

“The use of international law and of international organizations to de-legitimize and to demonize Jewish nationhood and Jewish statehood”

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Those who try to de-legitimize and to demonize Israel make a sophisticated use of legal arguments and of international organizations.

The purpose of the legal arguments is to present Israel as a criminal state, and Jewish statehood as intrinsically racist and, therefore, illegitimate.

As for the use of international organizations, it is meant to isolate Israel, to undermine the Jewish right to self-determination, and to make it impossible for Israel to defend itself.

My lecture today is going to focus on three examples of the use of international law and of international organizations to undermine the Jewish right to self-determination.

Let me start with an anecdote that summarizes the message I’m trying to convey.

Last week, I debated on the TV channel I24News Michel Warschafski, a far-left Israeli political activist. The topic of the debate was the true nature of the BDS movement (a movement which Warschafski supports).

Warschafski’s opening was that he supports BDS out of love and concern for Israel, the same way that a father reprimands and punishes a child for his own good. When I explained that BDS activists do not promote a two-state solution but what the Palestinians call the “right of return,” Warschafski admitted that he fully supports the right of return.

When pressed by me, he admitted that applying the “right of return” would turn pre-1967 Israel into a binational state with an Arab majority, and therefore that the Jews would lose their nation-state and their right to self-determination. And here Warschafski admitted that this is indeed his goal.

So Warschafski claims to love Israel but then says that he wants to undo Israel’s existence.

Warschafski got caught red-handed in his intellectual fraud on a live program, but unfortunately many of those who use legal arguments to de-legitimize Israel get away with their fraud.

The founder of the BDS movement, Omar Barghouti, says that it is a “moral obligation” to boycott Israel. Why? Because, Barghouti claims, Israel violates international law and commits war crimes;

because Israel denies the Palestinians their national rights; and because the very nature of Israel's regime is discriminatory and racist.

These are the three arguments I want to discuss today.

I claim that all three arguments are fraudulent for two reasons: a. because they are legally groundless; b. because those who use these arguments conceal their true aim behind the façade of international law, and their true aim is to deny the Jews their right to self-determination.

As I confront those arguments, I will also explain how they are promoted via the United Nations and via NGOs.

Let's start with the first argument, which is that Israel violates international law.

As you probably remember, there was a big controversy in Israel last month about the telecom company Orange after its CEO Stéphane Richard had declared in Cairo that his company would pull out of Israel immediately if it could.

Richard's declarations came shortly after an aggressive campaign orchestrated by French and Palestinian NGOs. In May 2015, a 51-page report entitled "**Orange's Dangerous Liaisons in the Occupied Palestinian Territories**" was collectively published by NGOs such as "Association France-Palestine Solidarité" and "Al-Haq."

On May 26, 2015, these organizations met with Orange's shareholders.

They asked Orange to "**publicly and explicitly state its decision to disengage and to denounce the human rights violations that Partner is involved in Israeli settlements in the OPT [Occupied Palestinian Territories].**"

Orange, of course, does not want to be accused of violating international law and human rights. Which is why it gave in to the pressure.

Except that Orange provides cell phone services in Nagorno-Karabakh, an area of Azerbaijan occupied by Armenia since 1992 (and considered an occupied territory by the United Nations and by the EU).

Orange is not alone of course. European and French companies operate in many occupied and disputed territories around the world.

French oil company Total, for example, renewed in February 2014 its license in occupied Western Sahara (despite the protests of the Sahrawi Arab Democratic Republic), and Michelin has a large factory in occupied northern Cyprus.

Obviously, Orange's activity cannot be legal in Nagorno-Karabakh and illegal in the West Bank. So, do Orange, Total and Michelin violate international law by operating in occupied or disputed territories?

According to European courts, the answer is no.

In 2013, a French court (the "Cour d'Appel de Versailles"), ruled that it is lawful for Alstom and Veolia to build a tramway in eastern Jerusalem because the Geneva Conventions do not apply to private companies.

