that Merelles could decide to issue international arrest warrants for any of the senior officials and military officers, who could then be detained upon arrival in any EU member state.<sup>100</sup>

In April 2009, the Spanish prosecution requested that the Madrid court dismiss the investigation due to the ongoing, parallel investigation in Israel. Judge Merelles refused, declaring that Israel was not conducting a criminal investigation,

and that Spanish law provided for simultaneous jurisdiction to investigate “war crimes.”<sup>101</sup> The prosecution immediately appealed the decision to the Spanish Court of Appeals, which, in June, decided to revoke the investigation due to lack of universal jurisdiction over the matter.<sup>102</sup> Backing the position of the prosecution, the court determined that a substantial, minimal link or national interest was required in order to implement universal jurisdiction that was otherwise incompatible with the fundamental principle of non-intervention in other states’ affairs. The court further concluded that Israel had jurisdictional priority in this case, and that a genuine investigation that was subject to a judicial review was already underway.<sup>103</sup>

#### 4.4 Déjà Vu

During this time, in March 2009, just before the request was made by the Spanish prosecution that Judge Merelles halt his investigation, a lawsuit was filed by a group of human rights lawyers with Judge Garzón of the *Audiencia*, against six senior US Bush-administration officials, including the former US Attorney General, Alberto Gonzales. The so-called “Bush Six” were charged with giving legal cover for the torture of terror suspects at Guantanamo Bay.<sup>104</sup> The case, which was one of several legal actions taken against US administration officials overseas, but the first to go to court thus far, exerted tremendous pressure on the Spanish political and legal systems.<sup>105</sup> In conjunction with the lawsuit against the Israeli officials, it threatened to turn Spain’s national court into a “global court,”<sup>106</sup> serving as a plaything for competing political interests.<sup>107</sup> Finding itself in the very awkward position of the Belgian authorities just a few years earlier, and risking its role as a player on the international stage,<sup>108</sup> the Spanish government proposed new legislation in May 2009, intended to limit the law on universal jurisdiction.<sup>109</sup>

Despite all of the above, the PCHR was yet to give in, zealously deciding to appeal the decision of the Court of Appeals to the Spanish Supreme Court. Backed by INGOs, such as Human Rights Watch, which were witnessing the beginning of the fall of Madrid as the capital of global justice,<sup>110</sup> it published, in the beginning of 2010, a report entitled “The Principle and Practice of Universal Jurisdiction.” This report outlined the “inadequacies of the Israeli judicial system” that “did not meet necessary international standards with respect to the effective administration of justice.” It concluded that,

[U]niversal jurisdiction constitutes an essential, long established component of international law...[It] does not represent an attempt to interfere with the legitimate affairs of the State; it is enacted as a last resort...[It] is the only available legal mechanism capable of ensuring Palestinian victims right to an effective judicial remedy. In the broader context, universal jurisdiction is also an essential tool in the fight against impunity...[It] is a stepping stone on the road to universal justice.<sup>111</sup>

The Spanish Supreme Court, however, was not convinced by the arguments of the PCHR, and in April 2010, affirmed the decision of the Court of Appeals to dismiss Judge Merelles’s investigation.<sup>112</sup> A further appeal to the Constitutional Court, although possible, was useless particularly in view of the passage, by the Spanish parliament, of a bill presenting far-reaching amendments to Spain’s

law, in November 2009, which practically barred private litigants wishing to file politically sensitive lawsuits.<sup>113</sup>

The Spanish saga – evidently more than the Belgian one – was instrumental in demonstrating the high risks and costs involved in allowing individual magistrates to selectively decide on the application of universal jurisdiction proceedings,<sup>114</sup> particularly in complex contexts such as the global fight against terrorism and ongoing political and military conflicts.<sup>115</sup> The combination of activist judges, hungry for publicity, with the lack of legal safety valves, proved to offer a very fertile soil for the breeding of manipulative lawsuits by politically motivated interest groups and individuals. The powerlessness of the executive to review, and to prevent, malicious forum-shopping by alleged victims further emphasized the responsibility of states to exercise procedural rigor in enforcing their laws and the need to create appropriate mechanisms to resolve competing jurisdictional claims.<sup>116</sup> The next state to learn these lessons the hard way – that is, through manipulation of its legal system and ensuing diplomatic pressures – was the United Kingdom.

## 5. The Proceedings in the United Kingdom

The law allowing universal jurisdiction proceedings to be initiated in the UK was considerably narrower than the Belgian or the Spanish laws, requiring the presence of the accused on British soil, before proceedings could effectively commence.<sup>117</sup> In any case, under the system of “private prosecution,” the law allowed any individual to initiate a criminal proceeding, even without having any connection to the alleged offence, before a magistrate who could then issue a summons or an arrest warrant to a visiting foreign official; all that was required was mere *prima facie* evidence.<sup>118</sup> Practically, such arrangements could hardly lead to actual court trials against Israeli officials within the UK.<sup>119</sup> Nevertheless, pro-Palestinian groups realized the great potential of manipulating the British legislation in an endeavor to disrupt diplomatic relations with Israel, and to single out its leaders. Harassing Israeli officials and top generals thus became part of the “well organized, well resourced, and concerted attempt” that was taking place in Britain “to demonize, criminalize, and delegitimize Israel in every area of public life,”<sup>120</sup> and it was publicly supported by British politicians,<sup>121</sup> as well as by judges.<sup>122</sup>

### 5.1 Challenging Customary International Law

In early 2004, an application for an arrest warrant against then-acting Israeli Defense Minister Shaul Mofaz was submitted to the Bow Street Magistrates’ Court.<sup>123</sup> The application was based on a complaint initiated by the PCHR, on behalf of families who had been affected by what was described as “the assassination policy of Israel,” or the “policy of shooting with impunity,” accusing Mofaz of committing “grave breaches” of the Fourth Geneva Convention. Mofaz was believed to be visiting the UK at the time.<sup>124</sup> Clearly, the complaint was meant to challenge the decision of the ICJ in the *Arrest Warrant* case, which did not explicitly mention an incumbent Minister of Defense among the high-ranking officials enjoying absolute state immunity under customary international law.<sup>125</sup> Eventually, the magistrate had to conclude that Mofaz, as a Defense Minister,

was also entitled to immunity, based on an analogy to the position of Minister of Foreign Affairs and the logic of the ICJ's decision.<sup>126</sup> Nevertheless, despite the fact that he was therefore barred from reviewing the application, the District Judge, C.L. Pratt, did not hesitate to indicate that “the extensive evidence” supplied to him “could certainly amount to ‘grave breaches.’”<sup>127</sup> This was a clear signal that applications against *former* officials would be welcomed by the British judiciary, which led pro-Palestinian groups to compile extensive evidence files against top Israeli generals and former leaders.

## 5.2 International Legal Ambush

In August 2005, the PCHR<sup>128</sup> handed over evidence files to the Metropolitan Police, relating to alleged “grave breaches” of the Fourth Geneva Convention, supposedly committed by Major General Doron Almog, former General of the Southern Command of the IDF. Following an application to the Bow Magistrates’ Court, an arrest warrant against Almog was issued in September by the Senior District Judge in relation to “59 house demolitions in Rafah, Gaza Strip, in 2002.”<sup>129</sup> Due to leaked information, Almog, who was scheduled to speak at a synagogue in Birmingham on the day after the arrest warrant was issued, did not disembark from the plane, and flew straight back to Israel, escaping the police awaiting him at Heathrow airport.<sup>130</sup> Israeli generals, as well as top officials and politicians, were subsequently advised to refrain from visiting the UK.<sup>131</sup>

In December 2009, a British magistrate issued another arrest warrant against former Foreign Minister Tzipi Livni, upon pro-Palestinian activist groups’ allegations that she had commissioned “war crimes” in Gaza.<sup>132</sup> Livni, then leader of Israel’s opposition, cancelled her planned visit to the UK. The diplomatic rift between Israel and the UK was mounting, as Israel retaliated by halting its routine, high-level “Strategic Dialogue” with the British government<sup>133</sup> and cancelling Deputy Prime Minister Dan Meridor’s visit to Britain.<sup>134</sup>

## 5.3 Déjà Déjà Vu

Livni’s near-arrest thus marked a turning-point in dealing with the abuse of British proceedings,<sup>135</sup> leading to intense political and academic debate. Both Labour and Conservative leaders, having realized the high costs of maintaining the system of “private prosecution” in universal jurisdiction proceedings, and fearing their further implementation by low-level judges against American and other foreign officials, vowed to change the law.<sup>136</sup> UK officials admitted that exploitation of the criminal procedure could “bring [the UK] legal system into disrepute,”<sup>137</sup> The Legal Task Force of the Scholars for Peace in the Middle East also released a statement, condemning, in strong words, the misuse of universal jurisdiction in the UK and elsewhere “in light of recent harassment of Israeli officials” and insisted upon reform.<sup>138</sup> On the other hand, extensive lobbying by pro-Palestinian advocacy groups and politicians,<sup>139</sup> backed by various INGOs and human rights groups, such as the London-based Amnesty International, Human Rights Watch and the International Federation for Human Rights,<sup>140</sup> prolonged the political debates surrounding the passage of amendments to the law. Nevertheless, in September 2011, the UK’s Police Reform and Social

Responsibility Act was accepted, requiring the approval by the UK Director of Public Prosecutions – the head of the UK’s Crown Prosecution Service – before a British court could issue a privately-sought arrest warrant for universal jurisdiction offences.<sup>141</sup> This practically meant that the issuance of a warrant required consultation with the Attorney General – the chief legal advisor to the Crown – as well as the Cabinet Ministers, for their views on “such an arrest and the impact that that might have on the UK’s national interest.”<sup>142</sup> With this reform, the UK joined Belgium and Spain, both which, within less than a decade, had drastically changed the scope of their laws on universal jurisdiction. Evidently, even the UK – a country that did not enact too permissive a law in the first place – still could not resist the abuse of its legal system by politically interested groups, as well as the selectivity of interested judges.

## **6. The Unbearable Lightness of Manipulation – Lessons and Conclusions**

### **6.1 Universal Jurisdiction – A Simple Concept?**

“Universal jurisdiction is a simple concept”;<sup>143</sup> it “constitutes an essential, long established component of international law”<sup>144</sup> – so goes the message delivered by Palestinian propaganda, echoing some prominent INGOs.<sup>145</sup> Nothing is more remote from the truth,<sup>146</sup> as a quick look into the discussions on universal jurisdiction, which were held at the UN Sixth Committee (Legal) within the last few years, demonstrates. Across the board, state delegates to the Committee note “the divergent views and differing practices,” the “evolving scope and nature of the principle and new substance given to it,” and the need for a “cautious approach to be taken” in dealing with the complex issues involved.<sup>147</sup> They warn that the “limitless application” of universal jurisdiction might lead to “conflicts of jurisdiction between States, to subjecting individuals to procedural abuses, or to politically motivated judicial prosecutions.”<sup>148</sup> They call for an “unbiased application” of the principle, in order to “prevent its selective application or exploitation for settling political scores”<sup>149</sup> and note the need for “further clarification and consensus-building” to “strengthen the application of universal jurisdiction” and “give legitimacy and credibility to its usage.”<sup>150</sup> Paradoxically, it has been the particularly extensive activity of pro-Palestinian interest groups that has exposed just how complex and unsettled the principle of universal jurisdiction is; this activity has been highly instrumental in demonstrating to all and sundry within the international community – legislators, politicians, judges and the general public – the dangers of its unrestrained application, as well as the lack of consensus surrounding its implementation.

### **6.2 The High Price of Manipulation**

Within a very short period of time, the three leading states that had adopted different modules of laws which allowed their courts to establish universal jurisdiction proceedings had to amend their legislation. Due to political manipulation, mostly against Israel, and later against the United States, all three came to realize that such proceedings could be a double-edged sword; the “lush feeling of moral superiority” could, at most, be afforded in the case of weaker

states.<sup>151</sup> They consequently limited the scope of their laws in a way that altogether either barred foreign individuals and groups from bringing lawsuits which bore no link to the forum state, or provided for substantial executive scrutiny of judicial decision-making. Unfortunately, principally due to the Palestinian abuse of universal jurisdiction-based proceedings and the bona fides of those states that had introduced them into their legal systems, some of these far-reaching amendments might eventually undermine the original notion of universal jurisdiction, and thereby defy the interests of international justice, by preventing the application of the principle, even in appropriate cases of exceptional character, where the prosecution of international crimes and mass atrocities is truly warranted and justified.<sup>152</sup>

Manipulation of universal jurisdiction has thus had a backlash against human-rights organizations and activists, which provided broad, unqualified support to Palestinian groups' abuse of proceedings in their "lawfare" campaigns against Israel.<sup>153</sup> Such activity thus showed that,

universal jurisdiction was anything but universal in practice. As an almost exclusively European affair [it] represented a curious mixture of *mission civilisatrice and resistance against United States Hegemony and Israeli exceptionalism*.<sup>154</sup>

Supporting – or downright manufacturing – headline-making "virtual cases"<sup>155</sup> against former senior officials, rather than strengthening international criminal law, made a mockery of it;<sup>156</sup> instead of promoting a transnational worldview and upholding global victimhood principles, it facilitated the introduction of state-centric mechanisms and domestically centered valuation of international claims.<sup>157</sup> Much like the case of the adoption of the ICC Statute in Rome in 1998, therefore, West-European "universal jurisdiction campaigns" should serve as a resounding lesson for groups seeking either to promote one-sided political agendas and gain publicity under the guise of promotion of human rights and a global rule of law, or to push too hard towards the "end of nationhood" by undermining the sovereignty of certain states.<sup>158</sup>

### 6.3 Asymmetric Application and Political Agendas

Most of the complaints brought against Israeli (and American) senior officials were intentionally framed in the context of, and as a means for undermining, the fight against terrorism. They consequently exposed the normative complexities involved in the asymmetric application of international criminal arrangements. The fact that universal jurisdiction typically deals with so-called "crimes of state" and the liability of state officials,<sup>159</sup> and not with offences typically committed by non-state actors and terrorists, still presents a significant challenge that shadows the lofty goals underlying the doctrine. This is all the more true in a world where the fight against the malignant phenomenon of global terrorism is not shared evenly by states, and where there is still no broadly accepted definition – let alone political consensus – regarding terrorist activity. It also raises deep concerns regarding the future application of universal jurisdiction in the context of other controversial "state crimes," such as that of aggression.<sup>160</sup>

Furthermore, in this regard, some commentators wanted to use universal jurisdiction-based petitions against Israeli officials abroad as an incentive for the conduct of “genuine and effective” domestic legal proceedings that would allegedly defend officials from foreign claims.<sup>161</sup> There is surely no doubt that prompt, objective, and effective domestic proceedings and investigations into alleged violations of human rights and humanitarian law are of crucial importance, a national interest indeed. Nevertheless, if anything, the short, but highly dense, history of proceedings against Israelis abroad suggests that domestic proceedings are *not* an effective barrier against the abuse of foreign proceedings.<sup>162</sup> Once lawsuits abroad are motivated, first and foremost, by political and propaganda considerations, anything less than maximal prosecution will always leave room for the argument that domestic proceedings are conducted “unwillingly” and “ineffectively,” or designed to get the defendant “off.” In this way, while a prosecution by the home state cannot be undone by others, decisions to not prosecute can be nullified by other states’ decisions to prosecute, and extra-judicial settlements can easily be ignored.<sup>163</sup> Consequently, a state showing the slightest sign of being inclined to conduct domestic proceedings due to fear of foreign lawsuits will most probably be inviting even more complaints from abroad, risking foreign scrutiny of, and even possible intervention in the conduct of domestic proceedings.<sup>164</sup> Such a development is particularly dangerous in the context of the fight against terrorism, due to the limited appreciation of the unique dilemmas posed by terrorism and counter-terrorism.<sup>165</sup>

## 6.4 Controversial Involvement of INGOs and Interest Groups

The conduct of “universal jurisdiction campaigns” against Israelis abroad also demonstrates the potential risks involved in the participation of certain INGOs and interest groups in the conduct of future domestic proceedings and investigations. Today, when most of the relevant countries have effectively closed their doors before foreign private litigants,<sup>166</sup> the motivation of interest groups to find and apply alternative channels of prosecution, such as the ICC and Israeli domestic legislation, is probably high. This means that any consideration of new domestic investigation and prosecution proceedings will certainly require serious evaluation of the proper procedural mechanisms and legal safety valves required to ensure that such proceedings are not easily abused and manipulated. Such an endeavor will probably require consideration of complementary legislation regarding, *inter alia*, interest groups’ sources of funding and support for terrorism. At the same time, international judicial institutions, such as the ICC, should be aware of not letting themselves be manipulated by parties to political conflicts and by their proponents, thus undermining their legitimacy and credibility.

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Universal jurisdiction is an important concept, and is here to stay. It could – and should – evolve into a cornerstone of the multilateral endeavor to end impunity and to bring justice to victims of the most atrocious of crimes. It is therefore all the more unfortunate that “lawfare” against Israel in the form of universal jurisdiction campaigns has set back the cause of international global justice in this regard. Indeed, some commentators argue that universal jurisdiction had become a mere “self-feeding hype generated by NGOs, activist lawyers and judges, academic conferences and papers, and mass-media.”<sup>167</sup> This probably goes too far.

Nevertheless, it is a powerful reaction in the face of the unbearable lightness of political manipulation. If universal jurisdiction is to be meaningful in the future, the lessons on how easily international law can be exploited and diverted from its true objectives,<sup>168</sup> turning it into an “international lynch-law,”<sup>169</sup> must resound.

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## Notes

- 1 See A. Cassese, *International Criminal Law* (2nd Ed.), (2008), p. 4; M.N. Shaw, *International Law* (7th Ed.), (2008), pp. 398, 402–403.
- 2 See, for example, R. Cooper, *The Breaking of Nations: Order and Chaos in the Twenty-First Century* (2003), explaining that in the so-called postmodern international order, as the state itself becomes less dominating, ‘state interest becomes less of a determining factor in foreign policy: the media, popular emotion, the interests of particular groups or regions (including transnational groups) all come into play’ – see p. 50. Consequently, the ‘postmodern state’ values above all the individual, and society, as a whole, becomes more skeptical of state power, less nationalistic. For the ‘postmodern state’ success therefore supposedly means openness and transnational cooperation – see p. 51, 76. For further discussion of the notions of globalization and de-territorialization in the context of a postmodern normative discourse – see R.H. Ben-Ari, *The Normative Position of International Non-Governmental Organizations under International Law – An Analytical Framework*, (2012), pp. 181–221.
- 3 Cooper regards the ICC a striking example of the ‘postmodern breakdown of the distinction between domestic and foreign affairs,’ reflecting the vision of a world that is governed by law rather than by force, in which those who break the law will be treated *as criminals*. In this postmodern world, *raison d’état* is replaced by a moral consciousness that applies to international relations as well as to domestic affairs. The quest for the establishment of international judicial institutions therefore, although being established by conventional treaties between sovereign states, results in ‘a growing web of institutions that go beyond the traditional norms of international diplomacy’ – see *ibid*, p. 31. See also L. Reydams, *The Rise and Fall of Universal Jurisdiction*, *Leuven Centre for Global Governance Studies*, Working Paper No. 37 (Jan. 2010), pp. 4–6, available at: [https://ghum.kuleuven.be/ggs/publications/working\\_papers/new\\_series/wp31-40/wp37.pdf](https://ghum.kuleuven.be/ggs/publications/working_papers/new_series/wp31-40/wp37.pdf).
- 4 International Criminal Tribunal for the Former Yugoslavia – see Security Council Res. 827(1993); International Criminal Tribunal for Rwanda – see Security Council Res. 995(1994); as well as mixed/hybrid tribunals such as the Special Court for Sierra Leone and the Special Tribunal for Lebanon – see generally Shaw, *op. cit.* note 1, p. 417–418.
- 5 Considered by some authors to be the most important institutional innovation since the founding of the United Nations – see W.A. Schabas, *An Introduction to the International Criminal Court*, (4<sup>th</sup> Ed.), (2011), p. X.
- 6 See Rome Statute of the International Criminal Court, UN Doc. A/CONF.183, Preamble & Art. 1.
- 7 For a discussion of the objectives of international criminal law, see R. Cryer, H. Friman, D. Robinson, E. Wilmschurst, *An Introduction to International Criminal Law and Procedure*, (2010), pp. 22–39.
- 8 See L. Reydams, *Universal Jurisdiction: International and Municipal Legal Perspectives*, (2003), pp. 28–42; A.J. Colangelo, *Constitutional Limits on Extraterritorial Jurisdiction: Terrorism and the Intersection of National and International Law*, *Harvard International Law Journal*, Vol. 48, (2007), p. 130; M. Jouet, *Spain’s Expanded Universal Jurisdiction to Prosecute Human Rights Abuses in Latin America, China, and Beyond*, *Georgia Journal of International and Comparative Law*, Vol. 35 (2007), p. 499.
- 9 See, for example, Draft Code of Crimes against the Peace and Security of Mankind, Report of the 48<sup>th</sup> Sess., *International Law Commission* (1996); Final Report on the Exercise of Universal Jurisdiction in Respect of Gross Human Rights Offences, *Committee on International Human Rights Law and Practice*, *International Law Association, Report of the 69<sup>th</sup> Conference* (2000); Princeton Principles on Universal Jurisdiction, *Princeton Project on Universal Jurisdiction, Program in Law and Public Affairs*, Princeton University (Princeton 2001); see also *Hard Cases: Bringing Human Rights Violations to Justice Abroad* -

- A Guide to Universal Jurisdiction, *Report by the International Council on Human Rights Policy*, (1999), available at: [http://www.ichrp.org/files/reports/5/201\\_report\\_en.pdf](http://www.ichrp.org/files/reports/5/201_report_en.pdf).
- 10 See Jouet, op. cit. note 8, pp. 498-499. See, for example, *Statement on Universal Jurisdiction by Mr. Viera (Brazil)*, Principle of 'Universal Jurisdiction' Again Divides Assembly's Legal Committee, *Sixth Committee*, 66<sup>th</sup> General Assembly, UN Doc. GA/L/3415 (12 Oct. 2011), calling to 'find an acceptable definition of universal jurisdiction.'
  - 11 See AU-EU Expert Report on the Principle of Universal Jurisdiction, *Council of the European Union*, 8672/1/09 Rev1, (Apr. 2009), para. 8, available at: [http://www.africa-eu-partnership.org/pdf/rapport\\_expert\\_ua\\_ue\\_competence\\_universelle\\_en.pdf](http://www.africa-eu-partnership.org/pdf/rapport_expert_ua_ue_competence_universelle_en.pdf).
  - 12 That is the principles of territoriality, nationality, passive personality, or the protective principle, ordinarily necessary under international law in order to assert jurisdiction by national authorities.
  - 13 See AU-EU Expert Report, op. cit. note 11, para. 8.
  - 14 See Rome Statute of the International Criminal Court, op. cit. note 6, Arts. 5-8bis; Draft Code of Crimes against the Peace and Security of Mankind, op. cit. note 9, Arts. 1-2, 16-20.
  - 15 See Rome Statute of the International Criminal Court, *ibid*, Preamble; see also London Agreement of August 8<sup>th</sup> 1945 for the Prosecution and Punishment of the Major War Criminals of the European Axis, Preamble ('acting in the interests of all the United Nations'), available at: <http://avalon.law.yale.edu/imt/chart.asp>.
  - 16 Such treaty crimes include grave breaches of the 1949 Geneva Conventions, the crime of torture as defined in the Convention against Torture 1984, the crime of enforced disappearance as defined in the Convention against Enforced Disappearance 2006, as well as certain crimes defined in the so-called set of anti-terrorism conventions.
  - 17 The so-called principle of *Aut Dedere Aut Judicare* ('extradite or sentence'), which is frequently confused with the principle of universal jurisdiction.
  - 18 There is no *duty* under customary international law to prosecute all serious human rights abuses under universal jurisdiction – see, for example, S.R. Ratner, Belgium's War Crimes Statute: A Postmortem, *American Journal of International Law*, Vol. 97, (2003), p. 895; Colangelo, op. cit. note 7, p. 130.
  - 19 See, for example, discussion in Colangelo, *ibid*, p. 130.
  - 20 See in this regard discussions within the Joint Separate Opinion of Judges Higgins, Kooijmans and Buergenthal, and Separate Opinion of President Guillaume, in Case Concerning the Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo v. Belgium), ICJ Rep. 2002, p. 3; see also R. O'Keefe, Universal Jurisdiction: Clarifying the Basic Concept, *Journal of International Criminal Justice*, Vol. 2, (2004), pp. 735-760.
  - 21 An echo to this controversy can be found in the Joint Separate Opinion of Judges Higgins, Kooijmans and Buergenthal, and Separate Opinion of President Guillaume, in Case Concerning the Arrest Warrant, *ibid*. See also Jouet, op. cit. note 8, pp. 498-499, who distinguishes between countries (such as Austria, France, and Switzerland) that uphold a doctrine of *conditional* universal jurisdiction, that requires custody of the accused in order to initiate proceedings (including investigation), and countries (such as Belgium and Spain, prior to the passage of amendments to their universal jurisdiction laws) that support the *absolute* universal jurisdiction doctrine, allowing to prosecute a defendant regardless of whether he or she is in custody; see also discussion in O'Keefe, *ibid*, p. 747.
  - 22 In the Case Concerning the Arrest Warrant, *ibid*, the ICJ determined that, under customary international law, certain holders of high-ranking office in a state, *such as* the Head-of-State, Head-of-Government, and Minister of Foreign Affairs (as well as diplomatic and consular agents) are entitled, while in office, to an absolute (procedural) personal state immunity from jurisdiction in other states – para. 51. The list of high-ranking government officials entitled to such immunity is not exclusive, and depends on the function of the state official concerned. See also Application for Arrest Warrant against General Shaul Mofaz, *First instance*, unreported (Bow Street Magistrates' Court), (12 Feb. 2004), paras. 10-15.
  - 23 Kontorovich notes that while all nations are in effect joint owners of a right to prosecute under universal jurisdiction, and may share a common interest in universal jurisdiction offences, they manifestly differ in the valuations they assign to this interest – see E. Kontorovich, The Inefficiency of Universal Jurisdiction, *University of St. Gallen Law School, Law and Economics Research Paper Series*, Working Paper No. 2007-13, (Jul. 2007), pp. 14-15, available at: <http://ssrn.com/abstract=1000179>.
  - 24 Israel was one of the very first states to enact legislation based on the doctrine of universal jurisdiction through the Nazis and Nazi Collaborators Punishment Law 5710-1950, for war crimes, crimes against the Jewish people and crimes against humanity – see <http://mfa.gov.il/MFA/MFA-Archive/1950-1959/Pages/Nazis%20and%20Nazi%20Collaborators%20-Punishment-%20Law-%20571.aspx>. The law was the legal basis for the *Eichmann* case, decided by the District Court of Jerusalem and the Supreme Court of Israel in 1961/2 – see *Attorney General of Israel v. Eichmann* (1961); *Eichmann v. Attorney-General*, Supreme Court, Judgment of 29 May 1962, 36 ILR, p. 5 & 277. As such, the case is considered the starting point insofar as universal jurisdiction as manifested in domestic courts is concerned – see Shaw, op. cit. note 1, p. 671, although, as the judges in the *Eichmann* case made clear, in view of the unique circumstances, the jurisdiction of Israel was also based on the principle of passive personality, due to the fact that the victims were Jewish and were therefore represented by the State of Israel, which was the Jewish state – see paras. 9, 6, 10-12 of the Supreme Court's judgment.
  - 25 See Jouet, op. cit. note 8, p. 501; D. F. Orentlicher, Whose Justice? Reconciling Universal Jurisdiction with Democratic Principles, *Georgetown Law Journal*, Vol. 92 (2004), pp. 1057, 1059-1060.
  - 26 In fact, the jurisdiction of the ICC is considerably narrower than that which was claimed by some states under the doctrine of universal jurisdiction – see Schabas, op. cit. note 5, pp. xi-xii, 63-67; Rome Statute

- of the International Criminal Court, *op. cit.* note 6, Art. 12.
- 27 See The Use and Abuse of Universal Jurisdiction, *Jerusalem Post – Blogs (Point/Counterpoint)*, available at: <http://blogs.jpost.com>.
  - 28 See Y. Zilbershatz, Universal Jurisdiction: The Waking Giant, *Justice*, Vol. 35 (2003), p. 15.
  - 29 See, for example, The Use and Abuse of Universal Jurisdiction, *op. cit.* note 27.
  - 30 In Switzerland (against Binyamin Ben-Eliezer, former Minister of Defense, and others); in New Zealand, 2005 (against Moshe Ya'alon, former Chief-of-Staff of the IDF); in the USA, 2005 (against Moshe Ya'alon); in the USA, 2005 (against Avi Dichter, former Director of the General Security Service); in Holland, 2008 (against Ami Ayalon, former Director of the General Security Service); in Norway, 2009 (against Ehud Olmert, former Prime Minister, Ehud Barak, former Minister of Defense, Tzipi Livni, former Minister of Foreign Affairs, and others); in Turkey, 2009 (against Shimon Peres, former Prime Minister and Minister of Defense, Ehud Olmert, Tzipi Livni, Ehud Barak, and Gabi Ashkenazi, former Chief-of-Staff); the list is not conclusive. See also Overview of Lawfare Cases Involving Israel, *NGO Monitor*. (visited 30/08/2013), available at: [http://www.ngo-monitor.org/article/ngo\\_lawfare](http://www.ngo-monitor.org/article/ngo_lawfare).
  - 31 The complaint was the initiative of Chibli Mallat, Professor in European Law in St. Joseph's University in Beirut, together with two Belgian lawyers, Michael Verhaeghe and Luc Walleyn. It was the outcome of months of intensive research in the Palestinian refugee camps in Lebanon aimed at identifying the immediate relatives of victims of the massacres, held by Sana Hussein and Dr. Rosemary Sayegh, 'friend of the Palestinian cause,' dealing with Palestinians in Lebanon – see C. Mallat, Special Dossier on the "Sabra and Shatila" Case in Belgium: Introduction: New Lights on the Sharon Case, *The Palestine Yearbook of International Law*, Vol. XII (2002-2003), p. 183, 185. The criminal procedure under the Belgian law was based on the system of *constitution de partie civile* ('plaintiff-prosecutors' system), by which the victims initiate cases before an investigating judge – see Ratner, *op. cit.* note 18, p. 890.
  - 32 The massacres of 700-800 Palestinians occurred in the Sabra and Shatila refugee camps between 16-18 Sep. 1982, during the Lebanon War, by Christian Phalanges in revenge for previous massacres and the assassination of their leader Bashir Jumayil. Following the massacres, the Israeli government appointed an inquiry commission chaired by Justice Kahan to investigate the events and Israel's role in them. The commission did not find any of the relevant Israeli office holders directly responsible, although it criticized several of them for not being sufficiently aware of the possible implications of the Phalanges' advance into the camps; Sharon was required to resign from his post – for a historical account of the events in Lebanon, see Y. Gelber, The Lawsuit Submitted against Ariel Sharon in Belgium: Historical Background, *Justice*, Vol. 35, (2003), pp. 25-28. Sharon was the Israeli Defense Minister in 1982, and Yaron was the general in charge of the Beirut sector. For a detailed chronology of the proceedings in Belgium, see M. Hirsch, N. Kumps, The Belgian Law of Universal Jurisdiction Put to the Test, *Justice*, Vol. 35, (2003), pp. 20-24; Ratner, *ibid.*, pp. 889-892.
  - 33 *R. v. Bow Street Metropolitan Stipendiary Magistrate Ex. p. Pinochet Ugarte (No. 3)*, *House of Lords*, [2001] 1 A.C. 147; [1999] 2 W.L.R. 827.
  - 34 See Mallat, *op. cit.* note 31, p. 183.
  - 35 See Jouet, *op. cit.* note 8, p. 502; see generally M. Byers, The Law and Politics of the Pinochet Case, *Duke Journal of Comparative and International Law*, Vol. 10 (2000), p. 415.
  - 36 See Hirsch, *op. cit.* note 32, p. 20.
  - 37 See Mallat, *op. cit.* note 31, p. 186.
  - 38 The filing of the complaint on behalf of the Sabra and Shatila victims immediately after the conviction in the 'Rwandan trial' was carefully calculated – see Mallat, *ibid.*, p. 184.
  - 39 On the significance of the 'Rwandan trial' and its possible consequences as a leading universal jurisdiction precedent – see Ratner, *op. cit.* note 18, p. 892; Jouet, *op. cit.* note 8, p. 528-529.
  - 40 Which turned Belgium into the uncrowned 'world capital of universal jurisdiction' – see Jouet, *ibid.*, p. 501, quoting Orentlicher, *op. cit.* note 25.
  - 41 See Hirsch, *op. cit.* note 32, p. 21.
  - 42 In the beginning, either the suspect or the victims were living in Belgium. In a later stage, complaints did not even possess such links – see Hirsch, *ibid.*, p. 21.
  - 43 Although Belgium's law was not the world's first domestic statute on universal jurisdiction, it was certainly the broadest in terms of the crimes it covered and the lack of any required link to Belgium – see Ratner, *op. cit.* note 18, p. 889. Evidently, the original law was passed without taking into account the various serious issues entailed by the enactment of such law and its application – see Hirsch, *ibid.*, p. 20. See generally A. Masset, The Supreme Court of Belgium Puts an End to the Prosecution of Sharon, *Justice*, Vol. 35, (2003), pp. 29-30.
  - 44 See Hirsch, *ibid.*, p. 21, 23. A group of six NGOs was established to participate in the drafting process, in an effort to ensure the adoption of an interpretative legislation that extended the scope of the universal jurisdiction law.
  - 45 See *ibid.*, p. 21.
  - 46 Mallat, *op. cit.* note 31, p. 185-186.
  - 47 See *ibid.*, p. 185.
  - 48 The International Campaign was coordinated by the leading pro-Palestinian activist, Dr. Laurie King-Irani, who later co-founded the 'Electronic Intifada' – see <http://cosmos.ucc.ie/cs1064/jabowen/IPSC/php/authors.php?aid=842>; Mallat, *ibid.*, p. 184.
  - 49 See Mallat, *ibid.*, *ibid.*
  - 50 Mallat acknowledges in particular the active support of Yale Law School Human Rights Clinic, under the direction of Deena Hurwitz and Jim Silk, as well as of Leah Tsemel and Raef Verstraeten – see *ibid.*

- 51 See Mallat, *ibid*; Hirsch, *op. cit.* note 32, p. 22.
- 52 Mallat, *ibid*, p. 186.
- 53 See Hirsch, *op. cit.* note 32, p. 23; Mallat, *ibid*, pp. 186-188; Hubeika, former Lebanese MP, was assassinated the morning after his meeting with the Belgian delegation, near his home in a Beirut suburb. Clearly, Hubeika, who was encouraged by the counsels for the victims to take part in the proceedings, saw a golden opportunity to clear his name as the perpetrator of the massacres – see Mallat, p. 186.
- 54 Hirsch, *ibid*.
- 55 Another question was the application of the *non bis in idem* principle, regarding the absence of criminal proceedings in Israel following the publication of the Kahan Commission report and the amnesty granted by the Lebanese authorities to the perpetrators of the massacres in Sabra and Shatila – see Masset, *op. cit.* note 43, p. 35.
- 56 A full review of the legal proceedings in Belgium, and the arguments of the State of Israel, is beyond the scope of this paper – see generally Hirsch, *op. cit.* note 32, pp. 22-24; Masset, *ibid*, pp. 29-30.
- 57 In 2000, the Democratic Republic of Congo contested before the ICJ the legality of an arrest warrant issued by a Belgian judge against Yerodia Ndombasi, the Foreign Minister at the time of the warrant. In 2002 the ICJ found the warrant to be inconsistent with the procedural immunity to which an acting minister of foreign affairs was entitled under customary international law – see Case of Arrest Warrant, *op. cit.* note 20.
- 58 See fn. 22, *supra*.
- 59 Ratner, *op. cit.* note 18, p. 890.
- 60 Vice President D. Cheney, Secretary of State C. Powell, and former general N. Schwarzkopf.
- 61 See Orentlicher, *op. cit.* note 25, p. 1062. In view of the American warnings that Belgium was risking its status as a diplomatic capital, G. Verhofstadt, the Belgian Prime Minister, who during the Sharon trial expressed support for the unqualified application of the law, immediately proposed the amendments to limit its application in order to prevent ‘manifestly abusive political use of this law’ – see Ratner, *op. cit.* note 18, pp. 890-891.
- 62 The law also acknowledged the immunities of senior officials recognized under customary law; for a review and analysis of the amendments to the Belgian law – see *ibid*, pp. 890-892; Hirsch, *op. cit.* note 32, p. 24.
- 63 Hirsch, *ibid*, p. 24
- 64 Ratner, *op. cit.* note 18, pp. 893-894.
- 65 Ratner, *ibid*, p. 889; see also Jouet, *op. cit.* note 8, p. 528.
- 66 I. Patel, Forward, in War Crimes in Gaza, *Report by ‘Friends of Al-Aqsa’*, (Sep., 2009), p. 9, available at: [http://issuu.com/friendsofalaqsa/docs/gaza\\_report\\_web?viewMode=magazine](http://issuu.com/friendsofalaqsa/docs/gaza_report_web?viewMode=magazine).
- 67 Jouet, *op. cit.* note 8, p. 501.
- 68 As was predicted by some commentators – see *ibid*, p. 531.
- 69 See *ibid*, p. 499, 522.
- 70 The Belgian law originally allowed trials *in absentia*, not only investigations.
- 71 The Spanish trial court responsible for matters of international and national interest, including international crimes and terrorism – see Jouet, *op. cit.* note 8, p. 504.
- 72 The same set of investigations, dealing with the junta reign in Argentina, led in 2004 to the arrest in Spain of Adolfo Schilingo, an Argentine navy officer charged with mass-murder during Argentina’s Dirty War. This was one of the very few and probably the most famous case brought under a universal jurisdiction law that ended in a conviction after passing a complete series of appeals – see generally Jouet, *ibid*, p. 505, 522.
- 73 See *ibid*, p. 501; S. Kern, Spain, Israel and War Crimes, *Gatestone Institute* (Apr. 2009), available at: <http://www.gatestoneinstitute.org/455/spain-isreal-and-war-crimes>.
- 74 Jouet, *op. cit.* note 8, p. 502-503.
- 75 See *ibid*, p. 502.
- 76 The Supreme Court in 2004 interpreted the law as requiring a link to national interests, clarifying that the Spanish courts could only exert a narrow form of universal jurisdiction. The court explained that a broader form of universal jurisdiction would be unreasonable and would violate the principle of non-intervention in another state’s affairs as enshrined in Art. 2(7) of the UN Charter – for a discussion of the court’s ruling see *ibid*, pp. 505-507.
- 77 The Constitutional Tribunal essentially held that a procedural link to national interests was not required since universal jurisdiction was exclusively based on the substantive nature of grave crimes affecting the entire international community – see *ibid*, pp. 508-510, 512.
- 78 The PCHR was founded in 1995 by a group of Palestinian human rights lawyers. It mainly operates from Gaza. According to the center’s definition, its work includes the documentation and investigation of human rights violations. The center was behind most of the lawsuits against senior Israeli officials abroad: Shaul Mofaz (UK, 2002); Doron Almog (UK, 2005), Avi Dichter (USA, 2005); Moshe Ya’alon (New Zealand, 2005), Binyamin Ben-Eliezer and others (Spain, 2008); Ami Ayalon (Holland, 2008). According to the center’s 2008 report, and the reports of the organizations that support it, the main donors to the PCHR are: the *Welfare Association* (financed by the World Bank, among others); the *NGO Development Center* (financed by the World Bank, among others); the *Open Society Institute* (USA); *Grassroots International* (USA); the *Ford Foundation* (USA); as well as the EU and several European governments – see The Financing of Welfare Association (WA) and NGO Development Center (NDC) by the US Government via the World Bank, *Report by KELA Research and Strategy* (on file with the author); see also: The Palestinian Center for Human Rights Plays a Leading Role in Anti-Israeli Warfare,

- Report by the Meir Amit Intelligence and Terrorism Information Center*, (Apr. 29, 2013), available at: [http://www.terrorism-info.org.il/Data/articles/Art\\_20506/E\\_059\\_13\\_437439896.pdf](http://www.terrorism-info.org.il/Data/articles/Art_20506/E_059_13_437439896.pdf); Palestinian Center for Human Rights (Information Page), *NGO Monitor* (Jul. 02, 2012), available at: [http://www.ngo-monitor.org/article/palestinian\\_center\\_for\\_human\\_rights\\_pchr](http://www.ngo-monitor.org/article/palestinian_center_for_human_rights_pchr).
- 79 See War Crimes in Gaza, op. cit. note 66, p. 50. For a brief history of the proceedings in Israel – see I. Rosenzweig, Y. Shany, Universal Jurisdiction: Spanish Court Initiates an Inquiry of the Targeted Killing of Salah Shehadeh in Gaza, *Terrorism and Democracy Newsletter*, Issue No. 3, (Mar. 2009), *Israel Democracy Institute*, available at: <http://en.idi.org.il/analysis/terrorism-and-democracy/issue-no-3/>. Shehadeh masterminded numerous terror attacks against Israeli civilians and soldiers in the Gaza strip and within Israel; he was involved in the production of Qassam rockets fired against Israeli civilian targets, and in the smuggling of arms into the Gaza Strip. As the leader of the Izz ad-Din al-Qassam Brigades, he was responsible for suicide attacks that caused the death of hundreds of Israeli civilians. For the conclusions of the special investigation committee on the targeted killing of Shehadeh, see: <http://www.pm.gov.il/PMO/Archive/Spokesman/2011/02/spokeshchade270211.htm>.
- 80 See War Crimes in Gaza, *ibid*.
- 81 See G. Gordon, Spanish UJ – From Pinochet to Purgatory?, *Opinio Juris Blog* (24/7/2009), available at: <http://opiniojuris.org/2009/07/24/spanish-uj-from-pinochet-to-purgatory/>; Kern, op. cit. note 73.
- 82 See Kern, *ibid*.
- 83 See Rosenzweig, op. cit. note 79 (italics added).
- 84 See, for example, The Principle and Practice of Universal Jurisdiction: PCHR’s Work in the Occupied Palestinian Territory, *Report of the Palestinian Center for Human Rights*, (Jan. 2010), Executive Summary, available at: <http://www.pchrgaza.org>.
- 85 Kern, op. cit. note 73.
- 86 The ensuing Report of the United Nations Fact Finding Mission on the Gaza Conflict (the so-called ‘Goldstone Report’) indeed recommended states parties to the Geneva Conventions to ‘start criminal investigations in national courts, using universal jurisdiction’ – see Conclusions and Recommendations, *Human Rights Council*, UN Doc. A/HRC/12/48 (ADVANCE 2), (24 Sep. 2009), para. 1975 (italics added), available at: [http://www2.ohchr.org/english/bodies/hrcouncil/docs/12session/A-HRC-12-48\\_ADVANCE2.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/12session/A-HRC-12-48_ADVANCE2.pdf); see fn. 95, *infra*.
- 87 See A. Pfeffer, Lawyers in EU Draw up List of Alleged IDF War Criminals, *Haaretz*, (27 Oct. 2009), available at: <http://www.haaretz.com/print-edition/news/lawyers-in-eu-draw-up-list-of-alleged-idf-war-criminals-1.5386>.
- 88 Kern, op. cit. note 73.
- 89 See Rosenzweig, op. cit. note 79.
- 90 For a discussion of the risks of such strategy and its legal implications – see *ibid*, under ‘Conclusions.’
- 91 See Kern, op. cit. note 73.
- 92 Rosenzweig, op. cit. note 79.
- 93 See HCJ 769/2 Public Committee against Torture v. State of Israel (the so-called ‘Targeted Killing Case’). The HCJ further determined that every case that involved civilian casualties had to be examined by a special committee.
- 94 See HCJ 8794/03 Yoav Hess et al. v. Judge Advocate General et al.
- 95 Following the wording of Art. 17(1)(a) & (b) of the Rome Statute of the International Criminal Court, op. cit. note 6. Recall in this regard that, although the ‘Goldstone Report’ initially raised ‘serious doubts about the willingness of Israel to carry out genuine investigations’ as required by international law – see op. cit. note 86, para. 1961, in an April 2011 Washington Post Op-Ed, Goldstone admitted that, ‘if I had known then what I know now, the Goldstone Report would have been a different document.’ Furthermore, Goldstone determined that Israel had fulfilled ‘to a significant degree’ its responsibility to investigate ‘transparently and in good faith’ the incidents referred to in the report, while the ‘ Hamas ha[d] done nothing’ – see R. Goldstone, Reconsidering the Goldstone Report on Israel and War Crimes, *Washington Post – Opinions*, (Apr. 1, 2011), available at: [http://articles.washingtonpost.com/2011-04-01/opinions/35207016\\_1\\_drone-image-goldstone-report-israeli-evidence](http://articles.washingtonpost.com/2011-04-01/opinions/35207016_1_drone-image-goldstone-report-israeli-evidence).
- 96 See Kern, op. cit. note 73; I. Rosenzweig, Y. Shany, Update - Universal Jurisdiction: Spanish Court’s Inquiry of the Targeted Killing of Salah Shehadeh, *Terrorism and Democracy Newsletter*, Issue No. 5, (May 2009), *Israel Democracy Institute*, available at: <http://en.idi.org.il/analysis/terrorism-and-democracy/issue-no-5/>.
- 97 Such as Deputy Prime Minister Maria-Teresa Fernandez de la Vega – see Kern, *ibid*.
- 98 See Rosenzweig, op. cit. note 96.
- 99 See Kern, op. cit. note 73, quoting incoming Prime Minister Netanyahu.
- 100 See *ibid*.
- 101 See Rosenzweig, op. cit. note 96.
- 102 See I. Rosenzweig, Y. Shany, Update on Universal Jurisdiction: Spanish Court of Appeals Decides to Close the Inquiry into the Targeted Killing of Salah Shehadeh, *Terrorism and Democracy Newsletter*, Issue No. 8, (Aug. 2009), *Israel Democracy Institute*, available at: <http://en.idi.org.il/analysis/terrorism-and-democracy/issue-no-8/>.
- 103 For a review of the minority opinion – see *ibid*.
- 104 See P. Haven, Spain: No Torture Probe of US Officials, *The Associated Press* (Madrid), available at: <http://www.google.com/hostednews/ap/>. Another judge of the *Audiencia* was already investigating whether secret CIA flights to or from Guantanamo entered Spanish airspace or landed at Spanish airports.

- 105 See Gordon, op. cit. note 81.
- 106 Ibid.
- 107 In the words of Candido Conde-Pumpido, Spain's top law-enforcement official - see Haven, op. cit. note 104.
- 108 See Gordon, op. cit. note 81.
- 109 See Rosenzweig, op. cit. note 96; War Crimes in Gaza, op. cit. note 66, p. 50.
- 110 See Gordon, op. cit. note 81.
- 111 See PCHR Report, op. cit. note 84.
- 112 See I. Rosenzweig, Y. Shany, Update on Universal Jurisdiction: Spanish Supreme Court Affirms Decision to Close Inquiry into Targeted Killing of Salah Shehadeh in Gaza, *Terrorism and Democracy Newsletter*, Issue No. 17, (May 2010), *Israel Democracy Institute*, available at: <http://en.idi.org.il/analysis/terrorism-and-democracy/issue-no-17/>. The Court pointed out, *inter alia*, that the fact the appellants had initially filed their complaint before the Israeli courts inferred that they accepted the genuineness of the Israeli proceedings.
- 113 The reform to the Spanish law included three non-cumulative requirements for the application of universal jurisdiction: presence of the accused on Spanish territory; Spanish nationality of the victims; or other relevant connection to Spain – for analysis and review of the new requirements, see C. Espósito, Shrinking Universal Jurisdiction, *ESIL Newsletter* (Feb. 2010).
- 114 Some commentators pointed out that the *Audiencia* judges had never sought to prosecute any Hamas or Fatah terrorists, nor crimes against humanity committed in Chechnya or Darfur, for example, nor any suspected Nazi war criminals who had sought refuge in Spain after WWII – see Kern, op. cit. note 73.
- 115 See, for example, Jouet, op. cit. note 8, p. 528, 531.
- 116 See *ibid*, pp. 513-514, 526, 531, 535.
- 117 See Recent Legislation: International Law – Universal Jurisdiction – United Kingdom Adds Barrier to Private Prosecution of Universal Jurisdiction Crimes – Police Reform and Social Responsibility Act, 2011, c. 13 (U.K.), *Harvard Law Review*, Vol. 125 (2012), p. 1554, 1555.
- 118 See *ibid*, p. 1555.
- 119 See War Crimes in Gaza, op. cit. note 66, p. 50; R. Prosor, Universal Jurisdiction: A Loophole that Must Be Repaired, *Justice*, Vol. 48, (2011), p. 36.
- 120 See Prosor, *ibid*, p. 36, 46.
- 121 See, for example, War Crimes in Gaza, op. cit. note 66, pp. 5-8.
- 122 See Prosor, op. cit. note 119, p. 36.
- 123 See Application for Arrest Warrant against General Shaul Mofaz, op. cit. note 22, paras. 1-2.
- 124 See *ibid*, para. 1.
- 125 See Case Concerning the Arrest Warrant, op. cit. note 20, para. 51; fn. 22, *supra*.
- 126 See Application for Arrest Warrant against General Shaul Mofaz, op. cit. note 22, paras. 10-15.
- 127 See *ibid*, para. 3.
- 128 In collaboration with Daniel Machover and Kate Maynard from Hickman and Rose Solicitors (UK) – see S. Nicolaou-Garcia, European Efforts to Apply the Principle of Universal Jurisdiction against Israeli Officials, *Middle East Monitor (MEMO, London)*, (Jul. 2009), available at: <http://www.middleeastmonitor.com/reports/by-silvia-nicolaou-garcia/>; Recent Legislation, op. cit. note 105, fn. 117, p. 1555.
- 129 Nicolaou-Garcia, op. cit. note 128.
- 130 See *ibid*. It was reported that Almgog had decided to cancel another visit to the UK in June 2013, despite an assurance of immunity by British authorities, following an action by PCHR lawyers challenging the decision of the UK government to grant Almgog's visit the status of 'special mission' that 'in effect put Almgog beyond the reach of the law' – see A. Abunimah, Israeli War Crimes Suspect Cancels London Visit, *The Electronic Intifada* (ei), (Jul. 2013), available at: <http://electronicintifada.net/blogs/ali-abunimah/israeli-war-crimes-suspect-cancels-london-visit/>. The PCHR challenged the decision 'given the fact that it was made by the UK government despite the existence of a warrant for Almgog's arrest on war crimes charges.'
- 131 In September 2005, a complaint against Moshe Ya'alon and Dan Halutz was filed in the UK by the human rights group 'Yesh Gvul' for their involvement in the Shehadeh targeted killing operation. Ya'alon, who was invited to London in 2009, was advised to cancel his trip. Such was the case with Minister of Defense Ehud Barak, and Minister of Public Security Avi Dichter. Maj. Gen. Aviv Kochavi, Military Intelligence Director, and Maj. Gen. Yohanan Locker, Military Secretary to the Prime Minister, also canceled their visits to the UK.
- 132 See Recent Legislation, op. cit. note 117, fn. 15, p. 1555.
- 133 See *ibid*, p. 1555-1556.
- 134 See The Use and Abuse of Universal Jurisdiction, op. cit. note 27.
- 135 See Reydams, op. cit. note 3, p. 26; Recent Legislation, op. cit. note 117, p. 1555.
- 136 See J. Bellinger, Britain Amends Universal Jurisdiction Law, *LAWFARE Blog* (Sep. 2011), available at: <http://www.lawfareblog.com/2011/09/britain-amends-universal-jurisdiction-law/>. In March 2010, the British government declared that 'the Crown Prosecution Service will take over responsibility for prosecuting war crimes and other violations of international law, ending the current system in which magistrates are obliged to consider a case for an arrest warrant presented by any individual' – see J. Chapin, Universal Jurisdiction is Abused and Leads to International Friction, say Legal Scholars, *The Cutting Edge News*, (Apr. 2010), available at: <http://www.thecuttingedgenews.com/index.php?article=12101>.

