



OPINION and ANALYSIS

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A selection of some of the more challenging and thought-provoking
local and international writings on the Middle East

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(1) Editorial, Hezbollah unmasked
Saudi Gazette, 7 June 2013

In recognizing that Hezbollah, for all its attempts to portray itself as a responsible political movement, is in fact simply a terror group, the GCC member states have taken a bold and decisive step. No longer will Hezbollah be able to present itself convincingly as a champion of any Arab cause. No longer will it be able to pretend that its men are dying for the rest of the Arab world. By rushing to fight alongside Assad's faltering army and Shabiha militiamen, this terror group has allied itself with a government that has sought and failed to terrorize its own people into obedience.

(2) Raheel Raza, On Israel's President's Conference
Gatestone Institute, 7 June 2013

The first time I was invited to speak at this conference, three years ago, I went hesitantly, not knowing what it was all about. I was so enthused by both my visit to Israel and the conference that I wrote extensively about the experience on my blog, and later formed my own Not for Profit Organisation "Muslims facing tomorrow" with the idea that one day I would host a similar conference about ideas and a vision for a better tomorrow.

(3) Jonathan Tobin, The Muhammad cartoons and the Jews
Commentary Daily, 6 June 2013

The latest proof of what the U.S. State Department has rightly termed a "rising tide of anti-Semitism" in Europe comes from Norway where a major daily newspaper printed a blatantly anti-Semitic cartoon about circumcision.

(4) Richard Falk, Whose "two-state solution"? End game or intermission
Blog, 2013

Israel has much more spin control in the world media, especially if its narrative is backed by the United States, as has been the case in the past and would almost certainly be in the future. The likely hasbara assault would put the Palestinians in the position of once more being seen as rejecting what would be put forward to the world as generous Israeli proposals for a two-state solution that if looked at closely offered a statelet instead of a state.

(5) Daniel Pipes, When Sunni and Shiite extremists make war
National Review Online, 5 June 2013

The fighting underway now benefits those of us outside of the Middle East. Here's hoping it weakens both combatants even as our governments take meaningful steps to help civilians caught in the crossfire.

(6) Jonathan Tobin, Palestinians and the hands of time
Commentary Daily, 5 June 2013

Saeb Erekat is not asking for negotiations for peace but an attempt to turn back the hands of time and return the region to the moment in history before the 1967 Six-Day War victory changed the strategic balance in the region.

(7) Emily Hauser, Painting a Green Line through Jerusalem
The Daily Beast, 5 June 2013

There is a green line that runs through the city of Jerusalem. It exists only on maps, and pretty much only on maps not printed by the State of Israel or other Jewish institutions, but it exists, and it represents a part of the international border between Israel and the West Bank as of June 4, 1967.

(8) Jennifer Rubin, You can't be for a weak United States and a strong Israel
The Washington Post, 4 June 2013

Obama has been the worst president from Israel's perspective not only because he bullied Israel on the "peace process," but also because his left-wing isolationism, military retreats and broken promises have left Israel exposed and vulnerable to growing forces in the region who have opportunistically acted while the United States turned a blind eye.

(9) Robbie Sabel, Manipulating international law as part of the anti-Israel "lawfare"
JCPA, 2 June 2013

Israel's record of compliance with international law is remarkably strong. 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. The court has even intervened in actual combat situations.

Hezbollah unmasked
Editorial, Saudi Gazette, 7 June 2013

<http://www.saudigazette.com.sa/index.cfm?method=home.regcon&contentid=20130605168559>

There will be those who wonder why the GCC did not declare Hezbollah a terrorist organization long ago. Hezbollah rode high in the opinion of some after it threw back the 2006 Israeli assault on southern Lebanon. However, the reality has always been that this is a group that is entirely preoccupied with its own agenda and has no interest in promoting the unity and reconstruction of Lebanon.

Indeed, in order to protect its mini-state within the country, the Hezbollah leadership has been prepared to act as an agent for Iran and its Syrian ally Bashar Al-Assad. In return for dancing to Tehran's tune and seeking to carry out the disruptive interventions desired by the Iranian leadership, its militiamen have been armed and trained and the movement as a whole has seen many millions of Iranian dollars poured into its coffers.