In 2014, the Supreme Court of the United Kingdom ruled that the Israeli company Dead Sea Products' activity in the West Bank does not amount to a transfer of population and, therefore, does not constitute a violation of the War Crimes Act and of the Rome Statute.

Also in 2014, the Paris "Tribunal de grande instance" rejected a petition calling for the boycott of Israeli company SodaStream, which operates in the West Bank.

According to these three court decisions, there is no legal ground for penalizing companies that operate in the West Bank – even though those decisions are based on the theory that the Israel's partial control of the West Bank is illegal, and that the 1949 Geneva Convention applies to the West Bank.

This theory, however, is demonstratively false.

Before I explain why, let me clarify that I am not making a political judgement. There is no contradiction between saying that Israel is not an illegal occupier and between supporting Israel's withdrawal from the West Bank. Whether you support or oppose Israel's partial control of the West Bank, whether you blame Israel or the Palestinians (or both) for the stalemate, Israel is not breaching international law by not withdrawing to its pre-1967 boundaries.

When the United Kingdom unilaterally ended its Mandate regime over Palestine in May 1948, it left a legal void that was filled by the newly declared (and borderless) State of Israel. There was no Arab declaration of Independence on the territory that had been allocated to an Arab state by the UN partition plan of November 1947.

That plan, in any case, was a non-binding recommendation (like all General Assembly resolutions) and it became moot the moment it was rejected by the Arab League. Palestine, by contrast, had been allocated to the Jewish people for self-determination by the 1920 Treaty of Sèvres and by the 1922 League of Nations Mandate.

When Transjordan conquered the West Bank in 1948 and annexed it in 1950, it did so over a territory that had been allocated to Jewish self-determination by post-World War I international treaties.

This is why Jordan's sovereignty over the West Bank was never recognized by the international community (with the exception of Britain and Pakistan). When Israel conquered the West Bank in

June 1967, it did so in a legitimate act of self-defense (as opposed to Jordan's military aggression in 1948).

Israel did not cross an international border, but a temporary armistice line explicitly defined as such by the armistice agreements of 1949 between Israel and Jordan. Israel did not conquer a recognized sovereign territory, but one that had been allocated to the Jewish People by the League of Nations and that had been unlawfully controlled by Jordan for 19 years.

This is why many international law experts dispute the claim that the West Bank is an occupied territory and that the 1949 Geneva Convention applies to it.

Article 49 of the convention, which prohibits the mass transfer of populations into occupied territories, was meant to prevent what was a common German practice during WWII. This article was not meant to prevent the voluntary settlement of Jews in a land that was allocated to them for that very purpose by the League of Nations.

Which is also why United Nations Security Council Resolution 242 does not demand an unconditional and total withdrawal of Israel from the territories it conquered in June 1967. The condition for Israel's withdrawal is the **“termination of all claims or states of belligerency.”** This means that Israel is only expected to withdraw in exchange for peace (as it did after signing a peace agreement with Egypt). Such withdrawal, moreover, is expected to be **“from territories”** (and not “from the territories”). In other words, Resolution 242 makes Israel's withdrawal conditional and partial.

So far, the Arab states have been unable to pass a different resolution at the Security Council, mostly thanks to the US veto. At the General Assembly, on the other hand, they have passed literally hundreds of resolutions that call upon Israel to fully and unconditionally withdraw to the 1949 armistice lines, and that define any Israeli presence beyond that line as an illegal occupation.

The main difference between Security Council and General Assembly resolutions is that the former are binding while the latter are not. Which is lucky, because since the mid-1960s a coalition of like-minded countries has formed at the General Assembly, which grants Arab-states an “automatic majority” whenever they want to pass a resolution to condemn and defame Israel.

As Israel's former foreign minister Abba Eban once quipped, if the Arab states wanted to pass a resolution declaring that the world is flat, they would easily get a majority at the General Assembly.

This “automatic majority” has consequences over the whole UN system, because it is the same majority that determines the composition of UN bodies and that sets the agenda of UN conferences.