- 137 See *House of Commons Fourth Sitting*, 20 Jan. 2011, Parl. Deb., H.C. (2011) 126 (UK), as quoted in *Recent Legislation*, op. cit. note 117, p. 1555.
- 138 See Chapin, op. cit. note 136.
- 139 See *The Use and Abuse of Universal Jurisdiction*, op. cit. note 27.
- 140 As well as Liberty, Redress, Global Witness, and Justice (the British section of the International Commission of Jurists) – see R. Irvine, UK Rewrites War Crimes Law at Israel’s Request, *The Electronic Intifada* (ei), (Oct. 2011), available at: <http://electronicintifada.net/content/uk-rewrites-war-crimes-law-israels-request/10446>; these organizations issued a joint brief on Universal Jurisdiction in the UK, expressing their ‘grave concern’ that ‘any changes to the existing law will undermine the capacity of victims of serious international crimes to hold accountable alleged perpetrators by making all arrest decisions in such cases subject to political considerations rather than being based on the legal merits’ – see *Liberal Democrat Friends of Palestine*, Universal Jurisdiction – Update (Feb. 2011), available at: <http://ldfp.eu/universal-jurisdiction/>.
- 141 Thus separating universal jurisdiction proceedings from the arrest warrant procedures for domestic crime – see *Recent Legislation*, op. cit. note 117, p. 1554.
- 142 See *ibid.*, p. 1557. See also *Statement on Universal Jurisdiction by D. Wilson (UK)*, Principle of ‘Universal Jurisdiction’ Again Divides Assembly’s Legal Committee, *Sixth Committee*, 66<sup>th</sup> General Assembly, UN Doc. GA/L/3415 (12 Oct. 2011).
- 143 See Irvine, op. cit. note 140.
- 144 See PCHR Report, op. cit. note 84.
- 145 See, for example, *International Federation of Human Rights*, Position Paper to the United Nations General Assembly at its 64<sup>th</sup> Session (Oct. 2009), claiming that universal jurisdiction is ‘firmly enshrined in international treaty and customary law’ – available at: [http://www.fidh.org/IMG/pdf/FIDH\\_Position\\_Paper\\_to\\_the\\_GA\\_-\\_64.pdf](http://www.fidh.org/IMG/pdf/FIDH_Position_Paper_to_the_GA_-_64.pdf), as quoted in Reydams, op. cit. note 3, p. 28 (italics added). Human Rights Watch report also states that ‘the vast majority of states recognize the validity of the concept of universal jurisdiction, as they are parties to conventions that provide for it’ – see Basic Facts on Universal Jurisdiction, Prepared for the Sixth Committee of the United Nations General Assembly (Oct. 2009), *Human Rights Watch*, available at: <http://www.hrw.org/print/news/2009/10/19/basic-facts-universal-jurisdiction> (italics added). Also Amnesty International calls upon states ‘to uphold their commitment to universal jurisdiction, a long-established rule of international law, and reaffirm the duty of every state to exercise its jurisdiction over crimes under international law regardless where they have been committed and the nationality of the suspects and victims’ – see Universal Jurisdiction – Strengthening this Essential Tool of International Justice, (Oct. 2012), *Amnesty International*, IOR 53/020/2012, p. 8 (italics added).
- 146 See also discussion by Reydams, *ibid.*, pp. 10-24.
- 147 See *Statement on Universal Jurisdiction by A. Enersen (Norway)*, Delegations Urge Clear Rules to avoid Abuse of Universal Jurisdiction Principle, *Sixth Committee*, 67<sup>th</sup> General Assembly, UN Doc. GA/L/3441 (17 Oct. 2012). See also *Statements on Universal Jurisdiction by Brazil, the United States, and Tunisia*, Principle of ‘Universal Jurisdiction’ Again Divides Assembly’s Legal Committee, *Sixth Committee*, 66<sup>th</sup> General Assembly, UN Doc. GA/L/3415 (12 Oct. 2011), noting the ‘ambiguity surrounding the principle’, as well as *Statement on Universal Jurisdiction by Iran*, Legal Committee is Told ‘Principle of Universal Jurisdiction’ Needs to be Refined, to Avoid Possible Abuses, Politicization, *Sixth Committee*, 64<sup>th</sup> General Assembly, UN Doc. GA/L/3372 (21 Oct. 2009).
- 148 See *Statements on Universal Jurisdiction by Argentina* (2012), *ibid.*
- 149 See *Statements on Universal Jurisdiction by Nigeria* (2012), *ibid.*
- 150 See *ibid.*
- 151 See *The Use and Abuse of Universal Jurisdiction*, op. cit. note 27.
- 152 See, for example, Esposito, op. cit. note 113.
- 153 Some leading INGOs still insist that there is no abuse and manipulation of the doctrine in the case of Israel – see Human Rights Watch report on Basic Facts on Universal Jurisdiction, op. cit. note 145.
- 154 Reydams, op. cit. note 3, p. 27 (italics in original text).
- 155 A term coined by Reydams to describe headline-making NGO-driven cases against a host of (former) senior officials, that, with the exception of Pinochet, ‘produced little more than headlines and diplomatic headaches (and fame for a Spanish judge)’ – see *ibid.*, p. 24.
- 156 *Ibid.*, p. 28.
- 157 *Recent Legislation*, op. cit. note 117, p. 1557.
- 158 See, for example, Kern, op. cit. note 73; see also Mallat, who framed his petition in Belgium in the context of the fight for a so-called Kantian ‘cosmopolitan justice’ in the face of economic forces that ‘wreak havoc with peoples’ lives’ – see op. cit. note 31.
- 159 Much like the ICC in this regard.
- 160 See generally M.P. Scharf, Universal Jurisdiction and the Crime of Aggression, *Harvard International Law Journal*, Vol. 53, (2012), p. 358.
- 161 See Rosenzweig, op. cit. note 112.
- 162 See, for example, G.P. Fletcher, Against Universal Jurisdiction, *Journal of International Criminal Justice*, Vol. 1 (2003), p. 580, 582.
- 163 On the problematic application of the principle of *non bis in idem* (‘double jeopardy’) in the context of universal jurisdiction see, for example, Kontorovich, op. cit. note 23, pp. 13-14.
- 164 This is all the more so today, once there is no international agreement on the complex issue of competing proceedings, and probably until a comprehensive multilateral treaty on universal jurisdiction

- is concluded – see, for example, Esposito, *op. cit.* note 113; Reydams (2003), *op. cit.* note 8, p. 16.
- 165 See Rosenzweig, *op. cit.* note 79.
- 166 Still, the amended Belgian law, for example, can be easily abused by litigants who are Belgian nationals or residents, although this is not considered anymore a universal jurisdiction case due to the link of the alleged victims to Belgium. Such was the case with the two Belgian activists who were reported to file a war crimes complaint over the ‘flytilla’ incident against Prime Minister Binyamin Netanyahu, former Minister of Interior, Eli Yishai, former Minister of Defense, Ehud Barak, and former Chief-of-Staff, Gabi Ashkenazi, in January 2012 – see A. Abunimah, Two Belgians File War Crimes Complaint against Israeli Leaders over ‘Flytilla’ Abuse, *The Electronic Intifada (ei)*, (Jan. 2012), available at: <http://electronicintifada.net/blogs/ali-abunimah/two-belgians-file-war-crimes-complaint-against-israeli-leaders-over-flytilla-abuse/>.
- 167 Reydams, *op. cit.* note 3, p. 27.
- 168 See Hirsch, *op. cit.* note 32, p. 24.
- 169 In the words of the former British Prime Minister, Margaret Thatcher, as quoted by Jouet, *op. cit.* note 8, p. 536. See also H. Kissinger, *The Pitfalls of Universal Jurisdiction*, Foreign Affairs, (Jul.-Aug. 2001).



# The Demonization of Israel at the United Nations in Europe

Focus on the Human Rights Council and Specialized Agencies

Hillel Neuer

## I. Introduction

If an alien from another planet visited the United Nations and listened to its debates, read its resolutions, and walked its halls, the extraterritorial observer would logically conclude that a principal purpose of the world body is to censure a tiny country called Israel.

Beginning around 1967, the full weight of the UN was gradually but deliberately turned against the country it helped to conceive by General Assembly resolution a mere two decades earlier.

The campaign at the UN to demonize and delegitimize Israel at every opportunity and in every forum was initiated by the Arab states in concert with the Soviet Union, and supported by an automatic majority of Third World regimes.

The result today is that many of the UN's political organs, specialized agencies, and bureaucratic divisions have been subverted by a relentless propaganda war against the Jewish state, causing them to stray from their founding purposes and constitutional frameworks.



*The UN Human Rights Council discusses the situation in Syria, 27 June 2012. (US Mission Geneva/Flickr)*

In the busiest corridor of the Palais des Nations, the European headquarters of the UN in Geneva, this prejudice is displayed by a series of giant panels devoted to the Palestinian cause. Every day, the visual message that the Palestinians are the world's greatest human rights victim – and, by implication, that Israel is the world's worst human rights abuser – is pumped into hundreds of UN country delegates, employees, and non-governmental activists, as they pass to and from the cafeteria.

Paradoxically, one of the greatest violators of the UN Charter's equality guarantee has been the UN body with primary responsibility for establishing and enforcing the principle of equality and other universal human rights: the 47-nation Human Rights Council (HRC).

Founded in 2006<sup>1</sup> to replace and improve upon the performance of its discredited predecessor, the former Commission on Human Rights, the new council has instead perpetuated the same selectivity and politicization, systematically singling out Israel for discriminatory treatment, and denying the world's only Jewish state – and its citizens – equality before the law.

As a case study into anti-Israel demonization at the UN, this chapter examines the situation at the HRC, the most prominent UN body in Geneva, as well as at three other Europe-based UN specialized agencies: the WHO and the ILO in Geneva, and UNESCO in Paris.

## II. Anti-Israel Bias in the UN System

The UN's discrimination against Israel is not a minor infraction, nor a parochial nuisance of interest solely to those concerned with the interests of the Jewish people and the Jewish state.

Rather, the world body's obsession with censuring Israel at every turn directly affects all citizens of the world, for it constitutes a severe violation of the sovereign equality principle guaranteed by the 1945 UN Charter<sup>2</sup> and underlying the 1948 Universal Declaration of Human Rights; a challenge to the very notion of universal standards at the UN, for when a standard is applied selectively, it loses its very meaning as a standard; and a significant obstacle to the UN's ability to carry out its proper mandate.

None of this, as Professor Irwin Cotler has pointed out, means that Israel should be above the law.<sup>3</sup> Every country, including every democracy, commits certain human rights violations, and states should be held to account, domestically as well as internationally. Yet Israel does have the right to be treated equally under the law. It is perfectly legitimate for the UN to criticize Israel, but not when this is done unfairly, selectively, massively, sometimes exclusively, and always obsessively.

Likewise, it is good to call attention to the legitimate rights of the Palestinian people, their difficult conditions, and right to self-determination. But it is something else to elevate one national claim above any other of the myriad aggrieved peoples around the world, for the sole reason that the Palestinians happen to have the Jewish state as their purported aggressor. UN advocacy for the

Palestinians is more often than not a contrivance for targeting Israel. For example, the HRC and other UN bodies have been completely silent on the violations of Palestinian rights in Lebanon, where hundreds of thousands are denied the most basic freedoms, including the right to work. The UN has shown that where Israel cannot be blamed, Palestinians are of little concern.

The excessive, grossly disproportional, and one-sided anti-Israel resolutions and related debates consume an astonishing proportion of the UN community's precious resources. In 2013, the UN General Assembly in New York adopted 21 Israel-related condemnations – and a total of only four on the rest of the world combined.

On November 14, 2013, when the UNGA Fourth Committee adopted nine of these draft resolutions, a UN interpreter made the following remarks to her colleagues in the booth, unaware that her microphone was on for the world to hear:

I think when you have...like a total of ten resolutions on Israel and Palestine, there's gotta be something — *c'est un peu trop, non?* [It's a bit much, no?] I mean...it's not the only, there's other really bad sh-t happening, but no one says anything about the other stuff.<sup>4</sup>

Indeed, the time in 2013 spent by UN ambassadors on drafting, debating, and enacting these anti-Israel resolutions was time not spent on passing a single resolution for the victims of mass killings, terrorist bombings, bloody police crackdowns, and other massive human rights abuses which took place that year in Sudan, Central African Republic, Egypt, China, Pakistan, Iraq, and elsewhere.

Diplomats at foreign ministries and UN missions have a finite amount of time and resources to devote to any particular UN session. Because every proposed resolution requires intensive review by various levels and branches of government, a direct result of the anti-Israel texts is a crippling of the UN's ability to take protective action for the world's genuine human rights victims.

Conversely, it is also true that UN action on Israel often serves as a fig leaf for inaction elsewhere. In the words of one UN Commission on Human Rights delegate from a Non-Aligned country, uttered in the late 1960s but no less relevant today:

We'd like to condemn the Soviet Union for its repression of intellectuals; we'd like to condemn the United States because of Viet Nam. We cannot afford to do either, so we'll support a condemnation of Israel for reprisals against Arab sabotage.<sup>5</sup>

### III. Specialized Agencies

#### *World Health Organization*

The purpose of the World Health Organization (WHO), a multi-billion dollar agency in Geneva, is to address health. “The objective of the World Health

Organization,” according to Article 1 of the WHO Constitution, “shall be the attainment by all peoples of the highest possible level of health.”<sup>6</sup> To achieve this objective, Article 2 provides that the functions of the organization shall be, *inter alia*, to coordinate international health work, assist governments in strengthening their health services, furnish emergency aid, promote scientific research in the field of health, and advance work to eradicate diseases.

Yet when it comes to Israel, the WHO’s governing structures, despite their declared professional and scientific purposes, regularly engage in politics. On January 21, 2009, for example, during the period of an intense Israel-Hamas conflict, the 34-member WHO Executive Board adopted a transparently one-sided resolution, entitled “The grave health situation caused by Israeli military operations in the occupied Palestinian territory, particularly in the occupied Gaza Strip.”<sup>7</sup>

The resolution was uncharacteristically political for the World Health Organization. Using inflammatory language, the WHO expressed “deep concern” over “Israeli military operations in the occupied Gaza Strip which have, thus far, resulted in the killing of more than 1,300 persons and injured thousands of Palestinian civilians, more than half of whom are women, children, infants, and elderly persons.”

The WHO resolution’s partisan findings and prejudicial premises ignored the effects on the health of Israelis caused by Hamas having fired 10,000 rockets against them, which was the cause of Israel’s anti-terrorist Operation Cast Lead.

Thus the WHO resolution demanded the “reconstruction of the health infrastructure in the Gaza Strip,” which, it said, “has been destroyed by the Israeli military operations.” The WHO called on its Director-General to “dispatch urgently a specialized health mission to identify the urgent health and humanitarian needs and assess the destruction of medical facilities that has occurred in the occupied Palestinian territory,” and to submit a report on “the current, medium- and long-term needs on the direct and indirect effects on health of the Israeli military operations,” to be debated at the next World Health Assembly meeting.

Several months later, in May 2009, the WHO’s 62nd World Health Assembly, comprised of 194 states, adopted its annual condemnation of Israel for allegedly harming the health of Palestinians.<sup>8</sup> This annual censure was duly repeated at the 63rd World Health Assembly in May 2010,<sup>9</sup> the 64th World Health Assembly in May 2011,<sup>10</sup> and in subsequent years.

Astonishingly, during this same time period, an examination of all WHO Executive Board and World Health Assembly resolutions reveals that not a single other country in the world – not even Syria, having lately killed more than 100,000 people – was censured even once.<sup>11</sup>

### ***International Labour Organization***

The International Labour Organization (ILO) was established to improve conditions of labour, regulate work hours, fight unemployment, assure adequate

living wages, and protect workers worldwide.<sup>12</sup> These purposes of the ILO Constitution are twisted each year in the selective and politicized treatment of Israel.

The ILO holds its annual assembly in Geneva where the agenda contains only one report on a country-specific situation: a lengthy document charging Israel with violating the rights of Palestinian workers – and those of the Druze in the Golan Heights.

In 2013, for example, the International Labor Conference (ILC) in its 102nd session debated a 64-page report by the ILO Director-General entitled “The situation of workers of the occupied Arab territories.”<sup>13</sup>

In accordance with a 1980 ILC resolution on “the implications of Israeli settlements in Palestine and other occupied Arab territories in connection with the situation of Arab workers,” adopted at its 66th Session, the Director-General had once again sent a mission to make “as full an assessment as possible of the situation of workers of the occupied Arab territories.”<sup>14</sup>

“The continuing occupation and expanding settlement activity are blocking the Palestinian economy, particularly its private sector, from significant progress,” said ILO Director-General Guy Ryder, in the accompanying ILO press release, calling the situation “unsustainable” until it is “based on social justice.”<sup>15</sup>

The report included an entire section on the alleged plight of Syrians living in the Golan Heights<sup>16</sup> – even though some openly admit that their health and security situation is far superior to that prevailing in Syria.<sup>17</sup> The ILO report drily noted that many students from the Golan who normally study in Syrian universities preferred – at this time of mass killings, including civilians being gassed to death by chemical weapons – not to return to Syria, and to stay in Israel.

That the ILO devoted so much attention to a tiny population and region that is suffering no crisis or significant violations, while turning a blind eye to the millions affected by the Syrian massacre next door, is scandalous. It highlights the selective and politicized nature of the ILO’s Arab-sponsored targeting of Israel each year.

## *UNESCO*

The Nazi genocide against the Jewish people was very much on the minds of the founders of the United Nations Educational, Scientific and Cultural Organization (UNESCO).

Their November 1945 constitution opens with a preamble that identifies the “doctrine of the inequality of men and races” as a cause of “the great and terrible war which has now ended,” along with “the denial of the democratic principles of the dignity, equality and mutual respect of men.”

In reaction to this, Article 1 affirms that the purposes of UNESCO shall be to “contribute to peace and security” by promoting “collaboration among the nations through education, science and culture” in order to further “universal respect for

justice, for the rule of law and for the human rights and fundamental freedoms which are affirmed for the peoples of the world, without distinction of race, sex, language or religion, by the Charter of the United Nations.”

It is especially tragic, then, that today – nearly seven decades later – UNESCO condemns only one country: Israel.

In 2009, for example, the UNESCO Executive Board adopted eight resolutions against the Jewish state at its 181st session<sup>18</sup> and 182nd session,<sup>19</sup> and then another two resolutions against Israel at the 35th session of the General Conference.<sup>20</sup> No other country in the world was censured.

Likewise, in 2010, the UNESCO Executive Board adopted 10 decisions against Israel at its 184th session<sup>21</sup> and 185th session.<sup>22</sup> In 2011, the UNESCO Executive Board again adopted 10 decisions against Israel at its 186th session<sup>23</sup> and 187th session,<sup>24</sup> and another two resolutions against Israel at the 36th session of the General Conference.<sup>25</sup>

Astonishingly, during this same time period, an examination of all UNESCO Executive Board decisions and UNESCO General Conference resolutions shows that not a single other country was censured even once.<sup>26</sup>

Exceptionally, in 2012 UNESCO condemned Syria for its bloody crackdown in one resolution. This took place only after Western countries were pressured by voices protesting UNESCO’s shameful election of Bashar al-Assad’s Syria to two of its human rights committees.<sup>27</sup> Regrettably, the condemnation of Syria failed to reappear in 2013. Instead, Israel returned once again to being the only country singled out by UNESCO.

Founded to combat the doctrine of the inequality of men and races, UNESCO today has sadly become a serial perpetrator of inequality.

### ***The Human Rights Council***

The UN Human Rights Council was created in 2006 to replace its discredited predecessor, the UN Commission on Human Rights.<sup>28</sup> Comprised of a rotating membership of 47 member states, the council is the highest body in the UN human rights system.

UNGA Resolution 60/251 (2006) provides, in Article 2, that the council is responsible for “protection of all human rights and fundamental freedoms for all, without distinction of any kind and in a fair and equal manner.” Article 3 provides that the council should address “situations of violations of human rights,” including “gross and systematic violations,” and make recommendations thereon. Article 4 provides that the work of the council shall be guided, *inter alia*, by the principles of “universality, impartiality, objectivity and non-selectivity.”

Contrary to its declared purposes, however, the council has systematically turned a blind eye to the world’s worst perpetrators of gross and systematic violations of human rights. Paradoxically, many of these violators are themselves council members. In November 2013, for example, despite an opposition campaign

by UN Watch and a coalition of parliamentarians, NGOs, and dissidents, the dictatorships of China, Cuba, Russia, and Saudi Arabia were elected by the UN as HRC members for the 2014 – 2016 term. None of these tyrannies has ever been condemned in any council resolution, emergency session or fact-finding mission.<sup>29</sup> Despite a handful of positive actions during the 2009–2013 period, the council has failed to fulfill the basic purpose of its creation – to address the world’s most urgent violations – and it has failed to act with “universality, impartiality, objectivity and non-selectivity.”

Nowhere is this chasm between promise and performance more pronounced than in the council’s pathological obsession with Israel. As described below, the council’s selective treatment of Israel is a standing, gross breach of its obligation to act “without distinction of any kind” and “in a fair and equal manner.”

### ***Human Rights Commission Founders Fought Anti-Israel Bias***

It is noteworthy that the founders of the Commission on Human Rights, Eleanor Roosevelt and Rene Cassin, were great supporters of Israel. When the UN began to single out Israel in the 1960s, both Roosevelt, founding Chair of the Commission, and Cassin, architect of the Universal Declaration of Human Rights, spoke out.

In April 1962, for example, Eleanor Roosevelt criticized the United Nations when it censured Israel for responding to an attack from Syria. She said that “a full-scale study should be made of Jewish-Arab border clashes before the UN placed blame on one side.”<sup>30</sup> Likewise, Cassin was an equally committed defender of Israel’s basic rights. For example, on the eve of the June 1967 Arab-Israeli war, Cassin published articles in *Le Monde* and elsewhere arguing that Nasser was the aggressor under law, while Israel had the right to defend its “legitimate right to exist.”<sup>31</sup> In 1968, when a landmark UN conference on human rights in Teheran targeted Israel, Cassin, head of the French delegation, left early in protest.<sup>32</sup> When UN member states criticized Israel for responding to terrorist attacks launched from Jordan, Cassin published an article defending Israel’s right to “put an end to the incontestable [ceasefire] violations being perpetrated by its neighbor.” Israel, wrote Cassin, “is entitled to equal treatment” as any other belligerent would be.<sup>33</sup> In 1969, *Le Monde* reported that Cassin, then the delegate of France to the UN Commission of Human Rights, came under attack from other representatives for having, during the debate on the territories occupied by Israel, “protested against the condemnation of violations committed exclusively in those territories, which are but one aspect of one conflict, whilst silence continues to reign in terms of all other comparatively more blatant violations being perpetrated in the four corners of the world.”<sup>34</sup>

To follow the founders’ example, those committed to the integrity of the United Nations and its human rights system ought to oppose blatant selectivity and politicization: the special agenda item targeting Israel; the one-sided resolutions against Israel that equal or surpass the combined total of country-specific resolutions against all other countries in the world; the council experts who subject Israel to irrational degrees of scrutiny and criticism; and the disproportionate amount of emergency special sessions that target Israel.

## *Agenda Item against Israel*

When the council's creation was debated in 2006, the UN's Department of Public Information distributed a chart promising that, in its words, the "agenda item targeting Israel" (Item 8) of the old commission would be replaced at the new council by a "clean slate."<sup>35</sup> Although this course correction never came to fruition, it is important to note that a key UN document acknowledged the true nature of the agenda item: to target Israel.

Despite the promise of reform, the new council revived the infamous agenda item, now as Item 7, and with the following title: "Human rights situation in Palestine and other occupied Arab territories," with the sub-title of "Human rights violations and implications of the Israeli occupation of Palestine and other occupied Arab territories; Right to self-determination of the Palestinian people."<sup>36</sup> No other country in the world is subjected to a stand-alone focus that is engraved on the body's permanent agenda, ensuring its prominence, and the notoriety of its target, at every council meeting.

The council's credibility and legitimacy remains compromised as long as one country is singled out while serial human rights abusers escape scrutiny. No one has ever explained how Item 7 is consistent with the council's own declared principles of non-selectivity and impartiality.

Indeed, UN Secretary-General Ban Ki-moon criticized this act of selectivity a day after it was instituted. On 20 June 2007, according to the official UN news website, Mr. Ban "voiced disappointment at the Council decision to single out Israel as the only specific regional item on its agenda, given the range and scope of allegations of human rights violations throughout the world."<sup>37</sup>

In addition, Western countries have on numerous occasions stated their opposition to Item 7. In statements delivered before and after its adoption, traditional supporters of human rights opposed the agenda item as biased.<sup>38</sup> The UK said that "the practice of 'singling out one' risked undermining the Human Rights Council's own principles."<sup>39</sup> France "regretted that the agenda was imbalanced by the singling out of Palestine, which was contrary to non-selectivity."<sup>40</sup> Australia and the Netherlands expressed similar objections, describing the agenda item as "unhelpful."<sup>41</sup> Canada said the Council breached its own principles of universality, impartiality, objectivity, and non-selectivity. Targeting any UN member state, said Canada, was "politicized, selective, partial, and subjective."<sup>42</sup> The US has also been a forceful opponent of Item 7.<sup>43</sup>

As the time of this writing, news reports indicate that the EU and other Western countries will no longer speak under Item 7 at upcoming sessions. Rather, they will voice any of their criticisms of Israel during the general debate on all country human rights situations, which is Item 4. If implemented, such a Western boycott of Item 7 would be unprecedented. If the only ones in the room during the day of Item 7 are the Arab states and fellow dictatorships who attack Israel, this could turn the biased exercise into a dead letter. This would be an important accomplishment.

## *Resolutions on Israel*

### *(i) Amount of Resolutions*

In the first six years of its existence, from 2006 to 2012, the council adopted 76 condemnatory resolutions for the entire world, of which 47 target Israel. The resolutions on Israel have all been one-sided condemnations that grant impunity to Hamas and Hezbollah terrorists, and to their state sponsor, the Islamic Republic of Iran. The resolutions completely disregarded all Palestinian violations of human rights. Therefore, it can be said that some 60 percent of the HRC's moral force has been deployed to demonize and delegitimize the only democracy in the Middle East.

### *(ii) Content of Resolutions*

There are four resolutions that the HRC adopts every year against Israel:

1. "Human rights in the occupied Syrian Golan"
2. "Right of the Palestinian people to self-determination"
3. "Human rights situation in the Occupied Palestinian Territory, including East Jerusalem"
4. "Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan"<sup>44</sup>

In addition, there are often special resolutions introduced in connection with special sessions, fact-finding missions, and follow-up thereto. These resolutions are similarly one-sided, selective, and politicized.<sup>45</sup>

What makes the resolutions on Israel different from virtually every other country-specific resolution is that they are suffused with political hyperbole, selective reporting, and the systematic suppression of any countervailing facts that might provide balance in background information or context.

By contrast, even the council's resolutions on a perpetrator of atrocities such as Sudan – whose president, Omar al-Bashir, is wanted for genocide by the International Criminal Court – regularly included language praising, commending, and urging international aid funds for its government.<sup>46</sup>

A 2008 resolution on Sudan, for example, even as it expressed concern at violations in Darfur, failed to condemn the Sudanese government, and instead falsely praised the regime for its "collaboration" and "engagement" with the international community, for "measures taken to address the human rights situation," and for "cooperating fully with the Special Rapporteur."<sup>47</sup> It suggested the regime was engaged in the "progressive realization of economic, social and cultural rights in the Sudan," and failed to reflect the true gravity of the human rights and humanitarian situation. It called for support and assistance to the Sudanese government. A resolution adopted in 2010 was similar.<sup>48</sup> None of this positive language, by contrast, appears in any of the resolutions on Israel.

Indeed, on one occasion, the council's praise of the al-Bashir regime was so excessive that the EU actually voted in opposition to a resolution on Darfur.<sup>49</sup>

The practice of singling out Israel – not only with a disproportionate amount of resolutions, but with language that is uniquely condemnatory – constantly reinforces the impression that there is nothing whatsoever to be said in Israel’s favor. The effect, as the philosopher Bernard Harrison has carefully shown in his book *The Resurgence of Anti-Semitism*, describing this same phenomenon in other influential sectors, is to stigmatize Israel as evil.<sup>50</sup>

### *Special Sessions*

A feature of the council is that emergency sessions can be triggered by only 16 members. Proponents said this low bar would allow the council to respond often and in real time to grave violations. Instead, out of the 15 special sessions that have criticized countries, six were on Israel, with nine on the rest of the world combined. That amounts to 40 percent of the emergency sessions against Israel.

Former UN Secretary-General Kofi Annan likewise criticized this bias:

I believe the actions of some UN bodies may themselves be counterproductive. The Human Rights Council, for example, has already held three special sessions focused on the Arab-Israeli conflict. I hope the Council will take care to handle the issue in an impartial way, and not allow it to monopolize attention at the expense of other situations where there are no less grave violations, or even worse.<sup>51</sup>

Victims of human rights crises around the globe have been ignored. Worse, some special sessions have been used to legitimize violations. In 2009, Western states finally managed to convene a special session on Sri Lanka after it killed an estimated 40,000 civilians. Yet the council majority turned the draft resolution upside down and praised the Sri Lankan government for its “promotion and protection of all human rights.”<sup>52</sup>

### *Urgent Debate Mechanism Created to Target Israel*

In the early morning hours of 31 May 2010, a flotilla of six vessels sought to run the naval blockade of Gaza, claiming to bring humanitarian aid. The activists on board were intercepted by the Israel Defense Forces. Violence on one of the ships, the *Mavi Marmara*, resulted in nine killed, and many others wounded.

While the council is typically lethargic regarding human rights violations small and large, in this case it suddenly decided to interrupt its three-week regular session to urgently address the incident. To do so it created a new procedure: the “Urgent Debate.” This was despite the fact that Israel, being the object of a permanent agenda item, was slated in any case to come up shortly thereafter in the regularly scheduled debate.

The result of this first-ever urgent debate was a council resolution that “Condemns in the strongest terms the outrageous attack by the Israeli forces against the humanitarian flotilla of ships.” Having declared its verdict, the council then proceeded to create an “independent international fact finding mission” to

investigate. Three months later, the mission presented a 56-page report, finding that Israel's actions demonstrated "totally unnecessary and incredible violence." The conduct of Israel's military "betrayed an unacceptable level of brutality." It constituted "grave violations of human rights law and international humanitarian law."<sup>53</sup>

However, a separate, independent panel of the UN Secretary-General, led by law professor and former New Zealand prime minister Geoffrey Palmer, found the opposite: while the activists aboard the Turkish ship "were entitled to their political views" in protesting Israel's Gaza policy, the flotilla had "acted recklessly in attempting to breach the naval blockade." Noting that "Israel faces a real threat to its security from militant groups in Gaza," the Secretary-General's panel held the naval blockade was "a legitimate security measure in order to prevent weapons from entering Gaza by sea" and its implementation "complied with the requirements of international law."<sup>54</sup>

The urgent debate mechanism has since been used only twice for another country – against the Assad regime's actions in Syria, in February 2012 and May 2013. However, when the council met for a regular session in September 2013, shortly after a massive Syrian chemical weapons attack against hundreds of civilians in Damascus, it failed to interrupt its regular schedule for any urgent debate for the victims.

### ***Fact-Finding Missions Focus on Israel***

The council has created six fact-finding missions or inquiries on Israel, to investigate: (1) Israel's July 2006 military response to the kidnapping of Gilad Shalit; (2) Israel's actions during the Lebanon war in August 2006; (3) Israel's November 2006 errant shells that responded to rockets from Beit Hanoun; (4) the Israel-Hamas war that began in late 2008, which led to the Goldstone Report; (5) the 2010 flotilla incident described above; and (6) a 2012 inquiry on settlements, which is what finally prompted Israel to boycott the HRC for 18 months. The Goldstone Report and the other inquiries have all proven to be travesties of justice with predetermined verdicts.

### ***Regional Group***

Until January 2014, Israel had been excluded from any of the Human Rights Council's five regional groups. Under the UN's geography-based system, Israel belonged in the Asian group, but Arab and Muslim countries barred the Jewish state from joining. In the end, the Western European and Other Group accepted Israel.<sup>55</sup>

Former UN Secretary-General Kofi Annan deserves credit for having strongly opposed this bias. In 1999, he said:

The exclusion of Israel from the system of regional groupings [and] the intense focus given to some of Israel's actions, while other situations sometimes fail to elicit the similar outrage [...] have given a regrettable impression of bias and one-sidedness.<sup>56</sup>

Annan spoke out on multiple occasions for Israel's inclusion in a regional group:

Israel [is] the only Member State that is not a member of one of the regional groups... This anomaly should be corrected. We must uphold the principle of equality among all United Nations Member States.<sup>57</sup>

Late UN High Commissioner for Human Rights Sergio de Mello, prior to his death in 2003, had also advocated for the inclusion of Israel in the Western group, lobbying ambassadors in Geneva.<sup>58</sup> It took many years, but finally the calls of Annan and de Mello to end this injustice were heeded.

### *Special Rapporteur on the Palestinian Territories*

The council's lead expert on Israel has the title of "Special Rapporteur on the situation of human rights on Palestinian territories occupied since 1967." The position has been held from 2008 to 2014 by Richard Falk.

The title is deliberately misleading, designed to mask the one-sided nature of the HRC's permanent investigative mandate on Israel.

The title is of a piece with the UN's routine misrepresentation of this mandate. In April 2010, for example, the UN's Office of the High Commissioner for Human Rights (OHCHR) sent out a press release stating that Mr. Falk was "mandated by the UN Human Rights Council to monitor the situation of human rights and international humanitarian law on Palestinian territories occupied since 1967."

This statement is false and misleading. The actual, unchanged mandate since 1993, as spelled out in Article 4 of Commission on Human Rights resolution 1993/2, is as follows:

To investigate *Israel's violations of the principles and bases of international law*, international humanitarian law and the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, in the Palestinian territories occupied by Israel since 1967. (Emphasis added.)

The mandate as the UN described it would be of universal application to all actors, be they Israeli or Palestinian. The mandate as it actually is, however, applies only to *Israeli* actions – and with its violations presumed in advance. There is a substantial difference between the two.

As Mr. Falk's predecessor, John Dugard, noted in an August 2005 report, the mandate "does not extend to human rights violations committed by the Palestinian Authority."<sup>59</sup> Human rights abuses by Hamas, Islamic Jihad, and the Palestinian Authority enjoy impunity.

On 16 June 2008, Mr. Falk himself acknowledged the one-sided nature of the mandate, saying it was open to challenge regarding "the bias and one-sidedness of the approach taken." He added: "With all due respect, I believe that such complaints have considerable merit."<sup>60</sup> However, the council made no changes.

Human rights groups have also criticized the one-sided nature of the mandate. On 11 July 2008, Amnesty International said that the mandate's "limitation to Israeli violations of international human rights and humanitarian law in the Occupied Palestinian Territories undercuts both the effectiveness and the credibility of the mandate."<sup>61</sup> Amnesty noted that the mandate "fails to take account of the human rights of victims of violations of international human rights and humanitarian law committed by parties other than the State of Israel."<sup>62</sup>

Amnesty also called for the mandate to be subjected to the review, rationalization, and improvement process that was applied to all other mandates in the transition from the commission to the council.<sup>63</sup> During this period, the outgoing president of the council, Ambassador Doru Costea of Romania, also called for the mandate to be subject to the RRI process.<sup>64</sup> However, this never took place, and the mandate on Israel was the only one not to be reviewed.

### *Officials of the Human Rights Council*

The selectivity described above is initiated by UN member states, namely, those belonging to the Arab, Islamic, and Non-Aligned blocs. In addition, however, several independent officials at the council have demonstrated a similar prejudice.

One extreme case is that of Richard Falk, the special rapporteur whose mandate is described above. Under the Code of Conduct for Special Procedures Mandate-holders of the Human Rights Council, Falk is obliged to uphold the highest standards of competence, integrity, probity, impartiality, equity, honesty, and good faith.<sup>65</sup>

However, in the course of his 2006–2014 tenure, Falk has advocated for the Hamas terrorist organization – so much so, that, as revealed by Wikileaks, even the Palestinian Authority sought to remove him.<sup>66</sup> In addition, Falk was condemned on multiple occasions by UN Secretary-General Ban Ki-moon, Britain, Canada, and the US for various inflammatory actions and statements, including: blaming the Boston Marathon bombings on the US and Israel, supporting 9/11 conspiracy theories, endorsing an anti-Semitic book, and calling for a non-governmental organization – UN Watch – to be investigated and effectively shut down.<sup>67</sup>

Another council expert who has targeted Israel in a selective and politicized fashion is Jean Ziegler, who in late 2013 was reelected to the council's 18-member Advisory Committee. The UN criteria for the position is expertise in human rights, high moral standing, independence, and impartiality. An analysis of Mr. Ziegler's record, however, raises serious questions as to his satisfaction of these requirements.

As the council's first expert on the right to food, from 2000 to 2007, Ziegler demonstrated a pattern of practice of disproportionately criticizing Israel. Less than a year into his term, Ziegler delivered a report accusing Israel of policies that "created hunger and threaten starvation of the most destitute."<sup>68</sup> In 2003, Ziegler informed journalists that Israel was responsible for inflicting "some form of brain damage" upon Palestinian children.<sup>69</sup> He openly defended Hezbollah.<sup>70</sup> Yet Ziegler is slated to serve on the council until the end of 2016.

Finally, there is the High Commissioner for Human Rights, Ms. Navi Pillay. Her office is mandated to support the work of the council, and she plays a major role therein.

According to a study by UN Watch of all her statements published on the UN website between September 2008 and June 2010, a questionable sense of priorities emerges.<sup>71</sup> Ms. Pillay was found to have made nine statements on Israel,<sup>72</sup> the only democracy in the region, but none on the human rights situations of 146 countries, including nothing on such gross violators as North Korea, Saudi Arabia, and Sudan.<sup>73</sup>

One such Pillay statement was delivered mere hours after the June 2010 flotilla incident described above, and before any authoritative information was available. Ms. Pillay rushed to condemn Israel for “what appears to be disproportionate use of force, resulting in the killing and wounding of so many people attempting to bring much-needed aid to the people of Gaza.”<sup>74</sup> She said Israel’s blockade was “inhumane and illegal.”<sup>75</sup> (As noted above, the Secretary-General’s Palmer report later found otherwise.) Finally, she declared that “the Israeli Government treats international law with perpetual disdain.”<sup>76</sup>

Disturbingly, the High Commissioner has also supported the biased agenda item against Israel. During her 2010 visit to Kuwait, she justified the council’s unequal treatment of Israel, stating that, “While the occupation continues, it (item 7 on the human rights situation in Palestine and other occupied Arab territories) will remain on the agenda.”<sup>77</sup>

On March 11, 2010, when an Italian parliamentary committee asked about the council’s one-sided approach, she defended it, saying, “the occupation must end in order to remove Israel from the agenda,” and she implicitly compared that situation to apartheid South Africa.<sup>78</sup>

## Conclusion

The highest human rights body of the United Nations, along with several of its specialized agencies that are supposed to advance humanitarian and social causes, are being wilfully and systematically misused by an organized campaign to assault Israel. Noble principles and purposes, such as human rights, equality, and peace, are being subverted by selectivity, politicization, and prejudice. The United Nations will never live up to its founding promise so long as this pathology endures.

At the same time, the recent admission of Israel into a HRC regional group in Geneva, putting an end to years of one form of exclusion and prejudice, is a reminder that institutional discrimination within UN bodies need not be met with fatalism or passivity. On the contrary, if the concept of universal standards are to have any meaning at all, it will be essential, whatever the array of forces, to keep alive the flickering flame of justice, right, and truth.

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*Human Rights in Geneva. Regularly quoted by major newspapers, he has appeared on CNN, BBC, France 24, and Al Jazeera. Mr. Neuer formerly worked at the law firm of Paul, Weiss, Rifkind, Wharton & Garrison, and clerked on the Supreme Court of Israel. The US Federal Court cited Mr. Neuer for the high quality of his pro bono advocacy. He holds four degrees in law and politics and is a member of the New York Bar.*

## Notes

- 1 UN General Assembly Resolution 60/251 (15 March 2006).
- 2 Article 2(1) of the UN Charter proclaims, that the organization is based “on the principle of the sovereign equality of all its Members.” This Article defines the position of member states with regard to and within the organization. It enjoins UN organs to “treat states equally,” and to “maintain equality among their member states.” Bruno Sima, *The Charter of the United Nations: A Commentary* (1994) 78, 88.
- 3 Irwin Cotler, Address to 2007 Herzliya Conference, available at <http://www.herzliyaconference.org/eng/?ArticleID=1790&CategoryID=223>.
- 4 See full video at [www.unwatch.org/hotmic](http://www.unwatch.org/hotmic); see also London’s *Daily Mail*, “Oops! Hot mic catches UN interpreter criticizing Israel foes,” at <http://www.dailymail.co.uk/video/news/video-1074167/Oops-Hotmic-catches-UN-interpreter-criticizing-Israel-foes.html>.
- 5 As recounted by Morris B. Abram, then U.S. representative on the commission, in M. Abram, “The U.N. and Human Rights,” *Foreign Affairs*, January 1969, available at <http://www.foreignaffairs.com/articles/24055/morris-b-abram/the-un-and-human-rights>.
- 6 Constitution of the World Health Organization <http://apps.who.int/gb/bd/PDF/bd47/EN/constitution-en.pdf>.
- 7 *Executive Board 124<sup>th</sup> Session: Resolutions and Decisions, Annexes*. Geneva: WHO, January 2009. Available at: [http://apps.who.int/gb/ebwha/pdf\\_files/EB124-REC1/B124\\_REC1-en.pdf](http://apps.who.int/gb/ebwha/pdf_files/EB124-REC1/B124_REC1-en.pdf).
- 8 *Sixty-Second World Health Assembly: Resolutions and Decisions, Annexes*. Geneva: WHO, May 2009. Available at: [http://apps.who.int/gb/ebwha/pdf\\_files/WHA62-REC1/WHA62\\_REC1-en.pdf](http://apps.who.int/gb/ebwha/pdf_files/WHA62-REC1/WHA62_REC1-en.pdf).
- 9 *Sixty-Third World Health Assembly: Resolutions and Decisions, Annexes*. Geneva: WHO, May 2010. Available at: [http://apps.who.int/gb/ebwha/pdf\\_files/WHA63-REC1/WHA63\\_REC1-en.pdf](http://apps.who.int/gb/ebwha/pdf_files/WHA63-REC1/WHA63_REC1-en.pdf).
- 10 *Decisions Adopted by the Executive Board at its 185<sup>th</sup> Session*. Paris: UNESCO, November 2010. Available at: <http://unesdoc.unesco.org/images/0018/001899/189993e.pdf>.
- 11 See the lists of resolutions adopted at the 124<sup>th</sup> session of WHO’s Executive Board and t at the 62<sup>nd</sup>, 63<sup>rd</sup>, and 64<sup>th</sup> sessions of the World Health Assembly cited above.
- 12 See ILO Constitution at [http://www.ilo.org/dyn/normlex/en/f?p=1000:62:0::NO:62:P62\\_LIST\\_ENTRIE\\_ID:2453907:NO](http://www.ilo.org/dyn/normlex/en/f?p=1000:62:0::NO:62:P62_LIST_ENTRIE_ID:2453907:NO).
- 13 The 2013 report is available at [http://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---relconf/documents/meetingdocument/wcms\\_213298.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_213298.pdf).
- 14 *Ibid.*, par. 1 at 1.
- 15 ILO press release, “Palestinian economy will not grow if restrictions on it remain, ILO says,” June 6, 2013, available at [http://www.ilo.org/ilc/ILCSessions/102/WCMS\\_215030/lang--en/index.htm](http://www.ilo.org/ilc/ILCSessions/102/WCMS_215030/lang--en/index.htm).
- 16 ILO 2013 Report, *supra* note 11, section entitled “Tensions in the occupied Syrian Golan,” at 39–40.
- 17 A Druze resident of the Golan was quoted by *Al-Monitor*: “More and more people are internalizing the fact that here is an enlightened country where you can live and bring up children. That is preferable over becoming refugees in another country. There is mass murder in Syria and if they lived under Syrian sovereignty, they could become victims of these atrocities. People see children who are murdered and penniless refugees escaping to Jordan and Turkey, and ask themselves: Where do I want to bring up my children? The answer is clear — in Israel and not Syria.” See “Golan Heights’ Druze Seek Israeli Citizenship,” *Al-Monitor*, October 7, 2012, at <http://www.al-monitor.com/pulse/politics/2012/10/the-druze-on-the-golan-heights-w.html#ixzz2oz9tHnfn>.
- 18 *Decisions Adopted by the Executive Board at its 181<sup>st</sup> Session*. Paris: UNESCO, May 2009. Available at: <http://unesdoc.unesco.org/images/0018/001826/182664e.pdf>.
- 19 *Decisions Adopted by the Executive Board at its 182<sup>nd</sup> Session*. Paris: UNESCO, November 2009. Available at: <http://unesdoc.unesco.org/images/0018/001861/186172e.pdf>.
- 20 *Records of the General Conference, 35<sup>th</sup> Session: Volume 1, Resolutions*. Paris: UNESCO, 2009. Available at: <http://unesdoc.unesco.org/images/0018/001864/186470e.pdf>.
- 21 *Decisions Adopted by the Executive Board at its 184<sup>th</sup> Session*. Paris: UNESCO, May 2010. Available at: <http://unesdoc.unesco.org/images/0018/001879/187904e.pdf>.
- 22 *Decisions Adopted by the Executive Board at its 185<sup>th</sup> Session*. Paris: UNESCO, November 2010. Available at: <http://unesdoc.unesco.org/images/0018/001899/189993e.pdf>.
- 23 *Decisions Adopted by the Executive Board at its 186<sup>th</sup> Session*. Paris: UNESCO, June 2011. Available at: <http://unesdoc.unesco.org/images/0019/001930/193025e.pdf>.
- 24 *Decisions Adopted by the Executive Board at its 187<sup>th</sup> Session*. Paris: UNESCO, November 2011. Available at: <http://unesdoc.unesco.org/images/0021/002144/214466e.pdf>.
- 25 *Records of the General Conference, 36<sup>th</sup> Session: Volume 1, Resolutions*. Paris: UNESCO, 2012. Available at:

- <http://unesdoc.unesco.org/images/0021/002150/215084e.pdf>.
- 26 See the lists of decisions adopted at the 181<sup>st</sup>, 182<sup>nd</sup>, 184<sup>th</sup>, 185<sup>th</sup>, 186<sup>th</sup>, and 187<sup>th</sup> sessions of UNESCO's Executive Board and the lists of resolutions adopted at the 35<sup>th</sup> and 36<sup>th</sup> sessions of UNESCO's General Conference cited above.
  - 27 UN Watch, "Appeal for UNESCO to Cancel Its Election of Syria to Human Rights Committees," Dec. 15, 2011
  - 28 See <http://www.ohchr.org/EN/HRBodies/HRC/Pages/AboutCouncil.aspx>; see also the 2007 report by UN Watch, "Dawn of a New Era? Assessment of the United Nations Human Rights Council and its Year of Reform," available at [www.unwatch.org](http://www.unwatch.org).
  - 29 For HRC resolutions and documentation on its sessions, see generally <http://www.ohchr.org/EN/HRBodies/HRC/Pages/HRCIndex.aspx>.
  - 30 "Mrs. Roosevelt Criticizes UN Censure on Israeli Attack," *Reading Eagle*, April 16, 1962, at 17, available at <http://news.google.com/newspapers?nid=1955&dat=19620416&id=KRMrAAAAIIBAJ&sjid=eZwFAAAAIBAJ&pg=4876,178928>.
  - 31 René Cassin, "Qu'est ce que c'est l'agression?," *Le Monde*, 3 June 1967, at 3; and R. Cassin, "Pour eviter un nouveau Munich," *Ici-Paris Hebdo*, June 6-12, 1967, at 2. See also Marc Agi, *René Cassin: Fantassin Des Droits De L'homme* (Paris: Plon, 1979) at 264; Gérard Israël, *René Cassin, 1887-1976: La Guerre Hors La Loi, Avec De Gaulle, Les Droits De L'homme* (Paris: Desclée De Brouwer, 1990) at 238; and Jay Winter & Antoine Prost, *René Cassin and Human Rights From the Great War to the Universal Declaration* (Cambridge Univ. Press 2013) at 403.
  - 32 Marceau Long, *Lettres De René Cassin a Sa Sœur Felice* (Paris: Honore Champion, 2001) at 261. Cassin wrote his sister: "Overall, our delegation played an honorable role in Tehran. It was the most we could do in such circumstances, and Israel was pleased with what we did."
  - 33 R. Cassin, "Pas de Paix Sans Retour Aux Principes de la Justice et du Droit," *Nice-Matin*, August 8, 1968, cited in Marceau Long, *Lettres De René Cassin*, supra at 263.
  - 34 *Le Monde*, 5 March 1969, cited in Marc Agi, *René Cassin: Fantassin Des Droits De L'homme*, at 276.
  - 35 UNDPI, "CHR vs. HRC: Key Differences." The chart had been posted on a UN website, but has since been removed. However, copies are available at [http://www.unwatch.org/atf/cf/%7B6DEB65DA-BE5B-4CAE-8056-8BF0BEDF4D17%7D/HRC\\_PROMISES.PDF?tr=y&cauid=2735018](http://www.unwatch.org/atf/cf/%7B6DEB65DA-BE5B-4CAE-8056-8BF0BEDF4D17%7D/HRC_PROMISES.PDF?tr=y&cauid=2735018).
  - 36 See agenda listed in Section V(b) of Human Rights Council Resolution 5/1 (2007), and as annotated by V(c), available at <http://www1.umn.edu/humanrts/iwraw/Inst-building-UN.pdf>.
  - 37 See [http://www.un.org/apps/news/story.asp?NewsID=22984#.UsyFz\\_RQIk0](http://www.un.org/apps/news/story.asp?NewsID=22984#.UsyFz_RQIk0).
  - 38 See country statements summarized by the UN on 16 November 2007 <http://unispal.un.org/UNISPAL.NSF/0/A0AF9BB0ED7BCABF85257398004D1A07>.
  - 39 *Ibid.*
  - 40 *Ibid.*
  - 41 *Ibid.*
  - 42 See the famous statement of Canada to the HRC on 19 June 2007, after it was so wrongly denied its right to call a vote on the HRC's institution-building package, which contained the anti-Israel agenda item, available at <http://www.unwatch.org/site/apps/nl/content2.asp?c=bdKKISNqEmG&b=1317481&ct=3978271>.
  - 43 The US record on this matter has been strong but imperfect, affected by the Obama Administration's intense effort to embrace, support and legitimize the council. When the council voted, on March 25, 2011, to renew a general package that included the anti-Israel agenda item, the US made a statement dissociating itself from the decision—yet declined to force a vote, which might have upset other delegates' desire to adopt all such institutional decisions by consensus. See US statement at <http://geneva.usmission.gov/2011/03/25/eop-on-review-of-work-and-functioning-of-the-human-rights-council/>. The result was that the UNHRC's official record indicated the complete convergence of the international community on the singling-out of Israel. See UN record at [http://ap.ohchr.org/documents/dpage\\_e.aspx?si=A/HRC/RES/16/21](http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/16/21). The significance attributed by countries to resolutions adopted without a vote was recently demonstrated. When the HRC on March 22, 2012 adopted a resolution on North Korea, council members China, Russia and Cuba made statements dissociating themselves from consensus—yet declined to call a vote. The US Mission characterized the overall result as a "consensus resolution" of "all 47 Human Rights Council members," which showed "complete convergence of [the] international community on this case." The identical conclusion could therefore be drawn from the identical US response in the matter of the HRC package. That said, it should be noted that when the package then moved to the General Assembly in New York, Israel called a vote, and the US joined both in voting against, and in delivering a strong statement.
  - 44 For extracts and analysis of the resolutions on Israel, see <http://www.unwatch.org/site/c.bdKKISNqEmG/b.3820041/>.
  - 45 *Ibid.*
  - 46 Two related resolutions adopted on 14 December 2007 are illustrative. In A/HRC/RES/6/34, the council renewed the mandate of an expert on Sudan, yet it failed to condemn the government's massive human rights violations. Instead, the text praised Sudan for "cooperating fully" with the UN and urged countries to give money to the Sudanese government. The preamble demanded that the UN expert abide by the HRC's code of conduct, implicitly criticizing the monitor's work and weakening his standing. Similarly, in A/HRC/RES/6/35, the council expressed general concern at impunity in Darfur, but quietly abolished its group of experts mandated to monitor that region. The text failed to directly condemn the Sudanese government for violations, and instead praised Sudan for "cooperation," "open

- and constructive dialogue,” and for its alleged efforts to implement recommendations. By contrast, no council resolution on Israel has ever praised its government for cooperation, or anything else, even when UN officials in their reports occasionally do. See resolutions on Israel at <http://www.unwatch.org/site/c.bdKKISNqEmG/b.3820041/>.
- 47 A/HRC/RES/7/16: “Situation of Human Rights in the Sudan” (27 March 2008).
- 48 In A/HRC/RES/15/27, “The situation of human rights in the Sudan” (1 October 2010), the council renewed the mandate of an expert for one year, yet failed to mention the grave human rights situation in the country or hold the government accountable for its violations. Instead it repeatedly praised the Sudanese government: “Recognizing... the efforts of the Government of the Sudan in the promotion and protection of human rights...”; “Commends the cooperation extended by the Government of the Sudan to the independent expert and to the [UN] and [AU] missions...”; and “Congratulates the Government and the people of the Sudan for organizing and for widely participating in the April 2010 elections.”
- 49 HRC Decision 2/115 entitled “Darfur” (28 November 2006) noted with concern the human rights situation in Darfur, but failed to name the Sudanese government as a perpetrator. Instead, it extolled Khartoum’s positive measures and “cooperation,” and called upon the international community to provide “urgent and adequate financial assistance to the Government of Sudan.” In protest to the resolution’s gross imbalances, the EU and other democracies took the exceptional move of voting No, even though they strongly supported passing a resolution on Darfur and several aspects of that particular text. Yet the same logic is not applied by EU states when they vote each year to support approximately 15 imbalanced UNGA resolutions on Israel sponsored by the Arab and Islamic states.
- 50 B. Harrison, *The Resurgence of Anti-Semitism: Jews, Israel, and Liberal Opinion* (Rowman & Littlefield, 2006) at 67-70.
- 51 UN Secretary-General Kofi Annan, addressing the Security Council, 12 December 2006, <http://www.un.org/News/Press/docs/2006/sgsm10796.doc.htm>.
- 52 Resolution A/HRC/S-11/1, entitled “Assistance to Sri Lanka in the promotion and protection of human rights” (27 May 2009) was adopted by a vote of 29 to 12 (EU and other Western countries voting No), with 6 abstaining. The text “Welcomes the continued commitment of Sri Lanka to the promotion and protection of all human rights.”
- 53 See A/HRC/15/21, “Report of the international fact-finding mission to investigate violations of international law, including international humanitarian and human rights law, resulting from the Israeli attacks on the flotilla of ships carrying humanitarian assistance,” dated 27 September 2010, at [http://www2.ohchr.org/english/bodies/hrcouncil/docs/15session/A.HRC.15.21\\_en.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/15session/A.HRC.15.21_en.pdf).
- 54 The Palmer report also found that while the majority of the flotilla participants had no violent intentions, “there exist serious questions about the conduct, true nature and objectives of the flotilla organizers, particularly IHH. The actions of the flotilla needlessly carried the potential for escalation.” The panel found that “Israeli Defense Forces personnel faced significant, organized and violent resistance from a group of passengers when they boarded the Mavi Marmara requiring them to use force for their own protection.” Specifically, it noted that three soldiers were “captured, mistreated, and placed at risk by those passengers. Several others were wounded.” Finally, Turkey failed in its duty to prevent the incident. “Where a State becomes aware that its citizens or flag vessels intend to breach a naval blockade, it has a responsibility to take proactive steps compatible with democratic rights and freedoms to warn them of the risks involved and to endeavour to dissuade them from doing so.” See the full report at <http://blog.unwatch.org/wp-content/uploads/Palmer-Committee-Final-report.pdf>.
- 55 See UN Watch Briefing, Dec. 10, 2013, “Historic Victory: Israel Admitted to UN Regional Group After Decades of Exclusion,” at [http://www.unwatch.org/cms.asp?id=4861971&campaign\\_id=63111](http://www.unwatch.org/cms.asp?id=4861971&campaign_id=63111).
- 56 UN Secretary-General Kofi Annan, Remarks at Dinner Honoring Morris Abram, 15 December 1999, available at <http://www.un.org/News/Press/docs/1999/19991215.sgsm7260.doc.html>.
- 57 UN Secretary-General Kofi Annan, address on “Israel and the United Nations” to the Israel Foreign Relations Council and the United Nations Association of Israel, 25 March 1998, available at <http://unispal.un.org/unispal.nsf/52b7d0e66142a40e85256dc70072b982/b0f4c3f48dba5aa3052565d40050a9a7?OpenDocument>.
- 58 See Jeane J. Kirkpatrick remarks in “What Future for the UN? A Prelude to the 58th UN General Assembly,” Council on Foreign Relations, available at <http://www.cfr.org/international-organizations-and-alliances/future-un-prelude-58th-un-general-assembly/p6251>; and see UN Watch internal memo on De Mello, quoted at [http://www.unwatch.org/cms.asp?id=4861971&campaign\\_id=63111](http://www.unwatch.org/cms.asp?id=4861971&campaign_id=63111).
- 59 In his August 2005 report, Dugard for the first time broke the mandate’s instructions, explaining that he felt compelled to address Palestinian violations as well. Not those against Israel, however, but rather in regard to the Palestinian use of the death penalty against their own. It would be “irresponsible for a human rights special rapporteur to allow the execution of Palestinian prisoners to go unnoticed. . . The Special Rapporteur expresses the hope that these executions were aberrations and that the Palestinian Authority will in future refrain from this form of punishment.” See report of 18 August 2005, at Section VIII: <http://unispal.un.org/UNISPAL.BF82D785FE854A85257088004C374C>.
- 60 See UN summary at <http://www.unhcr.ch/hurricane/hurricane.nsf/0/2B6ED3462A1CE0BEC125746A00487111?opendocument>.
- 61 See: <http://www.amnesty.org/en/library/asset/MDE15/028/2008/en/789c2afd-4f63-11dd-a20f-af4976c1087c/mde150282008eng.html>.
- 62 *Ibid.*
- 63 *Ibid.*

- 64 See Daniel Kuhn, "Outgoing HRC head: Review Palestinian mandate," June 7, 2008, at <http://www.jpost.com/International/Outgoing-HRC-head-Review-Palestinian-mandate>.
- 65 Human Rights Council Res. 5/2 (June 18, 2007) [http://www.ohchr.org/Documents/HRBodies/SP/CodeofConduct\\_EN.pdf](http://www.ohchr.org/Documents/HRBodies/SP/CodeofConduct_EN.pdf).
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# The Role of NGOs in the Palestinian Political War Against Israel

Prof. Gerald M. Steinberg

Since the late 1990s influential human rights NGOs such as Human Rights Watch (HRW) and Amnesty International have been at the forefront of attempts to delegitimize Israel. These international NGOs often work in concert with the Arab League and the Islamic bloc in UN frameworks, as well as with Israeli and Palestinian NGOs, promoting false allegations of “war crimes,” “massacres” and other violations of human rights.