Hezbollah leader Hassan Nasrallah may, however, have now overreached himself. Some wonder if he has not become a victim of his own propaganda about a militant and victorious organization and really believes that his forces are actually capable of turning the tide of defeat that is engulfing the Assad regime. Not only this, but he clearly had little idea of how, by throwing in its lot with the hated Assad, Hezbollah would unmask itself in the Arab world as an Iranian cipher. Even the leadership of Hamas, with which Hezbollah once had close relations, recoiled in disgust when it threw in its lot with the Assad dictatorship.

In recognizing that Hezbollah, for all its attempts to portray itself as a responsible political movement, is in fact simply a terror group, the GCC member states have taken a bold and decisive step. No longer will Hezbollah be able to present itself convincingly as a champion of any Arab cause. No longer will it be able to pretend that its men are dying for the rest of the Arab world.

Indeed, by rushing to fight alongside Assad's faltering army and Shabiha militiamen, this terror group has allied itself with a government that has sought and failed to terrorize its own people into obedience.

It must be wondered if some Hezbollah leaders do not already appreciate the considerable risks of rushing to the aid of a doomed regime. Once Assad is gone, there will be no easy supply line to Hezbollah-occupied areas of Lebanon. Nasrallah might have argued that it was for this very reason, plus the need to keep Iranian support, that its commanders simply had to send young Lebanese to Syria to fight and die alongside Assad's forces. But it will prove to be a desperate move.

When Syria is free, Hezbollah will be alone and isolated in its south Lebanon territory. Its murderous and malign influence in the country will be challenged by moderate Lebanese, who are fed up with its strutting thugs and the obstruction of its leaders in the country's delicate political process. The time is past when the Hezbollah leadership can pose as a champion of the Arab cause. Thanks to its slavish support for Iran and Syria, it has actually defined itself as an enemy of the Arab world in general and the Palestinian cause in particular.

Hezbollah needs to be seen for the ruthless terrorist organization that it really is and the GCC's decision to call it such is surely a crucial nail in the terror group's coffin.

On Israel's President's Conference

Raheel Raza, Gatestone Institute, 7 June 2013

<http://www.gatestoneinstitute.org/3754/israel-presidents-conference>

I would, in retaliation, host Saudi Arabia, Iran and Pakistan "Apartheid Weeks." Stephen Hawking has, apparently, no issues speaking in China and Iran, two countries with appalling human rights records. No one speaks about BDS of Saudi Arabia, where the list of human rights violations is endless. Where were their voices? Or Pakistan, with religious minorities facing persecution and violence against women? No one asked me to cancel my trip to Pakistan.

Recently I received an email from "a Palestinian in Vancouver," in Canada, asking me to boycott Israel's annual Presidential Conference, "Facing Tomorrow," soon in Jerusalem, where I have been invited to speak.

The request for my boycott cited as reasons Israel's human rights violations and mentioned that as Stephen Hawking boycotted the conference, perhaps I should, as well.

My response to my Palestinian friend is that the first time I was invited to speak at this conference three years ago, I went, hesitantly, not knowing what it was all about. I was so enthused by both my visit to Israel and the conference that I wrote extensively about the experience on my blog, and later named my own Not-for-Profit Organization "Muslims Facing Tomorrow" with an idea that one day, I would host a similar conference about ideas and a vision for a better tomorrow.

Upon my return, I praised the country and the people, but many of my Muslim friends were not interested in knowing these details. They only asked, "Were there any Palestinians at the conference and was the Israel-Palestinian issue discussed?" I was happy to respond that yes, there were Palestinians at the conference; I had even brought home a book on Islam from one of the Palestinian speakers there.

About human rights violations: granted that Israel, like every other country, has violations -- but far fewer than those of the countries surrounding it. Israel is still the only liberal democracy in the area where one can find gender equality and freedom for its citizens. During my visits to Israel, I have, in fact, questioned Israeli Arabs and found that they are loath to leave the country where they enjoy freedom and human rights.

As I am accredited to the United Nations Human Rights Council in Geneva, where I attend its sessions twice a year, I have a close connection with human rights. At the UNHRC, I hear a lot about humanitarian crises, and these do not include Israel. The OIC (Organization of Islamic Co-operation), for instance, -- a group of 57 Arab and Muslim States which has a permanent delegation to the United Nations and is the largest international organization outside the United Nations -- continuously slams and blames Israel for everything happening in the Arab and Muslim world and beyond. This incrimination of Israel has become the norm, and can be seen as a ruse to deflect or move focus away from the real problems besetting the Arab world.