It is thanks to this automatic majority that Muammar Ghaddafi's Libya was elected in 2003 to chair the United Nations human rights commission. It is thanks to this automatic majority that, in May 2015, the annual assembly of the World Health Organization (WHO) adopted a resolution condemning Israel for allegedly violating the “health rights” of Syrians in the Golan Heights.

This resolution was adopted as Israeli hospitals treat Syrians who flee Assad's massacres.

The World Health Organization, of course, had nothing to say about the “health rights” of Syrians massacred by their government; of Yemenite victims of Saudi Arabia’s bombardments; or of Ukrainian victims of Russia’s rampant annexation of their country.

Saudi Arabia, which recently condemned Raif Badawi, a blogger who advocates free speech, to a thousand lashes and to ten years in prison, and which punishes its citizens with beheading and amputations, was elected in 2013 to the Human Rights Council. Saudi Arabia is in good company. Since its foundation in 2006, the Human Rights Council has included members such as China, Russia, Cuba, Pakistan, Mauritania (a country that practices slavery), Venezuela (under Chavez) and Ghadafi's Libya.

The Human Rights Council’s Charter has a special article (Article 7) which stipulates that any conference on human rights must hold a separate discussion on Israel. This stipulation applies only to Israel, and no other country in the world is subject to such treatment – not even actual and horrendous human rights abusers such as Syria, Saudi Arabia, China or Sudan.

And indeed, there is a disproportionate condemnation of Israel by the Human Rights Council. In its March 2013 session, for example, the Council adopted six resolutions against Israel, and only four for the rest of the world combined.

The automatic majority enjoyed by the Arab states at the UN is precisely what enables them to demonize and to de-legitimize Israel.

In addition, there are dozens of so-called human rights NGOs that defame and demonize Israel with the same messages.

If Israel was established to compensate the Jews for the crimes of which they were the victims, and if the Jews now commit those very same crimes, then the conclusion is obvious: the Jews no longer deserve their state.

And why should the Jews deserve and enjoy self-determination when they deny this right to others?

Which brings me to my second point.

So Israel denies the Palestinians their right to self-determination are we told.

When, in 1937, the Peel Commission recommended the partition of Mandatory Palestine between a tiny Jewish state and a much larger Arab one, the Jews accepted it and the Arabs rejected it. When, ten years later, the UN General Assembly recommended partition again, the Jews accepted it and the Arabs rejected it.

In July 2000, Israeli Prime Minister Ehud Barack accepted the establishment of a Palestinian state on 100% of the Gaza Strip and 92% of the West Bank with a Palestinian capital over the Arab neighborhoods of Jerusalem. Arafat said no. In December 2000, President Bill Clinton improved Barak's offer, with 96% of the West Bank and Palestinian sovereignty over the Temple Mount. Israel said yes, Arafat said no.

In September 2008, Prime Minister Ehud Olmert increased the West Bank offer to 99.5% after land swaps. He also accepted to relinquish sovereignty over Jerusalem's "holy basin" (including the Western Wall) to an international body and to accept a few Arab refugees to Israel proper. Mahmoud Abbas said he would get back to him but never did.

The reason why Arafat and Abbas rejected these offers is no matter of speculation. They explained why they said no or didn't say yes. The reason they gave is what they call the "right of return."

Mahmoud Abbas has said many times that he does not intend to return to his hometown of Safed, but that he cannot waive the right of other refugees and of their descendants to return to their homes and to become citizens of Israel.

In his address to the United Nations General Assembly in 2013, Abbas called for a solution to the Palestinian refugee problem in accordance with General Assembly Resolution 194.

In the Palestinian narrative, Resolution 194 grants a legal right to the Palestinian refugees and their descendants to settle in Israel and to reclaim the real estate and land they lost in 1948. It is time to set the record straight.