As will be detailed below, this process was clearly manifested during campaigns to condemn Israel’s self-defense actions, beginning with Israel Defense Forces (IDF) operations in Jenin during Operation Defensive Shield (2002) and continuing through and after the Gaza operation in 2012. These NGO condemnations fuel boycott, divestment, and sanctions (BDS) campaigns, as well as lawfare campaigns in the International Criminal Court (ICC), and other venues.

The source of the NGOs political influence, particularly regarding moral and legal issues, is what Nye terms “soft power,” which he describes as “the ability to get what you want through attraction rather than coercion or payments.”<sup>1</sup> The perception of expertise, and commitments to a universal morality untainted by partisan politics or economic objectives, are crucial for human rights NGOs.<sup>2</sup> This is particularly important in the context of the Arab-Israeli conflict, where NGOs rely on this perception of expertise and moral authority as an important tool in the political war on Israel.

Many of these political advocacy NGOs are funded by foreign governments, primarily by the European Union (EU) and European governments, as well as private foundations, many providing millions of dollars and euros annually. EU member states, as well as Norway and Switzerland, together grant up to 100 million euros to an estimated 80 Israeli and Palestinian political advocacy organizations. These government funds are provided under the banners of human rights and promoting democracy, but the recipient NGOs are the leaders of political warfare through BDS and lawfare campaigns. As a result, the European governments, in particular, are important enablers in these activities. In addition, significant government funds are often budgeted for the major international NGOs that are centrally involved in anti-Israel political warfare, such as HRW, Amnesty, and Oxfam.

## The Durban Process

In analyzing NGO-Palestinian cooperation for political purposes, it is necessary to examine the Durban process. The Durban Conference had three parallel forums: an official diplomatic framework, an international youth forum, and an NGO Forum. In the opening day (August 31, 2001) of the official framework, PLO leader Yasser Arafat spoke, accusing Israel of being a “racist” state, guilty of “ethnic cleansing.” This set the tone for the NGO Forum, which was a formidable and unique gathering, and included thousands of representatives from an estimated 1,500 organizations. The participants included major global actors such as HRW and Amnesty International, joined by dozens of Palestinian NGOs such as MIFTAH, the Palestinian Committee for the Protection of Human Rights and the Environment, BADIL, Al Haq, and the Palestinian NGO Network (PNGO). All of these NGOs enjoyed and continue to receive significant funding from foreign governmental sources.

The Durban NGO Forum was characterized by many displays of anti-Semitism,<sup>3</sup> and Jewish and Israeli participants were subject to verbal and physical intimidation.<sup>4</sup> In this environment, and with the active participation of NGOs such as HRW and AI, the NGO Forum adopted a Final Declaration that focused on Israel. It is notable that the NGO declaration adopted much of the text drafted during the UN-sponsored Asian regional preparatory conference, held in Tehran during February 2001, targeting Israel with terms such as “racism,” “apartheid,” “crimes against humanity,” and “genocide.”<sup>5</sup> (In contrast to the pledge made by UN Human Rights Commissioner Mary Robinson, Israelis and Jewish delegates were excluded.<sup>6</sup>)

Article 164 of the NGO declaration asserts that “[t]argeted victims of Israel’s brand of apartheid and ethnic cleansing methods have been in particular children, women, and refugees.” Following the anti-apartheid South Africa strategy, article 425 advocated “a policy of complete and total isolation of Israel as an apartheid state...the imposition of mandatory and comprehensive sanctions and embargoes, the full cessation of all links (diplomatic, economic, social, aid, military cooperation, and training) between all states and Israel.” Article 426 condemned states that “are supporting, aiding and abetting the Israeli apartheid state and its perpetration of racist crimes against humanity including ethnic cleansing, acts of genocide.”<sup>7</sup> (Similar language was removed from the text of the document adopted by the governmental forum of the Durban Conference, following a walkout by American and Israeli delegations.<sup>8</sup>)

For some supporters of human rights, the Durban NGO Forum was recognized as a disaster. In writing about the Ford Foundation’s role as one of the main funders for NGO participants, Korey notes that “Durban turned out to be a propagator of vulgar anti-Semitism.”<sup>9</sup> Previous “world conferences against racism” had focused on South African apartheid. With the end of the apartheid regime, many of the participants in the Durban process turned their focus and energies to resuming the attempts to label Zionism as racism. In the context of UN frameworks, and specifically in the UN Human Rights Council (formerly the UN Human Rights Commission), NGOs work closely with the controlling bloc of the Organization of Islamic Cooperation (OIC) in furthering its anti-Israel agenda, resulting in numerous unsubstantiated, disproportionate condemnations of Israel.

In 1975, this campaign of political warfare, which is a continuation of the efforts to delegitimize Israel that began with the recognition of the state in 1948, produced UNGA Resolution 3379 (“Zionism is racism”). While the UNGA “revoke[d] the determination contained in its resolution 3379” by majority vote in 1991 (resolution 46/86),<sup>10</sup> the campaign continued and was revived globally at the Durban Conference.

The false accusations leveled at Israel since 2000, and their use as primary weapons in the efforts to isolate Israel and to resume the “Zionism is racism” campaign, were the direct results of the “Durban strategy.”

## NGO Warfare from Jenin to Pillar of Defense

The first major implementation of the Durban strategy of political warfare took place in April 2002, following the IDF’s Defensive Shield counter-terrorist operation in the West Bank. The operation was carried out in response to a series of Palestinian suicide bombing attacks which killed and injured hundreds of Israeli civilians. The Jenin refugee camp, the operational center of the mass terror attacks, was a major objective of the operation. Following the takeover of the camp by the IDF, Palestinian officials immediately claimed that it had committed a “massacre” in Jenin,<sup>11</sup> and NGO officials instantly echoed these allegations.

On April 16, *Le Monde* cited HRW’s statements alleging that Israel had committed “war crimes” and demanding the appointment of what they referred to as an “independent investigative committee.”<sup>12</sup> On April 18, the BBC interviewed an Amnesty official, Derrick Pounder, who repeated these massacre allegations.<sup>13</sup> Shortly afterwards, an AI statement declared, “The evidence compiled indicates that serious breaches of international human rights and humanitarian law were committed, including war crimes,” and, like HRW and Palestinian officials, also called for an “independent inquiry.”<sup>14</sup> Other influential NGOs issued similar statements, reports, and condemnations, including Caritas (a European Catholic group).<sup>15</sup>

The campaign led by NGOs and Palestinian supporters had a direct influence on UN Secretary-General Kofi Annan, who appointed a “fact-finding team” to “investigate” the allegations of Israeli war crimes. The Committee was headed by Finnish politician Martti Ahtisaari, and included Cornelia Sammaruga, president of the International Committee of the Red Cross, and Sadako Ogata, former United Nations High Commissioner for Refugees.<sup>16</sup>

The Israeli government refused to cooperate with what it viewed as a biased committee,<sup>17</sup> and this effort was disbanded. However, the General Assembly then adopted resolution ES-10/10 on May 7, 2002, “in which the Assembly requested the Secretary-General to present a report...on the recent events that took place in Jenin and other Palestinian cities.” Israel also rejected the legitimacy of this group, and denied its members access, as noted in the report issued by the Secretary-General.<sup>18</sup> This report generally followed the lead of HRW and other NGOs, and, as the Israeli government had anticipated, was similarly one-sided.<sup>19</sup> In contrast to the biased report, Israel reported that the vast majority of Palestinians killed were armed militants, and that the IDF’s tactics, which were planned to reduce civilian casualties, resulted in a large loss of life on the Israeli side.<sup>20</sup>

The 2002 anti-Israel NGO campaigns based on the Durban strategy were the first of many. In 2004, international NGOs joined the Palestinian campaign to condemn Israel's separation or security barrier, which was constructed in response to mass terror attacks. Again following Palestinian officials who labeled the barrier one of the "crimes against the Palestinian people," with "the magnitude of a crime against humanity,"<sup>21</sup> political advocacy NGOs issued press releases, letters, and reports calling on the UN to take action, and demanding that the US and the EU penalize Israel.<sup>22</sup> Groups active in this campaign included HRW, Amnesty International, Christian Aid, World Vision,<sup>23</sup> the UK-based War on Want, the Mennonite Central Committee, Médecine du Monde (France), along with many Palestinian NGOs, many of them funded by European governments. Christian Aid lobbied the British government, issuing a press release entitled "Why the Israeli 'barrier' is wrong," which referred to Palestinian hardships inflicted by Israel's "land grab."<sup>24</sup>

The NGO-led process contributed to the UN General Assembly adoption of a highly one-sided resolution that sent the allegations of Israeli violations regarding the security barrier to the International Court of Justice in The Hague for an "advisory opinion."<sup>25</sup> This resolution was adopted by a 90-to-8 margin with 74 abstentions, and reflected the Palestinian usage of the politically loaded term "wall" rather than neutral "barrier" (or Israeli "fence"), as well as the vocabulary and historical distortions of the Palestinian narrative.<sup>26</sup>

After the majority of the judges of the court, including senior Egyptian diplomat Nabil Elaraby issued the expected advisory decision condemning Israeli actions (accompanied by a blistering minority opinion and critique),<sup>27</sup> the NGOs began to quote and cite the majority text as if it were legally significant and mandatory and not merely advisory.<sup>28</sup>

In another example, Israel's complete withdrawal from Gaza in late 2005, followed by the 2007 Hamas takeover of the area, led to increased rocket attacks against Israeli civilians. These central changes were largely ignored by the political advocacy NGO network that continued to automatically condemn Israel as an "occupier" and condemn IDF responses as "war crimes." This was evident in what was known as the "Gaza Beach incident." Once again, HRW and other NGOs amplified a claim by "Palestinian officials" that a "massacre" occurred,<sup>29</sup> in line with the Durban strategy of delegitimizing Israel.

On June 9, 2006, an explosion occurred on the Beit Lahiya beach in Gaza, resulting in the reported death of eight Palestinian civilians. Though the details were and remain confused, HRW immediately initiated a major campaign condemning Israel, based on the analysis of Marc Garlasco, their "senior military analyst" (whose "military expertise" has been widely questioned<sup>30</sup>). In a series of highly publicized statements and a press conference, the purported details of the explosives and technical information, which relied on dubious sources such as a "forensics" facility in Gaza, changed rapidly. HRW and Garlasco repeatedly accused the IDF of being "incapable of uncovering the truth," and repeated the call for an "independent, international investigation."<sup>31</sup>

In the following months, Gaza remained at the center of the NGO network's political warfare. Increasing rocket fire followed by the abduction of Gilad Shalit (June 25, 2006) in a cross-border raid triggered an Israeli military response.<sup>32</sup> This response, but not the initial attack and kidnapping, was condemned by Palestinian and international NGOs as "collective punishment,"<sup>33</sup> creating a "humanitarian crisis."<sup>34</sup> The NGOs were also largely silent as Hamas held Shalit for five years, in blatant violation of any human rights standards, nor did they condemn the agreement in which he was released in exchange for hundreds of Palestinian terrorists (in violation of due process of law).<sup>35</sup>

After the violent Hamas takeover of Gaza in June 2007 and the imposition of a blockade, NGO allegations targeting Israel increased further, including from major international NGOs such as Amnesty International and Save the Children. These publications, in turn, relied almost exclusively on unsubstantiated allegations made by Israeli and Palestinian NGOs.<sup>36</sup>

At the end of 2006, following rocket attacks from Gaza, IDF artillery counter-fire erroneously hit Beit Hanoun in Gaza, resulting in the reported death of 19 Palestinian civilians. Palestinian leader Mahmoud Abbas demanded a United Nations inquiry into this "massacre."<sup>37</sup> Following the previous pattern beginning with Jenin, Human Rights Watch called for a "comprehensive independent investigation," rejecting the Israeli investigations into the event. Amnesty International also called for "an immediate, independent investigation and for those responsible to be held accountable."<sup>38</sup>

A special session of the UNHRC was convened and, as in the past, adopted a resolution creating a "fact-finding investigation" with a mandate prejudging the outcome, and condemning the IDF's alleged "gross and systematic" human rights violations "in the occupied Palestinian territories."<sup>39</sup> At this session, HRW and PCHR led vocal allegations that "[t]he level of killing and destruction was unprecedented by all means and standards" and that "[a]lmost all shelling attacks on Gaza had targeted civilians."<sup>40</sup>

To head this "investigation," the NGO-UNHRC alliance approached international personalities, including Canadian Professor Irwin Cotler, a leading human rights expert and advocate, who had defended Nelson Mandela, among other prominent dissidents; and Archbishop Desmond Tutu, who was a leader of the anti-apartheid struggle in South Africa and a vociferous opponent of Israel. Cotler, who was also a member of the Canadian Parliament at the time, and would become Minister of Justice, refused the appointment, stating that he "could not accept a mandate to hear only one side of a dispute...which denied the other side the right to a hearing...and which denied the presumption of innocence."<sup>41</sup>

In contrast, Tutu, a well-known critic of Israeli policies,<sup>42</sup> accepted the position and the mandate.<sup>43</sup> Tutu had already repeated the allegations regarding the Beit Hanoun incident, calling it an "outrage that cries out to heaven."<sup>44</sup> Another biased figure, Prof. Christine Chinkin, was appointed as Tutu's "co-expert," and the Israeli government rejected the legitimacy of the investigation and refused to cooperate or to allow it to work in Israel.<sup>45</sup> The Tutu-Chinkin report, written largely on the basis of NGO statements, were presented to the UNHRC and adopted in late 2008, just prior to the beginning of the Gaza War. This 24-page report used standard NGOs claims such as referring to Israel as "the occupying power" and

Israeli policy as “collective punishment.”<sup>46</sup> The NGO-led Beit Hanoun report and process were dress-rehearsals for the Goldstone committee that was to follow.

## Goldstone and Gaza: The Central Role of International NGOs

The resumption of the deadly rocket attacks from Gaza to Israel, and the resulting Israeli military operation that began on December 28, 2008, provided the framework for an expanded implementation of the Durban strategy. Each of the elements that had been used in the previous rounds – from Jenin to Beit Hanoun – was employed in a highly coordinated and intensive manner. Anticipating the Israeli military response, the Palestinians and their supporters in the UN framework and among the NGO network were able to plan the tactics of the political assault in detail. The Gaza conflict was an opportunity to perfect the procedures and processes that had been used with increasing success to attack Israel using charges of “war crimes” and violations of international law. This objective was embodied in the UNHCR’s Goldstone “fact-finding mission” and report, which has served as the justification for a major increase in the Durban strategy.

As in the past, the NGO network led the process. During the three weeks of fighting, over 500 NGO documents and statements were published, often accompanied by press conferences, op-ed articles, and media interviews. Human Rights Watch again played a leading role in this assault, with particular emphasis on allegations of “illegal” use of white phosphorous. As in “Gaza Beach,” Marc Garlasco, HRW’s “senior military analyst,” led the campaign, which resulted in widespread media focus on this issue. (Garlasco was later dismissed by HRW after he was revealed to be an obsessive collector of Nazi memorabilia.<sup>47</sup>)

On this foundation, HRW and other NGOs resumed the campaigns demanding an independent investigation. HRW’s executive director Ken Roth called on UN Secretary-General Ban Ki-Moon to “lean on all actors, protect civilians, and ensure accountability. Only an impartial international investigation can achieve that.”<sup>48</sup> Amnesty International demanded “a comprehensive international investigation that looks at all alleged violations of international law.”<sup>49</sup> These statements were in line with Palestinian NGO statements.<sup>50</sup>

A UNHRC special session (January 9–12, 2009) adopted a resolution establishing the framework for a “fact-finding investigation.” Following the Beit Hanoun precedent, the leaders of this campaign sought another high-profile figure, such as Desmond Tutu, as the commission chair. After Mary Robinson, the former UN Commissioner of Human Rights, declined to head this “fact-finding mission,” citing the imbalance in the mandate, Judge Richard Goldstone was offered the position.

In many ways, Goldstone was the perfect candidate for the Durban strategy. As a South African judge, he became involved in the transition from the Apartheid regime, and was later appointed by Nelson Mandela to the Constitutional Court. Furthermore, Goldstone’s Jewish background and affiliation with Zionist causes added to the impact he would have as Israel’s main accuser in this process. HRW was deeply involved in the nomination of Goldstone. Ken Roth, a friend of Goldstone, was instrumental in offering him the position. Goldstone was also

a member of HRW's board and only resigned after this conflict of interest was pointed out. Between Goldstone's appointment in April 2009 and the September 15 release date, HRW issued more than 15 calls praising the establishment of the inquiry, promoting Goldstone's "eminent" character, demanding that Israel cooperate despite the inherent bias, and lobbying the United States and others to pressure Israel.

In addition to Goldstone, the fact-finding mission again included Prof. Christine Chinkin, who, as noted above, had been a consultant for Amnesty and joined Desmond Tutu in the UNHRC-appointed "fact-finding" mission on Beit Hanoun. During the Gaza conflict, Chinkin signed a controversial public letter claiming that "Israel's bombardment on Gaza is not self-defense – it's a war crime."<sup>51</sup> The other members of the team – Hila Jilan, Desmond Travers (from Ireland), and Goldstone himself – also signed a highly biased letter spearheaded by Amnesty accusing Israel of "war crimes," before their appointment to the UN body.<sup>52</sup>

Between April and September 2009, the four committee members and their staff took testimony from invited witnesses in Geneva, and during two short visits to Gaza reviewed NGO submissions and held meetings also involving NGOs such as Amnesty and HRW. (The process was reportedly funded by the Arab League.<sup>53</sup>) As in Jenin and Beit Hanoun, the Israeli government rejected any cooperation with Goldstone's group, citing the one-sided mandate and inherent bias of both the UNHRC and the members of the "fact-finding mission."

As expected when the Goldstone process began, the allegations and recommendations in the 452 page report (issued on September 29, 2009) repeated the themes of the NGO Forum declaration at the 2001 Durban Conference. Once again, Israel was singled out and subject to unique criteria and methodologies that are not applied to other nations in considering counter-terror defense. As in the previous reports, testimony on alleged war crimes was not subject to cross examination, blatant internal contradictions were ignored, and much of the "evidence" was never made public or subjected to critical analysis. At the time, Goldstone himself acknowledged that while the language and framework of the report and proceedings were rigidly legalistic, the analyses and recommendations would not have been accepted by a duly constituted court of law.<sup>54</sup>

The Goldstone Report had more force and did more damage to Israel than the others, including accusations of systematic "war crimes," "crimes against humanity," and deliberately targeting "the people of Gaza as a whole." Goldstone's reputation gave the recommendations much greater force than in past – including calling on the UN Security Council to refer the situation to the International Criminal Court<sup>55</sup> and for other countries to start criminal investigations in national courts using universal jurisdiction.<sup>56</sup>

In the month immediately after the publication of Goldstone's report, HRW issued 12 statements in support of Goldstone, and HRW officials were widely quoted in the media.<sup>57</sup> Many repeated the central accusation that Israel had been guilty of "willfully" killing civilians. HRW's campaign continued in 2010, with 14 publications alleging the "inadequacy" of Israeli investigations into the Gaza War.<sup>58</sup>

More broadly, as noted above, the Goldstone Report was embraced and exploited by the supporters of intense efforts to delegitimize Israel, including the BDS (boycott, divestment, and sanctions) movement, “lawfare” campaigns, and “Israel Apartheid Week” activities.

As the campaign to market the report expanded, the numerous fundamental flaws in the entire process slowly received greater attention. The obsessive assault on Israel through the use of false claims and the gross distortion of legal arguments posed by the NGO network were increasingly understood to go beyond any substantive aspects of the Gaza conflict.<sup>59</sup>

On April 2, 2011, Goldstone published an op-ed article in *The Washington Post*, in which he recanted the essential claims of the report. Eighteen months after the UN publication, Judge Goldstone acknowledged that “our fact-finding mission had no evidence” to verify the allegations supplied by the radical NGOs. He retracted the allegations that Israel had deliberately targeted civilians, confessed to having ignored the war crimes of Hamas, and recognized that the UNHRC is fundamentally biased against Israel.<sup>60</sup>

## Post-Goldstone – Operation Pillar of Defense

Following weeks of rocket attacks on Israeli civilians, as well as numerous clashes along the border between Israel and Gaza, the IDF embarked in November 2012 on an operation aimed at halting rocket attacks on Israel.

Palestinian officials and NGOs immediately laid the blame on Israel, claiming a “new Israeli military escalation”<sup>61</sup> and accusing Israel of human rights violations, including “massacres” and “war crimes.”<sup>62</sup> Amnesty International and HRW immediately followed up on these accusations, condemning Israel alone for “re-igniting the conflict,” and “raising concerns” that Israeli strikes were “unlawfully disproportionate.”<sup>63</sup> Amnesty also called for an arms embargo against Israel.<sup>64</sup> However, these same groups also failed to condemn massive rocket attacks by Palestinian terrorist organizations in the weeks leading up to the operation.

The culmination of these political attacks was regarding the so-called Gaza “Media Center” or Al-Shurouk Tower, which housed Hamas communication infrastructure as well as various television studios. While Israel asserted that it targeted Palestinian terrorists and infrastructure, Palestinian NGOs and officials claimed this attack was a “systematic crime.” When describing the attack, HRW and Amnesty described the Hamas Al-Quds and Al-Aqsa channels which were housed in the tower simply as “pro-Palestinian,” failing to note that all bodies affiliated to Hamas are designated as global terrorist organizations, and failing to note that known terrorists were taking refuge in the building.<sup>65</sup>

## NGOs and Palestinian Lawfare Strategy

In parallel to the UN “investigations” and condemnations generated primarily through NGO campaigns, the Palestinians and their NGO allies exploited international legal frameworks and universal jurisdiction statutes in Western

democratic countries to press efforts to arrest and prosecute Israeli officials. This lawfare strategy was a direct outgrowth of the Durban NGO Forum and the repeated allegations of “war crimes” and “violations of international law.”

Between 2000 and 2010, over a dozen cases targeting Israeli officials were initiated in Belgium, the United Kingdom, Canada, the United States, Spain, and other countries. These attempts were also led by European-funded Palestinian NGOs such as Al Haq, the Palestinian Center for Human Rights (PCHR), Al Mezan, and Badil. International NGOs including Human Rights Watch, Amnesty International, International Federation of Human Rights (France), and the Center for Constitutional Rights (New York) were also deeply involved in this strategy.

In November 2008, the Palestinian Center for Human Rights (PCHR) in conjunction with the Arab Organization for Human Rights and the Arab Center for the Independence of the Judiciary and the Legal Profession (both Cairo-based NGOs) held a conference in Cairo under the banner of “Impunity and the Prosecution of Israeli War Criminals.” The main conference sponsors were the European Union and Oxfam-Novib, a highly politicized international aid agency funded largely by the Dutch government. (Officially, the EU funding was provided for a project entitled “Abolition of the Death Penalty” in the Palestinian Authority.) An independent audit held on behalf of the EU found that these programs had little substantive oversight once grantees received funding, leading to abuses of this sort.<sup>66</sup>

The NGO-led lawfare cases were all dismissed as groundless, but they had political and diplomatic impacts, including a significant reduction in travel by former and current Israeli military and government officials. The cases were used to generate major media impact, contributing to the overall demonization process. After a number of cases in which Israeli former IDF generals and political officials were threatened with arrest in European countries, the United Kingdom, Spain, and Belgium changed their laws, removing this threat.<sup>67</sup>

Following the 2008-2009 Gaza war, the Palestinian Authority (PA) and allied political advocacy NGOs intensified their efforts to persuade the ICC’s Office of the Prosecutor (OTP) to open cases against Israelis. In 2010, PCHR (funded by the EU and a number of European governments, including Norway) used the ICC Review conference in Uganda as another platform to target Israel, demanding that the ICC Prosecutor open “an investigation” and that the UN Security Council “refer the situation to the ICC.” The campaign intensified in 2011 and international NGOs such as Amnesty and FIDH joined it, claiming that Israel was “unwilling” and “unable” to investigate human rights violations, and calling for Palestinian accession to the ICC.<sup>68</sup> In December 2013, an HRW official published yet another opinion article repeating this call.<sup>69</sup>

In April 2012, the ICC Office of the Prosecutor decided that it did not have jurisdiction to begin an investigation over cases related to the 2008-09 Gaza War, as “Palestine” is not a state. Hence, it did not fall under the ICC’s purview (which only applies to states).<sup>70</sup> In response, many of the same NGOs that had lobbied the prosecutor in support of the PA’s goals attacked the OTP for its decision. These NGOs alleged that the decision was “political,” without elaborating how, and ignoring their own attempts to sway the ICC process.

Following the OTP's decision not to include Palestine under the jurisdiction of the ICC, NGOs are continuing to push the Prosecutor on this issue, despite the PA's official agreement not to pursue this track while US-sponsored peace negotiations are underway.<sup>71</sup> (Nevertheless, PA leader Mahmoud Abbas has not stopped discussing Palestinian plans to use the ICC.) On this issue in particular, NGOs are promoting a position that, if accepted by the OTP, would severely jeopardize the peace process.<sup>72</sup>

## **NGO Political Warfare and European Policy Outsourcing**

From the 2001 Durban NGO Forum through Jenin, Goldstone, the ICC, and other examples, a combination of major international NGOs and local NGOs based in Israel and the Palestinian Authority worked closely with the Palestinian leadership in promoting political warfare targeting Israel.

Major funding for these NGOs is provided by the European Union and individual European countries, under the rubric of "soft power" and as a form of foreign policy outsourcing. Through this funding, which is estimated at 100 million euros a year, channeled through direct and indirect frameworks, such as church aid organizations, European governments are enabling activities of radical NGOs that are directly contradictory to their stated objective of a promoting a negotiated peace agreement between Israel and the Palestinians. The discredited Goldstone report and the related boycott and lawfare campaigns were directly facilitated by the European-government funded NGO network.

While other governments, including the United States and Australia, provide some money to these NGOs (for example, the US National Endowment for Democracy funded Miftah through 2012), the amounts involved are much smaller than Europe's. (Canada has ended all government funding for political advocacy NGOs involved in the region, and has reorganized CIDA – the Canadian International Development Agency.)<sup>73</sup>

In the case of the European Union, budgets for between 20 and 30 political advocacy NGOs involved in the attacks on Israel are provided annually by frameworks such as the Partnership for Peace (PfP) and the European Instrument for Democracy and Human Rights (EIDHR). In the period between 2007 and 2010, EIDHR's country-based support scheme (CBSS), channeled more funds to Israeli and "OPT" NGOs than to any country or conflict area in the world.<sup>74</sup> Such NGO funding targeting Israel under the banners of democracy and human rights stands in sharp contrast to the very low levels of support for NGOs focusing on Syria, Iran, Libya, and similar countries.

Furthermore, these EU budgetary processes for NGOs that are involved in Arab-Israeli issues take place in secret processes without public hearings or parliamentary discussions, and requests under European Union freedom of information regulations have been denied.<sup>75</sup> Furthermore, in many cases, pro-Palestinian groups provide the basis for EU policymaking decisions on the conflict, reflecting the outsourcing of foreign policy to non-governmental organization that lack democratic accountability.<sup>76</sup>

Since the 2001 Durban conference, this European funding for NGO-led political warfare has reinforced Palestinian positions and created major obstacles to the negotiation of the compromises necessary for peace, while also inflicting substantial damage to relations between Israel and Europe. As long as this counterproductive process continues, the damage in both dimensions will continue to increase.

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# Politicizing the International Criminal Court

Prof. Eugene Kontorovich

## Introduction

In a press conference recently, Mahmoud Abbas threatened to use Palestine's GA-recognized "state" status to challenge Israel's settlements in the International Criminal Court.<sup>1</sup> He picked a most unlikely venue for the presser – Ankara, in a joint conference with Turkey's president. The absurdity of this is that Turkey continues to occupy much of Cyprus, and is responsible for a massive settlement program there. Indeed, Turkish settlers now constitute an absolute majority in Northern Cyprus. Cyprus itself is already an ICC member, and thus any state party, or the prosecutor himself, can commence proceedings against Turkey, but none seem interested, and Ankara does not seem worried.



*The main International Criminal Court building in the Hague. (Wiki Commons)*

Israel, on the other hand, is quite alarmed, for the same reason the Turks are unperturbed. The threat of a war crimes suit at the ICC concerning (Israeli) settlements has nothing to do with the established role of the Court or any precedent in international criminal law. Rather, it is part of the Durban Strategy, adopted by the NGO Forum at the United Nations Conference on Racism in 2001.<sup>2</sup> The strategy seeks to use tools of lawfare to isolate and delegitimize Israel. This involves confronting Israel in international organizations, some of which have been almost entirely hijacked by anti-Israel forces. Turkey is a partner rather than a target in this expressly political enterprise, and thus has nothing to fear.

The International Criminal Court has become perhaps the most important weapon in the lawfare campaign against Israel, particularly for Palestinian diplomatic and political efforts. Israel's various antagonists have increasingly sought to channel what were otherwise diplomatic disputes with Israel into criminal proceedings. Since 2009, Palestinian officials have sought or threatened ICC action first into Israeli military operations in the Gaza Strip, and more recently, the existence of Jewish civilian communities (settlements) in the West

Bank. Similarly, the Israeli interdiction of the flotilla running the Gaza blockade was first the object of extensive diplomacy with Turkey, and then was channeled into an ICC investigation.

It is difficult to overestimate the impact that a threat of an ICC investigation has on Israel, even though there are numerous jurisdictional barriers to such a proceeding. The ICC hangs over Israeli decision-making from the tactical to the strategic level. For example, in May 2012, the Israeli government forcibly removed Jewish residents from a house they had purchased in Hebron; the Attorney General had warned that if the members of the government allowed illegal property take-overs, they could find themselves prosecuted for violating the Geneva Convention.<sup>3</sup> On a much larger scale, Prime Minister Netanyahu entered “final status” negotiations with the Palestinians, and paid for the privilege with the high price of releasing convicted terrorist killers. The deal was that at least as long as Israel makes concessions, the Palestinians would put off seeking action at the ICC.<sup>4</sup> If the talks do not go as the Palestinians like, they will “go to the ICC.”

Thus the price for the “suspension” of ICC action is Israel’s entire territorial and political demands. The ICC is supposed to be an instrument of justice, not a bargaining chip. But the Palestinian leadership has consistently used the ICC as a very explicit cudgel to demand concessions from Israel.<sup>5</sup> In the Court’s jurisprudence as well as its Statute, justice takes precedence over diplomatic considerations such as peace negotiations. Ironically, a Court whose mission is to punish mass atrocity is being used as a tool for the mass *release* of convicted murders.

The Court was created to deal with, and deter, the gravest crimes in the world – genocide, ethnic cleansing, crimes against humanity, and other instances of mass atrocity. It has done little to prevent such outrages, or even punish them. Israel’s region alone features army massacres in Egypt, chemical warfare, ethnic cleansing and worse in Syria, genocide-inciting nuclear proliferators in Iran, and so forth. Yet the ICC is being used as a threat against the one country in the region not convulsed by violence or dominated by an authoritarian regime.

Since the 1990s, Israel has faced lawfare challenges from politically motivated prosecutions, or threatened prosecutions, of its leaders in foreign countries. The doctrine of “universal jurisdiction” for serious international law crimes allowed nations with no connection to the alleged offenses to arrest and try suspects. While this doctrine resulted in proceedings in Britain, Spain, and Belgium against Israeli leaders for alleged war crimes, these cases did not get far, largely because they lacked the support of the governments. Moreover, when such cases were brought against leaders of more powerful states, like the United States and China, the European nations promptly narrowed their statutes.

The International Criminal Court poses a greater problem for Israel because it is a court without a country. There is no foreign or prime minister to restrain politicized prosecutions, who might value an ongoing relationship with Israel, or who might fear a loss of trade, intelligence cooperation, and so forth. Moreover, European universal jurisdiction cases were reined in because they went too far, targeting not just Israel but also the United States. It is almost completely inconceivable that the ICC bureaucracy would take any steps against the United States or any other major power that had not consented to jurisdiction. Moreover, the ICC has been under pressure to pursue a “Western” nation, as all of its cases

thus far have involved African atrocities.<sup>6</sup> European states almost entirely avoid hostilities, the context in which deplorable war crimes might occur, and thus Israel may be an appealing “diversity” candidate for the Court.

Given the lack of ICC jurisdiction – and in Israel’s view, the lack of any underlying crimes – one must understand why Israel fears the Court so much. Certainly other countries do not appear to have been significantly harmed by an ICC investigation.<sup>7</sup> Kenya’s top leaders have actually been indicted and are being tried in The Hague, but that has evidently not damaged the country’s diplomatic relations, and did not even keep one of the accused from being elected president. Yet, for Israel, the threat of ICC proceedings is troubling because it is seen as being a cue or focal point for a new and more aggressive wave of delegitimization activity, much as the Goldstone Report was used. Nor does Israel wish to be the first and likely only Western democracy singled out at the bar of international justice. Thus the process is the punishment. As with the subsequently retracted Goldstone Report, the sensational nature of the ICC launching an investigation into Israel would overshadow any subsequent developments. Finally, Israel has seen other nominally neutral international bodies be hijacked by anti-Israel agendas. There is no evidence that this will be true of the ICC, but for Israel the risks of finding out are too high.

This chapter will explore how the efforts to enlist the ICC into a broader delegitimization campaign against Israel both flouts the international law rules that establish the Court, while threatening to politicize and trivialize the institution. Part 2 explains how incongruous proceedings against Israel would be within the context of the Court’s role and function in the past decade. Part 3 explains the background of Palestinian machinations to bring claims against Israel to the ICC. Part 4 explains how even if Palestine is a state, and because Israel is not a state party, the ICC would have no jurisdiction over Israel settlements. Efforts to bring such a matter before it are an invitation to the Court to usurp authority and disregard its Statute. Part 5 considers the more recent and quixotic attempts to inject the Court into the Gaza Flotilla controversy.

## **The Extraordinary Nature of an ICC Role**

The Palestinians glibly threaten to “take Israel to the ICC” over Jewish civilian communities; the United States, by counting abstention from such action as a Palestinian concession, flatters the legitimacy and realism of such threats. And the United Nations Human Rights Council has suggested the possibility of ICC jurisdiction over the settlements issue.<sup>8</sup> Yet the Palestinian threat has nothing to do with how the ICC actually functions. Currently the Court clearly has no jurisdiction over any aspect of the Israeli-Palestinian conflict. Far from a routine or recognized course of action, it would be extraordinary and unique for the ICC to accept such referrals. It would be unprecedented along several dimensions.

For example, one does not just “go” to the ICC. In its short history, the ICC has only completed two trials, one resulting in an acquittal. It has only accepted eight situations, all of them involving mass murder, depredation and wholesale brutality.<sup>9</sup> Only 18 defendants have been charged across the eight cases, with less than half of them in custody. Of the other defendants, one has since his indictment been

elected president of Kenya, while another remains a globe-trotting head of state, despite ICC rules requiring all member nations to arrest him.

Moreover, despite popular conceptions, the ICC does not have jurisdiction over all international crimes in the world. Rather, it is a membership organization. Nations become parties to the Court by acceding to its Statute, which is an international treaty. The Court only has jurisdiction over crimes committed in the territory or by the nationals of countries that have accepted its jurisdiction.<sup>10</sup> Notably, prominent Western targets of lawfare, the United States and Israel, are not parties to the Statute. Nor are the nations in the world that account for most of its population, and most of the potential for ICC charges: neither China, nor India, nor Pakistan, nor Russia have joined the Court. In the Middle East, only post-Saddam Iraq has become party to the Court.

An ICC case about Israel's settlements would be an extraordinary combination of firsts. While a relatively new court will frequently break new ground, this case would pile innovation upon innovation for the sake of prosecuting Israeli officials.

- The ICC has never accepted a referral by one state against another.
- The ICC has never received, let alone accepted, a referral by a member state against a non-member state. Each situation referred by a state involved itself or another state that had accepted the Court's jurisdiction.
- The ICC has never decided any issues about the status of disputed territory, or prosecuted any alleged crimes arising in disputed territory.
- The ICC has never pursued crimes that do not involve large-scale murder and extreme brutality.
- Finally, no court of any kind – national court or international tribunals from Nuremberg – has ever prosecuted anyone for “settlement activity,” despite an abundance of potential targets from Morocco to Turkey to Syria.

## The Long Campaign to Target Israel at the ICC

Israel, like the United States, has never joined the ICC. Despite Israel's initial support for such a court, and its strong commitment to the notion of international law, it was convinced, in light of the terms of its Statute and the politically inspired nature of some of its provisions, that the Court would reflect the broader bias against Israel found in such international bodies as the U.N. Human Rights Commission. The bias is baked into the Court's statute. The section of the Court's jurisdiction that defines war crimes borrows its definitions word-for-word from the Geneva Convention – with one major exception. At the drafting conference, Arab nations endorsed changing the language of the provision that many see as bearing on the legality of settlements – the prohibition on “deporting and transferring” civilians into occupied territory. The Arab League, led by Syria and Egypt, over US and Israeli opposition, succeeded in inventing an entirely new offense previously unknown to international criminal tribunals – “indirect” transfer, which was designed to make a war crime out of voluntary and free movement of Jews into the territories of Judea and Samaria. This language, which represented politically inspired departure from the purposes for which the initial prohibition had been inserted into the Fourth Geneva Convention in 1949, was

specifically and deliberately targeted at Israel, and thus Israel did not become party to the Statute.

Thus Israel is presumptively outside the court's limited jurisdiction, unless it acts in the territory of an ICC member. As it happens, none of Israel's neighbors are member states either. Yet the Palestinian leadership has been trying to invoke the Court's jurisdiction for years now. In doing so, they face two obvious problems: Israel has not accepted the Court's jurisdiction. And only "states" can do so; the Palestinian claim to a status as a state has been murky, at least in part because of its leadership's alternating descriptions of themselves as a state and an occupied territory aspiring to statehood.

In January 2009, in the wake of Palestinian-Israeli hostilities in Gaza, the Palestinian Justice Minister submitted a Declaration to the ICC accepting the jurisdiction of the ICC under Art. 12(3), which permits non-member nations to give the ICC jurisdiction over particular situations on an ad-hoc basis.<sup>11</sup> After a long consideration, the Prosecutor in April 2012 announced that he would not proceed with an investigation because Palestine was not a "state" within the meaning of the ICC Statute.

In determining what entities qualify as "States," the Prosecutor said he would be guided by determinations of the General Assembly, which did not treat Palestine as a state.<sup>12</sup> While at first this seemed a setback for the Palestinians, it also offered an opportunity. It suggested that the Office of the Prosecutor (OTP) would not look to objective *indicia* of statehood, such as the Montevideo Convention factors, but rather accept as binding the political determinations of the UN General Assembly (GA). If the GA would recognize Palestine, the Prosecutor could feel free to act, despite Palestine's not being a member of the United Nations and arguably not fitting traditional statehood criteria.

Thus the Palestinians turned their efforts to securing GA recognition. In a closely watched vote on Nov. 29, 2012, the GA granted "Palestine" "non-member-state observer" status.<sup>13</sup> It is a testament to the centrality of lawfare to the Palestinian strategy that the move was widely understood as specifically designed to facilitate an ICC action.<sup>14</sup> Indeed, this was the first time a nation sought UN membership specifically to be able to threaten ICC proceedings. Indeed, several powerful Security Council members that did not support the resolution but were sympathetic to it offered to vote in favor if the Palestinians promised not to turn to the ICC.<sup>15</sup> In the wake of the resolution's passage, commentary and media coverage focused on the new possibility of an ICC case involving Israeli military campaigns against terrorists in Gaza, and even more significantly, the entire existence of Jewish settlements in the West Bank, which many have long regarded as violating laws of war treaties.<sup>16</sup>

Of course, the majority vote in the GA does not have the power or authority to turn a territory into a state, for the ICC or any other purposes. (The Palestinians know this, which is why they had first sought the more-authoritative recognition of the Security Council, and been rejected.) The Court has a new Prosecutor, who is not bound by her predecessor's policy of looking to the GA for statehood determinations. Statehood is undefined in the Statute, and the new Prosecutor is free to make an independent determination based on objective criteria such as control of territory, or take some other approach.

But even assuming, *arguably*, Palestine is now a state (does this mean there is no longer a need for a two-state solution?), Israel is still not a state party. The Court could only have jurisdiction over Israeli activity “in the territory” of Palestine. Yet Israeli settlements are not in “the territory of Palestine” – which does not legally or factually exist – rather, they are in disputed territory where Israel exercises full criminal jurisdiction pursuant to express agreements with the Palestine Liberation Organization.<sup>17</sup> Thus the Palestinians cannot give the Court jurisdiction over Israeli civilian communities. This is a fundamental limit on the power of the Court, and bears some elaboration.

## **Even if “Palestine” is a State, Settlements are Outside Its Jurisdiction**

The International Criminal Court operates primarily on the principle of delegated jurisdiction, not universal jurisdiction.<sup>18</sup> Its jurisdiction depends on the consent of states, and thus it can only prosecute crimes that occur in the territory of consenting states, or were committed by their nationals. Thus far, the territorial and nationality jurisdiction has coincided: the ICC has only pursued investigations in situations involving crimes on the territory of member states when the alleged perpetrators are themselves nationals of the member state. The most controversial aspect of the ICC’s jurisdiction has always been its application to nationals of non-member states for conduct on the territory of member states.<sup>19</sup> Yet such jurisdiction is consistent with national sovereignty because the member state itself has jurisdiction under traditional territorial principles over the non-member nationals; it can thus delegate its own jurisdiction to an international tribunal.

This poses an important, if novel, jurisdictional bar to a Palestinian referral focused on settlements. Under Art. 12 of the Statute, the ICC could only have jurisdiction over Israel for conduct that occurred “on the territory” of the State of Palestine.<sup>20</sup> Thus, exercising jurisdiction requires first determining Palestine’s territory. The Rome Statute presumes defined, accepted international boundaries (most boundary disputes are quite minor and have thus far been irrelevant to the crimes within the ICC’s jurisdiction). When these assumptions are not satisfied, the Statute provides no guidance for dealing with territorial “gray areas.”<sup>21</sup>

The “territory” of Palestine is not at all established.<sup>22</sup> Similarly, Israel lacks some defined borders. In short, the borders of any state or states that have arisen in the territory of the League of Nations Mandate for Palestine remain entirely undefined. Accepting a Palestinian referral would make the scope of the ICC’s jurisdiction always indeterminate – non-member nations would be vulnerable to ICC suits simply by neighbors convincing the Court that a certain territory is theirs. Such action would also greatly discourage membership by nations with disputed frontiers. Territorial jurisdiction was envisioned as useful for self-referrals of the kind the ICC has dealt with so far, and clear aggression and invasion of previously recognized sovereign frontiers. The ICC has not been understood as a border-determination body; defining the territory of nations has never been part of the work of past international criminal tribunals.<sup>23</sup> The border demarcation role more naturally falls to the International Court of Justice, and even then only when both parties consent to jurisdiction.

The jurisdictional question of borders cannot be resolved by previewing the substantive legality of settlements. The origin of the “settlements” norm is Art. 49(6) of the Fourth Geneva Convention, which provides that the “occupying power shall not deport or transfer parts of its own civilian population into the territory it occupies.” In the drafting of the Rome Statute, the Arab states successfully proposed modifying the Geneva language to “directly or indirectly deport or transfer.” The inclusion of this language was thought to specifically target Israel’s settlements, and was the reason it did not join the treaty.

For “transfer” to be a crime, the relevant territory must be occupied. Israel has long argued that the underlying Geneva Convention provisions regarding occupation are limited to the “occupation of the territory of a High Contracting Party.”<sup>24</sup> The West Bank was not Jordanian sovereign territory when Israel took it in 1967. Because the territory did not belong to a High Contracting Party when occupied, the argument goes, the rules regarding occupation do not apply.

Yet many international lawyers reject this argument, concluding that the Conventions’ protections are intended to have broader scope, and apply (at least) to all wars between member states. However, such a conclusion does nothing to establish the “territory” of a Palestinian state. The central difficulty for ICC jurisdiction is that the mere fact of Israeli occupation does not mean the territory falls under Palestinian sovereignty. The dominant interpretation of the Geneva Conventions is that an “occupation” can arise even in an area that is not the territory of *any* state. Thus even if Israel is an occupying power throughout the West Bank for the purposes of substantive humanitarian law, this does not establish that settlement activity occurs “on the territory” of the Palestinian state.

To put it differently, while violations of the anti-transfer norm may not need to take place in the territory of a state to constitute a *violation*, they still must be “on the territory” of a state for the ICC to have *jurisdiction*. This is because the ICC is not a court of general or global jurisdiction; its jurisdiction does not extend to all violations of humanitarian law anywhere in the world. This is consistent with the respective roles of the Geneva Conventions and the ICC. The Geneva Conventions, which have near universal adherence, are interpreted broadly because of a desire to not have gaps in coverage. With the ICC, which has a limited and particular jurisdiction, gaps in jurisdictional coverage are purposeful and inherent.<sup>25</sup>

The lack of clear territorial jurisdiction would be particularly troubling because the underlying crime is not one of universal jurisdiction. Any and all nations have jurisdiction of universal jurisdiction crimes; no territorial connection with the offense is needed (though custody of the defendant may be required). An alternative theory of the ICC’s jurisdiction is that it exercises even delegated universal jurisdiction, not merely delegated territorial jurisdiction.<sup>26</sup> This account is not the dominant one, but certainly to the extent crimes within the Court’s jurisdiction are universally cognizable, concerns about non-member nationals are somewhat attenuated.<sup>27</sup> Yet not all crimes within the ICC’s charter are universal.<sup>28</sup> Perhaps the most salient exceptions are aggression<sup>29</sup> and non-grave breaches of the Geneva Conventions, of which “transfer” is one. Not only does the Geneva regime not make “transfer” universally cognizable, there is no subsequent precedent of universal jurisdiction being applied to the offense.<sup>30</sup>

One might think that just as the ICC would not determine statehood by itself but rather rely on the decisions of other UN agencies, it might also choose to take borders as a factual determination that could be made by the political branches. Even assuming the dubious validity of this approach,<sup>31</sup> neither of the two prominent (but non-legally binding) international statements on Palestinian rights purported to determine borders. Despite their condemnation of Israeli settlements, neither the GA resolution acknowledging Palestinian statehood, nor the earlier International Court of Justice condemnation of the construction of Israel's security fence, contained any express or implied borders determinations.