BDS (Boycott, Divestment and Sanctions) against Israel is also not a new movement, but has taken on a life of its own at academic institutions all over North America. This movement has led to "Israel Apartheid Week" events, ugly and nonsensical, at many universities. If I were a student, I would, in retaliation, host Saudi Arabia, Iran and Pakistan "Apartheid Weeks." But I know that is not the solution to the problems besetting these countries, and the crux of the issue is how freedom of speech can become the fine line between hate mongering and truth.

This incrimination also highlights the double standards held by academics such as Stephen Hawking: he had no issues, apparently, speaking in China and Iran, two countries that have appalling human rights records. But that is his problem.

My problem is that I am from Pakistan, a country where the word human rights has no meaning or recognition whatsoever. According to the Human Rights Watch World Report on Pakistan for 2012, Pakistan had a disastrous year -- including increasing attacks on civilians by militant groups, religious minorities facing unprecedented insecurity and persecution, and where freedom of belief and expression are coming under severe threat as the presence of Islamists has grown by leaps and bounds. This does not even begin to address violations against women. The Aurat Foundation, a local women's rights group in Pakistan, says the number of incidents of violence against women in Pakistan has increased at least seven percent over the past year.

But I have never seen or heard a Palestinian speak out about these human rights violations; take part in demonstrations or boycotts for these offences, or show support for the cause of Pakistani women. Where were their voices when Christians and Shias were being killed and brutalized in Pakistan just a few months ago? No one asked me to cancel my annual visits to Pakistan, but I did lodge a complaint against my own land of birth at the UNHRC, so I may not be travelling back there soon.

Let us also talk about Saudi Arabia, a country where the list of human rights violations is endless. There is evidence, according to some UN reports, of torture; and lashing criminals is a common practice. Amnesty International published an annual report on the state of human rights in Saudi Arabia last week. The report covered a large range of human rights violations within the country -- everything from women's repression, migrant worker mistreatment, execution of minors, sectarianism, arbitrary detainment and torture was discussed. The largest section of the report, however, concerned the suppression of dissidents and the detainment of human rights defenders within the kingdom.

But no one ever speaks of BDS against Saudi Arabia. I think that all Muslims should boycott Saudi Arabia for one year at least.

In ending let me say this to my Palestinian friend: The Palestinian-Israeli conflict is over land, and can be solved when both sides recognize one another and, as equals, then have a dialogue. This means that, like me, you have to accept that Israel has a right to exist. It is not the only conflict related to Muslims. If you want justice for those facing criminal human rights violations, then speak out against Sudan, Egypt, Burma, China, Iran and all other countries who regularly persecute their own citizens.

Meanwhile I'm packing for Israel and counting the days. My friends there have grown in number, and I plan to have a wonderful time in that beautiful nation.

The Muhammad cartoons and the Jews
Jonathan Tobin, Commentary Daily, 6 June 2013

<http://www.commentarymagazine.com/2013/06/06/the-muhammad-cartoons-and-the-jews/>

The latest proof of what the U.S. State Department has rightly termed a “rising tide of anti-Semitism” in Europe comes from Norway where a major daily newspaper printed a blatantly anti-Semitic cartoon about circumcision. The cartoon, which depicts Orthodox Jews torturing and mutilating an infant while blood spatters everywhere in the panel, has provoked outrage around the world. But the editors of the *Dagbladet* are unrepentant.

The image not only seeks to delegitimize a traditional and safe Jewish religious ritual, but also adds to the troubling demonization of Jews at a time when Islamists and European Jew-haters have stepped up their attack. But rather than apologizing, the *Dagbladet* is doubling down on its slander. They are now claiming protests against a cartoon that was highly reminiscent of the Nazis’ anti-Semitic propaganda are no different than Muslim protests against the cartoons of the Prophet Muhammad published by the Danish newspaper *Jyllands-Posten*. This false analogy tells us all we need to know about European elites that are clueless about the difference between the haters and their victims.

Let’s first understand the differences between the Muhammad cartoons and the *Dagbladet* attack on circumcision.

