

# The Challenge to Israel's Legitimacy

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

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

## The Irony of the Legitimacy Struggle

The assault on Israel's legitimacy is ironic. Israel is a unique country in the world community by virtue of the fact that it is the only member state of the United Nations whose right to exist was recognized by *both* the League of Nations and the UN itself. It is a country with deep national roots and a more than two-thousand-year-old history. Looking back to the period after the First World War when the victorious Allied powers formally recognized the rights of the Jewish people to reconstitute their national homeland, the European powers did not create that right but rather acknowledged what they viewed as a pre-existing right. For Western civilization, it was axiomatic that the Jewish people had a legitimate right to their ancient homeland.

Yet what was axiomatic a century ago is no longer the case today. It is not just the circumstances that Israel faces which have caused this shift, but also intellectual and political changes in the West. The results of this shift are deeply disturbing. It is rare to find a university debate over the legitimacy of France or Italy, yet such debates over Israel have been held at British universities. And while many states in Africa and Asia owe their origins to arbitrary borders drawn by colonial powers a century ago, it is not acceptable to question their validity as nation-states even though their boundaries artificially cross ethnic or tribal lines, making national cohesiveness very difficult. But denying the validity of Israel's borders is common.

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

Undoubtedly, delegitimization of Israel also emanates from a revival of classical Western anti-Semitism, which has become more permissible as more time passes since the Holocaust. It is for that reason that delegitimizers also engage in Holocaust-denial, or "Holocaust inversion," attributing to Israel the crimes committed against the Jewish people during the Second World War.

During the last decade, the campaign to delegitimize Israel has been reinvigorated and given new momentum through several repeating themes:

## **1. Denying Israel's Fundamental Right to Self-Defense**

Using the automatic majority which the Arab states can marshal in the main bodies of the UN system, the PLO and its allies have successfully exploited international law to dilute Israel's right of self-defense. This began to acquire momentum when the Arab bloc pushed through the UN General Assembly a resolution calling on the International Court of Justice (ICJ) to issue a nonbinding advisory opinion on the legality of Israel's security fence. Following the terms of reference it was given, the ICJ questioned the legality of the fence without considering the waves of suicide bombing

attacks on Israeli civilians that caused Israel to build the fence in the first place. And the ICJ went so far as to question whether the right of self-defense, enshrined in the UN Charter, applied to the terrorist threat Israel faced in the West Bank and Gaza.

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

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

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

## **2. Unfairly Portraying Israel as an International Criminal**

When Israel was forced to eliminate the centers of terrorism in the West Bank in 2002 that were located in areas under the jurisdiction of the Palestinian Authority, UN officials, taking their cue from Palestinian spokesmen, repeated unsubstantiated allegations that Israel had committed a massacre of Palestinian civilians in the Jenin refugee camp, which was quickly disproven. The truth was the opposite of what was being alleged, for rather than uprooting the terrorist infrastructure in Jenin with airpower or artillery, Israel sent in ground forces who engaged in house-to-house combat in a densely populated area, resulting in the loss of 22 Israeli soldiers. Again in 2009, at the initiative of Cuba, Pakistan and Egypt, the UN Human Rights

Council launched an investigation of Israel's military operations in Gaza that sought to expose improper actions by the Israel Defense Forces, without even looking at the eight years during which Hamas fired mortars and rockets at the civilian communities of southern Israel from the Gaza Strip. This became the famous Goldstone Report, that was noted earlier. The UN has become the traditional theater in which the Palestinians and their supporters seek to brand Israel as a war criminal and to thereby isolate it internationally. Even at the height of Arab-Israeli peace negotiations, the Palestinians kept up the pressure in this regard by trying to draw attention to allegations about Israeli violations of international humanitarian law, and getting UN bodies to repeatedly adopt one-sided resolutions. More recently, this year, the Palestinian leadership sought to prevent Israel's membership in the OECD, arguing that Israel was obstructing the peace process.

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

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

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

The third form of delegitimization was witnessed at the end of the July 2000 Camp David Peace Conference, when PLO Chairman Yasser Arafat denied that there ever was a Jewish Temple in Jerusalem. This contention has been reasserted by most of the leading Palestinian figures, from Saeb Erekat to Yasser Abd Rabbo to Mahmoud Abbas. The destruction of pre-Islamic artifacts during the unauthorized removal of tons of debris from the Temple Mount by the Palestinian Islamic authorities served as further evidence of an effort to eradicate Jewish history in Jerusalem.



When Palestinian Prime Minister Salam Fayyad spoke at an inter-religious gathering at the UN in late 2008, he mentioned Muslim and Christian ties to Jerusalem, but failed to say even a word about the Jewish connection to the Holy City. In the Palestinian discourse, it is conveniently forgotten that Jerusalem had a Jewish majority already in the nineteenth century; the British Consulate in Jerusalem determined that a Jewish majority existed in the city in 1863.

## **The International Political Context of Delegitimization: The Palestinians’ “Kosovo Plan”**

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

At the extreme, the new delegitimization takes a page out of the anti-apartheid campaign against South Africa by seeking to internationally condemn and isolate the Jewish state, perhaps with the hope of even undermining its continued existence.

## **The Iranian Agenda with Delegitimization: Security Implications of the Delegitimization Campaign**

The danger to Israel from this delegitimization campaign is not just economic or political. It affects national security as well. Israel’s adversaries in the Middle East, led by Iran, carefully calibrate the use of force on the basis of how the international

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

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

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

This is the harshest context of the delegitimization effort, but, nevertheless, it would be a cardinal mistake for the West to ignore it.