The General Assembly resolution of Nov. 2012 does not answer the question of Palestine's borders, and does not even address it. The resolution merely "decides" to accord Palestine non-member status in the GA; it decides nothing about borders.<sup>32</sup> Even the non-operative provisions are unclear as to borders. On the one hand, Par. 1 refers to "Palestinian territory occupied since 1967." This appears to be more of a claim about indigenous rights than a determination of national borders, as there was no Palestinian state or entity in 1967. On the other hand, Par. 4 expresses hope for the eventual "achievement" of a "*contiguous* Palestinian state living side by side in peace and security with Israel *on the basis of the pre-1967 borders*," suggesting that the Israel-Jordanian armistice line is not the operative or ultimate border. Moreover, it suggests that the Palestinian state does not yet have these borders (as it is certainly not contiguous).<sup>33</sup> The "on the basis" language has traditionally referred to adjustments in the 1949 Armistice Lines to include most Israeli settlements within Israel's borders. The Resolution also calls for a diplomatic process to "resolve the outstanding core issues" such as the fate of "Jerusalem, settlements, borders."<sup>34</sup> This makes clear that borders are an "outstanding" issue: the Assembly did not see its resolution as determining any of the territorial questions that must be central to an ICC investigation of settlements.

Even if the GA resolution did express a view on Palestine's borders, it is not binding or authoritative. The General Assembly has an internal bureaucratic power to determine its membership. That determination may or may not be the required trigger for "statehood" for ICC purposes – even that is unclear.<sup>35</sup> But determining the territory of states goes beyond any of the General Assembly's recognized powers.

Similarly, the ICJ opinion recognized the difference between the existence of occupation (which does not require the occupied territory to be sovereign) and borders, which delimit the territories of two separate sovereigns.<sup>36</sup> The Court self-consciously avoided any resolution of "permanent status" issues such as borders.<sup>37</sup> It also made clear that the 1949 Armistice Lines, while in its view triggering the applicability of Geneva Conventions and other principles, do not constitute an international boundary.<sup>38</sup> Indeed, the Court specifically criticized the route of the wall because it could "*prejudge the future* frontier between Israel and Palestine."<sup>39</sup> Thus in the view of Court, there was no recognized frontier between the two entities. If the Green Line were the recognized "frontier," the Wall would not prejudice it, but rather simply infringe on it.

Adjudication by international tribunals, including the ICC, depends fundamentally on state consent. As a result, the International Court of Justice held in the influential *Monetary Gold* case that it could not determine the legal rights and duties of a state that was not party to the case and that had not given its consent.<sup>40</sup> Thus, where the decision of a case necessarily requires the adjudication of the legal interests of a non-consenting state, the Court cannot exercise jurisdiction. This principle extends beyond the ICJ; other international tribunals have treated the principle as part of the general international law applicable to international tribunals:

[T]he consent principle applies to the ICC as it does to other international Tribunals. Were the ICC to make judicial determinations on the legal responsibilities of nonconsenting States with respect to the use of force and aggression, this would violate the *Monetary Gold* principle.<sup>41</sup>

To exercise jurisdiction, the Court necessarily must decide on the borders of Palestine, which simultaneously determines the borders of Israel, a non-member. In order to reach the issue of individual liability, the Court must first draw the borders of a non-consenting state – as clear a violation of the *Monetary Gold* principle as one could imagine.

## Turkey and the Flotilla

The Israeli interdiction of the Turkish-sponsored, Gaza-bound flotilla has been fodder for multiple international investigations, Israeli investigations, and extensive diplomatic discussions between Ankara and Jerusalem. Shortly after Israel and Turkey reportedly came to a rapprochement about the affair, the island nation of Comoros referred the situation to the Prosecutor. While neither Turkey nor Israel are state parties, one of the Turkish-owned vessels in the flotilla had been reflagged to Comoros – flags of convenience, as they are known, are quite loosely regulated under international law. Thus the vessel was technically on the territory of Comoros. Yet Comoros was clearly just a front – an Istanbul law firm drafted the referral itself.<sup>42</sup> The Turkish use of such a straw man to invoke the ICC's jurisdiction despite the settlement with Israel is undiplomatic and abusive, but within the letter of the Court's statute. The territoriality argument is technical, but sound, just as the Palestinian one is unsound.

Yet the Comoros referral suffers from even greater disabilities. For one, it grossly fails the requirement of complementarity. The ICC can only act when nations with primary jurisdiction are “unable or unwilling” to “genuinely” investigate.<sup>43</sup> Israel conducted a full and thorough inquiry into the flotilla incident and found no crimes occurred. The vessels ran a blockade, giving Israel a legitimate right to stop it; when confronted with force the boarders acted in self-defense. This is far from a clear violation of international law. And while one might criticize the inquiry, many leading scholars concurred, making it very difficult to criticize Israel's inquiry as a sham to avoid responsibility. Obviously any national inquiry could be perceived as self-interested, but the complementarity system nonetheless defers to such proceedings unless they are manifestly self-dealing. If Israel's inquiry fails the complementarity test, any national inquiry that does not result in prosecution would be inadequate – contradicting the clear language of the Statute,

which clearly sees non-strategic non-prosecution as enough to make a matter inadmissible before the Court.<sup>44</sup>

But even beyond the Israeli proceedings, Turkey has initiated a prosecution and trial of the Israeli military personnel in the flotilla incident.<sup>45</sup> It would defy credulity to suggest these proceedings aim to immunize Israeli officials.<sup>46</sup> Moreover, the Comoros referral fails to meet the “gravity” requirement for ICC cases. The ICC is designed to not deal with every colorable incident of war crimes, but only with the most awful and systematic. While the statute does not define the “gravity” requirement, the killing of nine armed people in an isolated incident, arguably in self-defense, manifestly fails this requirement. The ICC prosecutor has already rejected charges against British troops in Iraq as failing to meet the gravity requirement when a similar number of deaths were involved.<sup>47</sup>

The manifest weakness of the Comoros referral underscores that the purpose of such proceedings is not to secure convictions, but to exert political pressure on Israel regarding matters already subject to diplomacy, and cast a shadow on the legitimacy of the Jewish state. Thus such actions pervert the function and purpose of the Court. At the same time, the Comoros referral is so weak and manifestly unlikely to succeed, that one wonders whether its true purpose is even just to embarrass, as it seems too far outside the ICC’s mandate even for that. Rather, the Comoros suit may be best viewed as a political action to accompany, and precede, a Palestinian referral. The Comoros filing came just as matters between Israel and Turkey had nominally been resolved or at least ameliorated – but even as a possible Palestinian referral seemed imminent.

A Palestinian referral, if it resulted in an investigation, would certainly expose the Court to accusations of anti-Israel bias, especially given how far such a matter would go beyond the Court’s mission and mandate. However, if it had already rejected one referral against Israel, the Court would need some political cover, however thin, to protect it against such charges. While it may seem paranoid to suggest such machinations, it is widely thought to be a priority for the Court to “balance” its docket with matters not involving African states to hedge against accusations of neo-colonialism.<sup>48</sup> The suggestion here is that the pathetic flotilla case is a “loss leader,” or a kind of set-off for a subsequent Palestinian referral.

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## Notes

- 1 [http://www.google.com/hostednews/afp/article/ALeqM5i5tc0voVhdjx1rpgg\\_Rqk2B6k8GQ?docId=CNG.ec7b73e3bc421b8b5a3d5be7d0e31e42.9b1&chl=en](http://www.google.com/hostednews/afp/article/ALeqM5i5tc0voVhdjx1rpgg_Rqk2B6k8GQ?docId=CNG.ec7b73e3bc421b8b5a3d5be7d0e31e42.9b1&chl=en)
- 2 See Anne Herzberg, *Lawfare: Exploitation of the Courts in the Arab-Israeli Conflict* (2d. ed 2010), available at <http://www.ngo-monitor.org/data/images/File/lawfare-monograph.pdf>
- 3 Chaim Levison, *Netanyahu ordered evacuation of Hebron home over fears of war crimes suits*, Haaretz.com, May 13, 2012. An appellate panel subsequently upheld the legality of the Israeli purchase of the house. See Stuart Winer, *Settlers receive boost in battle over Hebron home*, Times of Israel (July 1, 2013), available at <http://www.timesofisrael.com/settlers-receive-boost-in-battle-over-hebron-home/>
- 4 Khaled Abu Toameh, PA to halt ICC plans against Israel as peace gesture, Jerusalem Post, May 5 2013.
- 5 Jack Khoury, *If peace talks fail, Abbas will have to answer to Palestinian people, not Kerry*, Haaretz.Com, July 20, 2013.
- 6 This is not due to any bias on the Prosecutor's part. Rather, Africa has a large number of countries that have both accepted the Court's jurisdiction, and are the sites of mass atrocities and bloody, prolonged wars. Indeed, most of the African cases were so-called "self-referrals," where a country invites the ICC in itself to help it prosecute criminals it could not handle itself; and another two were referred to the Court by the Security Council.
- 7 Most people would be unaware that countries such as Columbia and Russia are subject to preliminary investigations by the prosecutor.
- 8 Human Rights Council, *Report of the independent international factfinding mission to investigate the implications of the Israeli settlements*, par. 17, 104, U.N. Doc. A/HRC/22/63 (Feb. 7, 2103).
- 9 Current situations include the activities of the genocidal Lord's Liberation Army in Uganda, the crimes against humanity in the Congo, the genocide in Darfur, war crimes in the Central African Republic, the use of child soldiers and other brutalities during the civil war in the Cote d'Ivoire, the Islamist oppression in Mali, Qaddafi's repressive campaign during the Libyan civil war, and the ethnic massacres surrounding Kenya's elections.
- 10 See Rome Statute of the International Criminal Court, Art. 12(2), U.N. Doc. A/CONF.183/9\*.
- 11 The Security Council can also refer a case to the Court, as it did with Libyan and Sudan/Darfur.
- 12 Sung Un Kim, *ICC lacks jurisdiction to investigate Palestine war crimes claims: prosecutor*, JURIST (April 3, 3012).
- 13 The Situation in Palestine, par. 5-8, available at <http://www.icc-cpi.int/NR/rdonlyres/C6162BBF-FEB9-4FAF-AFA9-836106D2694A/284387/SituationinPalestine030412ENG.pdf>.
- 14 U.N. Doc. A/RES/67/19. Only the Holy See currently shares the status, though in the past a number of other nations, such as Switzerland and Spain have had it.
- 15 See Mahmoud Abbas, *The Long Overdue Palestinian State*, N.Y. Times A27 (May 17, 2011) ("Palestine's admission to the United Nations would pave the way for the internationalization of the conflict as a legal matter, not only a political one."). See also Ethan Bronner & Isabel Kershner, *Palestinians Set Bid for U.N. Seat, Clashing With U.S.*, N.Y. Times A1 (Sept. 17, 2011) ("One goal of the move is to gain admission to a range of international legal and diplomatic forums where complaints against Israeli occupation and settlement could be pursued.").
- 16 See Chris McGreal, *Palestinians warn: back UN statehood bid or risk boosting Hamas*, THE GUARDIAN (Nov. 27, 2013), available at (mentioning the U.S., U.K., and France as among nations wanting to link an affirmative vote to promises of avoiding the ICC).
- 17 See, e.g., George Bishart, *Why Palestine Should Take Israel to Court in The Hague*, N.Y. TIMES (Jan. 29, 2013); Aeyal Gross, *Following UN vote on Palestine, Israel may now find itself at The Hague*, Haaretz (Dec. 2, 2012); Christine Hauser, *New U.N. Status for Palestinians Could Open Door for Claims of Israeli War Crimes*, N.Y. TIMES A8 (Nov. 30, 2012).
- 18 Interim Agreement, Art. XVII.1.a, article XVII.2.c, article XVII.4 (1995); Interim Agreement Annex IV, Art. II(c).
- 19 Dapo Akande, *The Jurisdiction of the International Criminal Court over Nationals of Non-Parties: Legal Basis and Limits*, 1 J. INT'L CRIM. J. 618, 621-34 (2003)
- 20 Id. at 619-21 (describing American objections to jurisdiction over non-party nationals).
- 21 Art. 12(2)(a).
- 22 See SCHABAS, INTRODUCTION TO THE INTERNATIONAL CRIMINAL COURT 82.
- 23 See id. at 88 ("the actual limits of the territory of Palestine are also a matter of dispute"); David Luban, *Submitting to the Law of Nations: Palestine, Israel, and the International Criminal Court*, BOSTON REV. (Dec. 12, 3012) ("The ICC is a special-purpose criminal court, and it would be astounding for it to get out in front of the UN's own court on a fundamental question about the map of the world.")
- 24 SCHABAS, INTRODUCTION TO THE INTERNATIONAL CRIMINAL COURT at 82.
- 25 IV Geneva Convention Relative to the Protection of Civilians Art. 2, par. 2 (1949).
- 26 WILLIAM A. SCHABAS, AN INTRODUCTION TO THE INTERNATIONAL CRIMINAL COURT 82 (2011) (observing in regard to areas without an established sovereign that "some territories are necessarily beyond the reach of the Court," and jurisdiction could only be secured by the nationality of offender).
- 27 See Madeline Morris, *High Crimes and Misconceptions: The ICC and Non-Party States*, 64 LAW & CONTEMP. PROB. 12, 25-26 (2001)
- 28 See Akande, *Nationals of Non-Parties*, supra, at 626-27.
- 29 See Morris, supra at 28 & n.72 (using child soldiers as example of ICC crime not subject to UJ).

- 29 See Akande, *Aggression*, at 26.
- 30 Additional Protocol I to the Geneva Conventions treats an expanded version of the “transfer” norm as a “grave breach.” Some argue the Optional Protocol has acquired customary status – despite not being ratified by major powers such as the U.S., India, Pakistan, Turkey, and of course, Israel – but there is no evident state practice to support such a custom.
- 31 The occurrence of conduct on the territory of a member state is a jurisdictional fact and thus one the Court must convince itself of.
- 32 See *Status of Palestine in the United Nations*, U.N. Doc. A/67/L.28, par. 2 (Nov. 12, 2012).
- 33 *Id.* (emphasis added).
- 34 *Id.* at 5.
- 35 See Dapo Akande, *ICC Prosecutor Decides that He Can’t Decide on the Statehood of Palestine. Is He Right? Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* (ICJ 2004).
- 36 *Id.*, par. 52-54; see also Separate Op. of J. Higgins, par. 17.
- 37 Thus the Court recognizes that the Mandate created international “territorial boundaries,” while the 1949 Armistice Agreement did not. *Id.* at par. 71-72. The Court’s repeated references to “Occupied Palestinian Territory”, a term taken from the language of the G.A. request for an opinion, do not involve any determination that the territory “belongs” to the Arab population. Rather, it is that portion of Mandatory Palestine that Israel forcibly occupied in 1967, after ousting the Jordanian occupation. Par. 73.
- 38 *Consequences of Construction*, Par. 121 (emphasis added).
- 39 *Italy v. France, United Kingdom, and United States*, ICJ Rep. (1954) at 19.
- 40 See Dapo Akande, *Prosecuting Aggression: The Consent Problem and the Role of the Security Council*, Oxford Institute for Ethics, Law and Armed Conflict Working Paper, at 26 (May 2010).
- 41 [http://www.icc-cpi.int/en\\_menus/icc/structure%20of%20the%20court/office%20of%20the%20prosecutor/reports%20and%20statements/statement/Pages/otp-statement-14-05-2013.aspx](http://www.icc-cpi.int/en_menus/icc/structure%20of%20the%20court/office%20of%20the%20prosecutor/reports%20and%20statements/statement/Pages/otp-statement-14-05-2013.aspx)
- 42 Rome Statute, Art. 17(b).
- 43 Similarly, a UN-sponsored international inquiry concluded that “the incident and its outcomes were not intended by” Israel. Report of the Secretary-General’s Panel of Inquiry on the 31 May 2010 Flotilla Incident (Palmer Report), pg. 4 (Sept. 2011).
- 44 Gul Tuysuz, CNN, Trial opens in Turkey against Israeli military officers in 2010 ship raid, Nov. 6, 2012. Turkey launches 5th hearing of Mavi Marmara trial, TurkishPress.com, May 20, 2013, available at <http://www.turkishpress.com/news.asp?id=385074>.
- 45 Yonah Jeremy Bob, ‘Turkey Marmara trial a cynical political process’, Jerusalem Post, Feb. 20, 2013, [http://www.icc-cpi.int/NR/rdonlyres/04D143C8-19FB-466C-AB77-4CDB2FDEBEF7/143682/OTP\\_letter\\_to\\_senders\\_re\\_Iraq\\_9\\_February\\_2006.pdf](http://www.icc-cpi.int/NR/rdonlyres/04D143C8-19FB-466C-AB77-4CDB2FDEBEF7/143682/OTP_letter_to_senders_re_Iraq_9_February_2006.pdf), pg. 9
- 46 <http://www.ejiltalk.org/court-between-a-rock-and-a-hard-place-comoros-refers-israels-raid-on-gaza-flotilla-to-the-icc/>

# Degrading International Institutions: The United Nations Goldstone Report

Amb. Dore Gold

The United Nations' "Report of the United Nations Fact-Finding Mission on the Gaza Conflict"<sup>1</sup> was the most vicious indictment of the State of Israel bearing the seal of the United Nations since the UN General Assembly adopted its infamous "Zionism is Racism" resolution in 1975, which it subsequently revoked. A special session of the 47-member United Nations Human Rights Council called for establishing the Fact-Finding Mission that prepared the report through the adoption of Resolution S-9/1 on January 12, 2009. The special session was convened at the request of Cuba, Egypt, and Pakistan – not exactly beacons of human rights. Resolution S-9/1 was adopted with the notable support of Russia, China, Arab/Islamic, and third world countries, but without the support of a single democracy such as Canada or the member states of the European Union. The president of the Human Rights Council appointed a South African judge, Justice Richard Goldstone, to head the proposed fact-finding mission.

The background of this activity on the part of the UN Human Rights Council was Israel's decision to launch a three-week military campaign, called Operation Cast Lead, on December 27, 2008, in order to reduce significantly, if not eliminate, the indiscriminate rocket



*A rocket fired from a densely populated civilian area in Gaza towards Israel (AP)*

and mortar fire from the Hamas-controlled Gaza Strip into Israel, that had been taking place for eight long years. In the period leading up to Operation Cast Lead, the rate of rocket fire on Israeli towns and villages had escalated dramatically: from 179 in 2005 to 946 in 2006 and then surging yet again in 2008 to 1,572 yearly rocket attacks. By December 2008, nearly one million Israeli civilians were forced to move into bomb shelters. No state could accept this kind of continuing situation. Israel certainly had a right of self-defense under the UN Charter.

The UN Human Rights Council did not appear to be interested in learning the truth of what happened in the Gaza Strip. It prejudged Israel with the language of the resolution that called for the creation of its Fact-Finding Mission. Thus Resolution S-9/1 condemns Israel's military operation in Gaza, which it says "resulted in massive violation of the human rights of the Palestinian people." Moreover, the resolution "demands" that Israel "stop the targeting of civilians and medical facilities." The end of the resolution put forth the idea of dispatching an "independent fact-finding mission," which, unlike a judicial proceeding, did not have to follow certain rigorous procedures, especially with respect to the evidence it gathered.

Indeed, Justice Goldstone himself told *The Forward* in an interview published on October 7, 2009, "If this had been a court of law there would have been nothing proven.<sup>2</sup> And what new facts did the UN Human Rights Council expect to find if it had already determined in its resolution that Israel had engaged in "the targeting of civilians?" Moreover, the President of the Human Rights Council felt free to appoint two other panelists, Christine Chinkin and Hina Jilani, who, along with Goldstone, signed an open letter in March 2009, already condemning Israel for "gross violations of international humanitarian law," before any investigation was launched.<sup>3</sup> In any normal legal proceeding, they would have been disqualified. What was left to investigate if Israel was found guilty right from the start? The Goldstone Report, published in September 2009, ultimately relied upon political sources of information that helped tilt its findings in one direction.

The UN Human Rights Council already had a history of clear anti-Israel bias. Indeed, of the 11 special sessions it has convened since its establishment in 2006, five have dealt with Israel. Back in November 2006, former UN Secretary-General Kofi Annan strongly criticized how the new UN Human Rights Council functioned right after its creation, noting its anti-Israel emphasis: "Since the beginning of their work, they have focused almost entirely on Israel, and there are other crisis situations, like Sudan, where they have not been able to say a word." The UN Human Rights Council had just replaced the UN Human Rights Commission, which despite its illustrious past under its founder, Eleanor Roosevelt, had since that time become a highly politicized body that unfairly singled out Israel repeatedly. The goal of those who pushed the idea of a fact-finding mission in 2009 was to use it to invent a narrative hostile to Israel, which could serve their larger goal of delegitimizing the Jewish state.

Strictly speaking, the Goldstone report was primarily directed against Israel. The Goldstone Report alleged that Israeli troops had committed "war crimes" by attacking purely civilian targets in the Gaza War. Running through the report in incident after incident is the charge that Israel *intentionally* attacked civilian targets. To make matters worse, the report failed to link Hamas to any violations of the laws of war, even though its continuing rocket attacks on Israeli civilians, as well as shielding rocket emplacements in civilian buildings, caused the Gaza War to begin with. There was only mention of anonymous "Palestinian armed groups." It is probably for that reason that the Hamas second in command in Damascus, Musa Abu Marzuq, told the Saudi satellite channel *Al-Arabiya* that "the report acquits Hamas almost entirely."<sup>4</sup>

In April 2011, Justice Goldstone wrote an op-ed in the *Washington Post* in which he retracted the central premise of his report that Israel had deliberately killed Palestinian civilians.<sup>5</sup> This assertion by the UN report appeared spurious to begin with, given the fact that the IDF provided multiple warnings in Arabic to Palestinian civilians that were communicated by telephone, radio, and leaflets, before any attack on a civilian structure being used for military purposes.

When an official UN report is issued, and it makes such baseless charges against a UN member, the UN's own credibility is put into question. For by rejecting his panel's assertion that Israel intentionally killed Palestinian civilians, Goldstone was also rejecting one of the central pillars of the UN Human Rights Council's resolution that commissioned his report to begin with. Thus, the Goldstone Report was not only damaging for Israel, but also for the UN. Those who launched this politicized investigation into Israeli actions in Gaza apparently did not care that the result would ultimately degrade the UN itself.



South African judge Richard Goldstone. (Wiki Commons)

How had the Goldstone team produced such a result? What methodology was used? It is essential to understand that its members held a very specific outlook of the nature of this kind of armed conflict and this affected their conclusions. In part, this was the consequence

of the terms of reference for the Fact-Finding Mission that appeared in the UN Human Rights Council resolution. But there were other factors affecting the judgment of the Goldstone panel. Colonel Desmond Travers of Ireland was the senior military figure on Goldstone's panel and probably its most important member after Justice Goldstone. In a wide-ranging interview in *Middle East Monitor* from February 2, 2010,<sup>6</sup> he utterly rejects that there is something called "asymmetric warfare" in which insurgent forces introduce civilians into the battlefield against modern armies in a way that changes the nature of warfare. This outlook directly affected what Travers and his colleagues looked for as they gathered evidence, and how they went about the interviews that they conducted with Palestinians in the Gaza Strip.

Take, for example, the case of Muhammad Abu Askar, a longtime Hamas member who served as the director-general of the ministry of religious endowments in the Gaza government. He appeared before the Goldstone Panel arguing that his house had been "unjustly" blown up by Israel, though he admitted that he was warned in advance by the IDF, who telephoned him directly informing him that his home was to be targeted and he had better vacate the area.<sup>7</sup> The Goldstone Report concludes that Abu Askar's home was of an "unmistakably civilian nature." If that was the case then Israel would have violated one of the basic principles of international law by failing to discriminate between military and civilian objects and personnel during wartime.

Because the UN actually posted on its website video clips with the questioning of Abu Askar by the Goldstone Panel,<sup>8</sup> it is possible to examine how panelists reached their conclusions. They asked him detailed questions about the warning he received. They also asked about the other homes in the area. But the most pivotal question that would help them determine whether Abu Askar's house was purely civilian in nature or was a legitimate military target was never asked. No one bothered to confront him with the unpleasant but necessary question of whether Hamas munitions were being stored in his house.

In January 2010, the Israel Defense Force completed its own internal investigation of many of the incidents that appear in the Goldstone Report, including the case of Abu Askar, findings submitted by Israeli representatives to the UN secretary-general.<sup>9</sup> It turned out that the cellar and other parts of Abu Askar's house served as a storage facility for large stockpiles of weapons and ammunition, including Iranian-supplied Grad rockets that had been used against Israeli cities such as Ashkelon, Ashdod, and Beersheba.

Indeed, the area around the house had been used as a launch site for attacking many Israeli towns and villages. If anyone in the UN's research division had bothered to check the Arabic website of the Izz al-Din al-Qassam Brigades of Hamas, they would have discovered that Khaled Abu Askar, Muhammad's son, worked for the military supply unit of Hamas and provided its operatives with rockets and military equipment.<sup>10</sup> The failure of the Goldstone panel to look into these issues and to ask the most basic questions of Muhammad Abu Askar regarding his use of his own house to store rockets illustrates frankly how unprofessional this investigation really was.



*An anti-aircraft weapon stored in a mosque in Zeitoun, Gaza.*

The Abu Askar case is only one of many incidents that appear in the Goldstone Report, but it is representative of a pervasive problem that appears throughout. In trying to reconstruct the reality of what occurred in the Gaza War, the team members refused to consider that Hamas was exploiting civilian areas to gain military advantage. In late October 2009, Colonel Travers

confidently told *Harper's*: "We found no evidence that mosques were used to store munitions." He then added his own ideological position on the matter that helped him make such a conclusive assertion: "Those charges reflect Western perceptions in some quarters that Islam is a violent religion."<sup>11</sup> It appeared that Travers' conclusions were more the product of political correctness than empirical evidence that he worked hard to collect.

For, when Travers was asked how many mosques he actually inspected, he answered that he visited two. He did not even think that he needed to be more thorough for he dismissed the very possibility that anyone would hide munitions in a place of worship. In contrast, earlier this year, Colonel Tim Collins, a British veteran of the Iraq War, visited Gaza for BBC *Newsnight* and actually inspected

the ruins of a mosque that Israel had destroyed because it had been a weapons depot. He found that there was evidence of secondary explosions caused by munitions stored in the mosque cellar.<sup>12</sup> Travers clearly did not think it was necessary to make the same effort.

In other theaters of war in the Middle East, the militarization of mosques was very common. In 2004, US forces in Iraq found weapons and insurgents in no fewer than 60 mosques in the town of Fallujah.<sup>13</sup> While the Goldstone Report itself stated that it was unable to make a determination whether mosques were used for military purposes by the Palestinians, it nonetheless concluded that mosques were a “civilian object” and that Israeli operations against them were a violation of international law.

More generally, the Goldstone team simply refused to accept the argument that Hamas had used the Palestinian population in the Gaza Strip, as well as its civilian infrastructure, as human shields – a hallmark of the asymmetric warfare used by insurgents. Speaking about Hamas, Travers in his 2010 interview states point blank, “We found no evidence for the human shield phenomenon.” As a result, from the Goldstone panel’s worldview, Hamas had no responsibility for exploiting the Palestinian population to shield its military operations. Travers, in particular, was operating with ideological filters that prevented him from seeing evidence that contradicted his worldview.

From Israel’s military experience, it was clear that Hamas used human shields effectively. A new report by Israel’s Intelligence and Information Center contains Israeli Air Force videos showing that on Dec. 27, 2008, the first day of the Gaza War, after the residents of a building serving as a munitions storehouse were warned of an imminent Israeli air operation, they did not evacuate but ran to the roof of the building. As a result, Israel aborted the airstrike it had planned.<sup>14</sup> Other Israeli Air Force videos show Hamas operatives deliberately moving toward groups of children or using them in the fighting in order to escape any possible Israeli attack.<sup>15</sup> Detained Hamas combatants confirmed the existence of this military tactic.<sup>16</sup>

However, the Goldstone panel did not want to consider the possibility that the Gaza War was part of an emerging battlefield in which private homes, mosques, and innocent civilians are intentionally exploited by terrorist groups that seek to fight the West. In February 2010, Afghan officials reported that the Taliban were increasingly using human shields against US and allied forces trying to make inroads in Helmand province. Similar tactics have been employed by the Taliban in Pakistan as well.<sup>17</sup>

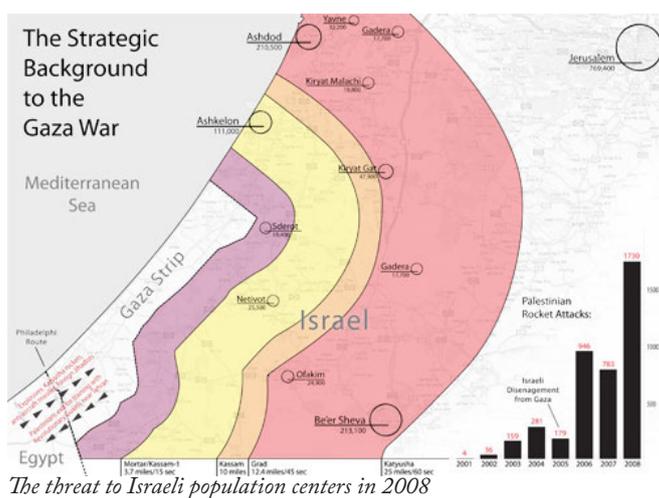
With respect to the Gaza Strip, the Goldstone Report recommended that states open criminal investigations against those whom it alleges may have committed war crimes. It also seeks the intervention of the International Criminal Court.<sup>18</sup> Already, British courts have sought the arrest of former Israeli officers on the basis of complaints issued by Islamic and radical left-wing groups in London.<sup>19</sup> Might not US and other NATO officers be exposed to the same treatment on the basis of these precedents? Hamas created a legal arm, called *al-Tawthiq* (lit. documentation), which fed information to the Goldstone panel and today provides British lawyers with material to seek the arrest of Israelis in Britain. What would prevent the Taliban from finding lawyers to do the same?

What needs to be done is to recognize that Western armies will be dealing increasingly with situations in which terrorist groups embed their military capabilities in the heart of civilian areas. In these circumstances, Western armies have three choices if their countries come under attack: 1) to surrender to terrorism and not defend their citizens, 2) to act like the Russians in Chechnya and use indiscriminate firepower, or 3) to find a way to separate the civilians from the military capabilities they hope to destroy.

Israel clearly chose the last option, using an unprecedented system of warnings to the Palestinian population, by means of leaflets, breaking into Hamas radio broadcasts with special Arabic transmissions, and finally by telephone calls and text messages to the residents of a targeted area to evacuate and avoid danger.

The Human Rights Council and its Goldstone Report never suggested how Israel was supposed to respond to eight years of rocket fire. Despite the multiple warnings that Israel issued to the Palestinian population, the report has the audacity to charge that Israeli soldiers “deliberately” killed Palestinian civilians, basing this accusation on biased interviews with Gaza residents whom it admitted were in “fear of reprisals.” The Goldstone Report does not ask itself how it could charge that Israel had a policy of deliberately killing civilians, if Israel actually took extraordinary measures to warn the very same civilian population of impending attacks. But rather than being discredited, unfortunately the Goldstone report picked up steam. The UN General Assembly voted on the report on November 5, 2009.<sup>20</sup>

It was noteworthy that countries with forces deployed in insurgency wars, such as Afghanistan, either opposed or abstained. Yet in a second vote in late February 2010, Britain and France changed their vote from abstention to support for the Goldstone Report. In mid-March 2010, the European Parliament voted to endorse the report as well.<sup>21</sup>



No one is suggesting that human rights be sacrificed on the altar of national security. The laws of war need to be carefully protected along with the lives of the innocent. The problem with the Goldstone Report is not the result of the need to revise those laws: They need to be applied correctly and not in a way that ignores what insurgent forces are doing on the ground. If a

public building filled with munitions needs to be attacked at night when civilians are not present, it is not for reasons of revenge but rather from military necessity. The Goldstone panel did not want to consider that possibility because of its own prejudices and its political objectives.

The politicization of the UN Human Rights Council through the Goldstone Report meant that one of the greatest international bodies established after the Second World War had been corrupted and its standing seriously compromised. For a short time, the Palestinian Authority (PA) desisted from pressing for the advancement of the report in relevant UN bodies, largely because of US pressure. But soon thereafter, the PA joined Hamas and the many organizations in Europe that were urging punitive measures against Israel and sought the UN Security Council's adoption of the report.<sup>22</sup> What was important for pro-Palestinian activists in Geneva who were at the heart of the effort to produce the Goldstone Report was not to understand what happened in the Gaza Strip in 2009, but to successfully wage political warfare against Israel, even if that meant adopting any means to achieve that end.

*Dr. Dore Gold, President of the Jerusalem Center for Public Affairs, served as Israel's Ambassador to the United Nations from 1997-1999. He currently serves as foreign policy advisor to Prime Minister Benjamin Netanyahu. Gold was involved in the negotiations over the 1998 Wye Agreement, the 1997 Hebron Protocol, and in 1996 concluded the negotiations with the US, Lebanon, Syria, and France for the creation of the Monitoring Group for Southern Lebanon. In 1991, he served as an advisor to the Israeli delegation to the Madrid Peace Conference. Gold is the author of Hatred's Kingdom: How Saudi Arabia Supports the New Global Terrorism (Regnery, 2003); Tower of Babel: How the United Nations Has Fueled Global Chaos (Crown Forum, 2004); The Fight for Jerusalem: Radical Islam, the West, and the Future of the Holy City (Regnery, 2007); and The Rise of Nuclear Iran: How Tehran Defies the West (Regnery, 2009).*

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# The Abuse of Islam as Part of the Demonization of Israel

Sinem Tezyapar

## Introduction

All we see in the Islamic world regarding Israel is clips of burning flags, rallies with “Death to Israel” slogans, prayers of destruction in mosques, cartoons depicting Israelis as bloodthirsty demons or villainized Jews in television series and the general indoctrination to hate Jews beginning from kindergarten: In brief, ubiquitous hate propaganda which is heavily ideological. But how much of this has its origins in Islam itself, and will Muslims ever be able to accept Israel as a friendly country and love Jews as fellow human beings?



*An Islamic crescent moon  
(Wiki Commons)*

As much as the Israel-Palestine conflict has been a symbol of an Islamic cause, the core problem is not about land or the situation of the Palestinians but rather hatred of Jews in general. Some people will say, “I have no problem with Jews but only with Israel or Zionism”; however when we dig deeper, there is a preconceived opinion about Jews – either based on religious or cultural education – that becomes an obstacle towards a fair approach towards Israel. Whether these people are militant jihadists or intellectual ones or ordinary Muslims in the spirit of solidarity, we find Jewish hatred is at the core of the issue either in an obvious or a discreet form.

There are two aspects to this antagonism that have kept growing – especially in our time – due to the wide-spread propaganda seen on TV or in social media. One aspect is evidently religious, and the other is political, a view that encompasses different ideologies both from left and right-wing groups. Since the hijacking of religion for a political agenda is in question, religious and political aspects are intricately interconnected. However, I will be focusing on the religious feature of the situation, which is largely based on colossal ignorance and mis-education to hate Jews.

In this paper, I will point out how basic misconceptions on the part of Muslims or misinterpretations of the Qur’an are deliberately misused to demonize Israel and dehumanize Jews. With this endeavor – to expose the exploitation and distortion

of Islam – I also would like to reveal how a proper education can reverse this so-called religious-based Jew-hatred. Israel, or the Jewish people in general, can struggle against media lies and emotional abuse via propaganda, but as long as the false beliefs circulating in Islamic communities go uncorrected, the indoctrination and propagation of blind hatred will be nurtured with a pseudo-belief system that is falsely villainizing Jews.

The other reason I am writing about this crucial topic is to show Muslims that they have been either badly misled or grossly misinformed about Islam, with the intention that they will not allow themselves to be used for nefarious political games. In order to eradicate religious-based enmity, it is imperative that they come to understand that – quite the opposite – being a proper Muslim necessitates neither Jew-hatred nor sectarian animosity. Lastly, I want it to be clear to non-Muslims that Islam is not the root of the problem; on the contrary, Muslims being true and pure followers of the Qur’an is the solution to the problem.

On a side note, I am very much aware of the potential criticism that might be directed against me, mostly consisting of: I do not represent mainstream Islam; I do not have authority like the *ulema* (an Islamic scholar) or the *ijmaa* (consensus or agreement of the Muslim community); or the most common, that I am practicing the doctrine of *taqqiya*<sup>1</sup> (precautionary dissimulation) – this last critique most typically emanates from those who possess no real understanding of what this doctrine represents. I will not respond to them since it is not the topic of the book. However, what I say comes from being a pure follower of the Qur’an, and reading it with a spirit of reason, love and conscience, and I fully believe that when the message of Islam is purified from all corruption, bigotry, fabrications, traditional misinterpretations, and misuse for political propaganda, there will be no obstacle for this unjustified and artificial conflict to come to an end.

## Reading the Qur’an Sincerely

First and foremost, when people hear negative references about Jews from the Qur’an, they should know that there are pages of verses that praise the Torah, the Prophet Moses and his followers. As is often the case, taking verses, or hadiths, out of context leads not only to a poor understanding, but also to prejudicial attitudes and outright hatred of people who have done nothing wrong. Perhaps even worse is the hypocrisy of those who wish to impose their extremist views by selecting particular verses and hadiths and deliberately distorting the meaning.

As a matter of fact, there are also threats of damnation by God for those so-called Muslims – who are described as hypocrites – who misuse the Qur’an for their own benefit. God talks about the false things that their tongues may put forth in the name of Allah and He promises punishment for “those who conceal Allah’s revelations in the Book, and purchase for them a miserable profit” (Qur’an, 2:174), “those in whose hearts is perversity follow the part thereof that is allegorical, seeking discord” (Qur’an, 3:7), “those who purchase idle tales, without knowledge, to mislead (men) from the path of Allah” (Qur’an, 31:6) and those who “invent (lies) against Allah” (Qur’an, 6:140).

In one particular verse, God mentions those who take some parts of the Qur'an and overlook the others as such:

Then is it only a part of the Book that you believe in, and do you reject the rest? But what is the reward for those among you who behave like this but disgrace in this life? – and on the Day of Judgment they shall be consigned to the most grievous penalty. For Allah is not unmindful of what you do. (Qur'an, 2:85)

As a point of fact, some clerics and Muslim leaders – leaving aside the Qur'anic verses that praise the Jews, leaving aside the spirit of the Qur'an as a whole – speak of nothing but hatred, rage, and holding grudges, instead of love, friendship, and brotherhood. Forgiveness is paramount, and this is mentioned also in connection with Jews (Qur'an, 5:12-13). The interpretation by those who approach the text with the spirit of war against Jewish people is not only a crime but an offense to Islam.

Taking isolated passages from the Qur'an to justify shedding blood is an abuse and misuse of Islam. Muslims are supposed to embrace the teachings of the Qur'an as a whole, because the verses explain one another; they have to be considered in a holistic fashion, and they have to be interpreted according to the context of the revelation of the suras.

## Why So Much Hatemongering and Unconditional Enmity?

If Islam does not teach hatred and violence against Jews, then why is there so much hatemongering and unconditional enmity among the Muslims? Even if the Muslims' widespread outlook towards Jews is erroneous, it becomes irrelevant whether it is true or false when millions of Muslims have unfortunately come to believe it. Actually – if we leave the ignorance and genuine faultiness aside – the answer was given by the Prophet of Islam 1,400 years ago. He reveals the hypocrisy prevalent in the Muslim community in the End Times as such:

Such a time will befall my community that rulers will be oppressive and scholars will be avaricious and without fear of Allah, those who worship will be hypocritical.<sup>2</sup>

As a matter of fact, in our day, radicalism, fanaticism, tribalism, and bigotry are severe threats to the core message of Islam as well as to all of humanity. The Prophet Mohammed himself also warns against this threat:

My community will be destroyed because of evil scholars and ignorant servants.<sup>3</sup>

And in another one he says:

Such a time will come that scholars will be an element of mischief.<sup>4</sup>

These statements are all talking about the corruption and mischief within the Muslim community. The harm done by some religious scholars is highly

destructive since they lead many uneducated and impressionable people astray with their false teachings that plant seeds of hate and invariably provoke violence. Throughout the Islamic history of 1,400 years, the Muslim community has had its share of ups and downs, and serious deterioration has been infiltrated to the message of Islam. However, the outright hate indoctrination and incitement towards violence via *fatwas* (Islamic rulings) is in its severest form of distortion. Thus it is highly important to stand against such despicable tactics and to speak out strongly when these are used as a way of incitement.

Here are a few of the main issues that are exploited as a staple of wartime propaganda, resulting in prejudiced mindsets and an irrational enmity towards Jewish people.

## The Allegation of Jews Being a Hereditarily Cursed People

There is a false conviction, held by both Muslims and non-Muslims, that according to the Qur'an, Jews are declared as a cursed community. This is far from the truth. In the Qur'an, God talks about peoples who were sent a prophet or envoy to spread God's message, and the mistakes of those communities are referred to in order to set examples for the next generations. Every community has those who have followed the right path and those that have committed errors. Nowhere in the Qur'an are a people condemned, cursed, or praised on a racial or ethnic basis. The Qur'an reveals this truth thusly:

O mankind, indeed We have created you from male and female and made you peoples and tribes that you may know one another. Indeed, the most noble of you in the sight of Allah is the most righteous of you. Indeed, Allah is Knowing and Acquainted. (Qur'an, 49:13)

Having said that, the Jews – *B'nei Israel* – are praised for their good attributes and criticized for their errors in the Qur'an, just in the same way God talks about Muslims. Thus, those people who try to attribute to the Jews the idea as being hereditarily cursed, and this curse being applicable for all time, are reading the Qur'an in a superficial way and overlooking many other verses while they selectively quote specific verses only to confirm their bias and preconceived notions.

The Qur'an refers to the community of the Prophet Moses as people who must abide by the Torah. God sometimes mentions their crimes and sometimes their good acts. For instance, in one verse we are informed about the existence of righteous Jews as such:

Of the people of Moses there is a section who guide and do justice in the light of truth. (Qur'an, 7:159)

In other verses, God says, "God's curse is on them for their blasphemy/disbelief" (Qur'an, 2:88) or "The Curse of God is on those who do wrong!" (Qur'an, 11:18) while referring to a portion of the community of the Prophet Moses.

These verses show that not all Jews are cursed but rather the ones who have committed these crimes against God. If someone denies God's commandments and does not repent, and if God does not forgive him, he is promised hell as a torment and that person is already cursed in the Sight of God, be they a Jew or a Muslim. Absolutely nowhere in the Qur'an does God say "I have cursed every Jew, I regard them as cursed en masse." Besides this is not a specific reference to Jews, but rather the threat of God in general: His punishment is valid for all deviators. This also includes those hypocrites who live in the guise of a Muslim.

Furthermore, all the things listed<sup>5</sup> as a reason for a curse in the Qur'an are crimes in the Sight of God, actions that are unlawful. God imposes these conditions and says that those people who do these things are cursed.

This punishment is also expressed in the same context in the Torah. Just like God says in the Qur'an: "[B]ecause of their breach of their covenant, We cursed them" (Qur'an, 5:13), the threat of a curse in the Torah is actually very similar: "See, I am setting before you today a blessing and a curse – the blessing if you obey the commands of the Lord your God that I am giving you today; the curse if you disobey the commands of the Lord your God and turn from the way that I command you today" (Deuteronomy, 11:26-28). The potential curses promised to the community of the Prophet Moses and the reasons for that are explained in great detail in Deuteronomy, chapter 28.<sup>6</sup>

Consequently, God certainly does not curse innocent people, and definitely not for reasons beyond their control. Since every child being born as innocent is a fundamental aspect of Islamic theology, claiming inherited error is incompatible with God's justice; indeed, such an idea is theologically indistinguishable from the false doctrine of "original sin." To expect such injustice from God means to truly not understand Him. Thus, a Jewish boy or girl is most assuredly *not* born as cursed or impure, and this kind of thinking has no basis whatsoever in the Qur'an.

## **The Allegation of Jews Being Eternally Despised as Apes and Pigs**

What we see on Arab TV channels – depicting Jews as pigs and apes or showing such transformations in animated cartoons – is based entirely on outright hate-propaganda and such propaganda has no basis in the Qur'an.

As the Prophet Moses was one of the greatest prophets and received a divine revelation – the Torah – the errors of his community are mentioned on many occasions. Within this context – giving examples of faults and flaws – God says that when people rebelled against Him and insisted on doing something they should not, He despised them as apes. (Qur'an, 7:165-166; Qur'an, 2:65-66)<sup>7</sup>

These verses in question refer to the humiliation visited upon those who disobeyed the commandments of God during the time of the Prophet Moses; these are not explanations that are inclusive of all Jews. God does not despise people *unless* they rebel against His commandments, but some Muslims fail to understand this and therefore say Jews are all humiliated like apes. However, this is *not* for all Jews, *not* for all time and certainly *not* hereditary punishment. The "despised" refers to specific people in a specific time and place,<sup>8</sup> although the verses are valid for all

times as a reminder of God's threat. In addition, nowhere in the Qur'an are Jews ever called or compared to pigs.<sup>9</sup>

It is also important to remember that if a Muslim stands in denial, then he is cursed as well. To present this as a curse on all Jews and for all generations or calling them all apes is against the Qur'an; most of those who say such things are mistaken and they expound on these verses falsely.

Furthermore, from an Islamic perspective, one cannot make generalized judgments based on one verse. The Qur'an is a whole, and every verse expounds upon another; therefore, any verse from the Qur'an should be interpreted within the spirit of the Qur'an. God informs Muslims that some Jews shall have their reward in the Hereafter (Qur'an, 2:62). There are many verses that can be cited to show that God discriminates most scrupulously and praises those good ones among the Jews and the Christians just as He does among Muslims.

For example, in one of the passages of the Qur'an, God praises Jews as such:

Not all of them are alike: Of the People of the Book (Jews and Christians) are a portion that stand (for the right): They rehearse the Signs of God all night long, and they prostrate themselves in adoration. They believe in God and the Last Day; they enjoin what is right, and forbid what is wrong; and they hasten (in emulation) in (all) good works: They are in the ranks of the righteous. Of the good that they do, nothing will be rejected of them; for God knoweth well those that do right. (Qur'an, 3:113-115)

## The Allegation That Muslims Should Not Take Jews as Friends

One of the verses that is misinterpreted by some Muslims to falsely claim that Jews are Muslims' eternal foes and selectively used to fuel Jew-hatred is:

O you who believe! Do not take the Jews and the Christians for friends (*awliyāa*); they are friends (*awliyāu*) of each other; and whoever amongst you that turns to them (for friendship) (*yatawallahum*), then surely he is one of them; surely Allah does not guide the unjust people. (Qur'an, 5:51)

In this particular verse, there are two words that are translated as referring to "friend." One is the word *awliyāa*, which means "guardians, protectors, authorities in the eyes of law, saints, masters, owners, possessors."<sup>10</sup>

The other word is *yatawallahum*, which means "turns to them (for friendship)." The word "friendship" refers to the *awliyāa* mentioned previously. In other words, the word that is translated as "friendship" is not a reference to friendship as in worldly human relations but rather it means "turn to them as protectors," as in "governance."

God relates that Muslims – of course in places where they are in the majority – should not be under the sovereignty of other religious rule; just like in Judaism, it is forbidden to appoint a king who is not a naturally-born Jew.<sup>11</sup> It certainly does not mean that Muslims should not make friends with Jews and Christians, be

foes of each other or that they should not show compassion and respect, or sever their social connections with them. This is one of the crucial misunderstandings regarding the relations of Jews and Muslims.

As a matter of fact, in the continuation of the text, another verse explains this issue further and refers to a special context:

O you who have believed, take not those who have taken your religion in ridicule and amusement among the ones who were given the Scripture before you nor the disbelievers as allies (*awliyāa*). (Qur'an, 5:57)

In the above verse, the same word *awliyāa* is used, and translated as “allies” – and in other translations as “friends and protectors.” Here the verse refers to a specified condition: If Jews and Christians mock a Muslim’s religion or curse it, then of course a Muslim would distance him or herself to avoid dispute as advised in the Qur’an for such cases (Qur’an, 6:68).

In another verse, only those who fight Muslims for their belief are forbidden to be allies (Qur’an, 60:9),<sup>12</sup> and God does not refer to all Christians and Jews. This forbiddance even includes believers who do not bear their share of burden (Qur’an, 8:72).<sup>13</sup>

Another verse that is misused<sup>14</sup> as if the Jews are Muslims’ enduring enemies is as follows:

Strongest among men in enmity to the believers wilt thou find the Jews and Pagans. (Qur’an, 5:82)

When we look at the references of Jews in the Qur’an, one can see that different expressions and words are used with distinction.<sup>15</sup> In this verse, the Arabic word that is translated as “Jew” is *Al Yahud*, and it does not point to all Israelites. It is a reference to a sect that regarded Uzayr (Ezra) as the son of God as mentioned in the Qur’an verse 9:30; apparently there are no Jews that believe this way anymore.<sup>16</sup> Thus the verses’ addressees are only those Jews of Arabia who differed from all other Jews.

Furthermore, not considering the Qur’an as a whole and leaving aside the verses that suggest humane relations with Jews are a deflection from the truth. Nowhere in the Qur’an is waging war or being enemies with Jews encouraged or suggested, and these are the only verses that are referring to a specific context and condition that has to be read with a sincere approach to the whole of the Qur’an.

## **Fabricated Hadith in the Hamas Charter and the False Belief that Killing Jews is God’s Will**

One after the other, we see Arab religious and political leaders referring to one specific hadith (a saying of the Prophet Mohammed) as a propaganda tool against Israel that has become a general “license” to kill Jews. There are surely many fabricated hadiths that have infiltrated even into the most authentic hadith collections over the centuries. However, one can easily discriminate these through

conscience and reason because no hadith can conflict with the Qur'an or annul a verse of the Qur'an. If it does, then it is not an authentic hadith, and this is indisputable.

There is a well-known specific false hadith that some radicals use to “justify” war against Jews, which can be found in the Hamas Charter, article seven:<sup>17</sup>

The last hour would not come until the Muslims will fight against the Jews and the Muslims would kill them until the Jews would hide themselves behind a stone or a tree and a stone or a tree would say: Muslim, the servant of Allah, there is a Jew behind me; come and kill him; but the tree Gharqad would not say, for it is the tree of the Jews.<sup>18</sup>

First of all, one can easily understand that this hadith is a false hadith because it conflicts with the Qur'an in an obvious and blatant manner.<sup>19</sup> Some attempts to interpret this as an excuse or a call to make war against the Jews can never give any kind of legitimacy whatsoever to wage war against Jews. Secondly, if somebody turns up one day and claims that stones and trees spoke to him, and thus he went off and started killing Jewish people, one can safely presume that he is suffering from an auditory hallucination, perhaps some psychotic episode, or else that person would thus be committing murder; he would be an assassin. This would be *haram* (unlawful), and it is definitely unacceptable.

These interpretations that call for war against the Jews have no theological or doctrinal basis, and they are a blatant misuse of Islam.

Even if a Jewish person is someone who has committed a crime, that individual should be arrested and charged, and he should be put on trial and sentenced by a judge. There is a legal system, and he would be punished for the particular crime he commits. This does not mean that whoever wishes can go off and kill every Jew he meets; such is the reasoning of madmen and delusional psychopaths.