The Muhammad cartoons were not part of a general campaign against Islam but rather a specific pushback by one publication against the efforts by Muslims to prohibit any reporting or discussion about terrorism motivated by Islam. Islamists around the globe have sought not merely to silence those who pointed out that the actions of Muslim terrorists stem from their religious beliefs but to brand any discussion of their faith or culture that is not laudatory as blasphemy that must be banned by law. The Muhammad cartoons were an attempt to answer a campaign against free speech with humor.

By contrast, the *Dagbladet* circumcision cartoon was part of a specific campaign aimed at banning a religious practice of both Jews and Muslims. The goal there was not, as with *Jyllands-Posten*, to defend free speech but to demonize Judaism and Jews in a manner highly reminiscent of the Nazis.

The reactions to the two cartoons are also very different.

The response to the *Jyllands-Posten* cartoons was a wave of riots and murders of non-Muslims across the Middle East and an intensified campaign of intimidation in Europe aimed at silencing those who criticize Islamist terror and its religious inspiration. Some of the cartoonists and editors involved are still in hiding in fear for their lives.

By contrast, the protests about the Norwegian cartoon, or, indeed any of those against the wave of anti-Semitism around the globe have resulted in nothing more than a few stern letters to the editor. The *Dagbladet*’s cartoonist isn’t in hiding and if no other newspaper will run it—except as an example of anti-Semitism—it isn’t because they fear Jews will kill them for doing so. While Muslims claim that the world is suffering from Islamophobia, what has really happened in the last few years is a process by which those who wish to criticize Islamists have been intimidated and which has also given anti-Semites impunity to demonize Jews.

Whose “two-state solution”? End game or intermission

Richard Falk, Blog, 2013

<http://richardfalk.wordpress.com/2013/06/06/whose-two-state-solution-end-game-or-intermission/>

From many sources there is a widespread effort to resume a peace process that has in the past led to failure, frustration, and anger, and often to renewed violence. The newly appointed American Secretary of State, John Kerry, is about to make his fifth trip to Israel since the beginning of 2013, insisting that the two sides try once more to seek peace, and warning if this doesn't happen very soon, the prospects for an agreed upon solution will be postponed not for just a year or two, but for decades. Kerry says if this current effort does not succeed, he will turn his attention elsewhere, and that the United States will make no further effort. So far, aside from logging the air miles, seems perversely to be responsive to Tel Aviv's demands for land swaps to allow settlement blocs to be incorporated into Israel and to promote further Palestinian concessions in relation to security arrangements, and totally unresponsive to Ramallah's demands for some tangible signs from the Israeli government that resumed negotiations will not be another slammed door. In this vein, Kerry's most ardent recent plea was at the Global Forum, an annual event organized under the auspices of the American Jewish Committee. Kerry told this audience that they possessed the influence to make the peace talks happen.

Somewhat surprisingly, even Marwan Barghouti writing from prison, has seemingly endorsed this Washington activism, and seemed to go further, calling upon the United States Government to use its leverage with Israel to resolve the conflict in a manner that recognizes Palestinian rights, and at the same time serves the broader American interest of stability in the Middle East. If Barghouti's response to written questions submitted by Adnan Abu Amer of Al-Monitor, and published on May 28, 2013, is read carefully, it reinforces an extremely pessimistic assessment of current prospects for peace. Barghouti is urging the U.S. Government that it must make a 180 degree turn away from its posture of unconditional support for Israel if it wants to be credible with Palestinians in the search for a solution to the conflict that accords with natural justice. The United States would need, above all, to insist that Palestine becomes a fully sovereign state within the 1967 borders, have East Jerusalem as its capital, while supporting the full implementation of UN Resolution 194 that affirms the right of return of Palestinian refugees, and the removal of the settlements without noting any exceptions. These are all reasonable positions to take, each in furtherance of the relevant standards of international law. Yet it must be observed, and I am sure this is not news to Mr. Barghouti, Palestinian reasonableness in the context of the Israel/Palestine struggle means choosing *not* to be *politically relevant*.