As I've already explained, General Assembly resolutions are mere recommendations. As opposed to Security Council Resolutions, they are not binding in international law. Resolution 194 is no exception: it is a non-binding recommendation. So even if this resolution recognized the right of Palestinian refugees and their descendants to return to Israel (which it doesn't) such recognition would neither be binding nor enforceable.

Article 11 of Resolution 194 says that **"the refugees wishing to return to their homes and live at peace with their neighbors should be permitted to do so at the earliest practicable date, and ... compensation should be paid for the property of those choosing not to return."**

The resolution doesn't talk about "Palestinian refugees" but about "refugees" as it refers to both Arab and Jewish refugees that were displaced as a result of war in the former British Mandate.

It mentions both return and compensation as possible solutions. But, mostly, it only refers to the refugees themselves and certainly not to their descendants.

This central point touches to the core of the refugee problem: the Palestinians claim that the refugee status and the "right of return" apply not only to the 1948 refugees but also to their descendants. This claim is groundless in international law and has no precedent in 20th century history.

In the 20th century, refugees were unfortunately a common phenomenon.

There was a 2 million population transfer between Greece and Turkey in 1923. After World War II, some 14 million Germans were expelled from Eastern Europe and became refugees. The partition of India in 1947 created a double refugee problem: over 7 million Hindu refugees and over 7 million Muslim refugees (with the breakup of Pakistan in 1971, some 10 million Bangladeshis became refugees as well).

The partition of British Palestine also created a double-refugee problem, though a much smaller one: some 600,000 Arab refugees from the newly established State of Israel, and some 900,000 Jewish refugees expelled from Arab and Muslim countries in the wake of the first three Arab-Israeli wars (1948, 1956, and 1967).

All in all, there were about 60 million refugees in the world in 1948, and the Palestinian Arab refugees represented 1% of the world's refugee population.

These Arab refugees could have been integrated in Arab countries with which they shared a common ethnicity, culture, language and religion. Instead, they were kept in camps and discriminated against by Arab leaders who cynically used them as pawns against Israel. Rather than trying to solve the Palestinian refugee problem, Arab leaders did everything to maintain it.

While the United Nations High Commissioner for Refugees (UNHCR) was established to solve the global refugee problem, the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) was created to maintain the Palestinian refugee problem.

Even though Palestinian refugees only represented 1% of the world refugee population in 1949, they were the only refugees for whom a special UN agency was established. The rest of the world's refugees were (and still are) treated by the UNHCR.

This unjustified institutional overlap has far reaching consequences, because of how UNHCR and UNRWA define refugees. While UNHCR defines refugees as forcibly displaced persons, UNRWA applies this definition to the refugees' descendants.

This is why the world's global refugee population decreased from 60 million in 1948 to 13 million in 2014, while the Palestinian "refugee" population has increased from 600,000 in 1948 to 5 million today.

It is time to put an end to this absurd and unjustified double-standard. There is no reason why the UNHCR's definition and jurisdiction shouldn't apply to Palestinian refugees. Incidentally, that would "reduce" the actual number of Palestinian refugees to about 50,000 (most of them are elderly by now). Alternatively, were the world to universalize the UNRWA algorithm, Poland would have to reintegrate the descendants of German refugees, and millions of Hindus and Muslims would have to re-cross the border between India and Pakistan.

The true meaning of UNGA Resolution 194 is that the actual Arab and Jewish refugees of 1948 should be compensated or allowed to reintegrate their lost homes.

But there is a UN resolution that is relevant and binding on the question of Middle Eastern refugees, and that is Security Council Resolution 242 (which I mentioned before).

Resolution 242 calls for **“achieving a just settlement of the refugee problem.”**

Arthur Goldberg, the US ambassador to the UN in 1967, explained at the time that the resolution **“refers both to Arab and Jewish refugees, for about an equal number of each abandoned their homes as a result of the several wars.”** Resolution 242 does not recognize a “right of return” for the descendants of the 1948 refugees, nor does it say that only the Arab refugees, but not the Jewish ones, are entitled to a “just settlement” (which cannot possibly mean granting to five million Arabs the option of becoming Israeli residents and citizens).