As a matter of fact, during the time of the Prophet Mohammed, Jews' rights – for all Jewish tribes and all branches of Jews – were protected under the constitution of Medina, and the same rights to life and protection were ensured for Jews as well as Muslims.<sup>20</sup> Retaliation is allowed in the Qur'an in cases involving murder; however, Muslims are encouraged even to forgive a murderer.<sup>21</sup> Thus, extra-judicial executions for Jews – or anyone else – can never be justified within Islam.

On the other hand, even if one takes this hadith as sound, Muslims and Jews have already made war against each other several times in the last century alone. Similarly, in the hadith collections, many events regarding the End Times have been explained in great detail which have been realized in the past decades; however, none of them were interpreted as events to be provoked/encouraged or intentionally imposed.<sup>22</sup> Also there are many hadiths that take the form “*The last hour would not come until...*”<sup>23</sup> They simply state an event will happen, without saying if it is a good or bad thing. In this hadith above, within the context of all others of this category, it is said that there will be a battle between some Muslims and some Jews, but it is never said that this is a good thing and certainly not something that should be proactively sought.

Therefore, these interpretations that misrepresent Jews as the eternal enemies of Muslims and call for war against them have no theological or doctrinal basis, and they are an apparent misuse of Islam.

## Misrepresenting Jews as the Army of *Dajjal* (Anti-Messiah) in the End Times

In Islamic eschatology, there is a hadith that the *Dajjal* (anti-Messiah/anti-Christ) will come and will be followed by 70,000 Jews:

Seventy thousand people from the Jews of Isfahan with turbans and gowns will follow the *Dajjal* (anti-Messiah).<sup>24</sup>

Based on this hadith, some Muslim clerics falsely claim that *all* Jews will be the army of the *Dajjal* – in other words, the anti-Messiah. It goes without saying that this hadith is not referring to every Jewish man, woman or child. It is referring specifically only to some who are against God's way. Like many things from the Qur'an and hadiths, this particular example has been taken out of context and used by extremists to justify their desire to commit wanton slaughter.

However, there is apparent evidence to this hypocrisy. According to the Islamic accounts, there is another hadith. The Prophet Mohammed says that:

Seventy thousand scholars from my community, all wearing turbans, will follow the *Dajjal* (anti-Messiah).<sup>25</sup>

In referring to the people who will follow the anti-Messiah in the hadith, the Prophet Mohammed speaks in particular of those who are from the Islamic community and, what is more, he draws attention to those who regard themselves as scholars. Consequently, there is an obvious bias with regard to some Islamic figures portraying Jews as evil and enemies of God based on this hadith, and falsely suggesting to kill them as some manner of virtue or indication of piety.

A Muslim cannot deduce any judgments based on a single hadith. However, even if we assume that there are such hadiths, those which seem offensive could easily be interpreted in a rational way that is compatible with the spirit of the Qur'an: The army of the anti-Messiah – in other words, enemies of God – will emerge from *every* religion, and they will constitute bigots who seek to damage their own faiths and the world. Among them there can be Muslims, Jews, Christians, and others who are insincere in their faith and who are involved in efforts that are against God's consent.

Furthermore, many different kinds of people are mentioned as “falling away from belief” and following the *Dajjal*. It would be a misrepresentation of the hadith to say that the *Dajjal* is a Jewish movement with only Jewish followers. Sometimes his followers are said to be from the Shi'ah or Khawarij<sup>26</sup> or Sunnis.<sup>27</sup> In another hadith, the *Dajjal*'s followers are said to come from 600,000 Jews wearing crowns along with 600,000 Bedouin, some from the tribe of Jadis,<sup>28</sup> while in other hadiths Turks, Weavers, Magicians, and Uzbeks are mentioned.<sup>29</sup> What is important to

note is that any sincere believer, be it a Jew or Muslim, will not follow the Dajjal as he will claim divinity.<sup>30</sup>

While referring to Jews as the army of *Dajjal*, some Muslims also imply a so-called holy war that ends with the extermination of Jews; furthermore, they claim that the Mahdi – the Islamic holy person of the End Times who is equivalent to King Messiah – will kill all the Jews as a *divine mission*.<sup>31</sup>

First of all, the Mahdi that Muslims are awaiting as someone who will guide people to truth in the End Times is the same holy person that the Jews are waiting for as the Messiah, and this leader's attributes are similar in both Islamic and Judaic accounts. According to the hadiths, the Mahdi is said to rule the Jews with the Torah at his time:

(Hazrat Mahdi) will rule among Jews with the Torah and among Christians with the Gospel.<sup>32</sup>

The Mahdi will also govern the world through love, not through war. He is someone who avoids war, a man of peace, who is full of love and compassion for all humanity. The way he will operate is described as follows in the hadith:

People will seek refuge in the Mahdi (King Messiah) as honey bees cluster around their sovereign. He will fill the world that was once full of cruelty with justice. His justice will be as such that he will not wake a sleeping person not even one drop of blood is shed. The earth will return to the age of happiness.<sup>33</sup>

As indicated in the reference to the “burden of war,” all forms of violence, oppression, and conflict will come to an end in the time of the Mahdi (King Messiah):

Enmity and hatred between people will cease....Like the cup fills with water, so will the earth fill with peace....There will be religious unity. Nobody but Allah will be worshiped. War will put down its burden.<sup>34</sup>

Consequently, it is not only false to suggest that the Mahdi will kill Jews, but it is also against Islamic theology in every way, shape, and form. “Not one drop of blood will be shed” is an indisputable expression and thus the Mahdi will not shed the blood of anyone from any religion.

## **Anti-Zionism, Anti-Semitism, and Denial of Israel's Existence**

Widespread rejection of Jews' historical, cultural, and religious ties to the Holy Land is one of the most common but facile narratives throughout Islamic majority countries. Despite the fact that this negation of Jews' rights in the Holy Land masquerades as an Islamic cause or even as an imperative of piety, there is no truth to the rejectionists' assertions that can be based on Islamic grounds.

The region where the Jews currently live is, beyond any doubt, their homeland, the land that their forefathers lived in and were buried in; thus, they must be allowed

to live there. What is perhaps not well-known is that from an Islamic point of view, there is no basis whatsoever that prohibits Muslims from recognizing Jews' presence in the region and accepting them as a state. In fact, the Qur'an itself provides clarification on this pivotal issue, not only referring to the connections of the Jews with the Holy Land but also to the legitimacy of their presence until the Last Day.

Although Zionism encapsulates the idea that Jews have the right to self-determination and to live as a people in Israel, it has been heavily loaded with negative meanings for Muslims in general. While for Jews it is simply Jewish nationalism or the connection of the Children of Israel with the Holy Land as a necessity to perform some of the Biblical commandments, it has quite a derogatory meaning and a negative impression in the Muslim world to a level not permitting anyone to speak fairly about it. Especially in the widespread political arena of the whole Middle East, being opposed to Zionism or generally being opposed to Israel is a classical right-wing statement. In other words, when a person makes statements against these subjects, then he gains popularity, support, and political power. The same goes for a writer or a leader of a religious group.

Since being anti-Zionist is falsely perceived of as a necessity of justice and conscience, no one dares to speak out in favor of or to be affiliated with it in any positive context because anyone who speaks in a friendly manner on the subject would find himself labeled as a supporter of oppressors, racists, blood shedders, world hegemony seekers and so on. Hence even those who are neutral to Israel would just simply evade the subject so as to avoid public pressure – in some cases, even more severe intimidation.

The Zionist conception of the Jewish people, who wish to live in peace and security in Israel alongside Muslims, seeking peace and wishing to worship in the lands of their forefathers and engaging in business, science, and art is perfectly normal from an Islamic perspective. In fact, the Zionist belief held by a devout Jew and based on the Torah does not in any way conflict with the Qur'an. On the contrary, the Jews' living in that region is stated in the Qur'an:

Remember Moses said to his people: 'O my people! Call in remembrance the favor of Allah unto you, when He produced prophets among you, made you kings, and gave you what He had not given to any other among the peoples. O my people! Enter the Holy Land which Allah hath assigned unto you, and turn not back ignominiously, for then will ye be overthrown, to your own ruin.' (Qur'an, 5:20-21)

It is also mentioned in the Qur'an that the Jews are a blessed people from the line of the Prophet Abraham and descended from the worthy prophets of God. There is no doubt that the Jews' effort to migrate and build a homeland for themselves is a most lawful demand and natural right. Indeed, God reveals in the Qur'an that He has settled the Jews in those lands they live in, and it is an implication that Jews have the right to live freely on those lands, as do Muslims and Christians:

We settled the Children of Israel in a beautiful dwelling-place, and provided for them sustenance of the best: it was after knowledge had been granted to them, that they fell into schisms. Verily Allah will

judge between them as to the schisms amongst them, on the Day of Judgment. (Qur'an, 10:93)

In another verse, God says, referring to Jerusalem:

And remember We said: 'Enter this town, and eat of the plenty therein as ye wish; but enter the gate with humility, in posture and in words, and We shall forgive you your faults and increase (the portion of) those who do good.' (Qur'an, 2:58)

The fact that *al-Quds* is a holy place for Muslims does not overrule the Jews' connection with it; on the contrary, the Qur'an mentions Jerusalem as the Jewish direction of prayer. The name *al-Quds* is itself a shortened version of *Bayt al-Muqaddas*, which means Sanctified House/House of Holiness/*B'et HaMiqdash* which is the name the *Tanakh* uses for the Temple of the Prophet Solomon. There are also other verses of the Qur'an that indicate the right of Jews to dwell in the Holy Land:

They say, 'If we follow the guidance with you, we shall be forcibly uprooted from our land.' Have We not established a safe haven for them to which produce of every kind is brought, provision direct from Us? But most of them do not know it. (Qur'an, 28:57)

And just like it is promised in Deuteronomy 30,<sup>35</sup> the Jews' existence is mentioned as a promise until the Last Day:

And We said unto the Children of Israel after him: Dwell in the land; but when the promise of the Hereafter cometh to pass We shall bring you as a crowd gathered out of various nations. (Qur'an, 17:104)

Among the Muslim community, there are huge numbers of people who say that they are not against Jews but only against Zionists. At first glance, this suggests no hostility towards Jews as a nation, as a follower of a religion, but only opposition to an ideological policy. However, when we look at matters more closely, we see that anti-Semitism and anti-Zionism are quite intertwined or that anti-Zionism is used as a cloak for anti-Semitism.<sup>36</sup> For instance, an Egyptian cleric openly states that fighting with Jews is not relevant to the Palestinian conflict:

If the Jews left Palestine to us, would we start loving them? Of course not. We will never love them....We must believe that our fighting with the Jews is eternal, and it will not end until the final battle – and this is the fourth point. You must believe that we will fight, defeat, and annihilate them, until not a single Jew remains on the face of the Earth.<sup>37</sup>

Another cleric from Qatar enunciates this vicious outlook as such:

We do not treat the Jews as our enemies just because they occupied Palestine, or because they occupied a precious part of our Arab and Islamic world. We will treat the Jews as our enemies even if they return Palestine to us, because they are infidels.<sup>38</sup>

While Al-Aqsa TV broadcasts a prayer for the extermination of all Jews, in all places,<sup>39</sup> a member of the Palestinian Shariah (Islamic religious law) Rulings Council says:

The Jews are the Jews, whether Labor or Likud, the Jews are the Jews. They do not have any moderates or any advocates of peace. They are all liars.... They must be butchered and they must be killed.<sup>40</sup>

When one scratches the surface of the distortion behind the meaning of Zionism, one can clearly see that anti-Zionism is used as a disguise for anti-Semitism or sometimes caused by ignorance and false indoctrination. Largely thanks to the infamous disinformation piece *The Protocols of the Elders of Zion*, which was so widely used to ignite hatred, people indeed were duped into believing that the Jews have a plan of world conquest.<sup>41</sup>

Consequently, in essence, Zionism as a word to describe the search of a community tied together by a common religious and cultural heritage and to live in a homeland free from persecution does not contradict with the Qur'an or with Islam's authentic teachings. That is why it is essential to educate Muslims what Zionism means and why opposing Israel's existence is a false understanding of piety.

## Denial of Jews' Connection to the Temple Mount

Another issue that is open to media manipulation and often exploited to create agitation among Muslims with the aim of a political agenda is the situation at the Temple Mount, known as *Haram al-Sharif* in the Islamic world. This area is surely one of the most important religious sites in the Old City of Jerusalem, and has been a holy place for thousands of years. However, the unique importance of the Temple Mount to Judaism, Christianity, and Islam makes the location vulnerable to tensions and conflicts, especially between Jews and Muslims.

Usually, these incidents originate in rumors such as: "The Jews are planning to bomb the mosque and build their Third Temple"<sup>42</sup> or "Jews are digging under the Al-Aqsa Mosque to make it collapse."<sup>43</sup> Obviously, false accusations and baseless suspicions like these turn the site from a holy place of prayer and love into a site of violent political demonstrations; consequently, potential escalation of tensions brings more restrictions and discomfort to all.

In an atmosphere of such high tension, any dissemination of provocative news and rumors – sometimes out of ignorance, sometimes intentional – results in acts of violence and clashes. However, Muslims are obliged to investigate the source and truth of news in order not to cause harm to people out of ignorance (Qur'an, 49:6), and they should not disseminate news without fact-checking it first since causing disorder is a serious crime in the Qur'an. (Qur'an, 10:81, 2:205)

On the other hand – because of the general hatred of Jews and anti-Israel sentiments – Jews' coming to pray in the area is declared as a "calamity" and a call for clashes. Jews' praying to God anywhere can never possibly be construed as an offense or an act that would cause unease to a Muslim, and it is an atrocious thing

to forbid anyone from praying at the *Haram al-Sharif* or anywhere in the world, for that matter. This is clearly stated in the Qur'an:

And who is more unjust than he who forbids that in places for the worship of God, God's name should be celebrated? – whose zeal is (in fact) to ruin them? It was not fitting that such should themselves enter them except in fear. For them there is nothing but disgrace in this world, and in the world to come, an exceeding torment. (Qur'an, 2:214)

Furthermore, among some Muslim religious and political leaders, in order to delegitimize the Jews' existence in the region as an indigenous people, we also witness the complete repudiation of their connection to the Temple Mount. For instance, long-time chairman of PLO Yasser Arafat commented about this issue as such:

For 34 years [the Israelis] have dug tunnels [around the Temple Mount...[T]hey found not a single stone proving that the Temple of Solomon was there, because historically the Temple was not in Palestine [at all]. They found only remnants of a shrine of the Roman Herod...They are now trying to put in place a number of stones so that they can say 'We were here.' This is nonsense. I challenge them to bring a single stone from the Temple of Solomon.<sup>44</sup>

His successor, Mahmoud Abbas (Abu Mazen), also talks in a similar manner:

[The Israelis] claim that 2000 years ago they had a Temple [on the Temple Mount]. I challenge the claim that this is so. But even if it is so, we do not accept [current Israeli claims on the Temple Mount].<sup>45</sup>

Furthermore according to the statement by the Higher Islamic Authority of Palestine:

The claims being made by the rulers of Israel and its rabbis about the alleged Temple are pure fabrications without any base or foundation.<sup>46</sup>

It is a well-known fact that for 3,500 years there has been a continual Jewish presence in the Holy Land, not to mention abundant historical discoveries. The Temple Mount, where the First and Second Temples stood, is the holiest place to the Jewish people; although it is no less holy to Muslims and Christians, one's rights in this religious site do not necessarily conflict with others. According to the Tanakh, this is a location that God has announced to be a "house of prayer for all nations" (Isaiah, 56:6-7) and His will is to make this unique spot a common sanctuary where all people coexist to "call upon the name of God, to serve Him shoulder to shoulder." (Zephaniah, 3:9)

From an Islamic point of view, anywhere one prays to the One and Only Almighty God is a house of prayer. Therefore, the Prophet Solomon's Prayer House, *Beit Hamikdash*, is holy for Muslims as well, and it is a duty for Muslims to rebuild and repair all houses of prayer.<sup>47</sup>

As a matter of fact, the longings of *B'nei Israel* to pray in that place can never be an offense to a Muslim; on the contrary, it is very pleasant to see Jewish people

praying at the Temple Mount, and also to see the Prophet Solomon's House of Prayer rebuilt.

This is definitely not a threat to al-Aqsa Mosque and the Dome of the Rock. There is a broad expanse<sup>48</sup> of land in that particular area easily allowing the Prophet Solomon's Prayer House to be placed just a bit away from *Qubbat as-Sakbrab*, and a little ahead of *Masjeed al-Aqsa*. Muslims should also remember that the Prophet Solomon – King Solomon as the Jews call him – is a prophet to Muslims whose superior understanding of beauty and aesthetics in architecture is praised in the Qur'an. Thus, the rebuilding of this holy place in its original form, with the same beautiful ornaments, covered in gold, adorned with beautiful gardens, and restored to its former glory, should be a source of joy for Muslims. The very thought of Christians, Jews, and Muslims cooperating to rebuild this house of worship, together hand-in-hand, and worshipping there together, should be a great desire for all.

## Distortion of the Concepts of *Jihad* and War in the Qur'an

Behind the on-going conflict between the Palestinians and Israel, Islamic motives are being badly misused to make this look like a holy war where the Muslim world has to unite. Since they depict Jews as the enemy of Allah – as explained earlier – the teaching is that Islam is at war with Jews and Israel, and killing Jews is requisite in order to fulfill Islam's victory and to draw Muslims closer to Allah. Having studied the so-called *Islamic grounds* for this war-mentality, there are serious and apparent deviations from Islamic teachings with regards to commandments of war and peace and also the outlook about the Jews at large. The fact is that Muslims do not have a "right" to be at war with Jews as people. Even if there are confrontations or war involving some Jews, there are serious breaches of the Qur'an's commandments as to their methods and way of thinking in so-called *justified terrorism*.

### *Jihad and Qital in the Qur'an*

First of all, the word *jihad* is widely misused due to a great distortion of the true meaning of the term by some Muslims. Although the Oxford English dictionary defines *jihad* as "a holy war undertaken by Muslims against non-believers" or Merriam Webster defines it as "a holy war waged on behalf of Islam as a religious duty," the word *jihad* comes from the word *jehd*, meaning to strive. Thus carrying out "jihad" refers to "showing effort, struggling, striving in the way of Allah" in the broadest sense as a permanent duty. *Jihad* is not holy war and it is most certainly not suicide, not killing innocent people, not fighting out of hatred, and not killing others just because they are not Muslims.

It is true that *jihad* is a central issue in Islam and a responsibility upon all Muslims. However *jihad* – according to the Qur'an – is spreading the message of Islam, enjoining the good and fighting against evil and injustice; therefore, it can surely mean a struggle carried out on intellectual grounds too. *Jihad* is not a "justification" for massacres or acts of aggression against innocent people. The Prophet Mohammed explains that "the greatest *jihad* is the one a person carries out against his lower self"<sup>49</sup> referring to selfish desires and ambitions. Thus, besides

*jihad al-nafs* (inner struggle), the external *jihad* can be done by knowledge, pen and tongue with the purpose to bring about justice and peace, and to oppose cruelty.

For the times when *jihad* involves war (*jihad al-qital*), it is either for self-defense or for defense of an aggrieved people in a situation obliging one to combat in order to survive or save lives. When the Qur'an refers to physical combat (fighting to kill) another word is used: *qatal*. *Qatala* is to battle, to kill, and *qital* is fighting, physical combat. There are verses that do give permission to kill; however, they are for limited circumstances; they are not a license forever, and assuredly not a blind endorsement of unrestricted violence.

### ***War for Self-Defense***

From an Islamic point of view, war is an exceptional matter and an unwanted obligation when one's life is under attack, and Muslims can only resort to it as the last option and for defensive purposes only. Muslims are not supposed to attack; war has to be inevitable at the point that one has to defend oneself. Even if it is considered obligatory for self-defense, it has to be carried out with strict observance of humane and moral values. To put it in another way, God granted permission for war only for defensive purposes, and Muslims are warned against the use of unnecessary violence:

Fight in the Way of God against those who fight you, but do not go beyond the limits. God does not love those who go beyond the limits.  
(Qur'an, 2:190)

In another verse, God commands justice and warns Muslims against feeling rage towards enemies so that their judgments are not impaired:

You who believe! Show integrity for the sake of God, bearing witness with justice. Do not let hatred for a people incite you into not being just. Be just. That is closer to heedfulness... (Qur'an, 5:8)

One also has to remember that in times of war, not fighting to defend or to stop persecution of attackers would be a crime since it would mean permitting the murder of innocent people. That is why the commandments to fight were a reminder of an obligation to action for Muslims.

### ***Obligation to Protect Peace***

When there is a peace treaty, both sides should adhere to the peace agreement meticulously and commit to not attacking each other. Especially for Muslims, after making a peace agreement, according to the Qur'an, one has to remain scrupulous in protecting it and abiding by its terms. God says:

If they incline to peace, then incline to it [also] and rely upon Allah.  
(Qur'an, 8:61)

As it is seen in the following verse, permission to fight is no longer valid when the other side offers peace:

If they remove themselves from you and do not fight you and offer you peace, then Allah has not made for you a cause [for fighting] against them. (Qur'an, 4:90)

In the case of the Israeli-Palestinian conflict, when one side fires rockets, the other side is fully entitled (and indeed obligated) to protect its citizens. When peace is declared and there is a peace agreement, Muslims have to abide by the provisions. Thus, after the cessation of attacks and making of a peace treaty, launching rockets blindly against Israeli villages and towns which eventually harm people is wholly incompatible with the Qur'an, and a violation of it.

### *Protection of Civilians is Essential*

There is absolutely no justification whatsoever in the Qur'an for killing innocent people. Murdering guiltless people is a crime that is utterly against Islam:

If someone kills another person – unless it is in retaliation for someone else or for causing corruption in the earth – it is as if he had murdered all mankind. And if anyone gives life to another person, it is as if he had given life to all mankind. (Qur'an, 5:32)

As it is stated explicitly in the verse, it is a sin to target civilians or be reckless of their security during an attack. When Hamas indiscriminately launches rockets over Israel, there is no precise direction and thus these rockets fall sometimes on empty land but also sometimes onto the homes of innocent Israeli civilians. Consequently it becomes inevitable that civilians, including innocent children, are severely affected by this. According to the Qur'an, it is a sin to take an innocent life, and it is also a sin to cause disorder or panic.

In war times, the Prophet Mohammed has explicitly prohibited the killing of the elderly, women, and children:

Do not kill children. Avoid touching people who devote themselves to worship in churches! Never murder women and the elderly. Do not set trees on fire or cut them down. Never destroy houses!<sup>50</sup>

Go to war in adherence to the religion of God. Never touch the elderly, women or children. Always improve their situation and be kind to them. God loves those who are sincere.<sup>51</sup>

The Prophet Mohammed's companion and first Caliph Abu Bakr states:

O people! I charge you with ten rules; learn them well! Stop, O people, that I may give you ten rules for your guidance in the battlefield. Do not commit treachery or deviate from the right path. You must not mutilate dead bodies. Neither kill a child, nor a woman, nor an aged man. Bring no harm to the trees, nor burn them with fire, especially those which are

fruitful. Slay not any of the enemy's flock, save for your food. You are likely to pass by people who have devoted their lives to monastic services; leave them alone.<sup>52</sup>

No matter who may espouse these ideas, however *Islamic* they may look or sound, if terror and wanton and random killing is being aimed at innocent men, women, and children, these acts are violations of the Qur'an and referred to as cruelty. Furthermore, in Islam, God encourages Muslims even to forgive people who have committed murder. (Quran, 2:78, 5:45)

Consequently, according to all sects of Islam, it is not permissible to kill women or children unless they are attacking Muslims to kill. It is also not permissible to kill non-combatants according to the Hanafi, Hanbali, and Maliki schools. Furthermore according to Islamic jurisprudence, children cannot be targets or soldiers of war; children should not be killed and should not be used or encouraged in war.<sup>53</sup>

### ***Terror and Suicide are Prohibited in the Qur'an***

Violence committed against civilian targets for political purposes is terrorism, the Muslim identity of the perpetrators and their use of God's name notwithstanding.<sup>54</sup> It is obvious that organizing acts of terror against innocent people constitutes a great sin and God informs us about this cruel mindset of terrorists and how they will be punished:

There are only grounds against those who wrong people and act as tyrants in the earth without any right to do so. Such people will have a painful punishment. (Qur'an, 42:42)

So Muslims are responsible for stopping these people, and terrorism by no means can be reconciled with Islam, even if it is considered as an act of *just war* (which most certainly is not).

Another important matter is that Islam absolutely forbids suicide attacks. God says:

Do not kill yourselves. (Qur'an, 4:29)

Suicide is a *haram* (unlawful), and it is a crime punished with an eternity in hell as revealed in the Qur'an. In some so-called Islamic websites that explain the law and strategies behind Palestinian *jihad*, they warn each other to refrain from using the expression *suicide attacks* because they know full well it is unlawful according to the Qur'an. Rather, they suggest to use actions of *istishhad* (martyrdom). This "self-martyrdom" is definitely not martyrdom according to the Qur'an and it is a grotesque distortion of Islam.

Martyrdom, according to Islam, means death while striving on the path of God;<sup>55</sup> indeed, the concept of martyrdom is virtually identical in all religions.

The Qur'an indisputably prohibits the killing of other believers; and that is opposite of those encouraging and aiding those in acts of suicide bombings:

If a man kills a believer intentionally, his recompense is hell, to abide therein (for ever): And the wrath and the curse of Allah are upon him, and a dreadful penalty is prepared for him. (Qur'an, 4:93)

If a suicide bomber perpetrates his action in the name of Islam, and kills innocent people as well as himself, then that is among the biggest sins and worst blasphemy committed in God's Name. The recompense for murder and suicide is promised as eternity in hell. Blowing up restaurants, markets, buses, and then honoring and glorifying the perpetrators are in fact celebrating murderers, not martyrs, and it is most unequivocally not *jihad*.

Furthermore, suicide bombings are a new phenomenon of the 20th century with no antecedents in Islamic history, and there is no justification for such cruelty in terms of Islamic theology, law, or tradition.<sup>56</sup>

### ***The False Belief That Muslims Should be at War With Jews***

Islamic history is often mentioned alongside wars, and thus falsely implying a continuous war with non-Muslims in our time. However, the verses regarding combat and killing are for a specific time, place, and set of circumstances; it is not an excuse or justification to go out and commit mass slaughter in our present day.

The pagans of that time were utterly ruthless and aggressive, slaughtering Muslims and women wherever they found them, and they were also well-known for surprise attacks, ambushes, and other methods of deception in their attempts to stop the Prophet Mohammed and destroy the nascent Islamic community. They committed atrocities against Muslims who were literally under siege everywhere, and caused them to move to the town of *Yathrib* (later to be renamed Medina). The pagans simply would not listen to reason, and Muslims were allowed to wage war only because they were being oppressed and subjected to unbearable violence. Thus, in the commandments regarding combat, God tells Muslims to defend themselves; however, that does not mean Muslims can go out and kill anyone at any time.

On the other hand, it is not an easy thing to decide to wage war, and the Prophet Mohammed was undecided, worrying about whether he would be committing a sin. As the aggressors in question are, after all, human beings, he felt a great responsibility of conscience and was unable to make a decision. Under these circumstances, God commanded the Prophet Mohammed to kill the polytheists wherever he finds them, and in other verses describes what strategic measures they needed to take in the wars of those times. However, that is a commandment delivered within the context of an ongoing war, and it was not meant as a method for the propagation of Islam. God gives this permission and explains the reasons and conditions as such:

...Whenever they are made to revert to hostility, they fall headlong into it. Therefore, if they do not keep aloof from you, nor offer you peace nor

restrain their hands, then seize them and kill them, wherever you find them. Against these We have given you clear authority. (Qur'an, 4:91)

In this same vein, the Qur'an commands siege warfare and the taking of prisoners as a more peaceful means of neutralizing a potentially aggressive community (Qur'an, 9:5). If a blockade or the taking of prisoners is not possible, then killing is permissible *only* as a last resort. Thus, God reveals how Muslims should defend themselves when they are under attack.

Another verse states that war has to end the moment the other side stops fighting (Qur'an, 4:90).<sup>57</sup> Consequently the early Muslim community (*ummah*) followed the command of God, and they fought to defend themselves from utter extermination within the boundaries set by God. When these verses are not properly understood in their proper historical context, all manner of disaster ensues, as we can see all too well when we watch the evening news.

It is true that the Prophet Mohammed had to fight not only the Meccans but also against some Jewish and Christian tribes when they planned an offensive against him; yet again, Islam does not justify a total aggressive war or extermination. In addition, it is important to clarify that the Prophet Mohammed did not fight Jews because of their ethnicity or because of their religion; rather his fight was against whoever intended to persecute Muslims or those who cooperated with the enemy – despite the agreement.

On the other hand, according to the constitution of Medina that the Prophet Mohammed established, Muslims and Jews were jointly responsible to defend the state against any outside attack;<sup>58</sup> adherence to these peace treaties was equally incumbent upon the Jews and Muslims.<sup>59</sup> So, this is another proof that the Jewish tribes were not a targeted enemy but an integral component of defense as long as they did not fight against the Muslim community.

### *The Falsehood about Abrogation of Peaceful Verses*

Some people suggest that the verses sent down during the Meccan period and those sent down during the period of Medina are different, and that the later texts supersede previous ones – indeed, there is not even complete agreement of the order of the suras. Accordingly, they conclude that the ninth chapter (sura) which was revealed last and during a time of war, annuls all the prior verses that speak of peace and understanding. Those claims – which are referred to as “doctrine of abrogation (naskh)”<sup>60</sup> – are unfounded: All the verses of the Qur'an are valid,<sup>61</sup> from beginning to end,<sup>62</sup> and “...there is none that can alter the words (and decrees) of Allah.” (Qur'an, 6:34) It is disbelief to speak of the annulment of any of God's commandments.<sup>63</sup>

These are merely ideas some people have invented for themselves, and therefore have no validity whatsoever; no commandment in the Qur'an can cease to apply. Even though some verses mention specific times, places, and events, they are informed to Muslims with wisdom, to take lessons or examples of. It is not acceptable to annul a verse on the basis of fabricated hadiths and of historical information. It must be kept in mind that no hadith can conflict with the Qur'an and if it does, then it is not an authentic hadith.

First and foremost, God says Muslims are responsible to the Qur'an alone,<sup>64</sup> declaring that all necessary instruction can be found within the Qur'an,<sup>65</sup> and He warns about those who divide the Qur'an as they please.<sup>66</sup> Consequently, the commandments concerning war do not abrogate the principles in the earlier suras that Islam mandates abiding by peace agreements, or that Muslims are only allowed to fight a defensive battle, or that Muslims must incline toward peace.

### ***Muslims and Jews Can Live Side by Side in Peace***

According to the Qur'an, Jews have a special status as "People of the Book" and there is no obstacle for Muslims to live side by side with Jews and engage in social life.<sup>67</sup> On the contrary, Muslims can establish warm human relationships with them through marriage and the sharing of food (Quran, 5:5). God says that the food of Jews is lawful (*halal*) for Muslims; that means that God creates some sort of closeness with Jews, and that He wants Muslims to consider them as worldly friends and to have a humane affection for them. He wants Muslims to approach their food with a sense of security and eat their food. Thus it is obvious that Muslims can invite Jews to their homes and dine with them together. It is patently illogical to claim that you go to the home of a person you consider to be a foe. Furthermore, if God says one can marry and eat with the People of the Book – Christians and Jews – then this is the clearest proof that Muslims and Jews can live together in a climate of peace and love. Since these interactions indicate trust, love, and affinity, the entire idea that Muslims are authorized to kill Christians and Jews collapses into its own logical absurdity. From an Islamic perspective, this shows that there can be no obstacle to living together and in harmony, and this is clear evidence that enables the formation of warm human relationships and tranquil togetherness between Jews and Muslims.

### **Holocaust Denial and Its Use as a Propaganda Tool**

Arguably, the roots of anti-Semitism found their most lethal expression in the Holocaust (*Shoah*), when some six million innocent Jewish men, women, and children were exterminated on the edge of mass graves in the Ukraine, Poland and Russia or had their lives systematically snuffed out at factories of mass murder such as Sobibor, Majdanek, Auschwitz-Birkenau, Treblinka, Chelmo, and Belzec.

For many centuries, the disdain towards the Jews in Diaspora was confined to the religious and social sphere. This religious and social sentiment is demonstrated in events such as the pogroms of the First Crusade in 1096, the expulsion of the Jews from England by Royal Decree in 1290, the Inquisition and expulsion of the Jews from Spain in 1492, and the pogroms in Russia and in the Ukraine. This sentiment could still be seen expressed by one of the world's largest religions as recently as 1959, when a reference to "perfidious Jews" was finally dropped from the Good Friday Liturgy of the Catholic Church.

Holocaust denial is a peculiar subset of pseudo-history which teaches that anyone who lays claim to the mantle of *historian* can deny, out-of-hand, that the *Shoah* took place. Aside from the reams of documentary evidence, or the photographs taken by members of the Nazi extermination squads as they wrought their

vile handiwork, we have the words of the perpetrators themselves, including the testimony on the stand, under oath, of no one less than Rudolf Höss, the Commandant of Auschwitz, not to mention the testimony of Adolf Eichmann, the pencil-pushing architect of the Final Solution. There is also the infamous “Posen Speech” (which was *recorded* for posterity) of Heinrich Himmler, head of the Nazi RSHA<sup>68</sup> and one of those most directly responsible for the *Shoah* itself.<sup>69</sup> That any sane individual, not to mention a historian, can dismiss this overwhelming and easily verifiable evidence which clearly testifies as to what transpired, often in the most blood-chilling and sickening detail, defies belief. To maintain that the *Shoah* is either a wholly fictive event, or that it was “grossly exaggerated” is the pinnacle of intellectual dishonesty.

We see all too often this fanatical and obsessive anti-Semitism being represented in popular culture in the Islamic world; references to Jewish people as a “cancer” or a “tumor” that must be removed. This rhetoric is almost identical to the biological racism employed by European anti-Semites beginning in the late 19th century, when they began utilizing Darwinist language<sup>70</sup> as a way to justify their opinions, and their occasional wholesale exterminations of indigenous peoples throughout the world. It is apparent that anti-Semitism has been transmitted from European culture to the culture of the Islamic world at large.

There have been Muslims who have denied the Holocaust occurred, unfortunately, so it is hardly uncommon or unheard of.<sup>71</sup> For instance, former Iranian President Mahmoud Ahmadinejad frequently denied the Holocaust. In one of his speeches delivered at Tehran University, he stated:

The pretext [the Holocaust] for the creation of the Zionist regime [Israel] is false.... It is a lie based on an unprovable and mythical claim.<sup>72</sup>

In his December 2005 speech, broadcast live on state television, Ahmadinejad repeated his view that the Holocaust was a myth:

They have fabricated a legend, under the name ‘Massacre of the Jews’... if somebody denies the myth of the massacre of Jews, the Zionist loudspeakers and the governments in the pay of Zionism will start to scream.<sup>73</sup>

According to Bernard Lewis, the three most common positions seen in the Arabic media about the Holocaust are:

It never happened; it was greatly exaggerated; the Jews deserved it anyway. On the last point, some more enterprising writers add a rebuke to Hitler for not having finished the job.<sup>74</sup>

Generally, what the Holocaust deniers in the Islamic world are doing is picking up this idea from Western sources and repeating it as part and parcel of their anti-Semitic beliefs. Speaking frankly, anti-Semitism and Holocaust denial generally go hand-in-hand. However, this is not always the case; there is another subset of the neo-Nazis/white supremacists who do maintain that the Holocaust took place, but that it is an “incomplete work,” as the Nazis ended the program officially in December of 1944 – not out of any humanitarian concern or profound regret over what they had done, but because it was becoming glaringly obvious to Heinrich

Himmler that Germany was going to lose WWII, and he needed time to try to cover up the evidence of the Nazis' monstrous crimes.

Furthermore, while some Muslims deny the Holocaust, some others express in a chilling way that the job – *incomplete work* – has yet to be finished. Some of the TV programs in the Arab world refer to the Holocaust as something Jews deserved and imply that the extermination of the Jews would be good for the world. We also see *Mein Kampf* in an Arabic translation widely distributed in Muslim and other countries, removing the study of the Holocaust from history books, distortion of it in the Arab dailies, and the comparison of Israel to Nazi Germany, implying that Israel is performing an *ethnic cleansing* or *genocide* upon the Palestinians. On top of all this, making mention of Hitler in a heroic way and open admiration of Nazism has been also embraced as a propaganda tool against Israel and Zionism. As a matter of fact, the unfortunate history of the Hitler-Arab alliance during the Second World War is also one of the factors for the embrace of Nazism in the Arab world.

We see that the Grand Mufti of Jerusalem, Mohammed Amin al-Husseini, has become a hero among the Palestinians, symbolizing their fight against the Jews. On November 28, 1941, Mufti al-Husseini met with German Führer Adolf Hitler in Berlin and asked for his help against the Jews living under British protection in Arab lands. On March 1, 1944, when the Grand Mufti spoke to Radio Berlin, he said, "Arabs, rise as one man and fight for your sacred rights. Kill the Jews wherever you find them. This pleases God, history, and religion. This saves your honor. God is with you."<sup>75</sup>

Hitler confirmed that Germany's objective was solely the destruction of the Jewish element residing in the Arab lands and the Mufti was promised by Hitler to be the most authoritative spokesman for the Arab world.<sup>76</sup>

Present-day anti-Semitism in the Islamic world is also being exacerbated by the ongoing Israel-Palestinian conflict, a low-level war of attrition.

For instance, Hamas refused to allow Palestinian children to learn about the Holocaust, calling it "a lie invented by the Zionists" and referred to Holocaust education as a "war crime."<sup>77</sup>

As Muslims, we bear a special obligation to confront the anti-Semitism that has infected the Muslim world. Muslims must not traffic in discredited ideas and unbecoming stereotypes or proclaim, as truth, notorious forgeries such as *The Protocols of the Elders of Zion*. (It has been well known in the West for almost a century now that this tract was a forgery by the Czarist secret police in order to justify pogroms in Russia.) Muslims must not subscribe to pseudo-scientific notions such as racism, nor allow themselves to be gulled by pseudo-historic nonsense such as Holocaust denial. When it comes to anti-Semitism, Muslims must confront it, and educate against it, and most of all, they must repudiate it utterly.

The sad legacy of anti-Semitism must be, over time, removed from the general culture of the Middle East, much as it has been largely removed from the culture of Germany and the Western nations. This is not to say that anti-Semitism will be eliminated entirely; indeed, there are still those voices who advocate this toxic

philosophy. However, these voices are almost entirely on the fringes of Western society and culture, and are generally dismissed as cranks or harmless lunatics. It is to that end that Muslims must aspire – to educate the overwhelming majority of the Islamic world so that when, in the future, some populist demagogue begins spouting anti-Semitic nonsense, he or she will be viewed as an aberration, and will be dismissed by the society at large from which they emerge, and not praised for speaking aloud such hateful notions.

## Conclusion

It is unfortunately all too true that there is a widespread hatred of Jews in the Muslim world. However, this does not stem from the Qur'an, but from various misinterpretations that do not reflect the spirit of Islam. The only way to put things right is for people of reason and good conscience to educate people against terror, radicalism and fundamentalism; a proper understanding of Islam will completely prepare people to reject these spurious interpretations that incite violence and blatant anti-Semitism. Thus, in order to bring a stop to violence and radicalism, enlightenment in Islam has to be supported.

We should not forget that Europe, after the collapse of the Western Roman Empire and prior to the Enlightenment Era, was a place of superstition and ignorance. Yet the Enlightenment lifted Europe from a place where life was “poor, nasty, brutish and short”<sup>78</sup> into the Europe we see today. Yes, it is true that there were missteps and reversals along the way, mostly the result of atavists and irredentists; on the whole, however, the Europe of today is infinitely preferable to the Europe of Late Antiquity and the Middle Ages. It was neither easy nor painless for Europe to arrive at its present station, but that does not mean that it was not worth it, and there is no reason to believe that the Islamic world cannot achieve the same, as long as the proper lessons of history are drawn. But the Muslim world needs an enlightenment of its own; not a rejection of religion but rather the embracing of a contemporary, modern interpretation, purifying the religion from superstitions, traditional discipline, fabrications, bigotry, etc. – a removal of the dark side that does not belong to the true religion itself.

That is why – as an integral part of a peaceful solution to the Israel-Palestinian issue – education is highly necessary in the Islamic world in order to remove the noxious idea of anti-Semitism and its underlying basis of religious and ethnic hatred. For a long time, Muslims were taught to hate Jews, and now it is time to counter-educate them. Children – but not only children – especially in the Islamic world, need to be thoroughly informed on the background of anti-Semitism, and made sensitive to the horrific consequences that the world saw in the 20th century of that hatred. Above all, Muslim adults and children must be taught that the Jewish people have every right to live in Israel and that the nation of Israel has every right to exist, and to do so in peace with its neighbors.

What needs to be done to end these false beliefs is to support Muslims who interpret the Qur'an and the hadiths in a rational spirit of love and good conscience and to support the unification of the Islamic world. When Muslims come together under a spiritual authority – instead of the current arbitrary model

in which everyone says and does as he wants under the rubric of Islam – radical voices will disappear. The only real solution will come from within Islam, with the enlightenment of the Islamic world.

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## Notes

- 1 *Taqiyyah*, commonly known as “justified falsehood”, only applies in a case of religious persecution where a person is coerced to renounce certain outward aspects of Islam. In Arabic *taqiyyah* literally means “caution”; derived from the Arabic word *waqa*; “to shield oneself”. Here is how it is spoken of in the Qur’an:  
*“Anyone who, after accepting faith in Allah, utters unbelief, except under compulsion, his heart remaining firm in faith but such as open their breast to unbelief, on them is wrath from Allah, and theirs will be a dreadful penalty.” (Qur’an, 16:106)*  
 So it is acceptable to renounce Islam with the mouth, while not actually doing so in the heart. This is an exceptional circumstance, and it does not give broad license to commit “pious fraud” against non-Muslims.
- 2 *Bihar al-Anwar*, vol. 23, p. 22.
- 3 Darimi.
- 4 Abu Nuaim.
- 5 Some of the crimes that are mentioned for those people from the community of the Prophet Moses are as such:  
 And for their covenant We raised over them (the towering height) of Mount (Sinai); and (on another occasion) We said: ‘Enter the gate with humility’; and (once again) We commanded them: ‘Transgress not in the matter of the sabbath.’ And We took from them a solemn covenant. (They have incurred Divine displeasure): In that they broke their covenant; that they rejected the signs of God; that they slew the Messengers in defiance of right; that they said, ‘Our hearts are the wrappings (which preserve God’s Word; We need no more)’; Nay, God hath set the seal on their hearts for their blasphemy, and little is it they believe. (Qur’an, 4:154-155)
- 6 Part of these reasons for this curse are stated as such:  
 However, if you do not obey the Lord your God and do not carefully follow all His commands and decrees I am giving you today, all these curses will come upon you and overtake you: You will be cursed in the city and cursed in the country... All these curses will come upon you... because you did not obey the Lord your God and observe the commands and decrees He gave you... (Deuteronomy, 28:15-45)
- 7 The specific mention of Jews regarding this is as follows:  
 And well ye knew those amongst you who transgressed in the matter of the Sabbath: We said to them: ‘Be ye apes, despised and rejected.’ So We made it an example to their own time and to their posterity, and a lesson to those who fear Allah. (Qur’an, 2:65-66)  
 When they disregarded the warnings that had been given them, We rescued those who forbade evil; but We visited the wrong-doers with a grievous punishment because they were given to transgression. When in their insolence they transgressed (all) prohibitions, We said to them: ‘Be ye apes, despised and rejected.’ (Qur’an, 7:165-166)
- 8 “Ask them concerning the town standing close by the sea. Behold! they transgressed in the matter of the Sabbath. For on the day of their Sabbath their fish did come to them, openly holding up their heads, but on the day they had no Sabbath, they came not: thus did We make a trial of them, for they were given to transgression.” (Qur’an, 7:163)
- 9 The reference to pigs is mentioned as such in the Qur’an:  
 Say: ‘Shall I point out to you something much worse than this, (as judged) by the treatment it received from Allah? those who incurred the curse of Allah and His wrath, those of whom some He transformed into apes and pigs, those who worshipped evil; these are (many times) worse in rank, and far more astray from the even path!’ (Qur’an, 5:60)
- 10 This can clearly be seen in the following verse:  
 But why should Allah not punish them while they obstruct (people) from al-Masjid al- ĩaram and they were not (fit to be) its guardians (awliyāahu)? Its (true) guardians (awliyāuhu) are not but the

- righteous, but most of them do not know. (Qur'an, 8:34)
- 11 Deuteronomy, 17:15; <http://www.sichosinenglish.org/general/daily-rambam/336.htm>
- 12 Allah only forbids you, with regard to those who fight you for (your) faith, and drive you out of your homes, and support (others) in driving you out, from turning to them (for friendship and protection) (yatawallahum). It is such as turn to them (in these circumstances), that do wrong. (Qur'an, 60:9)
- 13 Indeed, those who have believed and emigrated and fought with their wealth and lives in the cause of Allah and those who gave shelter and aided - they are allies (awliyāu) of one another. But those who believed and did not emigrate - for you there is no guardianship (walāyatihim) of them until they emigrate. And if they seek help of you for the religion, then you must help, except against a people between yourselves and whom is a treaty. And Allah is Seeing of what you do. (Qur'an, 8:72)
- 14 <http://www.memritv.org/clip/en/3871.htm>
- 15 When the verses address Christians and Jews together, they are referred to as the "People of the Book" (Ahl al-Kitab) meaning those who have received Divine Scriptures which preceded the Qur'an. In most of the verses when God refers to the Jews, the expression is "Children of Israel" (Bani Isra'il). There are other verses mentioning Jews with the Arabic word al Yahud or with the word alladhīna hādū, both translated as Jews. Al Yahud refers to some heretical Jewish sects of Arabia and alladhīna hādū literally means those that follow Judaism or became Jews (converts). By translating these terms with the generic term "Jews" in English, it is falsely misinterpreted to be a reference to Bani Isra'il (Children of Israel). Bani Isra'il encompasses all twelve Jewish tribes.
- 16 This group refers to some Jewish sects who have committed *shirk* (idolatry or polytheism); possibly the Hellenized Jews who accepted Greek philosophy, and deviated from Rabbinic Judaism. Ibn Hazm explains that the group that believed that way was called the *Al Saduqiyyh* (Sadducees): "*Al Saduqiyyh*: This sect associates itself with a person called *Saduq* (Zadok). Differing with all other Jews, they regard *Uzayr* (Ezra) as the son of God." (Ibn Hazm, *Kitab al-Fasl fi al-Milal wa al-Abrwa wa al-Nihal*.)
- 17 [http://avalon.law.yale.edu/20th\\_century/hamas.asp](http://avalon.law.yale.edu/20th_century/hamas.asp), *Hamas Covenant* 1988.
- 18 *Sahih Muslim*, Book 41, Number 6985.
- 19 Hadiths are divided into categories—sound (*sahih*), good (*hasan*), weak (*da'if*) or fabricated (*maudu'*)—depending critically on the reliability of the reporters. The narrators should be trustworthy, truthful, and the chain of transmission should be solid in order for it to be accepted as reliable. However there are some false hadiths that have infiltrated into collections that are accepted as authentic hadith collections. Nevertheless, the most important criteria is the hadith being compatible with the Qur'an; that is the first and foremost requirement for a hadith's authenticity.
- 20 Shaykh-ul Islam Dr. Muhammad Tahir-ul Qadri, *The Constitution of Medina*, Mihaj-ul Qur'an Publications, 2012, Article 20.
- 21 We ordained therein for them: 'Life for life, eye for eye, nose or nose, ear for ear, tooth for tooth, and wounds equal for equal.' But if any one remits the retaliation by way of charity, it is an act of atonement for himself. And if any fail to judge by (the light of) what Allah hath revealed, they are (No better than) wrong-doers. (Qur'an, 5,45)  
Even O ye who believe! The law of equality is prescribed to you in cases of murder: the free for the free, the slave for the slave, the woman for the woman. But if any remission is made by the brother of the slain, then grant any reasonable demand, and compensate him with handsome gratitude, this is a concession and a Mercy from your Lord. After this whoever exceeds the limits shall be in grave penalty. (Qur'an, 2:178)
- 22 For instance, in one of them the Prophet Mohammed foretells that blood will be shed in the Kaaba (and this has happened in the recent past, in 1979 to be specific, during the siege of the *Masjid al-Haram*), but it has never been interpreted as a call to shed blood in the Kaaba. The Prophet Mohammed informs us that there will be a great war between Iran and Iraq (the Iran-Iraq War of 1980-1988), and this has never been interpreted to mean that Muslims should fight each other.
- 23 The Hour will not come until wealth increases so much that a wealthy man will be worried lest no-one accept his Sadaqah: tribulations will appear; and there will be much Harj.' The people asked, 'What is Harj, O Messenger of Allah?' He said, 'Killing, killing'. (Ahmad)  
The Hour will not come until the following events have come to pass: people will compete with one another in constructing high buildings; two big groups will fight one another, and there will be many casualties - they will both be following the same religious teaching; earthquakes will increase; time will pass quickly; afflictions and killing will increase; nearly thirty dajjals will appear, each of them claiming to be a messenger from Allah; a man will pass by a grave and say, 'Would that I were in your place'; the sun will rise from the West; when it rises and the people see it, they will all believe, but that will be the time when 'No good will it do to a soul to believe in them then, if it believed not before.' (al-An'am 6:158); and a wealthy man will worry lest no-one accept his Zakat. (al-Bukhārī, Muslim)
- 24 Muslim, *At-Taj Ali Nasif al-Husayn*, vol. 5, p. 627.
- 25 Imam Ahmad Ibn Hanbal, *Musnad*, p. 796.
- 26 Abu Ya'la I, 296; al-Hindi XI, 205, no. 31.244.
- 27 Al-Majlisi, LII, 388.
- 28 Al Suyuti, V, 389, Nu'ayim 330; Ibn Abi Shayba XV, 182, no. 19.458.
- 29 Nu'aym 333; Ibn Abi Shayba XV, 159, no. 19.373; Ibn 'Adi, I, 303, VII, 53; Abu Ya'la I, 40, X, 381; al Sulami 338, 39, no. 19.373; al Khatib al Baghdadi, *Ta'rikh*, X, 84; al Hindi XIV, 326, no. 38.821, 618; al Mubarakfuri, *Tuhfa*, VI, 411.
- 30 Al Sulami, 342, no. 405, Abd al-Razzaq XI, 398, no. 20.836.

- 31 <http://www.memritv.org/clip/en/3698.htm>, Egyptian Cleric Mahmoud Al-Masri, Al-Nas TV, Egypt, November 16, 2012.  
The final annihilation [of the Jews] will come at the time of the Mahdi... A small group of Jews will remain, but not the Jews living in Palestine. A group of Jews from Isfahan will survive, and they will follow the anti-Christ, but eventually, they will also be killed, along with the anti-Christ... Ultimately, not a single Jew will be left on the face of the Earth..."
- 32 *Al-Mabdiy al-Mawud*, vol. 1, pp. 254-255.
- 33 *Al-Qawl al-Mukhtasar fi Alamat al-Mahdi al-Muntazar*, p. 29, 48.
- 34 *Sunan Ibn Majah*, 10:334.
- 35 And when you and your children return to the Lord your God and obey Him with all your heart and with all your soul according to everything I command you today then the Lord your God will restore your fortunes and have compassion on you and gather you again from all the nations where He scattered you. Even if you have been banished to the most distant land under the heavens, from there the Lord your God will gather you and bring you back. He will bring you to the land that belonged to your fathers. (Deuteronomy, 30:2-5)
- 36 <http://www.memritv.org/clip/en/2042.htm>
- 37 <http://www.memritv.org/clip/en/2042.htm>
- 38 <http://www.memritv.org/clip/en/2077.htm>
- 39 [http://www.palwatch.org/main.aspx?fi=676&fld\\_id=676&doc\\_id=3857](http://www.palwatch.org/main.aspx?fi=676&fld_id=676&doc_id=3857)
- 40 [http://www.palwatch.org/main.aspx?fi=676&fld\\_id=676&doc\\_id=3884](http://www.palwatch.org/main.aspx?fi=676&fld_id=676&doc_id=3884)
- 41 <http://palwatch.org/main.aspx?fi=783>
- 42 <http://www.palwatch.org/main.aspx?fi=771&call=1>, *Al-Hayat Al-Jadida*, Sept. 1, 2008; [http://palwatch.org/main.aspx?fi=157&doc\\_id=832](http://palwatch.org/main.aspx?fi=157&doc_id=832), PA TV (Fatah), Feb. 3, 2009.
- 43 <http://www.palwatch.org/main.aspx?fi=771&call=1>, Radio Voice of Palestine (Fatah), Oct. 26, 2012; [http://palwatch.org/main.aspx?fi=157&doc\\_id=7527](http://palwatch.org/main.aspx?fi=157&doc_id=7527), *Al-Hayat Al-Jadida*, Sept. 14, 2012; [http://palwatch.org/main.aspx?fi=157&doc\\_id=832](http://palwatch.org/main.aspx?fi=157&doc_id=832), PA TV (Fatah), Feb. 3, 2009; [http://www.palwatch.org/main.aspx?fi=771&doc\\_id=5580](http://www.palwatch.org/main.aspx?fi=771&doc_id=5580), Palvoice website (Fatah) - Dec. 15, 2010.
- 44 [http://archive.adl.org/Anti\\_semitism/arab/temple\\_denial.asp](http://archive.adl.org/Anti_semitism/arab/temple_denial.asp), Al-Hayat, London, October 5, 2002.
- 45 [http://archive.adl.org/Anti\\_semitism/arab/temple\\_denial.asp](http://archive.adl.org/Anti_semitism/arab/temple_denial.asp), Kul Al-Arab, Israel, August 25, 2000.
- 46 [http://archive.adl.org/Anti\\_semitism/arab/temple\\_denial.asp](http://archive.adl.org/Anti_semitism/arab/temple_denial.asp), Al-Quds, December 28, 2001
- 47 Qur'an, 9:17-18; Bukhari, *Salat* 65; Muslim, *Mesacid* 25, (533); Tirmidhi, *Salat* 237, (318); Nasai, *Mesacid* 1, (2, 31).
- 48 Most Muslims are not aware of the size and structure of the Temple Mount. First, the Al-Aqsa Mosque is not located anywhere near the site of Solomon's Temple, and according to most historians, it is built on an area that was added to the Temple Mount by Herod, thousands of years after the Prophet Solomon. Secondly, there is a good deal of unused space, even as playground for children.
- 49 *Al-Tasbarraf*, Part I, p. 70.
- 50 Ahmad Diya'al-Din al-Kamushkhanawi, *Ramuz al-Ahadith*, vol. 1, 76/12.
- 51 Ahmad Diya'al-Din al-Kamushkhanawi, *Ramuz al-Ahadith*, vol. 1, 84/8.
- 52 Aboul-Enein, H. Yousuf and Zuhur, Sherifa, *Islamic Rulings on Warfare*, p. 22, Strategic Studies Institute, US Army War College, Diane Publishing Co., Darby PA.
- 53 Muslim scholars are in agreement that Muslims who are in a position to fight in a war should be adults who possess a sound mind and body, and enjoin it with their free will. (Aboul-Enein, H. Yousuf and Zuhur, Sherifa, *Islamic Rulings on Warfare*, pp. 12-13, Strategic Studies Institute, US Army War College, Diane Publishing Co., Darby PA.)
- 54 For detailed information; Harun Yahya, *Islam Denounces Terrorism*, Global Publishing, Istanbul, 4th ed., 2013.
- 55 The Arabic verbal root shahada means to "see", to "witness", to "testify, so a shaheed (martyr) is one who is a witness to the Truth of God. However martyrdom is valid only under certain specific circumstances; it is not the act of committing suicide but dying in the course of defending and upholding the principles of the Qur'an. Those who lose their lives in God's way are regarded as having a special status in the Qur'an:  
"And say not of those who are slain in the Way of God: 'They are dead.' Nay, they are living, Though you perceive it not." (Qur'an, 2:154)  
"Think not of those who are slain in God's way as dead. Nay they live, finding their sustenance in the Presence of their Lord." (Qur'an, 3:169)  
"And if ye are slain, or die, in the way of Allah, forgiveness and mercy from Allah are far better than all they could amass." (Qur'an, 3:157)
- 56 Bernard Lewis and Buntzie Ellis Churchill, *Islam: The Religion and the People*, Wharton School Publishing, 2008, p. 153.
- 57 "If they withdraw from you but fight you not, and (instead) send you (guarantees of) peace, then Allah hath opened no way for you (to war against them)." (Qur'an, 4:90)
- 58 Shaykh-ul Islam Dr. Muhammad Tahir-ul Qadri, *The Constitution of Medina*, Mihaj-ul Qur'an Publications, 2012, Article 54.
- 59 Shaykh-ul Islam Dr. Muhammad Tahir-ul Qadri, *The Constitution of Medina*, Mihaj-ul Qur'an Publications, 2012, Article 55.
- 60 These Muslims refer to specific verses for their claims:  
"None of Our revelations do We abrogate or cause to be forgotten, but We substitute something better or similar: Knowest thou not that Allah Hath power over all things?" (Qur'an, 2:106)

- “When We substitute one revelation for another, and Allah knows best what He reveals (in stages), they say, ‘Thou art but a forger’: but most of them understand not.” (Qur’an, 16:101)
- First of all, the verses above refer to revelations since the Prophet Adam. Secondly, even the ones who claim that some verses have been abrogated are in conflict as to which verses were supposedly annulled. This alone is sufficient to refute the claim that falsely suggests that some verses have been abrogated.
- 61 The promise of God to protect the Quran: “Indeed, it is We who sent down the Qur’an and indeed, We will be its guardian.” (Qur’an, 15:9)
- 62 “The word of thy Lord doth find its fulfilment in truth and in justice: None can change His words: for He is the one who heareth and knoweth all.” (Qur’an, 6:115)  
 “And recite (and teach) what has been revealed to thee of the Book of thy Lord: none can change His Words, and none wilt thou find as a refuge other than Him.” (Qur’an, 18:27)
- 63 “Then is it only a part of the Book that ye believe in, and do ye reject the rest? but what is the reward for those among you who behave like this but disgrace in this life?- and on the Day of Judgment they shall be consigned to the most grievous penalty. For Allah is not unmindful of what ye do.” (Qur’an, 2:85)  
 “And who is more unjust than one who invents about Allah a lie or denies His verses? Indeed, the wrongdoers will not succeed.” (Qur’an, 6:21)
- 64 “[I]ndeed, it (Qur’an) is a remembrance for you and your people, and you [all] are going to be questioned (from it).” (Qur’an, 43:44)
- 65 “Nothing have We omitted from the Book.” (Qur’an, 6:38)
- 66 “(Of just such wrath) as We sent down on those who divided (Scripture into arbitrary parts), (So also on such) as have made Qur’an into shreds (as they please). Therefore, by the Lord, We will, of a surety, call them to account, for all their deeds.” (Qur’an, 15:90-93)
- 67 For detailed information; Harun Yahya, *A Call for Unity*, Global Publishing, Istanbul, 2010.
- 68 Reichssicherhauptamt—or Reich Central Security, the umbrella security organization of the SS, SD and the Gestapo.
- 69 Evans, Richard J., *The Third Reich at War*, New York, 2008, Penguin Group, pp. 321–402.
- 70 Harun Yahya, *The Social Weapon: Darwinism*, Global Publishing, 2006, Istanbul.
- 71 <http://www.jta.org/2009/09/21/news-opinion/israel-middle-east/ahmadinejad-likes-irking-west-with-holocaust-denial>; <http://www.youtube.com/watch?v=Ymvo-XICMi8>
- 72 <http://news.bbc.co.uk/2/hi/8264111.stm>
- 73 <http://www.aljazeera.com/archive/2005/12/200849154418141136.html>
- 74 Lewis, Bernard, *The Crisis of Islam: Holy War and Unholy Terror*, New York, The Modern Library, 2003, p. 155.
- 75 <http://www.breitbart.com/Big-Peace/2013/01/09/Abbas-Honors-Architect-Of-Final-Solution>
- 76 Record of the conversation between the Fuhrer and the Grand Mufti of Jerusalem on November 28, 1941, in the presence of Reich Foreign Minister and Minister Grobba in Berlin, documents on German Foreign Policy, 1918–1945, series D, vol. XIII, London, 1964, p. 881ff in Walter Lacquer and Barry Rubin, *The Israel-Arab Reader*, (NY: Facts on File, 1984), pp. 79-84.
- 77 <http://www.jta.org/2009/08/31/news-opinion/israel-middle-east/hamas-rips-u-n-for-teaching-the-holocaust>, “ Hamas rips U.N. for teaching the Holocaust”, *Jewish Telegraphic Agency*, August 31, 2009.
- 78 Hobbes, Thomas, *Leviathan*, “Chapter XIII: Of the Natural Condition of Mankind as Concerning Their Felicity, and Misery”, 1651.

# Palestinian Christian Abuse of Christian Organizations in the West

Dr. Dexter Van Zile

Arab Christians, especially those living in the West Bank and East Jerusalem, have had a corrosive and narcotic effect on church and para-church organizations in Europe and the United States.

These Christians successfully portray Israel as the worst human rights abuser and singular threat to peace in the Middle East. Often they falsely depict Christian-Muslim relations in the region as good. In those instances when they are willing to acknowledge that there is a problem between Christians and Muslims, they blame these difficulties on Israel.

Contrary to the message offered by Arab Christians, Palestinian Christians especially, Israel treats its enemies, dissidents, and own citizens better than any other country in the Middle East. Christians are fleeing the region in droves and their flight has nothing to do with Israel but is the result of an upsurge of Muslim-on-Christian attacks in Egypt, Iraq, and Syria.

These Christians do more than convey a distorted view of life in the Middle East. They encourage Christian institutions to return to a supersessionist expression of the Christian faith. In sum, they encourage Christians in the West, whose churches had, in the aftermath of the Holocaust, started to acknowledge the continued legitimacy of God's covenant with the Jewish people, to abandon this understanding in favor of a more retrograde belief that the Jews are a cast-off people who have been replaced by the Christian church.



*Photo posted on "Friends of Sabeel – North America" Facebook page on Nov. 30, 2013.*

Whether they mean to be or not, this community of Christians has become an effective group of apologists for Islamist imperialism in the Middle East. They help focus the attention of civil institutions in the West and international bodies on the alleged sins of the Jewish state and render the impact of Islam and Islamism on Christians in the region a taboo subject for discussion. Those who wish to raise this issue are “Islamophobes.”

Institutions that embrace and rebroadcast the narrative offered by these activists impart a demonstrably false picture of life in the Middle East. They direct the energy of their members away from legitimate human rights activism into an agenda of demonization of Israel and appeasement of totalitarian Islamism.

One example of how these Christians have been able to influence the behavior of institutions in the West is the positive reception given to the Kairos Palestine Document in December 2009. This text, ironically named “A Moment of Truth,” was issued by a small group of Palestinian Christians from the West Bank and East Jerusalem who framed the Arab-Israeli conflict as if it could end once Israel withdrew from the West Bank and allowed the creation of a Palestinian state. They wrote that “if there were no occupation, there would be no resistance, no fear and no insecurity.” The document also referred to Palestinian violence – which has included suicide attacks against civilians – as “legal resistance” to the Israeli occupation.<sup>1</sup>

Another problem with the Kairos Palestine Document is the way in which it used the lens of the Holy Land to examine or judge Israeli behavior while failing to use this same lens to assess the misdeeds and acts of violence by Israel’s adversaries, most notably Hamas and Hizbullah. The document was so patently hostile that the Central Conference of American Rabbis, a group of liberal Reform rabbis in the United States, described it as supersessionist and anti-Semitic and condemned it for “opposing and negating the applicability of scriptural texts, historical presence, and theological discourse to justify the existence of a Jewish state,” while doing exactly the same thing “in making its case for a Palestinian State.”<sup>2</sup>

These complaints did not stop Christians in the United States and Europe from hailing the document as a roadmap to peace. The World Council of Churches promoted the text,<sup>3</sup> as did a number of liberal Protestant churches in the United States, most notably the United Church of Christ and Disciples of Christ.<sup>4</sup>

The document was also lionized by *Sojourners*, a magazine that caters to liberal Evangelicals in the United States.<sup>5</sup> And to make matters worse, a segment of the popular CBS news program *60 Minutes* also extolled the document and declared it “unprecedented,” when in fact Palestinian and Arab Christians have issued a number of similar documents over the years.<sup>6</sup>

In addition to attracting publicity to itself and its authors, the Kairos Palestine Document also served as a model for Christians in the West when addressing the Arab-Israeli conflict. More than three years after the document was published, the Church of Scotland issued a document of its own that trafficked in the same types of messages. Titled “The Inheritance of Abraham? A Report on the ‘Promised Land,’” it subjected Israel to intense scrutiny while giving its adversaries a pass. It also predicated the Jewish claim to the land on how well Israel treated its

adversaries who seek its destruction, asking: “Would the Jewish people today have a fairer claim to the land if they dealt justly with the Palestinians?”

The document offered not one word of criticism of Hamas and Hizbullah, which assail Israel in the name of Islamic jurisprudence and theology.<sup>7</sup>

The willingness of churches and para-church institutions in the West to broadcast the distorted and hostile message inherent in the Kairos Palestine Document is the result of a decades-long process in which Middle Eastern Christians have insinuated themselves into Western churches and para-church organizations supported by them. In short, Christians from the West Bank, Jerusalem, and Egypt have, over several decades, achieved significant influence in mainline Protestant churches. This, in turn, has affected how these churches and church institutions have spoken about the Arab-Israeli conflict.

Some have been able to achieve this influence by virtue of their presence in the Holy Land. Leaders who fall into this category include Rev. Dr. Naim Ateek, founder of Sabeel Ecumenical Liberation Theology Center; Rev. Dr. Mitri Raheb, a Lutheran pastor based in Bethlehem and founder of the Diyar Institute; and Rev. Dr. Munib Younan, former bishop of the Lutheran Church of Palestine and Jordan and current president of the Lutheran World Federation. These and other leaders have leveraged their location in the Holy Land to gain access to Western clergy and lay Christians and encourage them to embrace a distorted view of the Arab-Israeli conflict. Such leaders have also spoken at national gatherings of churches to affirm resolutions that target Israel for divestment.

Emblematic of this approach are the tours offered by Naim Ateek’s Sabeel, which highlight the suffering of Palestinians under Israeli occupation. Using the Stations of the Cross as a template, visitors are encouraged to view the Israelis as if they are crucifying the Palestinians just as Jews killed Jesus in Jerusalem two thousand years ago.<sup>8</sup>

Other Arab Christians have been able to achieve influence over Western churches and para-church organizations by moving to the United States and establishing themselves as members, clergy, and high-ranking officials in mainline Protestant churches. This phenomenon is particularly evident in the Presbyterian Church (USA). This denomination, whose General Assembly voted to single Israel out for divestment in 2004,<sup>9</sup> has a caucus of Christians from the Middle East that is intensely focused on anti-Israeli activism within the denomination. This caucus and its allies, most notably the Israel Palestine Mission Network of the PC(USA), have promoted antipathy toward Jews living in the United States who work to counter their activism.<sup>10</sup> The irony is that these Christians, who have fled a region rife with anti-Christian hostility and human rights abuses, attack the nation with the best human rights record in the Middle East after their arrival in the United States.

One interesting aspect of this phenomenon is the way in which families of Arab Christians reach out to different religious communities in the United States in a manner that multiplies their influence. For example, Rev. Dr. Victor Makari, who hails from Egypt, served as coordinator for the Office of the Middle East and Europe for the PC(USA), while his son, Rev. Dr. Peter Makari, served in a similar position for the Global Ministries of two other churches – the Disciples of Christ

and the United Church of Christ. As a result of this fanning out, so to speak, this father-son duo greatly influenced the narrative told by three liberal Protestant churches in the United States.

Both father and son promoted the cause of divestment in the churches they worked for. The elder Makari has now retired from the PC(USA), and the son, Peter, played a significant role in the passage of a now notorious “Tear Down the Wall” resolution that was adopted by the general synods of the United Church of Christ and the Disciples of Christ in 2005.<sup>11</sup> This resolution called on Israel to take down the security barrier but did not call on the Palestinians to stop the terror attacks that prompted its construction.<sup>12</sup>

Peter Makari has also used his position at Global Ministries to promote the Kairos Palestine Document and downplay the impact of Islamist hostility toward Jews and Christians in the Middle East, with a particular emphasis on his father’s homeland, Egypt. For example, in his book about Coptic-Muslim relations,<sup>13</sup> Makari describes Sayyid Tantawi, the Grand Mufti of Al-Ahzar University in Cairo, who died of a heart attack in 2010, as one of several “Egyptian Muslim religious officials who have, since the 1990s, expressed fraternal feelings with Egypt’s non-Muslims.” Makari also describes Tantawi as a “moderate Islamic voice” who has spoken of “equality in rights and responsibilities” for Muslims and non-Muslims in Egypt.<sup>14</sup>

Makari’s narcotic message was belied by reality. In fact, Tantawi was an inveterate Jew-hater who mined the Koran for passages to depict Jews as enemies of God. Before his death, he called for the imposition of the *jizya* (poll tax) on Coptic Christians in Egypt.<sup>15</sup> The Grand Mufti was nothing like the way Makari described him.

The elder Makari has also been a source of misinformation about the Middle East. After retiring from his post at the PC(USA), Victor Makari began work at the Diyar Institute in Bethlehem and authored a newsletter sent to mainline Protestants in the United States in which he complained about a twenty-five-foot concrete wall that has “enclosed Bethlehem for 10 years now.” In fact, Bethlehem is not surrounded by a wall.<sup>16</sup>

The Awads are another family that has turned anti-Israeli activism into a family business. Members of this prominent Palestinian Christian family who reside in the West Bank and the United States broadcast their message to a number of secular and religious institutions, mostly in the United States. Alex Awad, a Baptist with ties to the United Methodist Church, has worked to disseminate a distorted narrative to US mainline churches,<sup>17</sup> while his brother Bishara Awad targeted Evangelicals in North America and Europe with misinformation about the Arab-Israeli conflict from his perch as president of Bethlehem Bible College before retiring in 2012.<sup>18</sup>

Like the Makaris, both Alex and Bishara have falsely reported that the security barrier completely surrounds Bethlehem. And Alex’s son Sami, who founded an interfaith organization called Holy Land Trust, made the same factual misstatement to a group of Evangelicals from the Vineyard Church at a meeting in Texas in 2009.<sup>19</sup>

Then there is Alex and Bishara's brother, Mubarak Awad, founder of Nonviolence International, a US-based organization. Having been born in East Jerusalem, Awad was eligible for Israeli citizenship after the Six-Day War. Awad instead kept his Jordanian citizenship, moved to the United States, eventually becoming an American citizen, and subsequently losing his right to reside in Jerusalem under Israeli law, making him a cause célèbre.<sup>20</sup>

While Mubarak is known for his support of nonviolent strategies against the Israeli government, he is no pacifist. This was made clear in an article published in the *Journal of Palestine Studies* in the summer of 1984. Mubarak Awad described nonviolence "as the most effective method" for Palestinians living in the West Bank and Gaza Strip. He continued: "This does not determine the methods open to Palestinians on the outside; nor does it constitute a rejection of the concept of armed struggle. It does not rule out the possibility that the struggle on the inside may turn into an armed struggle at a later stage."<sup>21</sup>

The last paragraph of this article states that nonviolent methods "can be successfully utilized, at least in part, by individuals who are not necessarily committed to non-violence and who may choose, at a different stage, to engage in armed struggle."

Awad made a very similar statement to a reporter in 1991: "I'm willing to go to the soldiers and talk to the fellow with the gun about non-violence. And if it works, I tell him, you won't have to use the gun. And if it doesn't, you can always go back to using the gun. My brother [Alex] says, 'No, no, no. You can't tell them you can use a gun.'"<sup>22</sup> Clearly, Mubarak Awad's commitment to nonviolence is instrumental, not principled.

In addition to condoning violence while portraying himself as a nonviolent activist, Mubarak has also denied the right of the Jewish people to a sovereign state of their own. In 2002 he spoke at Princeton University and declared: "I am telling you loud and clear there cannot be a Jewish state in the Middle East. It is impossible."<sup>23</sup>

Along with promoting a distorted view of the Arab-Israeli conflict on historical and political levels, Arab Christians have also encouraged Christians to abandon the theological reforms regarding the Jewish people that took place after the Holocaust. Naim Ateek, for example, encouraged his supporters in the West to view the Jewish people through a hostile theology that depicts them as singular obstacles to God's purposes in the Middle East and unable to manage a sovereign state in the modern world.<sup>24</sup>

Ateek's overtly hostile theology eventually generated some pushback, but this has not stopped the next generation of scholars from pressing the issue, albeit in a much softer manner. Writing in *Current Dialogue*, a theological journal published by the World Council of Churches, Salim Munayer, an Evangelical Protestant, chides Western Christians for allowing "post-Shoah guilt" and fear of supersessionism to drive them "beyond the boundaries of strict Christian orthodoxy." Munayer also invokes the notion that anti-Semitism cannot be used to critique Arab peoples "for in the Palestinian context, both groups of people are Semites."<sup>25</sup>

Munayer carries this denial of Arab and Muslim anti-Semitism further by portraying the Arab-Israeli conflict as if it began solely as a conflict between competing nationalisms. To render discussion of Muslim attitudes and doctrine regarding non-Muslims taboo, Munayer chides Westerners for “propagating the logic and language of Islamophobia.” And instead of acknowledging the indigenous roots of Muslim hostility toward Jews and their state, Munayer attempts to portray it largely as a consequence of Western anti-Semitic literature having been translated into Arabic, the result of which is that “new religious language is injected into a national conflict.” In actuality, Islamic doctrine about the Jewish people has been a central force behind the Arab-Israeli conflict since its beginning. The anti-Jewish riots of the 1920s and 1930s were incited by the Grand Mufti of Jerusalem, a religious leader.<sup>26</sup>

Despite the counterfactual nature of the narrative propounded by Palestinian Christians, they have helped make anti-Zionist activism the ideological successor to the human rights campaign that brought an end to South African apartheid in the 1980s. Archbishop Desmond Tutu has cooperated with this process. Tutu, who has served as a patron or sponsor of Sabeel, has been a vocal proponent of the notion that Palestinian suffering is, like the suffering of blacks in South Africa, the great wound on humanity that all right-minded people must confront.

Appearing at a Sabeel conference in Boston in 2007, Tutu gave a speech<sup>27</sup> in which he attempted to legitimize the double standard applied to the Arab-Israeli conflict by adducing the concept of the Jews as a chosen people with a special mission to change the world and promote a universal morality. After invoking a number of stories from Hebrew scriptures to highlight Israeli wrongdoing, Tutu then spoke about the Jewish people in positive terms:

The world needs the Jews, Jews who are faithful to the vocation that has meant so much for the world’s morality, of its sense of what is right and wrong, what is good and bad, what is just and unjust, what is oppressive and what sets people free. Jews are indispensable for a good, compassionate, just and caring world.

Tutu’s insistence that Jews struggle with their conscience over Israeli policies was coupled with a failure to make the same demands of their adversaries. For example, Tutu did not condemn by name those who would murder Jews because they are Jews. At no point in his speech did he mention groups like Hamas and Hizbullah, or other groups in the Middle East that deny Israel’s right to exist and espouse vicious attitudes toward Jews. Hamas, for example, has posted a video of a suicide bomber expressing a desire to drink Jewish blood. Archbishop Tutu remained silent about this hate but instead focused exclusively on Israeli checkpoints and the security barrier. The story Tutu tells of the Arab-Israeli conflict, like the narrative offered by Palestinian Christians, is Judeo-centric in that it portrays Israel as singularly responsible for the violence, and racist – against Jews and Arabs – in that it makes no demands of Israel’s Arab adversaries.

While these Christians have not had much success in convincing churches in the West to divest from Israel, the arguments they deploy have been used to promote church boycotts against goods produced by Israeli companies in the West Bank. The most notable and deplorable of these boycotts was approved by the governing body of the United Church of Canada in 2012, which endorsed the Kairos

Document and called on church members to “avoid any and all products produced in the settlements.” The resolution, passed by the church’s General Council, also described the “occupation as a major contributor to the injustice that underlies the violence of the region,” and apologized for previously asking Palestinians to “acknowledge Israel as a Jewish state.”<sup>28</sup>

The PC(USA) passed a similar boycott resolution at its 2012 General Assembly.<sup>29</sup> While the United Methodist Church did not pass a boycott resolution at its national gathering in 2012, the church’s national assembly did pass a resolution calling on “all nations to prohibit the import of products made by companies in Israeli settlements on Palestinian land.”<sup>30</sup>

Another impact of the narrative presented by Palestinian Christians and their allies is to render Christian organizations in the West unable to respond effectively to the Islamist violence directed at Christians in the Middle East. Probably the best example is the May 2013 statement by Christian leaders meeting under the auspices of the World Council of Churches in Lebanon.<sup>31</sup>

The statement issued by this group of approximately 150 leaders declared that “Palestine” remained the central issue in the Middle East. According to this calculus, the Arab-Israeli conflict, which has cost approximately eight thousand people their lives since the 1980s, is in more need of peacemaking than the Syrian civil war, which has cost approximately one hundred thousand people their lives since it began in 2011. What is most astounding about this statement is that while it made a reference to the kidnapping of two Christian clergy by Islamists in Syria, it provided no description of ongoing attacks against Christians in Iraq, where more than a million Christians have been ethnically cleansed over the past decade, nor did it offer any mention of Islamist violence against Copts in Egypt, where attacks have driven more than a hundred thousand Christians from their homes.

Instead of condemning this violence head-on, the conference, organized with the help of the Middle East Council of Churches, promoted the Kairos Document as if it outlined a path to Christian safety in the region.

Sadly, this is not new behavior. It was evident, for example, in the waning days of the Byzantine Empire. Rivkah Duker Fishman noted that, as adherents of the newly founded religion, Islam, threatened the Byzantine Empire with destruction, the empire’s elites focused their attention not “toward the enemy at the doorstep, but at the Jews of the realm.”<sup>32</sup>

Fishman recounts that a number of scholars have tried to explain this phenomenon. According to one expert, Averil Cameron, “anti-Jewish bellicosity” resulted from a number of factors including the writings of the early Church Fathers, anti-Jewish legislation imposed by Emperor Justinian in the sixth century, and the involvement of Jews in court politics. It did not help that Jews were viewed as supporters of the empire’s longtime foe, the Persians.

Fishman also reports: “Other scholars believe that Jews mainly served as a surrogate or a literary and artistic construct in place of the Muslims whose power Christianity could not break.”

Sadly, a similar scenario is playing itself out in the modern era as Islamist influence spreads to Europe. Christian leaders, who are unable to respond to Islamist violence, particularly in Europe, are nevertheless obsessed with the Jews and their state. Such an obsession, Fishman warns, could “harm Christianity by deflecting it from the real challenge it faces, as it did in the past”; and “the Christian legacy of Patristic anti-Semitism represents a flaw of such proportions that it could paralyze the healthy tendency to self-defense in the face of existential danger.”

This is the impact of Arab Christian activism.

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# UNRWA: Blurring the Lines between Humanitarianism and Politics

Dr. Rephael Ben-Ari

The United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) has become one of the largest UN programs, with over 30,000 personnel operating in Jordan, Lebanon, Syria, the West Bank, and the Gaza Strip. It remains the only UN agency whose area of operation is not global but regional, and which deals with a single group of people; it is also unique in that it directly provides government-like public services to its beneficiaries.

Undoubtedly, since its inception nearly sixty-five years ago, UNRWA has accomplished significant major achievements, providing relief and humanitarian aid in one of the most complex geopolitical arenas, under the challenging conditions of political uncertainty and physical insecurity. Nevertheless, within the last few decades, the vast, quasi-state machinery into which the Agency has evolved has attracted considerable criticism. Some of UNRWA's long-standing policies have made it susceptible to political manipulation, in particular by extremist groups. It is evident that the Agency has become deeply involved in Middle-Eastern politics, in a way that might overshadow its significant accomplishments.



Screenshot from "Camp Jibad" documentary about UNRWA summer camps (Israel Resource News Agency)

In the following commentary, we will review the main areas of criticism regarding UNRWA's actual performance and strategies, as well as the legal-institutional and political factors that have combined to bring about the current situation, which raises concern among experts and statesmen, calling, in particular, for awareness and action on the part of UNRWA's donor countries.

## 1. A Humanitarian Agency Becoming an Active Political Actor

On June 20, 2013, on the occasion of World Refugee Day, Catherine Ashton, the EU's High Representative for Foreign Affairs and Security Policy, decided to visit the Rimal Boys' School in Gaza.<sup>1</sup> Obviously, choosing a Gazan elementary school out of all of the numerous refugee facilities and camps scattered around the world was no coincidence. Hosted by Filippo Grandi, Commissioner General of UNRWA, Ashton made it clear that her visit was meant to "underline the situation in Gaza" and to support the work of UNRWA.<sup>2</sup> She took that opportunity to share her wish to see the crossings opened, and declared that the EU would continue to be the strongest supporter, providing the required financial aid, and "also the political support."<sup>3</sup> Clearly, Ashton's visit was a major achievement for UNRWA, the result of an ongoing, intensive, world-embracing lobbying effort by the UN Agency's leadership, tailored to attract international public attention to the *political* problem of Palestinian refugees.

Recently, the bloody Syrian conflict provided another excellent platform for UNRWA's Commissioner General to recall "the plight of Palestinian refugees, resulting in a 65-year-old diaspora."<sup>4</sup> In a written interview given by Grandi (March 2013), broadly spread by the UN News Center, he emphasized UNRWA's endeavors to assist Palestinian refugees residing in Syria, while expressing grave concerns that the situation in Syria might divert international attention away from the "ongoing Gaza blockade."<sup>5</sup> This very same point had been made a month earlier by Grandi at the *Conference on Cooperation Among East Asian Countries for Palestinian Development*, which was hosted by Japan, where he had stated – alongside Salam Fayyad, the Palestinian Authority (PA) Prime Minister – that Syria's brutal war "should not make us forget that for Palestinian refugees, *as for other Palestinians*, the most powerful obstacle to development continues to be the Israeli occupation."<sup>6</sup> Grandi publicly condemned the "tightening grip" of Israeli policies, while presenting UNRWA as the "international *political* framework" that "strives to afford a measure of human development amidst the carefully structured and ever expanding occupation," calculated, according to Grandi, to "slowly but surely alienate Palestinians from their land and assets."<sup>7</sup>

These recent examples demonstrate the extent to which UNRWA has become an active player involved in Middle-Eastern politics, and a powerful tool within the anti-Israel propaganda campaign. Nevertheless, this proficiency in translating humanitarian hardship into political gains has been only one cause of the growing body of criticism that has been directed at UNRWA within the past few decades.<sup>8</sup> UNRWA's actual performance, which includes the breeding of an atmosphere of hatred and violence among Palestinian youth and even the support of terrorist activities, as well as the upholding of the concept of the "right of return" and the determined policy of inflating the number of refugees, have raised concern among experts, commentators, and statesmen alike.<sup>9</sup>

## 2. Manipulation of Educational Activities

### 2.1 Improper Use of Facilities

There has been some alarm regarding improper activities in UNRWA schools and summer camps. In 2000-2001, Palestinian children were reported to have received military training in summer camps that had been organized by the PA using UNRWA facilities.<sup>10</sup> In 2001, during an awards ceremony held in an UNRWA facility by a Palestinian NGO, an Agency teacher was reported to have publicly praised suicide bombers; a speech by Sheikh Ahmed Yassin, who at the time was Hamas' "spiritual" leader, followed.<sup>11</sup> These incidents – the most prominent to have come to light – were most likely the tip of the iceberg, given the fact that out of the Agency's 30,000 personnel, fewer than 150 are international staff; the remaining staff consists almost entirely of locals.<sup>12</sup>

Indeed, as the journalist Linda Polman acknowledged in her famous book, "The Crisis Caravan: What's Wrong with Humanitarian Aid?"<sup>13</sup> UNRWA camps have in fact introduced the world to the phenomenon of what are now called "refugee warriors":

The UNRWA camps that sprang up [half a century ago] in Lebanon, Syria, Jordan, the West Bank, and the Gaza Strip have since developed into fully fledged city-states, from which the 'freedom struggle' against Israel – and against one another<sup>14</sup> – continues to this day. The recruitment of fresh blood is effortless in the camps; one uprooted generation after another has been trained to fight.<sup>15</sup>

James Lindsay, UNRWA's former Legal Advisor, also concluded in his in-depth 2009 report, "Fixing UNRWA,"<sup>16</sup> that UNRWA makes no attempt to remove individuals who support extremist positions<sup>17</sup>; the Agency has taken very few steps to detect and eliminate terrorists from its ranks, while taking "no steps at all to prevent members of terrorist organizations, such as Hamas, from joining its staff."<sup>18</sup> Applicants in the West Bank and Gaza are thus exempt from pre-employment security-checks and the Agency does not check up on staff members to see what activities they are engaged in outside office hours.<sup>19</sup>

The fact that there are some UNRWA staff members who support violence, terrorism, and extremist political philosophies<sup>20</sup> does not seem to particularly bother UNRWA's leadership, as was expressed by former Commissioner General Peter Hansen in 2004:

I am sure that there are Hamas members on the UNRWA payroll and I don't see that as a crime. Hamas, as a political organization, does not mean that every member is a militant and we do not do political vetting.<sup>21</sup>

Moreover, even staff members who come from the refugee camp population who do not agree with extremist views can hardly express any disagreement. Consequently, as Lindsay observes, it is rare for staff members, especially in Gaza or the West Bank, to report or confirm that another staff member has violated rules against political speech, let alone exhibited ties to terrorism.<sup>22</sup> Allegations of improper speech or misuse of UNRWA facilities, therefore, remain difficult to

prove, as “virtually no one is willing to be a witness against gang members.”<sup>23</sup> This is probably the actual reason behind the fact that hardly any incidents of improper use of language or power have come to light, not – as some commentators have presumed – that UNRWA has become more meticulous in screening for the use of its schools.<sup>24</sup>

This became more evident recently, when new video footage came to light, entitled “Camp Jihad,” showing the curriculum of Palestinian children in several UNRWA summer camps, which incite hostility towards Israel and the Jews.<sup>25</sup> The documentary that filmed summer programs in the Gaza Strip and Balata refugee camp (north of Nablus) shows young campers being educated about the “Nakba”<sup>26</sup> and taught about “the villages they came from,” such as Acre, Ashkelon, Beersheba, Haifa, Jaffa, Lod, Nazareth, Safad, and even Tel-Aviv (Sheikh Munis) – all cities within sovereign Israel. Even the names of the teams in their summer camps take on the names of these cities. In the documentary, the director of the Gaza camp explains that these programs are meant to motivate the youngsters “to return to their original villages,” and she expresses her deep gratitude to UNRWA for financing the camp.<sup>27</sup> One scene shows a teacher telling a group of young students a story about the “wolf” – that is, the Jews who brutally expelled their parents from their peaceful sea-side “palaces and villas.” Another teacher tells a group of young campers that “with education and *jihad* we will return to our homes; we will wage war.” Evidently, the indoctrinating messages are well absorbed by the youngsters, as several scenes in the documentary show young girls singing “I will not forget my promise to take back my land” and “we are filled with rage.” A young camper declares to the camera that she “will defeat the Jews,” who are “a gang of infidels” that “don’t like *Allah*,” while in another scene, a young boy explains that “the summer camp teaches us that we have to liberate Palestine.”

## 2.2 Inappropriate Textbooks

The continued use of inappropriate textbooks in UNRWA schools, particularly in Gaza and the West Bank,<sup>28</sup> also remains a source of much controversy, despite the fact that reports of various sources have repeatedly raised the issue of a hostile attitude towards Israel and the Jewish people, promoted by the schoolbooks.<sup>29</sup> A recent ten-year research study, regarding the Palestinian curriculum at UNRWA schools, examined some 150 textbooks of various subjects, taught in grades 1-10, which had been issued by the PA between the years 2000-2005.<sup>30</sup> The study found three fundamental negative attitudes in the presentation of the Jewish/Israeli “other”: denial of the legitimacy of the State of Israel; demonization of the State of Israel; and advocacy for the violent struggle for Palestinian liberation.

According to this research report, PA schoolbooks, for example, do not recognize any Jewish rights or Jewish holy places in Palestine, but merely “greedy ambitions.”<sup>31</sup> Generally, the name of the state, “Israel,” does not appear on the maps (or within textual material), and Jewish cities and regions within Israel proper are presented as exclusively Palestinian.<sup>32</sup> Israel’s Jewish population is not counted among the country’s legitimate inhabitants, which are comprised solely of Israeli Arabs and Diaspora Palestinians.<sup>33</sup> Demonization of Israel has it as an occupying entity, existing at the expense of the Palestinian people’s right to self-determination and as a source of many evils committed against the Palestinians

and other Arabs.<sup>34</sup> Consequently, no peaceful solution to the conflict has been advocated in PA books that are used in UNRWA schools; instead, the books advocate a violent struggle for liberation, not restricted to the West Bank and Gaza, and underlined by the notions of *Jihad* and *Shahadah* (martyrdom).<sup>35</sup>

\* \* \*

Clearly, the educational services provided by UNRWA to Palestinian students – particularly in the West Bank and the Gaza Strip, but also in neighboring countries – help to propagate a non-peaceful point of view, upholding a political vision of a continued struggle against a delegitimized Israel until its eventual destruction.<sup>36</sup> By maintaining the policy of non-involvement in the local curricula taught in its schools<sup>37</sup> – a policy that should not be taken for granted in the first place by a UN body<sup>38</sup> – as well as by refraining from screening the use of its facilities and by ignoring the “unofficial” activity of its local staff, UNRWA at best ignores the obvious.<sup>39</sup> The Agency’s relatively powerful influence on Palestinian educational activities, as well as the fact that more than half of its general budget is dedicated to education,<sup>40</sup> further highlight UNRWA’s problematic educational role in the Middle East conflict. It demands urgent, ongoing scrutiny on the part of donor countries – most of which are Western democracies – to ensure that their contributions are not being used inappropriately to support terrorism or to incite violence and hatred.

### 3. Politicization of Relief

#### 3.1 Self-Proclaimed “Protection Mandate” & Political Advocacy

It is no secret that UNRWA’s work has long crossed the lines of humanitarianism and relief, deep into the political realm. Indeed, the acceptance by UNRWA’s leadership of the mission to enhance the *political* rights of Palestinians *at large*, not only refugees, has gradually become a key trend, characterizing the Agency’s activity.<sup>41</sup> Particularly since the first *Intifada* (1987), and following the request of the UN Secretary General that UNRWA expand its activities to provide protection for refugees and non-refugees alike “on an emergency basis and as a temporary measure,”<sup>42</sup> UNRWA has unilaterally expanded its mandate to include “protection” and to encompass all Palestinians.<sup>43</sup> The Agency’s international staff, including its Refugee Affairs Officers (RAOs) in the West Bank and Gaza, who had been nominated to implement UNRWA’s so-called “protection mandate,”<sup>44</sup> had become intensively involved in publicity activity – that is, the collection and collation of information on protection issues, and their publication – either through reports or by making this information available to the media.<sup>45</sup> Consequently, as Lindsay observes, even when the first *Intifada* ended and the Interim Self-Government Arrangements had been signed,

the mandate to protect Palestinians, and the accompanying sense of being joined with the Palestinians against Israel, remained a part of UNRWA’s culture.<sup>46</sup>

UNRWA's endorsement of Palestinian political views was also notable throughout the second *Intifada* (2000).<sup>47</sup> The Agency's RAOs were replaced by Operations Support Officers (OSOs), whose main duty was to provide "general assistance" protection, including "observing and reporting."<sup>48</sup> The one-sided positions of UNRWA officials were reflected by their focusing on condemning Israeli counter-terrorism efforts in language associated with war crimes; criticism of Palestinian-initiated attacks was mild and infrequent.<sup>49</sup>

This trend has continued ever since. UNRWA officials frequently condemn the IDF's attacks on terrorists, in response to rocket strikes on Israeli civilian targets launched from Gaza, as a "disproportionate, indiscriminate and excessive use of force."<sup>50</sup> For the appearance of balanced reporting, UNRWA commentary would sometimes also mention "the firing of rockets from Gaza into Israel" – but as an afterthought, not in terms of war crimes or terrorist attacks, never protesting the bombarding of innocent Israeli civilians.<sup>51</sup> In fact, on several occasions, former Commissioner General Karen AbuZayd even referred to the continuous firing of Qassam rockets into Israel from Gaza as a legitimate "response" to "military incursions."<sup>52</sup>

The UNRWA leadership's political position is also reflected in the continuous, unqualified support it provides to Hamas in various international fora, despite its violent methods and declared dedication to eliminating Israel. In the past, Commissioner General AbuZayd was particularly active in campaigning devotedly against the West's isolation of Hamas, calling upon European leaders in particular to engage with the group as a pre-condition for "regaining credibility with Palestinians" and ending "the partisan approach to denouncing violence and to blaming the victims."<sup>53</sup> In the same spirit, UNRWA's leadership also protested the Quartet's embargo of the Hamas government, thus openly challenging the formal policies of its main donors – the USA and the EU – as well as the UN.<sup>54</sup> Since 2008, UNRWA has echoed Hamas' views by keenly criticizing the Israeli blockade of Gaza on humanitarian grounds,<sup>55</sup> while at the same time ignoring reports regarding the theft of humanitarian assistance items by the group.<sup>56</sup>

Indeed, in practice, UNRWA's so-called "protection mandate" has allowed the Agency to become a fierce advocate for Palestinians in its dealings with Israel, although the Agency remains nearly silent and indifferent when Arab governments in host countries violate or restrict Palestinian civil rights.<sup>57</sup> Such was the case, for example, when nearly 400,000 Palestinians were expelled from Kuwait in 1991, in spite of repeated warnings issued by human rights organizations regarding the large-scale violation of their rights; as well, there is the more recent case of the grievous treatment of Palestinians by the government of Lebanon, where Palestinians live, according to Human Rights Watch reports, "in appalling social and economic conditions" due to far-reaching legal restrictions on their access to the labor market and discrimination under property and title laws.<sup>58</sup>

### 3.2 Growing Involvement in Political Speech

As cited earlier, UNRWA's current leadership follows the path of routinely exploiting every international stage and forum available to delegitimize Israel and its policies – a method that has become an essential part of UNRWA's extensive global fund-raising campaign. A recent collection of the UNRWA chief executive's pronouncements is illuminating in this regard. Grandi, in his farewell speech before the Fourth Committee of the UN General Assembly in November 2013, repeated his motto of "profound concern" regarding the preoccupation of the international community with Syria. According to Grandi, it might divert attention from the situation in Gaza, which was "exacerbated by the closure of tunnels, through which many basic commodities were entering"<sup>59</sup> – completely ignoring the systematic abuse of such tunnels by terrorist groups for their massive smuggling operations of illegal arms and ammunition into the Gaza Strip.<sup>60</sup> He further condemned, at length, the "stifling restrictions imposed by Israel in the West Bank including East Jerusalem," as well as settlers' behavior, the "possible transfer of the Bedouin community," and the conduct of Israeli military operations<sup>61</sup>; no censorship whatsoever was mentioned of Palestinian violence or terrorist activity against Israel and Israeli citizens. "Rockets launched towards southern Israel" were briefly mentioned – not condemned – by Grandi, and only after raising concerns about possible "Israeli military incursions."<sup>62</sup>

A few days later, at the opening session of UNRWA's Advisory Commission (AdCom), Grandi suggested that "strengthening the human security of the people of Gaza is a better avenue to ensuring regional stability than physical closures, political isolation and military action"; to obtain this, according to Grandi, "first and foremost, the Israeli blockade, which is illegal,<sup>63</sup> must be lifted."<sup>64</sup> At the previous round of the AdCom's meetings, several months earlier, Grandi had blamed "the interests of the Israeli government in sustaining an unresolved situation" and trumping "the real substance of security and stability" in the region, including the fact that "Palestinian leadership remains divided."<sup>65</sup> During a recent visit to Rio de Janeiro, in an effort to add Brazil to UNRWA's donor base, Grandi spoke about the Gaza blockade as "one of the harshest occupation measures of modern times," and condemned the "complex web of policies and restrictions" that "thrives under the umbrella of military occupation and has been slowly depriving Palestinians of assets and of livelihood."<sup>66</sup>

It is no wonder that the style, tone, and example set by UNRWA's Commissioners-General has had an impact on other UNRWA officials. A lively example was provided recently by UNRWA's spokesperson, Chris Gunness, who took advantage of a public event to commemorate the anniversary of the death of Count Bernadotte to condemn Israeli officials who were, according to Gunness, "venerated in the most senior echelons of Israeli public life," and whose "values and rejectionist attitudes towards the UN sadly are reinforced by repetitious nationalistic mythologizing."<sup>67</sup> "Selective ignorance" was his preferred terminology for describing the attitude of these officials, who, according to Gunness' historiography, followed Ben-Gurion's dismissive attitude towards the UN.<sup>68</sup> In this regard, it is no surprise that UNRWA's Area Staff Regulations, as well as International Staff Regulations,<sup>69</sup> which both necessitate "to avoid any action and in particular any kind of pronouncement which may adversely reflect on their status, or on the integrity, independence and impartiality which are

required by that status,” as well as the engagement “in any political activity which is inconsistent with or might reflect upon the independence and impartiality required by their status,” are easily ignored. After all, if the Agency’s most high-ranking officials consistently disregard their obligation for impartiality, what can be asked – or expected – from the more junior officials, let alone the area staff, made up almost entirely of local Palestinians?

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In reality, despite repeated statements that UNRWA is not a political organization,<sup>70</sup> the Agency is regularly involved in political speech and public pronouncements.<sup>71</sup> In large part, this is the outcome of the fact that UNRWA lacks outside controls over its chief executive, who receives hardly any political guidance from any of the relevant international bodies that are in a position to provide direction,<sup>72</sup> and thus effectively enjoys wide authority and freedom of action and of speech.<sup>73</sup> Sixty-five years after its establishment, UNRWA still has no settled accountability framework – let alone a broadly accepted, defined mandate<sup>74</sup> – that would enable the international community to scrutinize and to direct the Agency’s daily performance. This situation allows its leadership, as well as interested parties – first and foremost the Palestinian leadership and some Arab (host) countries<sup>75</sup> – to manipulate this vast UN agency, mainly sponsored by goodwill contributions of the international taxpayer, using it as a tool for the promotion of specific political agendas. As commentators have observed in the past, there is therefore a need for donor countries in particular, having, in practice, the most influence to impact UNRWA’s leadership, to persuade the Agency to strictly limit its actions and public pronouncements to humanitarian issues.<sup>76</sup>

## 4. *Lex Specialis* Bypassing International Law

### 4.1 Defining a “Refugee” & Upholding the “Right of Return”

UNRWA’s activity involves two complex, interrelated conceptual-legal controversies: the definition of who is a “refugee,” entitled to the protection of certain international arrangements, and the existence of a so-called “right of return.” A thorough doctrinal investigation into these issues is clearly beyond the scope of this paper.<sup>77</sup> Nevertheless, it is important to note how UNRWA’s very existence and, moreover, its actual performance, have created a sort of *lex specialis* in the case of Palestinian refugees, thus bypassing existing legal arrangements and contributing to the complication and misconception of these issues.