Of course, all this nonsense is promoted through the UN and through NGOs.

But the bottom line is that Israel does not violate international law by refusing to grant citizenship to five million people who claim descent from the half-a-million who were made refugees seven decades ago because of the folly of their leaders.

Of course, Israel implements its own right of return with its “law of return” (where do you think the Palestinians got the idea from?) But in the framework of a two-state solution the “right of return” would be applied separately in each nation state. The Palestinians, however, want to apply their return to pre-1967 Israel.

The consequence would be that Israel would no longer be a Jewish nation state since a majority of its citizens would be Arab.

That would be the end of Jewish sovereignty and of the Jews’ right to self-determination. How can that possibly be moral and just? Oh, well, that’s an easy one: you see, a Jewish state is by definition racist and discriminatory. So by rejecting the very legitimacy of Jewish statehood you’re actually doing a service to international law, to human rights, and to morality.

Which brings me to my third and last point.

The very concept of Jewish statehood is now denounced as undemocratic. How peculiar: the right to self-determination should apply to all peoples, except to the Jews?

The right to self-determination was recognized by the Versailles Conference after WWI, and it was implemented by the treaties that dismantled the Austro-Hungarian and Ottoman empires. This right was recognized to the Czechs and Hungarians in Eastern Europe, as well as to the Jews and to the Arabs in the Middle-East. So when, exactly, did the Jews (and only the Jews) lose that right?

Never, of course.

But those who can't stomach the idea of Jewish statehood claim that the Jews should be denied the right of self-determination for two reasons:

- a. The Jews should never have been granted this right in the first place because they are not a people but only a religion;
- b. Even if this right was granted to the Jews in the past and even if you admit that the Jews do constitute a nation, a state cannot be both Jewish and democratic, and therefore you cannot support Jewish statehood and be a true democrat.

What actually constitutes a people has been debated by historians, philosophers and anthropologists for decades and even for centuries. I shall spare you a review of the theories of peoplehood. But the bottom line is that when people express a strong feeling of national identity and are ready to fight for their independence, that should be good enough.

There are also objective elements of peoplehood such as language, a recorded history, a distinct culture, and an attachment to a homeland.

The Jews happen to meet them all. And the fact that Judaism and Jewish peoplehood are intertwined does not disqualify the Jews for self-determination.

If religious influence over national identity were to disqualify peoples from self-determination, then many countries would lose their right to independence. The list includes, the Islamic Republic or Iran as well as the Arab states where Islam is the official state religion. But the list also includes Japan, because of its national Shinto religion; Poland, because of the central role and influence of Catholicism in the national ethos; Denmark, which has an official state religion (Lutheranism); and even Great Britain, where the head of state is the head of the Anglican Church.

Many Israeli Jews are agnostic and their identity is purely secular. They consider themselves part of a Jewish nation even though they do not practice Judaism, or even because of that.

According to the theory that the religious factor is what disqualifies Jews from the right to sovereignty, only secular Jews are entitled to a country of their own. As it happens, however, even they don't fit the bill. That's because the words "Jewish" and "democratic" are supposedly incompatible, even if "Jewish" is understood as a secular concept.

I find it ironic that those who started propagating this idea that a state cannot be both Jewish and democratic are Israeli Arabs. It's ironic because I have yet to find a state that is both Arab and democratic, and because Israel is the only country in the Middle East where Arab citizens enjoy the rights and benefits of democracy.

But besides the irony, why should nation-state and democracy be incompatible only in the case of the Jews? Does anyone claim that a state cannot be both Czech and democratic? Danish and democratic? Japanese and democratic?

I mean, except for Belgium, all 28 members of the European Union are nation states. Are they not democratic? Being a nation-state means just that: being the state of a specific nation. Not all countries are nation-states but all nation-states grant privileges to the dominant nation: the language of that nation is the language of the state, its history is taught in public schools and expressed in national holidays.