UNRWA remains the only UN agency whose area of operation is not global but regional, and which deals with a single group of people<sup>78</sup>; it is also unique among UN agencies in that it directly provides various government-like public services.<sup>79</sup> Unlike its sister organization, the UN High Commission for Refugees (UNHCR), mandated since 1950 to coordinate the handling of all refugee communities worldwide, UNRWA was established in that same year to deal exclusively with Palestinian refugees, who were thus excluded from the protection of the UNHCR.<sup>80</sup> Furthermore, while the aims and operations of the UNHCR are based on international instruments<sup>81</sup> – mainly the 1951 Convention Relating to the Status of Refugees – UNRWA was never provided with a specific statute or charter<sup>82</sup>; it has operated since its inception under a general mandate, renewed

every three years by the General Assembly.<sup>83</sup> The latter, however, has been offering little guidance concerning the evolution of the Agency's mandate.<sup>84</sup> It therefore remains for the UNRWA Commissioner General to determine, in good faith, any questions concerning the mandate.<sup>85</sup>

The decision to establish UNRWA, just a few days after the decision had been taken to establish the UNHCR, was the initiative of Arab countries that feared that the inclusion of Palestinian refugees under the general definition of "refugees" would be interpreted as a waiver of their claim that "return" was the sole solution, and as an implied agreement to resettlement in their territories.<sup>86</sup> The creation of a separate, autonomous UN agency thus allowed them to impose limitations on UNRWA's mandate to provide "temporary assistance," while the UNHCR's mandate generally provided for refugees' rehabilitation and resettlement.<sup>87</sup> Indeed, in the following years, the majority of refugees, as well as Arab states, objected to any attempt by UNRWA to facilitate integration into their countries of residence,<sup>88</sup> insisting on the return of refugees to Israel.<sup>89</sup> As was acknowledged by Lt. Gen. Sir Alexander Galloway, director of UNRWA in Jordan, in 1952:

It is perfectly clear that Arab nations do not want to solve the Arab refugee problem. They want to keep it as an open sore, as an affront against the United Nations and as a weapon against Israel. Arab leaders don't give a damn whether the refugees live or die.<sup>90</sup>

UNRWA, which never criticized the refugees or the Arab states for failing its original resettlement and reintegration scheme,<sup>91</sup> has consequently developed into a vast welfare agency, providing quasi-governmental services for a huge population of refugees which has grown more and more dependent on its benefits.<sup>92</sup> It has thus entrenched the idea of return,<sup>93</sup> as well as its misconception as a legal right rather than as a privilege or a political claim.<sup>94</sup> Today, UNRWA's leadership does not hesitate to openly advocate the solution of return, as reflected in the words of UNRWA's chief executive who stated recently that,

[Palestinians'] refugee status remains unresolved, and their exile continues everywhere. In spite of the passage of time and even where they have lived for two or three generations in relative peace and stable coexistence with host communities, refugee status continues to set them apart as a temporary group, unable to return to a state which they call their own, and to permanent homes.<sup>95</sup>

The fact that UNRWA was established as a distinct arrangement by the General Assembly also allowed for the development of a unique operational definition of a "Palestinian refugee," entitled to the Agency's services. Clearly, such a definition, based on UNRWA documents rather than on any formal UN decision,<sup>96</sup> deviates from the general definition recognized under international refugee law (as a key for benefitting under UNHCR protection),<sup>97</sup> and was tailored to fit the political interests of those states that initially sponsored the Agency. According to UNRWA's original definition, a Palestinian refugee was a person whose normal place of residence had been Palestine between June 1946 and May 1948,<sup>98</sup> who had lost his home and means of livelihood as a result of the 1948 war. Controversially, in 1965, UNRWA decided to create an extension

of eligibility to the third generation of refugees (that is, to children of persons who were themselves born after 14 May 1948).<sup>99</sup> In 1982, the Agency took another far-reaching decision to extend eligibility to *all* subsequent generations of descendants, without any limitation.<sup>100</sup> Further deviating from the accepted norms and arrangements regarding refugees worldwide,<sup>101</sup> UNRWA also registers as “refugees” those who have acquired citizenship in other countries.<sup>102</sup> Given UNRWA’s broad definitions, it is therefore no wonder that the current number of Palestinian refugees, according to the Agency’s figures,<sup>103</sup> amounts to nearly 5 million – half of the number of refugees in the entire world<sup>104</sup> – whereas the formal number of original refugees who fled Palestine in 1948 was around 700,000 – 750,000,<sup>105</sup> out of whom only 8 percent are still alive.<sup>106</sup> As was stated recently within a report presented to the US Senate Appropriations Committee, UNRWA’s practice in this regard is,

artificial and misleading, and undermines any possibility of resolving the refugee issue in future peace negotiations. It manufactures fictional refugees who vastly outnumber the actual remaining 1948 and 1967 “refugees.” The real refugees are today only a small fraction of the five million nominal refugees registered with UNRWA.<sup>107</sup>

Even PA President Mahmoud Abbas has openly acknowledged in the past that,

it is illogical to ask Israel to take five million, or indeed one million. That would mean the end of Israel.<sup>108</sup>

## 4.2 Mythologizing “Refugeeism”

Whereas the mission of the UNHCR is generally to reduce the number of refugees in the world, UNRWA has brought about an exponential increase in the number of Palestinian refugees. More than anything else, its actions have underlined the issue of Palestinian refugees as a significant, far-reaching practical political concern, not simply a humanitarian one.<sup>109</sup> In this, as acknowledged by Zilbershats and Goren-Amitai, the UN Agency serves as an agent, fulfilling “the political desire of the Arab states and the Palestinians to preserve, expand and perpetuate the refugee problem in order to avoid the need to recognize the State of Israel as a Jewish state.”<sup>110</sup> Others have also acknowledged the financial aspect of the situation, pointing to the fact that a decrease in the number of refugees would result in the PA losing hundreds of millions of dollars in annual aid.<sup>111</sup>

Furthermore, UNRWA’s ideological insistence on the “right of return,” combined with its policy of inflating the number of refugees, greatly contributes to the strengthening of the sense of nationalism and solidarity underlined by feelings of injustice,<sup>112</sup> cultivating a collective memory based on a mentality of victimhood.<sup>113</sup> The Agency’s current leadership plainly – and actively – supports this mindset, as was demonstrated recently, when the Commissioner-General showed pride in unveiling UNRWA’s newly digitized archives, under the title: “The Long Journey: Digitizing the Palestine Refugee Experience.”<sup>114</sup> According to UNRWA’s website, these archives, funded by the governments of Denmark and France, Palestinian NGOs, and private sector partners, consist of “over half a million negatives,

prints, slides, films and videocassettes covering all aspects of the life and history of Palestine refugees from 1948 to the present day.”<sup>115</sup> Describing the UNRWA archives, considered since before their digitization to be part of Palestinian national heritage,<sup>116</sup> Grandi stated that,

Collective memory is a vital element of communal identity and this rich archive documents one element of Palestinian identity, the refugee experience....<sup>117</sup> These photos are part of an important legacy.... To preserve this legacy is an important duty we have to the Palestinian people. They raise awareness about the history of the Palestinian refugee issue.<sup>118</sup>

Notably, a traveling exhibition based on the new archives was organized and launched by UNRWA; after being presented in the Old City of Jerusalem, UNRWA scheduled the exhibition to go on tour, starting in January 2014, to key cities in the Agency’s areas of operation, as well as “centers of culture and politics in Europe and North America.”<sup>119</sup> Such activity exemplifies UNRWA’s decisive role in constructing Palestinian political identity,<sup>120</sup> as has been suggested by R. Bowker:

[T]he political mythologies and memoirs of Palestinian refugees in which UNRWA is deeply embedded...are central elements in Palestinian politics. Palestinian refugees...are not merely recipients of international aid. Viewed in terms of the historical conflict between Palestinians and Israelis, the relationship of the refugees to UNRWA has been instrumental in forging their sense of identity as refugees, their claims for justice, and their perceptions of the roles and responsibilities of other parties relevant to their situation and aspirations.<sup>121</sup>

Further significant contribution to the process of mythologizing refugeeism<sup>122</sup> is made through UNRWA’s long-standing policy of absolute submission to the political and ideological lines of host governments particularly in the field of education, due to the numerous manifestations of the “right of return” in the textbooks taught in the Agency’s schools.<sup>123</sup> In fact, the textbooks used in UNRWA’s schools never discuss any other possible solution to the refugee problem.<sup>124</sup> As acknowledged in Groiss’ research study, mentioned earlier, and bearing in mind the huge, accumulated number of UNRWA graduates throughout its years of operation, this might be one of the significant contributions of the Agency to the perpetuation of the conflict.<sup>125</sup>

Indeed, in recent years, more and more commentators have raised concerns that UNRWA’s determined policies in fact overwhelm voices coming from within Palestinian society – of those who wish their people to abandon the refugee camps without claiming return.<sup>126</sup> A recent article in “The Economist,” noting that almost 70 percent of West Bank refugees already live outside refugee camps,<sup>127</sup> quotes a camp psychologist admitting that “people don’t even dream anymore of returning.”<sup>128</sup> Also, Palestinian leaders privately confess that even if there were a deal with Israel, “the refugees and their offspring will never return en masse to Israel.”<sup>129</sup> Thus, by treating Palestinian refugees as a collective socio-political group, UNRWA overlooks differing attitudes of adaptation to changing political contexts and economic circumstances,<sup>130</sup> as well as studies that show how new “pragmatic”

discourses among Palestinians and new symbolic meanings attached to the “right of return” have emerged.<sup>131</sup>

## 5. Conclusion: Donor Countries’ Awareness and the Quest for Accountability

Since its inception, nearly sixty-five years ago, UNRWA has undoubtedly accomplished momentous achievements in the humanitarian field,<sup>132</sup> providing relief and essential public services, while operating in one of the most complex geopolitical arenas in the world, under the challenging conditions of political uncertainty and physical insecurity. Nevertheless, within the last few decades under the orchestration of impassioned commissioners-general,<sup>133</sup> the vast, quasi-governmental machinery into which the UN agency has evolved has made itself susceptible to political manipulation in such a way that might overshadow its significant accomplishments. Indeed, a quick look into UNRWA’s website or the numerous public pronouncements by its leading officials – particularly since the 1980s – would suffice to demonstrate the Agency’s ever-deepening political involvement; it has become an active agent in reaching out to international actors and audiences, as well as an effective tool in manipulating public opinion worldwide.

Evidently, several legal-institutional and political factors have combined to bring about this situation. The “original sin” of creating a unique, “temporary” agency, tailored to meet certain political demands without providing a specific statute or an accountability framework, in fact left UNRWA’s leadership with unparalleled broad discretion and authority to shape the Agency’s mandate and implement its policies. Furthermore, due to the fact that the Agency’s funding system is guaranteed almost exclusively by the voluntary contributions from donor countries, it has to constantly develop sophisticated communication skills to market its mission and secure its funding<sup>134</sup> – a mission that has become more and more difficult since the 1990s. Apparently, crucial policy decisions taken throughout the years and bearing far-reaching political consequences, such as those regarding the definition of the Agency’s beneficiaries that resulted in the relentless inflation in the number of Palestinian refugees, or the adoption of initiatives within a so-called, never-clearly-stated “protection mandate,” have inflicted tremendous, steadily growing budgetary constraints on the Agency. Eventually, the international community has to shoulder the burden of these costs.

UNRWA’s leaders have thus become occupied with efforts to break the vicious circle created by the Agency’s own policies – either by convincing donor countries to enlarge their contributions or by campaigning to persuade other countries to join its donor base.<sup>135</sup> Clearly, within these efforts, criticizing the conduct of camp residents, host authorities, or extremist groups for the poor humanitarian conditions of the refugees would lead to their disenfranchisement with UNRWA and would badly affect local refugee communities, and is therefore not an option. However, as was demonstrated earlier, “naming and blaming” Israel definitely is. Mythologizing refugeeism and upholding the “right of return” further validate the Agency’s *raison d’être*.

Altogether, such activities are not always compatible with the interests and political positions of moderate Palestinian leadership; they obstruct pragmatic efforts to mediate the positions of Israelis and Palestinians. On the other hand, UNRWA is a vital source of income and a caretaker of unstable factions within Palestinian society; going against its policies would probably cause much political unrest and be perceived as defying the cause of Palestinian refugees.<sup>136</sup> In this way, the *status quo*, which allows a growing political involvement by UNRWA, mostly plays into the hands of extremist groups such as Hamas, whose position and practices the Agency has been backing in international fora since it took over the Gaza Strip. The same applies to some of UNRWA's long-standing policies, such as ignoring the "unofficial" activities of its local staff, refraining from screening the use of its facilities, and non-involvement in the local curricula taught in its schools.

Within the last few years there has been, however, a growing awareness within political, diplomatic, and academic circles regarding UNRWA's policies, as well as the Agency's growing tendency toward active political involvement. This has attracted attention to UNRWA's lack of accountability, as well as to the unfettered freedom of speech enjoyed by its executive officers, defying the fundamental norms of objectivity and neutrality that oblige UN officials as international civil servants.<sup>137</sup> Consequently, some donor states have not remained indifferent. In January 2010, the government of Canada decided to cut off funding to UNRWA, redirecting its contributions to the PA, in order to "ensure accountability."<sup>138</sup> In December 2011, the Dutch foreign minister declared its government's intention to "thoroughly review" its policies toward UNRWA.<sup>139</sup> In March 2009, in the US House of Representatives, twenty-two Democrats and Republicans criticized UNRWA for having violated the requirement of neutrality, and providing assistance to Hamas.<sup>140</sup> Furthermore, in May 2012, a significant amendment was passed by the US Senate Appropriations Committee and incorporated into the *Fiscal Year 2013 Department of State, Foreign Operations, and Related Programs Appropriations Bill*, directing the Secretary of State to report to the Committee on the current number of UNRWA beneficiaries in different categories ("original" 1948 refugees; their descendents), as well as the extent to which the provision of UNRWA services "furthers the security interests of the US and of other US allies in the Middle East."<sup>141</sup> Such initiatives testify to the fact that UNRWA's position as a stabilizing, "peace servicing" factor in the region and as a guardian of refugee interests<sup>142</sup> is no longer taken for granted in the eyes of Western donor countries. It also reflects the growing quest for accountability and an acknowledgement of the responsibility of donor countries to scrutinize UNRWA's policies to ensure the strict application of their tax-payers' money toward relief and humanitarian causes.

UNRWA is funded by the voluntary contributions of a relatively *narrow* donor base. Therefore, Western donor countries are likely in the most effective position to influence and direct UNRWA leadership to prevent the humanitarian Agency from being further exploited for the promotion of extremist agendas, the backing of terrorist groups, and the growing involvement of its officials in political speech and public pronouncement. As one commentator put it recently, paraphrasing Clausewitz: "humanitarianism, not just war, has now become the continuation of politics by other means."<sup>143</sup> Indeed, if we are to judge according to some of UNRWA activities and policies within the last few decades, accountable, restrained leadership and more determined action by donor states are required in order to prevent the Agency from further exemplifying this.

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## Notes

- 1 See Remarks by Catherine Ashton with UNRWA Commissioner General, Filippo Grandi, at Rimal Boys' Elementary School, *Council of the European Union*, Press Release (Gaza, 20 June, 2013), A337/13, available at: <http://www.eeas.europa.eu>.
- 2 Ibid.
- 3 Ibid.
- 4 See Interview with UNRWA Commissioner General Filippo Grandi, *UN News Centre*, (14 March, 2013), p. 1, available at: <http://www.un.org/apps/news/newsmakers.asp?NewsID=86>.
- 5 Ibid, pp. 3–4.
- 6 Remarks by Filippo Grandi, at the Conference on Cooperation among East Asian Countries for Palestinian Development (Feb. 14, 2013), available at: <http://www.unrwa.org/>, p. 3 (italics added).
- 7 Ibid. According to Grandi, 'occupation policies' include 'the blockade of Gaza; the cantonization of the West Bank; the expansion of settlements; the usurpation of water resources; and the alienation of Palestinians from East Jerusalem'.
- 8 See generally J.G. Lindsay, 'Fixing UNRWA: Repairing the UN's Troubled System of Aid to Palestinian Refugees', *The Washington Institute for Near East Policy*, Policy Focus #91 (Jan. 2009), pp. 33–48. See also A. Kushner, The UN's Palestinian Refugee Problem, *Azure*, No. 22 (2005), available at: <http://azure.org.il/>; A. Kushner, UNRWA: A Hard Look at an Agency in Trouble, *Centre for Near East Policy Research*, (2005); B. Rubin, A. Romirowsky, J. Spyer, UNRWA: Refuge of Rejectionism, *Global Research in International Affairs*, (2008), available at: <http://www.romirowsky.com/>; N. Nachmias, UNRWA at 60: Are There Better Alternatives?, *MEF Policy Forum*, (2009), available at: <http://www.meforum.org/>; M.S. Bernstam, The Palestinian Proletariat, *Commentary*, (Dec. 2010), available at: <http://www.commentarymagazine.com/>; A. Kushner, UNRWA's Anti-Israel Bias, *The Middle East Quarterly*, (2011), available at: <http://www.meforum.org/>. A very interesting and significant collection of research papers can be found within the *Refugee Survey Quarterly*, Vol. 28 (Nos. 2 & 3), (2010), that was dedicated to commemorating UNRWA's 60<sup>th</sup> anniversary.
- 9 Lindsay, *ibid*, p. 33. See also R. G. Khouri, Sixty Years of UNRWA: From Service Provision to Refugee Protection, *Refugee Survey Quarterly*, Vol. 28 (Nos. 2 & 3), (2010), p. 449.
- 10 Lindsay, *ibid*, pp. 39–40.
- 11 Ibid, p. 30 fn. 30, 40.
- 12 Ibid, p. 31, 39; 'UNRWA in Figures (as of 1 Jan., 2013)', available at: <http://www.unrwa.org/sites/default/files/2013042435340.pdf>. In the West Bank there are some 4,500 UNRWA area staff members, while in Gaza there are 12,000.
- 13 L. Polman, The Crisis Caravan: What's Wrong with Humanitarian Aid?, (Picador), (2010).
- 14 For a recent account in this regard, see 'Palestinian Refugee Camps – A New Type of Settlement', *The Economist*, (Oct. 12–18, 2013), p. 36, available at: <http://www.economist.com/news/middle-east-and-africa/21587846-some-palestinians-want-their-people-abandon-refugee-camps-without-demanding>.
- 15 Polman, *op. cit.* note 13, p. 108; for other 'refugee warriors' cases that emerged afterwards – see p. 109. See also R. Bocco, UNRWA and the Palestinian Refugees: A History within History, *Refugee Survey Quarterly*, Vol. 28 (Nos. 2 & 3), (2010), pp. 239–240.
- 16 Lindsay's work is probably the most comprehensive, systematic, and articulate commentary written on UNRWA so far. See also Khouri, *op. cit.* note 9, p. 449.
- 17 Lindsay, *op. cit.* note 8, p. 31.
- 18 Ibid, p. 32.
- 19 Ibid, p. 41. Indeed, as Lindsay observes, evidence of area staff members who have had 'second jobs' with Hamas or other terrorist groups does occasionally come to light.
- 20 See also in this regard accusations regarding Hamas control over UNRWA area staff unions – *ibid*.
- 21 Ibid.
- 22 Ibid, p. 32.
- 23 Ibid.
- 24 Ibid, p. 40.

- 25 The video was uploaded to YouTube on July 2013, and was screened in part on Israel's Channel 2 news. It was directed by journalist D. Bedein, and produced by the Nahum Bedein Center for Near East Policy Research – available at: <http://www.IsraelBehindTheNews.com>. For UNRWA's official comment regarding the video, see 'UNRWA Rejects Allegations of Incitement as Baseless: Statement by UNRWA Spokesperson Chris Gunness' (22 Aug., 2013), available at: <http://www.unrwa.org/>.
- 26 An UNRWA social worker at the Balata camp states in the report that, 'we teach the culture of the Nakba to campers; we try, on days like Nakba Day, to commemorate the Nakba in the school'. 'Al Nakba' – 'the Catastrophe' in Arabic – generally refers to the 1948 War of Independence, while the 'Nakba Day' refers to the State of Israel's day of independence.
- 27 Clearly, the practice of teachers is embedded in their local experience, being themselves refugees – see Bocco, op. cit note 15, p. 245.
- 28 UNRWA uses the books provided by the host governments. Generally, textbooks used by the Agency in Lebanon, Syria, and Jordan have raised less attention – see Lindsay, op. cit note 8, p. 42. Nevertheless, in some cases these books have advocated an armed struggle against Israel, denied its legitimacy as a sovereign state and demonized it, and even called for the annihilation of Jews – see research report by A. Groiss, Problematic Educational Role of UNRWA in the Middle East War, *Israel Resource Review*, (Oct. 18, 2013), p. 1, available at: <http://www.IsraelBehindTheNews.com>.
- 29 See generally, Lindsay, op. cit. note 8, pp. 13, 18, 41-45. Indeed, in the past, it was Commissioner General Michelmore who admitted that UNRWA schools had been supporting a 'bitterly hostile attitude to Israel' – see p. 18.
- 30 See Groiss, op. cit note 28.
- 31 p. 2.
- 32 Ibid.
- 33 Ibid.
- 34 p. 3.
- 35 Ibid
- 36 See 'Conclusion' in ibid, p. 7.
- 37 Since the mid 1950s, when UNRWA's mandate changed from relief and emergency assistance to social development, education became UNRWA's central program, with the Agency adopting the host country curriculum to its schools – see L. Takkenberg, UNRWA and the Palestinian Refugees after Sixty Years: Some Reflections, *Refugee Survey Quarterly*, Vol. 28 (Nos. 2 & 3), (2010), pp. 255-256.
- 38 Lindsay argues that, being a UN body, that its schools are not adjuncts to the PA or to the host countries educational systems, UNRWA should provide its students with a UN curriculum using UN textbooks – see op. cit note 8, p. 61. See also Bocco, op. cit. note 15, p. 245.
- 39 Lindsay, ibid, p. 7. See also p. 41, regarding Hamas control over UNRWA area staff unions. In this regard, UNRWA's declared efforts to supplement the host governments' curricula with additional materials and courses designed to 'foster thinking about human rights, tolerance, and conflict resolution' are quite unhelpful – see p. 6. Bocco concludes that, with due respect to the national curricula of host countries, 'UNRWA schools could do more to foster a culture of peace and reconciliation' – see ibid, ibid. See also I. Marcus, 'UNRWA Workers 'Adamantly Opposed' to Holocaust Education in UNRWA Schools', *Palestinian Media Watch*, (Apr. 27, 2011), available at: <http://www.palwatch.org>.
- 40 Approximately 57% (\$381,055 million out of a total budget of \$673,789 million in 2012) – see UNRWA Website, at: <http://www.unrwa.org>. Education historically became the main sector of UNRWA activity, both in terms of funds and personnel involved – see Bocco, ibid, p. 244.
- 41 Lindsay, op. cit. note 8, p. 13.
- 42 Ibid, p. 20. See also J. Al-Husseini, R. Bocco, The Status of the Palestinian Refugees in the Near East: The Right of Return and UNRWA in Perspective, *Refugee Survey Quarterly*, Vol. 28 (Nos. 2 & 3), (2010), p. 267 & fn. 29, regarding the *ad hoc* nature of UNRWA protection programs.
- 43 Lindsay, ibid, ibid. Undoubtedly, UNRWA's evolving 'protection mandate' is one of the most controversial issues regarding the Agency's activities – see generally M. Kagan, Is There Really a Protection Gap? UNRWA's Role vis-à-vis Palestinian Refugees, *Refugee Survey Quarterly*, Vol. 28 (Nos. 2 & 3), (2010), pp. 511-530. Notably, in 2000, the UN Secretary General described UNRWA's mandate, acknowledging that 'Under its mandate ... the scope of the Agency's activities is mainly humanitarian in nature' – *Secretary General's Bulletin*, 'Organization of UNRWA', UN Doc. ST/SGB/2000/6 (17 Feb. 2000), note 1, as quoted in Bartholomeusz, The Mandate of UNRWA at Sixty, *Refugee Survey Quarterly*, Vol. 28 (Nos. 2 & 3), (2010), pp. 461-462. Nevertheless, Commissioner General K. AbuZayd stated that, despite the fact that, 'unlike UNHCR, UNRWA's creation was not by a statute with express references to "protection", nevertheless, protection is an integral part of UNRWA's mandate and in view of the human rights challenges faced by many Palestinians and Palestine refugees, this aspect of our work has gained greater importance since the 1980s' – see K. AbuZayd, UNRWA and the Palestinian Refugees after Sixty Years: Assessing Developments and Marking Challenges, *Refugee Survey Quarterly*, Vol. 28 (Nos. 2 & 3), (2010), p. 228, (italics added). For AbuZayd's significant role in promoting UNRWA's 'protection mandate' through international lectures and by addressing UN bodies – see Khouri, op. cit. note 9, p. 439, 447-448; Kagan, ibid, pp. 518-519. Bocco, op. cit. note 15, p. 232, and Al-Husseini & Bocco, ibid, recognize that UNRWA's general assistance mandate has never included as a regular activity the protection activities covered by the UNHCR – see p. 267. Compare with Takkenberg, op. cit. note 37, who argues that UN General Assembly resolutions affirm UNRWA's protecting role by referring to the 'valuable work done by the Agency in providing protection to the Palestinian people, in particular to Palestine refugees' (italics added) – see UNGA Res. 62/104 (17 Dec., 2007) (Operations of UNRWA),

- quoted in Takkenberg, p. 258; see also, in this regard, discussion in Bartholomeusz, *ibid.*, pp. 466-469.
- 44 Bocco acknowledges that the nomination of RAOs demonstrates the possibility for the Agency to interpret its mandate from a protection perspective within delicate political contexts, as a result of the fact that UNRWA does not have a clearly stated protection mandate – see *ibid.*, pp. 232-233. See also Khouri, *ibid.*, p. 449; Bartholomeusz, *ibid.*, p. 469; Kagan, *ibid.*, p. 522-523.
- 45 Lindsay, *op. cit.* note 8, p. 20; Khouri, *ibid.*, pp. 438-439, acknowledges that UNRWA officials have become recognizable in the global mass media as symbols of the Agency’s responsibility to speak out for the physical protection of the refugees, in particular against Israel.
- 46 Lindsay, *ibid.*, *ibid.* Lindsay acknowledged that the leadership of UNRWA’s international staff had become identified with Palestinian views particularly after the Agency tasks had changed from resettling refugees to protecting them – see p. 19. See also Bocco, *op. cit.* note 15, p. 239, who notes that particularly since the end of the 1980s, an increasing number of Palestinian staff have been promoted to higher ranks within UNRWA.
- 47 Lindsay, *ibid.*, p. 21.
- 48 *Ibid.*; Bartholomeusz, *op. cit.* note 43, p. 467.
- 49 Lindsay, *ibid.*
- 50 See *ibid.*, fn. 54. See as well statement of K. AbyZayd at the UN Security Council (2009) – the first time an UNRWA Commissioner General was invited to address the Council – discussing Israel’s ‘systematic destruction’ of civilian facilities in Gaza, as well as the ‘attackers’ failing to distinguish between military targets and civilians’ and ‘indiscriminate violence’– UN Security Council Closed Consultations Session, *Statement by UNRWA Commissioner General, Karen AbuZayd*, (New York, 27 Jan., 2009), and discussion in Kouri, *op. cit.* note 9, p. 447.
- 51 See Lindsay, *ibid.* & fn. 55.
- 52 See *ibid.*, & p. 23. Note that in 2008, in her lecture at Princeton University, AbuZayd described one of the main five programs constituting UNRWA’s *raison d’être* as a program designed to ‘build homes for refugees, replacing those *destroyed by Israeli forces in the course of conflict*’ (italics added) – see K. AbyZayd, ‘Palestine Refugees: Exile, Isolation and Prospects’, *Annual Edward Said Lecture* (May 6, 2008), available at: [www.un.org/unrwa/news/statements/2008/SaidPrinceton\\_6May08.html](http://www.un.org/unrwa/news/statements/2008/SaidPrinceton_6May08.html), as quoted in Lindsay, *ibid.*, p. 5.
- 53 See Lindsay, *ibid.*, p. 22 & fn. 60, p. 23. See, for example, speech by AbuZayd delivered at the University of Iceland, Reykjavik (Mar. 8, 2007), where she compared the history of the 1948 war with the present Israeli conflict against Hamas, stating that ‘there is a striking historical continuity in the systematic approach to use overwhelming and disproportionate force in the name of security; to separate and exclude Palestinians from the mainstream; to eject them from their land; and to occupy Palestinian land ... [T]hat was the sequence of events in 1948. The very same sequence defines Palestinian reality today’ – see K. AbuZayd, ‘Crisis in Gaza and the West Bank’, available at: [www.un.org/unrwa/news/statements/2007/IcelandUniv\\_Mar07.html](http://www.un.org/unrwa/news/statements/2007/IcelandUniv_Mar07.html), as quoted in Lindsay, *ibid.*, p. 19, fn. 45.
- 54 See Lindsay, *ibid.*, p. 22.
- 55 See generally AbyZayd, *op. cit.* note 43, p. 227, mentioning the ‘blockade in Gaza and the closure regime in the West Bank’ within the main impediments challenging UNRWA.
- 56 See Lindsay, *op. cit.* note 8, p. 23 & fn. 65, p. 24; T. Sternthal, ‘Media, UNRWA Silent on Attacked Aid Convoy’, *Camera*, (Jan. 21, 2009), available at: <http://www.camera.org>. On UNRWA, as well as other humanitarian organizations, playing the role of Hamas fig leaves – see Bocco, *op. cit.* note 15, p. 243.
- 57 See Proposed Report Language on UNRWA, *Proposal to the Senate Appropriations Committee, Subcommittee on State, Foreign Operations, and Related Programs, Regarding Senate Report on the Department of State, Foreign Operations, and Related Programs Appropriations Bill, 2013, Section: Migration and Refugee Assistance account; funds appropriated to the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA)*, pp. 7-8 (on file with the author). Kagan criticizes UNRWA’s clear tendency to interpret, and to employ, its ‘protection mandate’ in the form that involves the urging of changes in Israeli conduct and broad policies – which may also apply to non-refugees – while neglecting and ignoring issues involving the protection of individual rights of refugees vis-à-vis Arab host authorities, due to political preferences – see *op. cit.* note 43, pp. 522-528. On the socio-economic discrimination imposed by host states on the Palestinian refugees, most often in the name of the ‘right of return’, and its political consequences – see Al-Husseini & Bocco, *op. cit.* note 42, pp. 264-266.
- 58 See Proposed Report Language on UNRWA, *ibid.*, p. 8; ‘Lebanon: Seize Opportunity to End Discrimination against Palestinians’, *Human Rights Watch*, (June 18, 2010), available at: <http://www.hrw.org/news/2010/06/17/lebanon-seize-opportunity-end-discrimination-against-palestinians>. See also Al-Husseini & Bocco, *ibid.*, p. 270.
- 59 Statement by Filippo Grandi, Commissioner General of UNRWA, to the Fourth Committee of the United Nations General Assembly (7 Nov., 2013), available at: <http://www.unrwa.org>, pp. 2-3
- 60 See J. Khoury, Egyptian Army Destroys 152 Smuggling Tunnels to Gaza Since July, *Haaretz Online*, (Sep. 16, 2013); Egypt Destroys Smuggling Tunnels on Gaza Border, *Times of Israel*, (Nov. 12, 2013); T.G. Lichtenwald, F.S. Perri, Terrorist Use of Smuggling Tunnels, *International Journal of Criminology and Sociology*, Vol. 2, (2013), pp. 210-226.
- 61 Statement by Filippo Grandi, *op. cit.* note 59, pp. 2-3.
- 62 *Ibid.*
- 63 Recall in this regard that the Report of the Secretary General’s Panel of Inquiry on the 31 May 2010 Flotilla Incident (Sep. 2011) determined that: ‘Israel faces a real threat to its security from militant

- groups in Gaza. The naval blockade was imposed as a legitimate security measure in order to prevent weapons from entering Gaza by sea and its implementation complied with the requirements of international law' – see para. 82, p. 45, available at: [http://www.un.org/News/dh/infocus/middle\\_east/Gaza\\_Flotilla\\_Panel\\_Report.pdf](http://www.un.org/News/dh/infocus/middle_east/Gaza_Flotilla_Panel_Report.pdf).
- 64 See Statement by Filippo Grandi, Commissioner General of UNRWA, at the Opening Session of the Advisory Commission, (18 Nov., 2013), available at: <http://www.unrwa.org/newsroom/official-statements/>.
- 65 Opening Statement by the Commissioner General of UNRWA, Filippo Grandi, at the Meeting of the UNRWA Advisory Commission (16 June, 2013), available at: <http://www.unrwa.org/newsroom/official-statements/>, p. 2, 7.
- 66 See 'Palestine Refugees: An Unresolved Question at the Time of the Syria Crisis', *Lecture by Filippo Grandi, Commissioner General, UNRWA, Pontifical Catholic University, Rio de Janeiro, Brazil*, (4 Oct., 2013), available at: <http://www.unrwa.org/newsroom/official-statements/>. Grandi stated that 'the slow drain of Palestinians from their cities and land is a key driver of the long-term strategy of occupation'.
- 67 See 'Bernadotte: His Legacy to Palestinian Refugees', Speech by Chris Gunness, UNRWA Spokesperson, on Behalf of the UNRWA Commissioner General at an Event in Jerusalem to Commemorate the Sixty-Fifth Anniversary of the Death of Count Bernadotte, (17 Sep., 2013), available at: <http://www.unrwa.org/newsroom/official-statements/>, p. 2.
- 68 Gunness stated that 'one is hardly surprised that Ben-Gurion's famous put-down, 'Um Shmum', or, to give it a rough translation, "the UN is nothing", reverberates with such callous ease among some. If only those who use the phrase appreciated its tragic historical antecedents and its selective ignorance' – see *ibid*, pp. 2-3.
- 69 See UNRWA Area Staff Regulation 1.4 & 1.7, and UNRWA International Staff Regulation 1.4 & 1.7, as quoted in Lindsay, *op. cit.* note 8, pp. 29-30.
- 70 Note, however, in this regard, Grandi's proclamation, emphasizing that although 'UNRWA is not a political organization', it is 'ultimately *a political framework* that supports development' (*italics added*) – see Remarks by Filippo Grandi, *op. cit.* note 6, p. 3.
- 71 See Lindsay, *op. cit.* note 8, p. 59. Bocco acknowledges that although UNRWA is officially a non-political organization, it has been deeply involved in a highly politicized context from its inception – see Bocco, *op. cit.* note 15, p. 232.
- 72 The General Assembly; the Advisory Commission (AdCom); the UN Secretary General; the host countries; and the donor countries – see Lindsay, *ibid*, p. 46 & fns. 91-92.
- 73 See *ibid*, pp. 46-47.
- 74 See further in text, *infra*, regarding UNRWA's establishment.
- 75 See Lindsay, *op. cit.* note 8, p. 47.
- 76 See *ibid*, pp. 46-47, 59.
- 77 See, for example, E. Benvenisti, C. Gans, S. Hanafi (eds.), *Israel and the Palestinian Refugees*, (Springer), (2007); Y. Zilbershats, N. Goren-Amitai, *Return of Palestinian Refugees to the State of Israel*, in R. Gavison (Ed. of Series), *Position Papers, The Mezilab Center for Zionist, Jewish, Liberal and Humanist Thought*, (Feb. 2011).
- 78 See 'Palestine Refugees: An Unresolved Question at the Time of the Syria Crisis', *op. cit.* note 66, p. 2; Bocco, *op. cit.* note 15, p. 231. Bernstam maintains that UNRWA, being unique by design, has been 'one of the most bizarre humanitarian organizations in human history' – see *op. cit.* note 8, p. 2.
- 79 See AbyZayd, *op. cit.* note 43, p. 227.
- 80 Refugees under the protection of the UNHCR are subjected to the 1951 Convention Relating to the Status of Refugees, that restricts its application (under Art. 1D) to persons who do not receive protection or assistance from other UN organs or agencies. See also Art. 7 of the Statute of the Office of the High Commission.
- 81 Such as the 1933 Convention Relating to the International Status of Refugees; 1938 Convention Relating to the Status of Refugees who Came from Germany; and the 1939 Protocol Additional to these Conventions, all referred to by the Statute of the Office of the High Commission.
- 82 See Bocco, *op. cit.* note 15, p. 232; Bartholomeusz, *op. cit.* note 43, pp. 454-455, who recognizes that UNRWA's mandate, therefore, has to be derived implicitly from all relevant resolutions and requests of the UN General Assembly and the Secretary General.
- 83 UNRWA is a subsidiary organ of the General Assembly (see Arts. 7(2) and 22 of the UN Charter), established by General Assembly Resolution 302(IV) (Dec. 8, 1949), and started operating in 1950. It is one of only two UN agencies that report directly to the General Assembly – see Bartholomeusz, *op. cit.* note 43, pp. 453-454.
- 84 See Bocco, *op. cit.* note 15, p. 232; Bartholomeusz, *ibid*, p. 456.
- 85 See Bartholomeusz, *ibid*, p. 456, 474. The Commissioner General consults, as appropriate, with the Advisory Commission, established by the General Assembly 'to advise and assist' UNRWA's chief executive; the General Assembly could reconsider the Commissioner General's decisions.
- 86 See Zilbershats & Goren-Amitai, *op. cit.* note 77, pp. 28-29. See also Al-Husseini & Bocco, *op. cit.* note 42, pp. 266-267. On the dispute regarding General Assembly Resolution 194(III) (Dec. 11, 1948), interpreted by Palestinians (and Arab host states) as a legitimization of the 'right of return' – see Zilbershats & Goren-Amitai, *ibid*, pp. 24-26, 49-57. See also Takkenberg, *op. cit.* note 37, pp. 254-255; Bocco, *op. cit.* note 15, pp. 229-231; Al-Husseini & Bocco, *ibid*, p. 283, determine that UNGA Res. 194(III) is still endorsed by a large majority of the UNGA's Member States.
- 87 See Zilbershats & Goren-Amitai, *ibid*, p. 29. See also Bocco, *ibid*, p. 231.

- 88 See Bocco, *ibid*, *ibid*, clarifying that the Agency was originally tasked with the implementation of public works programs aimed at 'economic reintegration', and indeed began implementing resettlement strategies – see pp. 231-232.
- 89 See Zilbershats & Goren-Amitai, *op. cit.* note 77, pp. 29-30.
- 90 Report by K. Baehr, Executive Secretary of the American Christian Palestine Committee, to the Committee on Foreign Relations, Palestine Refugee Program, Hearings before the Subcommittee on the Near East and Africa of the Committee on Foreign Relations, United States Senate, Eighty-Third Congress, First Session on the Palestine Refugee Program (May 1953), (Government Printing Office, 1953), p.103. See also A. H. Joffe, A. Romirowsky, *A Tale of Two Galloways: Notes on the Early History of UNRWA and Zionist Historiography*, *Middle Eastern Studies*, Vol. 46 (No. 5), (2010), pp. 655–675. Until today, Arab states remain among the most modest contributors to UNRWA. Within the last years, the Agency's chief executive, 'being aware of the reasons for Arab reluctance in supporting UNRWA, namely that Arabs feel that the solution is allowing the refugees to return and therefore Western countries should bear the brunt of the budget of UNRWA', has repeatedly called upon the states of the Arab League to 'achieve and sustain the longstanding 7.8% target of their collective contributions to UNRWA's basic programs' – see D. Kuttab, *Filippo Grandi: The New UN Official Intent on Defending Palestinian Refugees Rights and Living Conditions*, available at: <http://huffingtonpost.com/>; Statement by Filippo Grandi, *op. cit.* note 59, p. 6.
- 91 See Zilbershats & Goren-Amitai, *op. cit.* note 77, p. 30. By 1959, UNRWA terminated all its programs aimed at resettlement and integration – see Bernstam, *op. cit.* note 8, p. 2.
- 92 See, generally, Bernstam, *ibid*; Bocco, *op. cit.* note 15, p. 234, recognizes UNRWA's 'quasi-state function' – p. 234.
- 93 See Zilbershats & Goren-Amitai, *op. cit.* note 77, p. 30; Al-Husseini & Bocco, *op. cit.* note 42, acknowledge that UNRWA has been perceived as a reflection of the international community's recognition of the 'right of return', and its services have from the outset been considered by the refugees and the host countries as entitlements rather than a charity scheme depending on the generosity of the international community. Consequently, 'the UNRWA registration card quickly became a political symbol', which is still widely held as a 'Passport to Palestine' – see p. 268, 277.
- 94 See generally Zilbershats & Goren-Amitai, *ibid*, pp. 43-78.
- 95 See 'Palestine Refugees: An Unresolved Question at the Time of the Syria Crisis', *op. cit.* note 66, p. 7. See also Kushner, *The UN's Palestinian Refugee Problem*, *op. cit.* note 8.
- 96 See Zilbershats & Goren-Amitai, *op. cit.* note 77, p. 33; Bartholomeusz, *op. cit.* note 43, p. 457. Indeed, there is no definite response regarding who is a Palestinian refugee – see discussion in Bocco, *op. cit.* note 15, pp. 237-238. The Criteria for registration as a Palestinian refugee are based on internal instructions reflected in the annual reports of the Commissioner General. The latest version of the criteria can be found in the UNRWA Consolidated Eligibility and Registration Instructions (Oct. 2009), available at: <http://www.unrwa.org/userfiles/2010011995652.pdf>.
- 97 See Art. 1(A)(2) to the 1951 Convention Relating to the Status of Refugees; see also Arts. 1(2), 1(3) to the 1967 Protocol to the Convention Relating to the Status of Refugees; Art. 1(2) of the 1969 Organization of African Unity (OAU) Convention Governing the Special Aspects of Refugee Problem in Africa; Art. III(3) to the 1984 Cartagena Declaration on Refugees adopted at Cartagena, Colombia. UNRWA's definition is much broader than the definition of the 1951 Refugees Convention – see discussion in Zilbershats & Goren-Amitai, *ibid*, pp. 32-38; Kagan, *op. cit.* note 43, pp. 525-526.
- 98 Clearly, the mere requirement of two years of residence was designed to inflate the number of 'original' refugees.
- 99 See Proposed Report Language on UNRWA, *op. cit.* note 57, p. 2.
- 100 Initially along the male line, and later also along the female line - see Proposed Report Language on UNRWA, *ibid*, p. 2. This decision was indirectly endorsed by General Assembly Resolution 37/120, Section I (A/RES/37/120(A-K)), (16 Dec., 1982), that was adopted without a vote; Zilbershats & Goren-Amitai, *op. cit.* note 77, p. 35; Bartholomeusz, *op. cit.* note 43, p. 460.
- 101 See, for example, Art. 1(C)(3) to the 1951 Convention Relating to the Status of Refugees.
- 102 See Zilbershats & Goren-Amitai, *op. cit.* note 77, pp. 36-37. This is most significant in Jordan, where the majority of the recipients of UNRWA services has been given Jordanian citizenship – see Proposed Report Language on UNRWA, *op. cit.* note 57, pp. 5-6, and holds a Jordanian passport – see Bocco, *op. cit.* note 15, p. 235 & fn. 20, 237; B. Goldstein, B. Muller, 'Refugee or Not Refugee? No Longer a Question', *American Thinker*, (Jul. 13, 2012), available at: <http://www.americanthinker.com>, state that in Jordan, 82% of UNRWA's Palestinian refugees do not live in camps and many of them have full Jordanian citizenship.
- 103 See 'UNRWA in Figures (as of 1 Jan. 2013)', *op. cit.* note 12.
- 104 See discussion in Zilbershats & Goren-Amitai, *op. cit.* note 77, p. 37. By the end of 2012, the UNHCR documented 10.4 million refugees worldwide (excluding Palestinian refugees administered by UNRWA) – see <http://www.unhcr.org/>.
- 105 The number of refugees who actually fled due to the 1948 war is still under some dispute – see Zilbershats & Goren-Amitai, *op. cit.* note 77, p. 22; see also Y. Arnon-Ohanna, 'Line of Furrow and Fire: The Conflict for the Land of Israel, 1860-2010', (2013), pp. 397-415; Al-Husseini & R. Bocco, *op. cit.* note 42, p. 266.
- 106 That is, nearly 60,000 - see 'Palestinian Refugee Camps - A New Type of Settlement', *op. cit.* note 14.
- 107 Proposed Report Language on UNRWA, *op. cit.* note 57, p. 3.

- 108 See <http://www.guardian.co.uk/world/palestine-papers-documents/4507>. See also 'Palestinian Refugee Camps - A New Type of Settlement', op. cit. note 14; Bocco, op. cit. note 15, pp. 229-230, 241, regarding Palestinian leadership (as well as some host countries) progressive awareness of the impossibility of return and the adoption of a 'pragmatic' interpretation of the notion of 'return', as well as the opposition by several refugee camp committees to the possible, gradual transfer of assistance programs from UNRWA to the PA, due to their fear of losing their 'right of return'. See also Al-Husseini & Bocco, op. cit. note 15, pp. 271, 273-275, 284; Khouri, op. cit. note 9, p. 441, 443.
- 109 Zilbershats & Goren-Amitai, op. cit. note 77, p. 41.
- 110 Ibid, p. 39.
- 111 See Goldstein & Muller, op. cit. note 102, p. 2. UNWRA is also the second largest employer in the PA after the Palestinian government – see Remarks by Filippo Grandi, op. cit. note 6, p. 2. Three quarters of UNRWA's budget are devoted to local staff salaries – see Al-Husseini & Bocco, op. cit. note 42, p. 268.
- 112 See Zilbershats & Goren-Amitai, op. cit. note 77, p. 39.
- 113 See S. J. Rosen, D. Pipes, Lessening UNRWA's Damage, *Jerusalem Post*, (9 July, 2012), available at: <http://www.jpost.com>.
- 114 See 'The Long Journey': Digitizing the Palestine Refugee Experience, available at: <http://www.unrwa.org>; the archives were inscribed with UNESCO 'Memory of the World' register, which includes collections of 'outstanding cultural and historical significance'.
- 115 'The Long Journey', *ibid*.
- 116 See Bocco, op. cit. note 15, p. 236.
- 117 'The Long Journey', op. cit. note 114.
- 118 Statement by Filippo Grandi, op. cit. note 64, pp. 7-8.
- 119 See 'The Long Journey', op. cit. note 114.
- 120 For a discussion of UNRWA's contribution to the development of the Palestinian National Movement (PNM), and some of the attempts of the PNM to make use of the Agency – see Bocco, op. cit. note 15, pp. 239-244.
- 121 See R. Bowker, *Palestinian Refugees – Mythology, Identity, and the Search for Peace*, (2003), as quoted in Bocco, *ibid*, p. 236.
- 122 The term follows Bernstam, op. cit. note 8. Khouri also recognizes UNRWA becoming 'a symbol of Palestinian refugeehood and denied rights' – see op. cit. note 9, p. 451.
- 123 As demonstrated by Groiss in his study research, op. cit. note 28.
- 124 See *ibid*, p. 6.
- 125 See *ibid*, p. 7. See Bocco, op. cit. note 15, p. 245.
- 126 See 'Palestinian Refugee Camps - A New Type of Settlement', op. cit. note 14.
- 127 Official refugee camps, jointly administered by UNRWA and the host country's authorities, have long symbolized the plight for return. Living conditions in the camps have been deteriorating constantly, as locals, as well as host country authorities, traditionally opposed structural improvements that might have been translated as a sign of acquiescence to permanent resettlement – see Al-Husseini & Bocco, op. cit. note 42, pp. 263-264.
- 128 See 'Palestinian Refugee Camps - A New Type of Settlement', op. cit. note 14.
- 129 See *ibid*.
- 130 See Bocco, op. cit. note 15, p. 249. See also Al-Husseini & Bocco, op. cit. note 42, pp. 274-275, as well as Bocco, *ibid*, p. 247, who wonder, in view of surveys carried out among refugee communities, as well as the *de facto* resettlement/rehabilitation/reintegration process in most of the countries where they live, whether the refugees, the crushing majority of whom have never seen their former places of origin, are in a position to seriously envisage such scenarios as repatriation.
- 131 See Bocco, *ibid*, p. 250.
- 132 See, for example, Takkenberg, op. cit. note 37, p. 256; Lindsay, op. cit. note 8, pp. 5-12 ('What Does UNRWA Do?').
- 133 Undoubtedly, former Commissioner General AbuZayd was particularly involved in political speech and thus had set an example for her predecessor, Filippo Grandi. It was under AbuZayd's leadership that UNRWA developed a very explicit focus on protection – see Takkenberg, *ibid*, p. 258. AbuZayd has continued to proliferate anti-Israeli positions after leaving office – see, for example, H. Chehata, Middle-East Monitor (MEMO) Interview with Karen Abu-Zayd, available at: <https://www.middleeastmonitor.com/resources/interviews/827-memos-interview-with-karen-abu-zayd>. Note that in November 2013, UN Secretary General Ban-Ki Moon appointed Pierre Krähenbühl of Switzerland, former Director of Operations at the International Committee of the Red Cross (ICRC), to the position of UNRWA Commissioner General, replacing Filippo Grandi – see UN Doc. SG/A/1444/BIO/4551/PAL/2167, (20 Nov., 2013), available at: <http://www.un.org/News/Press/docs/2013/sga1444.doc.htm>.
- 134 See Bocco, op. cit. note 15, p. 233; Bartholomeusz, op. cit. note 43, p. 454. For UNRWA's recent lobbying efforts, particularly in the USA due to increasing demands on the part of politicians calling for official scrutiny of the Agency's activities and policies, see, for example, *American Friends of UNRWA*' website, at: <http://www.unrwausa.org/>, and fn. 141, *infra*.
- 135 On the efforts invested in expanding UNWA's donor base, see Statement by Filippo Grandi, op. cit. note 59, p. 6; Interview with UNRWA Commissioner General Filippo Grandi, op. cit. note 4, p. 3. Traditional UNRWA donors include the US, the EU and its Member States, Norway, Japan, Switzerland, and Australia (providing collectively over 90% of UNRWA's budget). Brazil and Turkey have substantially increased their contributions due to extensive UNRWA lobbying. Constant efforts are invested to persuade members of the Arab League to meet their 7.8% target for collective contributions.

- The US has consistently been the largest donor, currently contributing more than 25% of UNRWA's total revenue (and in total, since its inception in 1950, has contributed approximately \$4.4 billion) – see Proposed Report Language on UNRWA, op. cit. note 57, p. 1.
- 136 Obviously, the State of Israel shares in some of these interests – see, for example, Rosen & Pipes, op. cit. note 113.
- 137 See, for example, Staff Regulations of the United Nations, UN Doc. ST/SGB/2009/6, (27 May 2009), Regulation 1.2(f) ('Basic Rights and Obligations of Staff'), that requires that UN staff members 'shall conduct themselves at all times in a manner befitting their status as international civil servants and shall not engage in any activity that is incompatible with the proper discharge of their duties with the United Nations. They shall avoid any action and, in particular, any kind of public pronouncement that may adversely reflect on their status, or on the integrity, independence and impartiality that are required by that status'.
- 138 See Rosen & Pipes, op. cit. note 113, p. 2; A. Zerbisias, Canada Redirects Funding for UN Relief Agency, *Toronto Star*, (Jan. 15, 2010), available at: [http://www.thestar.com/life/2010/01/15/canada\\_redirects\\_funding\\_for\\_un\\_relief\\_agency.html](http://www.thestar.com/life/2010/01/15/canada_redirects_funding_for_un_relief_agency.html).
- 139 Ibid.
- 140 See Text of H. Con.Res. 29, as Introduced in House, *Expressing the sense of Congress that the United Nations should take immediate steps to improve the transparency and accountability of UNRWA to ensure that it is not providing funding, employment, or other support to terrorism*, available at <http://www.opencongress.org/bill/111-hc29/text>, as referred to in Khouri, op. cit. note 9, p. 450.
- 141 The 'Senator Kirk (R-IL) UNRWA Amendment' was passed in spite of State Department opposition. For the Letter of Opposition to Kirk Amendment from the Deputy Secretary of State, Thomas R. Nides, see <http://www.scribd.com/doc/94703915/DepSec-State-Opposes-Kirk-Amdt>. The initiative opens the door for the Congress to scrutinize UNRWA's policies regarding the definition of 'Palestinian refugee' – a Background Paper on the amendment, as well as the Proposed Report Language on UNRWA, op. cit. note 57, submitted to the *Senate Appropriations Committee* are on file with the author; see also J. Schanzer, Status Update: With the Stroke of a Pen, a New Bill in Congress Could Slash the Number of Palestinian Refugees and Open a World of Controversy, *Foreign Policy*, (May 21, 2012), available at: [http://www.foreignpolicy.com/articles/2012/05/21/status\\_update](http://www.foreignpolicy.com/articles/2012/05/21/status_update).
- 142 See Al-Husseini & Bocco, op. cit. note 42, p. 269.
- 143 D. Rieff, 'Afterward', in C. Magone, M. Neuman, F. Weissman (eds.), *Humanitarian Negotiations Revealed: The Médecins Sans Frontières (MSF) Experience*, (2012), available at: <http://www.msf-crash.org/livres/en/book/export/html/2012>.

# Manufacturing and Exploiting Compassion: Abuse of the Media by Palestinian Propaganda

Philippe Assouline, Esq.

Blaise Pascal once observed that “people...arrive at their beliefs not on the basis of proof, but on the basis of what they find attractive.”<sup>1</sup> Today this is confirmed by science, and it explains why Palestinians have won the media war.

In 2011 – an age of abundant and verifiable information – opinion polls found that as many as 40 – 60 percent of Europeans believed that “Israel is conducting a war of extermination against the Palestinians.”<sup>2</sup> That so many Westerners baselessly accuse Israel of genocide is all the more baffling when one considers that it is Israel that is regularly threatened with annihilation.<sup>3</sup> Those poll results are not peculiar to Europe: similar worrying trends have been noted among American youth, liberals, and minorities.<sup>4</sup> Israel, a liberal democracy caught between tyrannies and sectarian violence, is increasingly perceived as uniquely evil.<sup>5</sup> Tired refrains can no longer obfuscate the truth: the success of the Palestinians in generating such widespread hostility towards Israel has been earned, and in fact can be scientifically explained.

In the struggle for hearts and minds, propagandists for the Palestinian cause intuited long ago that which science now proves: *feelings trump facts*. Imagery and accusations that automatically trigger public compassion are incomparably more compelling than dry, defensive argumentation. Indeed, compassion – a deeply rooted survival adaptation – has been shown to heavily skew our social attitudes in favor of those we perceive to be *innocent victims in distress*.<sup>6</sup> Suffering children are the ideal triggers of this instinctive compassion.<sup>7</sup> In fact, because our social judgment “may be influenced more by emotion than by reason,” we tend to favor those we *see* as victims in distress even to the detriment of more numerous, but faceless, other victims.<sup>8</sup>

A number of recent studies support the role of emotions in moral judgment....The researchers’ findings show there is a key relationship between moral judgment and empathic concern in particular, specifically feelings of warmth and compassion in response to someone in distress.<sup>9</sup>

Because “it makes us feel good when we can alleviate that suffering” (by siding with perceived victims), the repeated experience of compassion ingrains in our minds “self-other similarity to those who are vulnerable, who suffer, and who are

in need.”<sup>10</sup> This is a critically important fact: we are “wired” by evolution to support those we perceive as innocent victims in distress, even when the facts do not mandate such support.<sup>11</sup>

The portrayal of Palestinians as innocent victims in distress is the common thread running through all of Palestinian propaganda – and has been the key to its popular success. Through the mass-production of heartrending imagery centered on children, staged “news,” manipulative rhetoric, and rigid censorship, Palestinian propaganda has successfully used the media to recast Palestinians as entirely blameless victims of Israeli brutality. Having secured the public’s empathy and bypassed its critical reasoning by portraying Palestinians as helpless victims, Palestinian propaganda has created millions of Western allies for the Palestinians, and sheltered Palestinians from any accountability for their political choices.

## 1. Children as Weapons of Mass Deception

Since the First Intifada, Palestinians have deliberately used children as foot-soldiers in made-for-TV-riots, because images of vulnerable children most effectively and enduringly reframe the Palestinians as hapless Davids, regardless of whether the facts agree:<sup>12</sup>

[T]he emotions such pictures arouse are more likely to defeat than promote rational discussion. This tendency is so common that in the social psychology field it is titled the Fundamental Attribution Error (FAE). The FAE is “The tendency to make internal attributions over external attributions in explaining the observed behavior of others.”...So when a television viewer sees the 30-second image of an Israeli soldier using deadly force on a 16-year-old who is throwing rocks, the observer is likely to make the attributions that the Israelis are cold, bloodthirsty murderers while the Palestinians are simply an oppressed people wanting their freedom and land. Attributions are made nearly instantaneously.<sup>13</sup>

In order to replicate these damning shots, Palestinian leaders have systematically indoctrinated their own children to hatred of Jews and “martyrdom,” and then placed them on the front lines for the cameras.<sup>14</sup>

The effectiveness of dead Palestinian children as propaganda tools was underlined by Yasser Arafat in 2002: “The Palestinian child holding a stone, facing a tank,” the Palestinian leader asked, “is that not the greatest message to the world, when that hero becomes a ‘martyr’?”<sup>15</sup> Weeks prior, an AP photo of 15-year-old Faris Ouda stoning a tank had become an iconic symbol of Palestinian “resistance,” and Arafat wanted more of the same.<sup>16</sup> When Ouda was later killed while rioting, a beaming Arafat declared to his young classmates, “We salute the spirit of our hero, the martyr, Faris Ouda!” After repeatedly chanting Ouda’s name to enthralled cheers, Arafat then encouraged the children – some looking as young as 11 or 12 years old – to emulate Ouda’s “steadfastness and his sacrifice,” i.e., to also attack Israeli soldiers and die for the Western media’s cameras.<sup>17</sup>

This indoctrination of children – at times by their own families<sup>18</sup> – has been pervasive in Palestinian society since the Oslo Accords.<sup>19</sup> Children are relentlessly brainwashed from the most tender age and in the crudest way to strive for

“martyrdom” – in schools,<sup>20</sup> sports,<sup>21</sup> summer camps,<sup>22</sup> music,<sup>23</sup> mosques,<sup>24</sup> social media,<sup>25</sup> culture,<sup>26</sup> television,<sup>27</sup> and even public celebrations of murderous terror attacks.<sup>28</sup>

As a corollary to this indoctrination, Palestinian children are sent to the front lines for propaganda, and “have assumed an integral role” in televised confrontations, “burning tires and shooting slingshots to attract the television cameras.”<sup>29</sup> Thousands of Palestinian children have been arrested for stone-throwing, and yet “the phenomenon of unsupervised minors under the age of 12 throwing stones at cars on West Bank roads, at civilians and soldiers, and during riots” is only growing.<sup>30</sup> Palestinian groups have frequently used playgrounds as rocket-launching pads, in the hope that reprisals directed at those same playgrounds will trigger sensational headlines.<sup>31</sup> Worse, dozens of minors have been sent to carry out acts of violence and terror against Israelis.<sup>32</sup> Hamas, which in 2009 boasted that Palestinians use “human shields of the women, the children...to challenge the Zionist bombing machine,”<sup>33</sup> now openly trains child-soldiers in its high schools,<sup>34</sup> while Fatah affiliates force other children, often less than 10 years old, to theatrically defy Israeli soldiers for the cameras.<sup>35</sup> In all of these cases, children are deliberately endangered by Palestinian leaders and propagandists in order to make them appear as pitiable victims of Israeli cruelty.<sup>36</sup>

Casualties and arrests generated by this cynical exercise are then used, effectively, to defame and slander Israel.<sup>37</sup> Palestinian officials and allied NGOs regularly accuse Israel of rank child abuse while activists circulate damning pictures of child casualties in order to further demonize the Jewish state.<sup>38</sup> The responsibility of Palestinian leaders for the promotion of attacks by children on Israeli soldiers and civilians is seldom even broached in their indictments. Armed minors who have died in combat with Israel are instead counted as noncombatant children, without further inquiry.<sup>39</sup> Israel is frequently blamed for the deaths of Palestinian children accidentally killed by Palestinian terrorists and even images of Israeli children injured by Palestinian attacks have been passed off as those of Palestinians injured by Israel.<sup>40</sup> In fact, Palestinian propagandists have often recycled pictures of children killed in other conflicts as Palestinian victims of Israel, so confident are they of Western credulity.<sup>41</sup>

Western media, beholden to the “Palestinians-as-victims” line, have cooperated in this headline-making exploitation of children and, with time, have helped effectively rebrand *all* Palestinians as non-competent children. Indeed, the Palestinians are now overwhelmingly portrayed in Western media as if they are entirely bereft of moral agency.<sup>42</sup> Palestinian leaders have thus never been required to explain why they still allow so many of their young to be endangered for the purposes of propaganda, or why Palestinian governments have irresponsibly diverted foreign aid to brainwashing children.<sup>43</sup> Responsibility for the welfare of Palestinian children, rather than being placed on Palestinian leaders or even on the parents of those children, is instead placed squarely and solely upon Israel. Rock throwing – which has often killed Israeli children – is whitewashed as a Palestinian “hobby,”<sup>44</sup> and when Palestinian minors have died or been arrested while stoning Israelis, the Western media reflexively condemns the Jewish state.<sup>45</sup> When Israelis bring to light Palestinian responsibility for the cycle of indoctrination, dereliction of parental and social duty, and violence, they are accused of racism.<sup>46</sup>



*Stills from the Mohammed Al Dura video in a 2000 French news report that led to international criticism of Israel, but drew questions about its veracity. (France 2, via AFP)*

## 2. Staged Propaganda as “News”

In addition to manufacturing child-martyrs, Palestinian propaganda has for decades staged distressing “news” scenes in order to bolster the widespread perception of Palestinians-as-innocent-victims and thereby manufacture public compassion.<sup>47</sup>

The heart-wrenching footage of the death of Mohammed Al Dura in September 2000 may be Palestinian propaganda’s greatest coup in this regard. In that clip, a boy and his father are seen caught in crossfire, crouching fearfully behind a concrete cylinder. Moments later, the picture jumps, final shots ring out, and a cloud of dust dissipates to reveal the boy strewn, lifeless at his father’s feet. As a final note, French journalist Charles Enderlin reflexively decrees to the world that the boy and his father had been “the targets of Israeli fire.”<sup>48</sup>

Enderlin’s report immediately went viral and was instrumental in morally reframing (and fueling) the Second Intifada.<sup>49</sup> Nothing had yet so conclusively branded Palestinians – who had just launched a horrific wave of violence against Israel’s civilians<sup>50</sup> – as victims. The clip irreversibly indicted Israel in the West and provided unprecedented moral cover for Palestinian terrorism.<sup>51</sup> Spurred by the clip of Al Dura’s death, numerous Western commentators equated Israel with Nazi Germany.<sup>52</sup> In the Muslim world, Al Dura’s image was used on stamps, billboards, cartoons, in mosque sermons, and on endless TV shows to galvanize hostility to Israel.<sup>53</sup>

But it wasn’t Israel that shot Al Dura.<sup>54</sup> In fact, he may not even have been killed: Al Dura was said to have died of blood loss but the footage shows no blood; the picture of his body in a Gaza morgue was that of another boy;<sup>55</sup> the wounds that his father said he sustained from Israeli fire were from a stabbing, years prior.<sup>56</sup> In the unedited reels used for the report,<sup>57</sup> the boy miraculously moves his body, lifts his arm and looks out, post-mortem.<sup>58</sup> And, importantly, instead of the gun battles purported to have happened, the footage shows Palestinian participants faking injuries, staging evacuations and choreographing “battles” in full view of dozens of reporters from leading news agencies – this, while children stroll past the alleged Israeli position, unperturbed. The Al Dura story – the trigger for a sustained media lynching of Israel – was a fiction.<sup>59</sup>

This phenomenon of scripted Palestinian “news” scenes is ongoing and so rampant that it’s been given a name: “Pallywood.”<sup>60</sup> Professor Richard Landes and his colleagues have gathered extensive evidence exposing the practice of simulating injuries for Western cameras as well as “faked funerals, staged gun battles, . . . professional weeping grandmothers,” and bogus ambulance evacuations among other “distressing” events.<sup>61</sup> The actors have become so brazen, and this fraud so common, that one now-infamous video of the “funeral” of a Palestinian allegedly killed by Israel shows the corpse falling out of its stretcher only to quickly jump back on.<sup>62</sup> A recent report by the BBC has a Palestinian man feigning debilitating injury only to reappear *in the same segment*, seconds later, perfectly fine.<sup>63</sup> In another clip, a man ducking to avoid purported Israeli fire decides to stop, answer his phone and have a conversation.<sup>64</sup> In yet other scenes, actors are shown taking direction while Western news agencies “report” their performances as news.<sup>65</sup> Italian photographer Ruben Salvadori’s recent photo essay captures how ubiquitous news staging by Palestinians in east Jerusalem (in collusion with Western journalists) has become.<sup>66</sup>

Tellingly, when confronted with the staged “news” in the Al Dura reels, *France 2* officials and Enderlin are reported to have said, “You know, it’s always like that” and “Oh, they do that all the time.”<sup>67</sup> Indeed, cinema posing as news has for years perpetuated the image of Palestinians as pitiable victims, and has assassinated Israel’s good name in the process. And yet the real power of choreographed scenes is that later corrections can never undo the damning emotional impressions that the fictions leave.

Perhaps for this reason, the practice of faking news has spread to Lebanon, where Hizbullah and leading news agencies were caught in 2006 placing toddlers’ toys and other sentimental trinkets on wreckage, photographing the same crying elderly woman next to different sites, parading the same dead children, and generally manipulating reporters in order to demonize the Israelis.<sup>68</sup> More recently, the Muslim Brotherhood in Egypt has been caught staging “news” and faking casualties.<sup>69</sup>

### 3. Palestinian Propaganda Co-Opts the West’s Narratives of Injustice

Palestinian propaganda co-opts Western narratives of injustice in order to conflate the Palestinians with history’s archetypal victims.<sup>70</sup> The morally charged mental images that are evoked by this rhetoric cause the public to automatically empathize and, therefore, side with the Palestinians.<sup>71</sup> Palestinian aggressions are erased in the process.

As part of this strategy of moral reframing, Palestinian propagandists have recast Zionism, the struggle for Jewish self-determination in the Jewish homeland, as “colonialism” (and, by extension, Palestinians as victimized Native Americans).<sup>72</sup> Palestinians refer to their terrorism as “resistance” (“*mukawama*”), thus equating themselves with Holocaust victims and resistance fighters during the Second World War.<sup>73</sup> Reinforcing this Jew/Nazi imagery, Palestinians fashion themselves as a nation of “refugees” that fled “massacres” and “ethnic cleansing.”<sup>74</sup> Likewise, Israel’s counter-terrorism is depicted as “racism” and its arms blockade against

Gaza, determined by the UN to be legitimate, is characterized as “collective punishment” in order to evoke injustices such as the Japanese internment in WWII.<sup>75</sup> At other times, Palestinians liken themselves to Jesus being persecuted by the Jews,<sup>76</sup> or to black victims of white supremacism: Israel is accused of being an “apartheid” state or, alternatively, Palestinians are equated with Rosa Parks.<sup>77</sup> In every case, this calculated rhetoric recasts the Palestinians as entirely passive and innocent victims of unjustifiable Israeli cruelty.

In order to cement the impression of Palestinians as guiltless victims of Israel that is created by this rhetoric, Palestinian leaders regularly churn out spurious yet demonizing accusations against the Jewish state. Yasser Arafat’s speech at the 2001 Third World Conference against Racism and Racial Discrimination in Durban, South Africa, set the tone for a reinvigorated campaign of anti-Israel calumny that continues to this day. After having rejected Israeli peace offers<sup>78</sup> and eleven months into a horrific onslaught of Palestinian violence directed at Israel’s civilians, Arafat informed the assembled dignitaries at the conference that Palestinians were in reality the victims of “racial discrimination” and a “new and advanced type of apartheid,” among an exhaustive list of purported Israeli atrocities:

As a result of this colonialist challenge against international legitimacy, the governments of Israel usurped our rights, land and natural resources. They destroyed many Christian and Islamic holy places. They robbed our water. They turned a majority of our people into refugees in the region and the world, deprived of return to their homeland and to their homes even after the adoption of Resolution 194, which guaranteed their right of return. Indeed the Government of Israel is now undertaking military escalation and imposing an economic, financial, provisions-supply and medical siege against our people and against all of our towns and villages as well as against our farms and industrial establishments, which they are destroying by all kinds of the American war machine, including those internationally prohibited.<sup>79</sup>

In one fell swoop, the Palestinians – who were at that very moment committing gruesome terrorism on Israel’s civilians<sup>80</sup> – were remade into innocent and passive victims of Israel’s defensive measures, now recast as sadistic and irrational crimes.

Arafat’s Durban speech was seen as a model to emulate and a call “to rekindle the Arab campaign to delegitimize the planet’s single Jewish state – and thus prepare the psychological and political ground for its extinction.”<sup>81</sup> NGO watchdogs have referred to this effort to isolate Israel through defamation as the “Durban Strategy,” a plan whose effects are still felt in the media today.<sup>82</sup> Indeed, Palestinian spokesmen and numerous NGOs<sup>83</sup> have persistently echoed Arafat’s tirade, regularly accusing Israel of committing massacres<sup>84</sup> and genocide,<sup>85</sup> of poisoning school children,<sup>86</sup> spreading drug use and AIDS among Palestinian youth,<sup>87</sup> harvesting Palestinians organs,<sup>88</sup> torture,<sup>89</sup> racial segregation,<sup>90</sup> and generally of “war crimes.”<sup>91</sup> All of these false accusations, again, have one thing in common: they portray Israel as a cruel monster afflicting the *entirely blameless* Palestinians as victims.

A number of these delegitimizing accusations – trotted out by Palestinian spokesmen when moral scrutiny trespasses onto Palestinian behavior – have found considerable traction with Western media. For instance, following a Palestinian

massacre of dozens of civilians at a Passover Seder in 2002, Saeb Erekat and other Fatah officials shifted the spotlight back onto Israel by falsely accusing it of conducting massacres in Jenin and Nablus.<sup>92</sup> More recently, to deflect attention from Palestinian rocket attacks on Israel, Palestinian officials falsely accused it of creating a humanitarian tragedy in Gaza.<sup>93</sup> These accusations were parroted, unchallenged, by Western media and immediately refocused ire on Israel's reprisals, absolving the Palestinians of any responsibility for the countless preceding suicide bombings, or for the indiscriminate firing of thousands of missiles at Israel's civilian population.

Through repetition of this evocative propaganda, the false image of Palestinian victimhood has become ingrained as fact in the public consciousness.<sup>94</sup>

#### **4. “Say I Am a Victim, or Else”: Palestinian Control of Stringers, Fixers, and Local Newsgathering**

Palestinian administrations – whether the Palestinian Authority in the West Bank, or Hamas in the Gaza Strip – strictly enforce the branding of Palestinians as blameless victims through the outright intimidation of journalists. In addition, Palestinian reporters on whom the West relies are often openly partisan and hostile to Israel.

In 2001, the Palestinian Authority's information minister, Yasser Abed Rabbo, warned a Foreign Press Association delegation (which had complained that journalists covering Palestinian celebrations on 9-11 had been threatened) in no uncertain terms, that “Palestinian national interests would come before freedom of the press.”<sup>95</sup> Indeed, numerous reporters were threatened under Yasser Arafat's rule for reporting facts detrimental to the Palestinians' image, claiming such reports “inflict...damage to the interests and reputation of the Palestinian people and their struggle.”<sup>96</sup> In one remarkable incident, journalist Ricardo Cristiano found it necessary to publicly apologize to Palestinian officials for distributing his tape of the brutal lynching and dismemberment of two lost Israeli reservists by a Palestinian mob in October 2000. A number of camera crews were beaten and had their equipment confiscated merely for filming that gruesome scene.<sup>97</sup> The Palestinians simply could not be shown as the aggressors, even when they were.

These examples of the enforcement of the Palestinian narrative through violence are by no means unique.<sup>98</sup> In recent years, Fatah has cracked down, often violently, on journalists perceived to be threatening “Palestinian values” and has used press accreditation to bully journalists into toeing the line.<sup>99</sup> Things are no better under Hamas' government in Gaza where, according to Freedom House, “[t]he media are not free.”<sup>100</sup> Hamas forces have “raided the bureaus of Reuters, Cable News Network (CNN), and Japan's NHK, attacking journalists and destroying equipment,” and have shut down non-compliant outlets.<sup>101</sup> Hamas has also tortured bloggers.<sup>102</sup>

Enforcement of the hapless-victim narrative does not end at intimidation. A number of prominent journalists for international news agencies have *concurrently* been salaried employees of Palestinian administrations.<sup>103</sup> Both Agence France Presse and the Associated Press – whose dispatches are picked up by thousands

of news outlets worldwide – have employed journalists with close ties to the Palestinian Authority.<sup>104</sup> There is likely no other conflict in the world in which paid propagandists for one side are relied on to objectively inform the West.

Even Palestinian fixers and journalists *not* on Fatah or Hamas payrolls “often function overtly or covertly as ‘minders’ in the manner of old Soviet KGB media ‘escorts.’”<sup>105</sup> Indeed, Hamas’ charter explicitly calls on “media people...to perform their role,” adding that “[t]he effective word, the good article, the useful book, support and solidarity...all these are elements of the Jihad for Allah’s sake.”<sup>106</sup> Article 7 of the Palestine Liberation Organization’s Charter similarly calls for “all means of information” to be harnessed in service of the Palestinian struggle.<sup>107</sup> Whether driven by these explicit enjoinders, or simply because they lack a strong tradition of democratic journalism,<sup>108</sup> Palestinian fixers commonly see their job as fighting Israel and operate under “an unspoken but firm set of rules” not to impugn the Palestinians.<sup>109</sup>

According to media watchdog Honest Reporting, “Arab journalists working for CNN, Reuters, the Associated Press and other major Western news providers in the Middle East, [don’t] think there [is] any contradiction between working as a journalist for an international news outlet and holding extreme anti-Israeli views.”<sup>110</sup>

One “senior” BBC reporter, Fayad Abu Shamala – who in 2001 told a rally that journalists were “waging the campaign [against Israel] shoulder-to-shoulder together with the Palestinian people” – was exposed as a Hamas member by Hamas official Fathi Hamad (though the BBC refused to have him removed).<sup>111</sup> Similarly, Talal Abu Rahmeh, the Palestinian cameraman who filmed Mohammed Al Dura’s death, said to a Moroccan newspaper in 2001 that he became a journalist in order to fight for the Palestinian people.<sup>112</sup>

In the words of Jay Bushinsky, a veteran member of the Foreign Press Association, Palestinian stringers upon which the West increasingly depends are rarely “fair-minded reporter[s]. They have a mission and they don’t give anything detrimental to their leadership.”<sup>113</sup>

It is not surprising that, according to Freedom House’s 2012 report on Freedom of the Press in the Palestinian Territories, “[t]he cumulative pressure” placed on so many covering the Palestinians “has driven many journalists to practice self-censorship.”<sup>114</sup>

## Defensive Arguments Are Not Enough

Compassion is a powerful evolutionary adaptation that, when triggered by images of undue suffering, impedes our ability to make rational moral judgments. And just as sex sells, so too does compassion. The experience of compassion is in fact psychologically rewarding and compels us to enduringly side with perceived victims, regardless of mitigating context or facts. Through the deliberate endangerment of children, crafted imagery, manipulative rhetoric, and the bullying of journalists, Palestinians have expertly recast themselves as innocent victims of cruelty, and have thus capitalized on public compassion. As a result, Palestinians

now command the support of millions in the West. And, having cemented their image as innocent victims, Palestinians' crimes are routinely assumed to be merely reactions to Israeli offenses. Factual defenses proffered by Israel to defend its good name only reinforce the impression that Palestinians have been wronged.

Israelis have long tried to win minds with a multitude of defensive arguments and legal justifications, and have lost. Palestinians have instead wielded their putative child-like suffering to wager on hearts, and have won. If Israel wants to reclaim its honor, it first needs to "de-infantilize" the Palestinians in Western eyes. More importantly, Israel will also have to define itself to the world in a way that is at least as emotionally appealing as the Palestinians' saga of victimhood. Rather than fighting spurious accusations with impersonal facts, Israel must fight Palestinian propaganda's exploitation of public compassion with a touching but morally correct narrative of its own.

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## Notes

- 1 *De l'Art de persuader* ("On the Art of Persuasion"), written 1658; published posthumously.
- 2 Specifically, 63.3 percent of Poles, 48.8 percent of Portuguese, 47.7 percent of Germans, 42.4 percent of Brits, 41 percent Hungarians, 38.7 percent of Dutch, and 37.6 percent of Italians held that view. See <http://cifwatch.com/2013/08/08/are-jews-the-most-incompetent-ethnic-cleasers-in-the-world/>.
- 3 <http://cifwatch.com/2013/08/08/are-jews-the-most-incompetent-ethnic-cleasers-in-the-world/>.
- 4 <http://www.gallup.com/poll/161387/americans-sympathies-israel-match-time-high.aspx>.
- 5 <http://www.haaretz.com/news/diplomacy-defense/israel-grouped-with-iran-north-korea-as-world-s-least-popular-countries-1.347636>.
- 6 Compassion is "the feeling that arises in witnessing another's suffering and that motivates a subsequent desire to help." *Psychol. Bull.* 2010 May; 136(3): 351–374 at 2, available at <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2864937/>. Compassion evolved in us as a survival adaptation "designed to help raise vulnerable offspring;" [http://www.ted.com/talks/robert\\_wright\\_the\\_evolution\\_of\\_compassion.html](http://www.ted.com/talks/robert_wright_the_evolution_of_compassion.html); see also *Psychol. Bull.* 2010, id., at 7. Regarding the effect of compassion on social attitudes, see [http://www.nytimes.com/2007/03/21/health/21cnd-brain.html?\\_r=0](http://www.nytimes.com/2007/03/21/health/21cnd-brain.html?_r=0); See also [http://www.iasc-culture.org/THR/THR\\_article\\_2013\\_Spring\\_Kihlstrom.php](http://www.iasc-culture.org/THR/THR_article_2013_Spring_Kihlstrom.php). Regarding the effect of perceived guiltless victims in distress in triggering compassion, see, e.g., *Psychol. Bull.* 2010, id., at 15–16; <http://www.plosone.org/article/info%3Adoi%2F10.1371%2Fjournal.pone.0060418>.
- 7 *Psychol. Bull.* 2010, *supra*, at 15–16. In fact, we will favor those we see as being in distress even to the detriment of more numerous but faceless potential victims. See also <http://www.wjh.harvard.edu/~jgreene/GreeneWJH/Greene-CogNeuroIV-09.pdf>.
- 8 [http://www.iasc-culture.org/THR/THR\\_article\\_2013\\_Spring\\_Kihlstrom.php](http://www.iasc-culture.org/THR/THR_article_2013_Spring_Kihlstrom.php); <http://www.wjh.harvard.edu/~jgreene/GreeneWJH/Greene-CogNeuroIV-09.pdf>.
- 9 <http://www.bc.edu/content/bc/offices/pubaf/news/2013-may-jun/empathy-a-key-factor-in-moral-judgment.html> citing *PLoS One.* 2013; 8(4): e60418. Published online 2013 April 4. doi: 10.1371/journal.pone.0060418 PMID: PMC3617220 Ezequiel Gleichgerrcht and Liane Young.
- 10 [http://greatergood.berkeley.edu/article/item/the\\_compassionate\\_instinct](http://greatergood.berkeley.edu/article/item/the_compassionate_instinct); *Psychol. Bull.* 2010, *supra* at 39.
- 11 [http://greatergood.berkeley.edu/article/item/the\\_compassionate\\_instinct](http://greatergood.berkeley.edu/article/item/the_compassionate_instinct).
- 12 <http://www.hcs.harvard.edu/~hireview/content.php?type=article&issue=summer03/&name=martyrdom>. See also [http://www.nytimes.com/2013/08/05/world/middleeast/rocks-in-hand-a-boy-fights-for-his-west-bank-village.html?pagewanted=all&\\_r=0](http://www.nytimes.com/2013/08/05/world/middleeast/rocks-in-hand-a-boy-fights-for-his-west-bank-village.html?pagewanted=all&_r=0). See also <http://globalnews.ca/news/508638/a-childs-view-from-gaza-art-exhibit-postponed/> on the exploitation of children for propaganda means, namely, a Palestinian children's art exhibit in Canada that was canceled due to allegations that the work was propaganda made by adults.
- 13 [http://www.unc.edu/depts/diplomat/item/2006/0103/ca\\_efaw/efaw\\_intifada.html](http://www.unc.edu/depts/diplomat/item/2006/0103/ca_efaw/efaw_intifada.html).
- 14 Photographs are often staged and recycled, see e.g., <http://honestreporting.com/the-wretched-scandal-of-reporting-from-gaza/>. See also <http://www.ajiac.org.au/news/article/for-propaganda-purposes-palestinian-children-in->. Regarding indoctrination, see [http://palwatch.org/main.aspx?fi=157&doc\\_id=9308](http://palwatch.org/main.aspx?fi=157&doc_id=9308); <http://www.mrctv.org/videos/us-senate-committee-palestinian-propaganda-and-child-abuse/>;

- <http://www.palwatch.org/main.aspx?fi=846>.
- 15 <http://www.youtube.com/watch?v=7M1Rq4WxEVU> (emphasis mine).
- 16 [http://en.wikipedia.org/wiki/File:Faris\\_odeh03a.jpg](http://en.wikipedia.org/wiki/File:Faris_odeh03a.jpg).
- 17 <https://www.youtube.com/watch?v=IHHP8CpvjnQ>.
- 18 See, e.g., <http://honestreporting.com/rachel-corrie-died-for-this-3/>.
- 19 See <http://www.jcpa.org/jl/vp441.htm>. Also, citing *Palestinian Media Watch's* Itamar Marcus, Justus Reid Weiner recalls two shocking segments that appeared frequently on Palestinian TV, for years:  
One powerful video clip, shown regularly on PA-controlled TV over the past two and a half years, shows a schoolboy writing a farewell letter to his parents. "Do not be sad, my dear, and do not cry over my parting, my dear father. For my country, I shall sacrifice myself." The child leaves home and joins his friends in a riot. He places himself in front of the soldiers, is shot in the chest and falls down. His words are sung: "How sweet is martyrdom when I embrace you, my land," as he falls to the ground, "embracing" the land. As the boy's mother is seen crying, the letter continues: "My beloved, my mother, my most dear, be joyous over my blood and do not cry for me." The message is clear: it should be the goal of every Palestinian child to die confronting Israel.  
In another clip, a child actor playing the role of Mohammed Dura, the most well recognized child victim of the fighting, is shown waving to his young viewers, calling on them to follow him to paradise. We then see snippets of his joyous life in heaven with a backdrop of beaches and waterfalls. The actor walks through an amusement park and flies a kite. He is saying, "I am not waving goodbye, I am waving to tell you to follow in my footsteps." On the accompanying soundtrack a song plays, "How pleasant is the smell of martyrs, how pleasant the smell of land, the land enriched by the blood, the blood pouring out of a fresh body."  
<http://www.hcs.harvard.edu/~hireview/content.php?type=article&issue=summer03/&name=martyrdom>.
- 20 <http://www.palwatch.org/main.aspx?fi=608>.
- 21 [http://www.palwatch.org/main.aspx?fi=157&doc\\_id=7272](http://www.palwatch.org/main.aspx?fi=157&doc_id=7272).
- 22 <http://www.zoa.org/pressrel/20030313b.htm>, [http://news.bbc.co.uk/2/hi/middle\\_east/3395973.stm](http://news.bbc.co.uk/2/hi/middle_east/3395973.stm).
- 23 See, e.g., <http://www.youtube.com/watch?v=rHNeJURwIpk>. See also, e.g., <http://www.israelnationalnews.com/News/News.aspx/170351#.UhlJdgWRgZpE>.
- 24 <http://www.memri.org/report/en/0/0/0/0/0/1027.htm>.
- 25 <http://www.israelnationalnews.com/News/News.aspx/170275#.UhlJdiGRgZpE>.
- 26 <http://www.mrcvtv.org/videos/us-senate-committee-palestinian-propaganda-and-child-abuse>
- 27 Ibid.
- 28 [http://archive.adl.org/israel/israel\\_sbarro.asp](http://archive.adl.org/israel/israel_sbarro.asp).
- 29 <http://www.hcs.harvard.edu/~hireview/content.php?type=article&issue=summer03/&name=martyrdom>.
- 30 <http://www.jpost.com/Defense/IDF-legal-adviser-backs-detention-of-5-year-old-Palestinian-stone-thrower-321696>. In the first 5 months of 2013, in Jerusalem alone, 207 stone throwers were arrested, the majority of whom were minors. [http://www.israelhayom.com/site/newsletter\\_article.php?id=9793](http://www.israelhayom.com/site/newsletter_article.php?id=9793).
- 31 <http://aclj.org/israel/terrorist-use-children-playground-cover-rocket-attack-israel>.
- 32 <http://mfa.gov.il/MFA/ForeignPolicy/Terrorism/Palestinian/Pages/Palestinians%20exploit%20children%20for%20terror%20-%20March%202004.aspx>; [http://en.wikipedia.org/wiki/Child\\_suicide\\_bombers\\_in\\_the\\_Israeli%E2%80%93Palestinian\\_conflict](http://en.wikipedia.org/wiki/Child_suicide_bombers_in_the_Israeli%E2%80%93Palestinian_conflict); <http://www.takeapen.org/Takeapen/Templates/showpage.asp?DBID=1&LANGID=1&TMID=84&FID=917>.
- 33 [http://www.youtube.com/watch?v=9B4fFyZ\\_1sQ](http://www.youtube.com/watch?v=9B4fFyZ_1sQ). The UN has stated it intends to investigate Hamas for its use of children as human shields. <http://honestreporting.com/un-to-probe-hamas-use-of-children/>.
- 34 <http://www.timesofisrael.com/3000-gaza-teens-graduate-hamas-terror-school/>.
- 35 <http://blogs.timesofisrael.com/cheap-shots-palestinians-put-kids-in-the-line-of-fire/>.  
See, e.g., <http://www.youtube.com/watch?v=ax-Jk2ijL0k>; see also <http://honestreporting.com/and-you-thought-vuvuzelas-were-annoying/>. Similarly, Palestinian propagandists have used children's arts exhibits to showcase adult-made drawings that demonize Israel. <http://globalnews.ca/news/508638/a-childs-view-from-gaza-art-exhibit-postponed/>.
- 36 <http://www.euronews.com/2013/07/12/five-year-old-palestinian-child-detained-by-israeli-army/>.
- 37 <http://www.theguardian.com/world/2010/mar/14/palestinian-children-rights-violated-israel>; <http://www.bbc.co.uk/news/world-middle-east-18436602>. See also <http://honestreporting.com/pipe-dreams/reporting-that-hamas-accused-israel-of-forcing-unsanitary-water-on-gaza-s-children-because-of-its-blockade-if-any-damage-to-gaza-s-sanitation-system-did-occur-it-resulted-from-hamas-use-of-its-pipes-to-produce-rockets-to-attack-israel>. <http://www.bbc.co.uk/news/world-middle-east-18436602> <http://honestreporting.com/pipe-dreams/>.
- 38 Regarding propagandizing NGOs, see, e.g., <http://cifwatch.com/2012/01/24/political-activism-as-journalism-harriet-sherwood-promotes-agenda-of-radical-anti-israel-ngo/>; <http://www.ngo-monitor.org/gsearch.php?q=children>. See also [http://www.ngo-monitor.org/article/defence\\_for\\_children\\_international\\_palestine\\_section\\_dci\\_ps\\_summary\\_report\\_on\\_political\\_advocacy\\_and\\_credibility\\_of\\_allegations](http://www.ngo-monitor.org/article/defence_for_children_international_palestine_section_dci_ps_summary_report_on_political_advocacy_and_credibility_of_allegations); <http://www.timesofisrael.com/bds-groups-protest-israel-philharmonic-in-buenos-aires/>. Regarding accusations that Israel abuses children, see, e.g., <http://www.jpost.com/Diplomacy-and-Politics/Israel-slams-UN-report-claiming-Palestinian-minors-tortured-in-jail-317387>; this, while even Fatah openly celebrates the murder of Israeli children, [http://palwatch.org/main.aspx?fi=157&doc\\_id=6520](http://palwatch.org/main.aspx?fi=157&doc_id=6520).
- 39 See <http://www.ngo-monitor.org/article.php?id=3220>; see also [http://www.ngo-monitor.org/article/defence\\_for\\_children\\_international\\_palestine\\_section](http://www.ngo-monitor.org/article/defence_for_children_international_palestine_section), and [http://en.wikipedia.org/wiki/Casualties\\_of\\_the\\_Gaza\\_War#Disputed\\_figures](http://en.wikipedia.org/wiki/Casualties_of_the_Gaza_War#Disputed_figures).
- 40 <http://honestreporting.com/palestinian-girls-death-hamas-owns-up/>; <http://honestreporting.com/>

- [finally-bbc-admits-to-shoddy-journalism/](#). As one salient example, in November 2012, Hamas prime minister Ismail Haniyeh paraded the bloodied corpse of a Palestinian child and blamed an Israeli raid for the killing. <http://edition.cnn.com/video/?/video/bestoftv/2012/11/17/pkg-sidner-gaza-child-killed.cnn>. The child was in fact killed by a Hamas rocket. <http://www.telegraph.co.uk/news/worldnews/middleeast/israel/9685564/Israeli-forces-prepare-for-war-as-troops-mass-on-Gaza-border.html>. The Islamist group thought nothing of turning its own victim into a PR weapon – and the international press obliged. <http://honestreporting.com/palestinian-girls-death-hamas-owns-up/>. See also <http://honestreporting.com/4-palestinian-propagandists/>. See also <http://www.aish.com/jw/id/48890577.html>.
- 41 Palestinian activists repeatedly tried to pass off photos of dead Arab children on social media as Israel's doing. The photos were in fact of Syrian children massacred weeks earlier by Bashar Assad. A few weeks later, the UN fired Kulhood Badawi, one of its senior public affairs officers in Jerusalem, for peddling a photo of a girl killed in an accident in 2006 as a victim of Israel. See also, e.g., <http://honestreporting.com/finally-bbc-admits-to-shoddy-journalism/>.
- 42 See <http://www.theaugeanstables.com/reflections-from-second-draft/palestinian-suffering/>.
- 43 <http://palwatch.org/main.aspx?fi=1000>.
- 44 <http://www.idfblog.com/2013/03/18/rocks-can-kill/>. "Children have hobbies, and my hobby is throwing stones," Muhammad explained weeks before his most recent arrest." [http://www.nytimes.com/2013/08/05/world/middleeast/rocks-in-hand-a-boy-fights-for-his-west-bank-village.html?pagewanted=all&\\_r=0](http://www.nytimes.com/2013/08/05/world/middleeast/rocks-in-hand-a-boy-fights-for-his-west-bank-village.html?pagewanted=all&_r=0). And yet: "In 1986, a U.S. teenager was sentenced to life in prison for throwing a stone from an overpass that killed a toddler in a car below. In 2010, two South Carolina teenagers were indicted on first degree murder charges after killing a woman sitting in the front seat of a car with a stone hurled from an overpass. In 2002, even when stone throwing resulted in no injuries, the teenaged perpetrators were charged with assault and battery with intent to kill and malicious injury to personal property. As the Sheriff's Department explained, throwing rocks "is not a prank. This is extremely dangerous. You could kill somebody doing this." [http://www.camera.org/index.asp?x\\_print=1&x\\_context=6&x\\_article=2519](http://www.camera.org/index.asp?x_print=1&x_context=6&x_article=2519).
- 45 [http://en.wikipedia.org/wiki/Child\\_suicide\\_bombers\\_in\\_the\\_Israeli%E2%80%93Palestinian\\_conflict](http://en.wikipedia.org/wiki/Child_suicide_bombers_in_the_Israeli%E2%80%93Palestinian_conflict); <http://honestreporting.com/guardian-report-misses-the-real-child-abuse/>. See also e.g., <http://honestreporting.com/shocking-omission-by-ap/>. See also <http://honestreporting.com/israel-responds-to-guardian-child-abuse-charge/>; [http://www.camera.org/index.asp?x\\_context=3&x\\_outlet=17&x\\_article=2463](http://www.camera.org/index.asp?x_context=3&x_outlet=17&x_article=2463).
- 46 [http://www.camera.org/index.asp?x\\_article=191&x\\_context=8](http://www.camera.org/index.asp?x_article=191&x_context=8).
- 47 <http://www.theaugeanstables.com/reflections-from-second-draft/pallywood-a-history/>.
- 48 <http://youtu.be/2ztMMRxhwts>.
- 49 <http://archives.cnn.com/2000/WORLD/meast/11/09/mideast.songs.reut/>. Indeed, within days, an enraged mob in Ramallah shouted "revenge for the blood of Muhammad Al Dura" as they dismembered two lost Israeli reservists. <http://www.metulanews.net/article.php?sid=671>; [http://en.wikipedia.org/wiki/2000\\_Ramallah\\_lynching](http://en.wikipedia.org/wiki/2000_Ramallah_lynching). A deluge of Palestinian suicide bombers often claimed the same motive before murdering hundreds of Israeli civilians in horrific attacks on restaurants, schools, buses and malls. [http://en.wikipedia.org/wiki/List\\_of\\_Palestinian\\_suicide\\_attacks](http://en.wikipedia.org/wiki/List_of_Palestinian_suicide_attacks); <http://www.haaretz.com/news/hamas-confirms-israeli-arab-was-nahariya-suicide-bomber-1.69430>; <http://www.jewishvirtuallibrary.org/jsource/Terrorism/victims.html>; [http://en.wikipedia.org/wiki/Sbarro\\_restaurant\\_suicide\\_bombing](http://en.wikipedia.org/wiki/Sbarro_restaurant_suicide_bombing). Al Qaeda used Al Dura as a major recruiting theme, and jihadists beheaded Daniel Pearl in 2002 with Al Dura's picture behind them. [http://online.wsj.com/article/SB119129100111946027.html?mod=googlenews\\_wsj](http://online.wsj.com/article/SB119129100111946027.html?mod=googlenews_wsj); [http://online.wsj.com/article/SB120165176905126961.html?mod=rss\\_opinion\\_main](http://online.wsj.com/article/SB120165176905126961.html?mod=rss_opinion_main).
- 50 <http://www.mfa.gov.il/mfa/foreignpolicy/terrorism/palestinian/pages/victims%20of%20palestinian%20violence%20and%20terrorism%20sinc.aspx>.
- 51 <http://aldurah.com/the-al-durah-incident/initial-responses/western-responses/>. See also, e.g., <http://www.haaretz.com/news/hamas-confirms-israeli-arab-was-nahariya-suicide-bomber-1.69430>.
- 52 <http://aldurah.com/the-al-durah-incident/initial-responses/western-responses/>.
- 53 <http://aldurah.com/reception-in-the-arab-and-muslim-world/>.
- 54 <http://www.standpointmag.co.uk/node/143/full>; <http://en.wikipedia.org/wiki/Al-Dura>; <http://news.bbc.co.uk/2/hi/europe/7092262.stm>; <http://www.haaretz.com/news/independent-expert-idf-bullets-didn-t-kill-mohammed-al-dura-1.240438>.
- 55 [http://www.seconddraft.org/index.php?option=com\\_content&view=article&id=595:adfefacialrecognitionexpert&catid=85:the-al-durah-case-the-videos&Itemid=250](http://www.seconddraft.org/index.php?option=com_content&view=article&id=595:adfefacialrecognitionexpert&catid=85:the-al-durah-case-the-videos&Itemid=250).
- 56 <http://www.veroniquechemla.info/2012/01/la-evidence-france2-raw-footage-presented-to-court/>.
- 57 <http://aldurah.com/the-al-durah-incident/the-evidence/france2-raw-footage-presented-to-court/>.
- 58 <http://www.youtube.com/watch?v=75hiDGp89Xk>.
- 59 <http://www.theaugeanstables.com/al-durah-affair-the-dossier/karsenty-court-of-appeals-decision-english/>.
- 60 <http://en.wikipedia.org/wiki/Pallywood>. See also [http://www.youtube.com/watch?v=t\\_B1H-1opys](http://www.youtube.com/watch?v=t_B1H-1opys).
- 61 <http://www.breitbart.com/Breitbart-TV/2012/11/15/Palestinians-Caught-Faking-Injuries-For-BBC%20Cameras>; <http://www.nationalpost.com/news/story.html?id=48fc4069-cf42-4dbd-ab0e-857ad6142ec3>; [http://www.seconddraft.org/index.php?option=com\\_content&view=article&id=58&Itemid=63](http://www.seconddraft.org/index.php?option=com_content&view=article&id=58&Itemid=63).
- 62 <http://www.youtube.com/watch?v=USKq44G1kQ>; <http://www.gatestoneinstitute.org/3762/propaganda-war>.
- 63 <http://www.breitbart.com/Breitbart-TV/2012/11/15/Palestinians-Caught-Faking-Injuries-For-BBC%20>

Cameras.

- 64 [http://www.seconddraft.org/index.php?option=com\\_content&view=article&id=58&Itemid=63](http://www.seconddraft.org/index.php?option=com_content&view=article&id=58&Itemid=63).
- 65 [http://www.seconddraft.org/index.php?option=com\\_content&view=article&id=251:directors-cut&catid=55:pallywood-footage-selections&Itemid=191](http://www.seconddraft.org/index.php?option=com_content&view=article&id=251:directors-cut&catid=55:pallywood-footage-selections&Itemid=191).
- 66 <http://whowhatwhy.com/2011/10/16/media-manipulation-are-conflict-photos-staged/>.
- 67 <http://www.theaugeanstables.com/2007/09/18/background-on-the-rushes-interview-with-jambar-and-leconte/>; [http://www.seconddraft.org/index.php?option=com\\_content&view=article&id=434&Itemid=183](http://www.seconddraft.org/index.php?option=com_content&view=article&id=434&Itemid=183).
- 68 [http://www.liveleak.com/view?i=0b4\\_1375922321#D1vXPcg3ruxYuKe1.99](http://www.liveleak.com/view?i=0b4_1375922321#D1vXPcg3ruxYuKe1.99); <http://drinkingfromhome.blogspot.com/2006/08/extreme-makeover-beirut-edition.html>; <http://eureferendum.blogspot.com/2006/08/qana-directors-cut.html>; <http://www.cnn.com/CNN/Programs/anderson.cooper.360/blog/2006/07/our-very-strange-day-with-hezbollah.html>; <http://www.pbs.org/mediashift/2006/08/skepticism-rampant-over-war-fauxtography226>.
- 69 See [http://www.liveleak.com/view?i=0b4\\_1375922321#D1vXPcg3ruxYuKe1.99](http://www.liveleak.com/view?i=0b4_1375922321#D1vXPcg3ruxYuKe1.99).
- 70 <http://blogs.timesofisrael.com/what-is-the-palestinian-narrative/>.
- 71 On the use of moral inversion in Palestinian propaganda, see <http://jcpa.org/article/the-big-lie-and-the-media-war-against-israel-from-inversion-of-the-truth-to-inversion-of-reality?print=1>.
- 72 <http://jcpa.org/article/is-israel-a-colonial-state-the-political-psychology-of-palestinian-nomenclature/>
- 73 [http://worldnews.nbcnews.com/\\_news/2013/05/06/18017544-resistance-through-reality-tv-young-palestinians-battle-to-become-president?lite](http://worldnews.nbcnews.com/_news/2013/05/06/18017544-resistance-through-reality-tv-young-palestinians-battle-to-become-president?lite); <http://palwatch.org/main.aspx?fi=805#808>.
- 74 [http://www.camera.org/index.asp?x\\_article=191&cx\\_context=8](http://www.camera.org/index.asp?x_article=191&cx_context=8).
- 75 <http://www.telegraph.co.uk/news/worldnews/middleeast/palestinianauthority/8800569/Palestinians-accuse-US-of-collective-punishment-after-200m-in-aid-is-cut-off.html>.
- 76 <http://palwatch.org/main.aspx?fi=505>; <http://www.imra.org.il/story.php?id=29949>.
- 77 See, e.g., <http://www.israelnationalnews.com/News/News.aspx/168165#.UHK0bmRgZpE>. See also, <http://www.nytimes.com/2011/11/01/opinion/israel-and-the-apartheid-slander.html>, and <http://www.sfxaminer.com/sanfrancisco/pro-palestinian-ads-misrepresent-apartheid/Content?oid=2339168>; [http://worldnews.nbcnews.com/\\_news/2013/03/05/17194265-a-palestinian-rosa-parks-is-needed-israels-segregated-buses-spark-outrage?lite](http://worldnews.nbcnews.com/_news/2013/03/05/17194265-a-palestinian-rosa-parks-is-needed-israels-segregated-buses-spark-outrage?lite).
- 78 [http://www.liveleak.com/view?i=91b\\_1239827655&comments=1](http://www.liveleak.com/view?i=91b_1239827655&comments=1).
- 79 <http://www.un.org/WCAR/statements/palestineE.htm>; <http://groups.yahoo.com/group/MewNews/message/2676>.
- 80 [http://en.wikipedia.org/wiki/List\\_of\\_Israeli\\_civilian\\_casualties\\_in\\_the\\_Second\\_Intifada](http://en.wikipedia.org/wiki/List_of_Israeli_civilian_casualties_in_the_Second_Intifada).
- 81 <http://www.newamericancentury.org/Krauthammer-Sept17.pdf>.
- 82 <http://www.ngo-monitor.org/article.php?id=460>.
- 83 <http://www.think-israel.org/steinberg.ngodurban.html>.
- 84 [http://www.camera.org/index.asp?x\\_article=217&cx\\_context=7](http://www.camera.org/index.asp?x_article=217&cx_context=7).
- 85 <http://www.independent.co.uk/news/world/middle-east/israel-stole-palestinian-heritage-1907397.html>. See also <http://www.israelnationalnews.com/News/Flash.aspx/206835#.UHKufWRgZpE>; <https://www.youtube.com/watch?v=IV369Fa8yzzg>; <http://www.telegraph.co.uk/news/worldnews/middleeast/israel/1389935/Genocide-claim-by-Muslim-ally-Turkey.html>.
- 86 <http://www.theaugeanstables.com/reflections-from-second-draft/pallywood-a-history/>.
- 87 <http://www.jpost.com/Middle-East/Israel-behind-increase-in-Palestinian-AIDS-cases>; <http://palwatch.org/main.aspx?fi=766>.
- 88 [http://www.nytimes.com/2009/08/24/world/middleeast/24mideast.html?\\_r=0](http://www.nytimes.com/2009/08/24/world/middleeast/24mideast.html?_r=0); <http://www.palwatch.org/main.aspx?fi=776>.
- 89 <http://articles.latimes.com/2013/feb/25/world/la-fg-israel-palestinian-protests-20130225>.
- 90 <http://blogs.telegraph.co.uk/news/jakewallissimons/100205212/palestinian-only-buses-israeli-apartheid/>; <http://www.washingtonpost.com/blogs/worldviews/wp/2013/03/04/israels-palestinian-only-buses-draw-accusations-of-segregation-apartheid/>.
- 91 <http://www.jpost.com/Middle-East/PLO-charges-Israel-with-war-crimes-anti-human-racist-acts-323504>; <https://www.youtube.com/watch?v=EniRmR0wJ9k>.
- 92 <http://honestreporting.com/big-lies/> “Jenin” tab. See also [http://www.camera.org/index.asp?x\\_article=217&cx\\_context=7](http://www.camera.org/index.asp?x_article=217&cx_context=7).
- 93 <http://honestreporting.com/big-lies/> “Gaza Siege” tab. See also [http://blog.camera.org/archives/2011/04/there\\_is\\_no\\_humanitarian\\_crisi.html](http://blog.camera.org/archives/2011/04/there_is_no_humanitarian_crisi.html).
- 94 President Barack Obama has said that “[n]obody is suffering more than the Palestinian people.” This statement is verifiably untrue, and completely ignores the causes of Palestinian suffering, casting them entirely as passive sufferers. But it went largely unchallenged, because this image of Palestinians as absolute victims has already become part of accepted wisdom. <http://www.nationalreview.com/campaign-spot/12926/obama-nobody-suffering-more-palestinian-people>.
- 95 Interview with a deputy bureau chief of a leading Jerusalem-based international news agency, November 17, 2002, reported at <http://www.jcpa.org/brief/brief2-23.htm>.
- 96 Bassem Eid, November 17, 2002. For other instances of Palestinian intimidation of the press, see Freedom House 2000 report, <http://www.freedomhouse.org/pfs2000/reports.html#ispa>, and the 2000 Amnesty International Annual Report, <http://web.amnesty.org/web/ar2001.nsf/webmenafri?OpenView>, “Palestinian Authority: Silencing Dissent” (AI Index: MDE 21/016/2000) reported by <http://www.jcpa.org/brief/brief2-23.htm>. See also “AP protests threats to freelance cameraman who filmed Palestinian rally,” September 12, 2001, <http://arabterrorism.tripod.com/terrorism3.html> at same. See also <http://www.aish>.

- com/jw/me/48883522.html; [http://honestreporting.com/articles/critiques/Tel\\_Aviv\\_Fallout.asp](http://honestreporting.com/articles/critiques/Tel_Aviv_Fallout.asp).
- 97 <http://www.jcpa.org/brief/brief2-23.htm>.
- 98 <http://www.aish.com/jw/me/48883522.html>.
- 99 <http://www.cpj.org/2012/04/palestinian-authority-detains-questions-two-journa.php>; <http://www.cpj.org/2012/07/palestinian-security-forces-assault-journalists-co.php>; <http://www.freedomhouse.org/report/freedom-press/2012/west-bank-and-gaza-strip>; <http://www.cpj.org/2012/04/palestinian-authority-blocks-critical-websites.php>; <http://www.cpj.org/2013/04/palestinian-journalist-pardoned-for-insulting-pres.php>; <http://www.jcpa.org/brief/brief2-23.htm>.
- 100 <http://www.freedomhouse.org/report/freedom-world/2013/gaza-strip>.
- 101 <http://www.freedomhouse.org/report/freedom-press/2012/west-bank-and-gaza-strip>; <http://www.freedomhouse.org/report/freedom-world/2013/gaza-strip>. Hamas closed the LENS outfit merely for offering its broadcast services to an Israeli news channel. [http://www.nytimes.com/2013/07/26/world/middleeast/hamas-closes-news-media-outlets.html?\\_r=0](http://www.nytimes.com/2013/07/26/world/middleeast/hamas-closes-news-media-outlets.html?_r=0); <http://cpj.org/2013/07/hamas-closes-two-media-offices-in-gaza.php>.
- 102 <http://www.freedomhouse.org/report/freedom-press/2012/west-bank-and-gaza-strip>. For more examples of Hamas' crushing of dissent in the media, see <http://blogs.timesofisrael.com/speaking-power-to-truth-in-gaza-and-the-west-bank-repression-of-progressive-artists-in-the-palestinian-territories/>.
- 103 For an in-depth study of Palestinian insiders as journalists, see <http://honestreporting.com/palestinian-insiders/>.
- 104 As egregious examples, Majida al-Batsh, who even considered running for PA presidency, was a Palestinian affairs correspondent for AFP for years, though she was also employed by the PA's official paper, Al-Ayyam. AFP's Adel Zanoun was also the chief reporter for the PA's Voice of Palestine. Muhammad Daraghmeh, who has regularly reported out of Ramallah for the Associated Press, is also an employee of Al-Ayyam. See <http://www.jpost.com/servlet/Satellite?pagename=JPost/JPArticle/Printer&cid=1105992533340&p=1006953079845>; <http://honestreporting.com/palestinian-insiders/>.
- 105 <http://www.securityaffairs.org/issues/2006/11/rozenman.php>.
- 106 [http://avalon.law.yale.edu/20th\\_century/hamas.asp](http://avalon.law.yale.edu/20th_century/hamas.asp).
- 107 <http://www.iris.org.il/plochart.htm>.
- 108 <http://cpj.org/attacks95/SpecialReports/palestine.html>.
- 109 <http://www.jcpa.org/brief/brief2-23.htm>.
- 110 <http://honestreporting.com/exposed-how-palestinian-fixers-manipulate-their-media-bosses-2/>.
- 111 <http://www.haaretz.com/print-edition/news/leading-hamas-preacher-warns-of-clash-with-islamic-jihad-1.143951>; <http://honestreporting.com/exposed-how-palestinian-fixers-manipulate-their-media-bosses-2/>; <http://www.tomgrossmedia.com/mideastdispatches/archives/000039.html>.
- 112 <http://postimage.org/gallery/loqm4uu/606a7286/>.
- 113 <http://www.jpost.com/Middle-East/Gaza-a-no-go-zone-for-journalists-since-BBC-reporters-kidnapping>. Bushinsky was referring specifically to Gaza stringers, though, as shown, the intimidation of journalists and biased stringers is a reality under both Palestinian administrations. See <http://honestreporting.com/exposed-how-palestinian-fixers-manipulate-their-media-bosses-2/>.
- 114 <http://www.freedomhouse.org/report/freedom-press/2012/west-bank-and-gaza-strip>; <http://www.timesofisrael.com/palestinian-journalists-boycott-pa-security/>.



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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ISBN 978-965-218-117-6



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