Israel is no exception. It is both the nation-state of the Jewish people and a democracy that grants equal civil rights to minorities. As Israeli writer A.B. Yehoshua says, nobody expects Denmark to add a Muslim symbol to its flag in order to make its Muslim minority feel good.

Of course, many mention Israel's "law of return" as discriminatory. Again, notice the irony: the Palestinians would have their law of return apply not only to Palestine but also to Israel.

Israel's Law of Return is a humanitarian law. It is perfectly consistent with the right of nations to bring home their expatriates. According to the Venice Commission (an advisory body to the Council of Europe), European countries are entitled to encourage the immigration of their Diaspora.

Hungary does just that, as it grants a "right of return" to Hungarians living abroad. Yet I have to find someone who argues that a state cannot be Hungarian and democratic. There have admittedly been some illiberal and even authoritarian tendencies in Hungary under the government of Viktor Orban, but these tendencies have nothing to do with the fact that Hungary is a nation-state with a law of return.

Israel's immigration policy is consistent with international law, which allows for preferential treatment of certain immigrants, provided there is no discrimination *against* specific potential immigrants.

In addition, Israel's highly liberal High Court of Justice has produced a jurisprudence that makes every effort to conciliate between the privileges of the Jewish nation and the equal rights of the state's non-Jewish citizens.

In its 2000 *Ka'adan* decision, for example, the Court ruled that Arab citizens should be entitled to purchase land in a village set-up and funded by the Jewish National Fund for Jewish settlement. The court ruled that, even though the mandate and of the Jewish National Fund is to settle the land for Jews, preference should be given to complete equality between citizens.

By the way, in 1989, the Court ruled in the *Avitan* case that it is legitimate and legal to bar a Jew from buying land in a village set-up by the state for the Bedouin population.

In addition, the court has rejected over the years petitions meant to disqualify Arab parties that run for Knesset and that publicly deny the right of the State of Israel to exist. I wonder how many nation states in Europe allow parties to run while denying the very legitimacy of the state.

The idea that Israel cannot be both a nation-state and a democracy is therefore absurd and wrong. Either nation-states and democracy are compatible or they are not. They are compatible, of course,

as 27 of the European Union's 28 members can testify, as well as other democratic nation-states such as Japan and South Korea.

The fact that the claim about the alleged incompatibility between nation-state and democracy is only made in the case of Israel says it all about the intentions of those who make that claim.

But Israel's detractors are not content with propagating this idea. They also try to undo the legal framework that defines Israel as a nation-state. How? Via NGOs that petition Israel's High Court of Justice in order to repeal laws and government decisions that protect Israel's national identity.

Just to give you one example, Israel's High Court of Justice, was petitioned twice (in 2006 and in 2012) by Arab NGOs such as Addalah in order to repeal Israel's law on citizenship. This law was amended in 2003 so as to prevent family reunification of fictitious marriages between Arab Israelis and Arabs from the West Bank. The purpose of the petitioners is to implement the Palestinian "right of return" to Israel via the back door.

To conclude, I would say that the use of international law of and international organizations to delegitimize and to demonize Jewish nationhood and Jewish statehood are based on three arguments and on three organizations.

The three arguments are that: a. Israel is an illegal occupier guilty of war crimes; b. Israel denies the Palestinians their right to self-determination, including their "right of return;" c. Jewish statehood is by definition and by nature incompatible with democracy.

The main three international organizations and bodies used to promote those claims are the UN General Assembly, the Human Rights Council, and NGOs that call themselves human rights NGOS.

This propaganda and "lawfare" against Israel are not new. Back in 1975, the same propaganda and the same "lawfare" managed to pass a resolution at the UN General Assembly condemning Zionism as a form of racism.

This propaganda must and can be fought against by exposing the fraud and maliciousness of the three arguments I have just deconstructed in front of you.

As Edmund Burke said: "**All it takes for the triumph of evil is for good men to do nothing.**" If Jews and their sympathizers don't wage this struggle, nobody will do it for them. I hope I contributed today to better understand how we can fight back and win.