It is from precisely this perspective that Barghouti words should be carefully and respectfully pondered. He calls the two-state solution “the only possible solution” and adds that it “must not be abandoned.” It is a vision of a two-state solution that comes superficially close to what the Israeli peace activist, Uri Avnery, advocates, but seems light years away from the kind of ‘solution’ that Israel might consider or Kerry advocate. In other words, there are *two* radically different two-state solutions that are often not being carefully distinguished: what might be called ‘the American conception,’ originally detailed in Barack Obama's May 21, 2011 speech delivered at the U.S. State Department, which at the time of its utterance seemed to look toward Israel's withdrawal to 1967 borders, with minor border adjustments, but included a general acceptance of Israel's refusal to implement the Palestinian right of return behind the green line and its expectation that the main settlements would be incorporated into Israel sovereign territory. As so often has happened during the Obama presidency, what seemed initially forthcoming, was soon altered by backpedaling in a manner that has severely damaged American credibility as a fair-minded third party. The U.S. Government in this instance has gradually come to acquiesce in, even if does not openly avow, these Israel's unyielding demands, which makes Washington approach to the idea of two states for two peoples radically different than the Barghouti/Avnery conception of Palestinian statehood and self-determination. This latter conception is premised on the establishment of a genuinely sovereign and independent Palestine with East Jerusalem as its capital, and a genuine equality of the two states on matters bearing on security, resources, and refugee identity. There are, to be sure, important differences between Barghouti and Avnery with respect to the right of return, with Avnery opting for a more territorial view of the conflict consistent with the more moderate and humane Zionist views about limiting rights of Palestinian

refugees and of the second-class status of the Palestinian minority living in Israel, but still rather far from the Barghouti position on these crucial matters so often ignored by the Western media.

In the background is the persisting unwillingness of the Netanyahu government, despite the overall backing it receives from Washington, to make Kerry's life easier by undertaking some obvious confidence-building gestures: a settlement freeze and the release of some Palestinian political prisoners. Netanyahu insists on no preconditions for resumed negotiations, which means no letup in settlement expansion, no lifting of the Gaza blockade, and the continuing abusive treatment of the West Bank population. Kerry was probably hoping that his remarks at the AJC event would generate some pressure on Netanyahu to be somewhat more forthcoming. It is clear that if the Palestinian Authority are to enter direct negotiations while settlement expansion continued unchecked, it would likely be extremely detrimental to the claims of Mahmoud Abbas to be the sole legitimate voice of the Palestinian people, a view that Barghouti rejects despite his Fatah affiliation.

If Netanyahu was more adroit he could yield on these confidence-building prerequisites, and put Abbas in a bind. What has the Palestinian Authority to gain by entering into negotiations with an unabashedly expansionist and settler oriented Israeli government? Perhaps, it would win momentary favor in Washington. But for what benefit in relation to the struggle of the Palestinian people for a just solution? There are no signs whatsoever that Israel would even consider an outcome for negotiations that remotely resembled the Barghouti/Avnery two-state conception even if their differences are set aside for the moment. What would likely happen is that the negotiations would breakdown, as in the past, with the Palestinians receiving the lion's share of the blame. Israel has much more spin control in the world media, especially if its narrative is backed by the United States, as has been the case in the past and would almost certainly be in the future. The likely *hasbara* assault would put the Palestinians in the position of once more being seen as rejecting what would be put forward to the world as generous Israeli proposals for a two-state solution that if looked at closely offered a statelet instead of a state, and even then subject to a humiliating and intrusive Israeli regime of control, all in the name of security, which should recall the disingenuous Israeli claim that its 'disengagement' from Gaza in 2005 put an end to the 'occupation' of the Gaza Strip.

Barghouti distance from what Kerry is trying to broker was also underscored by his expression of anger directed at the recent acceptance by the Arab League of modifications of its 2002 Arab Peace Initiative made in response to pressures exerted by Kerry. Barghouti's comment on this aspect of Kerry's diplomacy is worth reproducing: "The Arab Peace Initiative is the lowest the Arabs have gone in terms of a historical settlement with Israel. The statements of the Arab ministerial delegation to Washington in regards to amending the 1967 borders and accepting the land-swap inflict great damage on the Arab stance and Palestinian rights, and stimulate the appetite of Israel for more concessions. No one is entitled to amend borders or swap land; the Palestinian people insist on Israel's full withdrawal to the 1967 borders, in addition to removing the settlements." In effect, what Kerry put forward as a diplomatic coup, Barghouti denounced as an Arab betrayal. It all goes to show that there are many contradictory understandings cohabiting within the two-state tent.

It is notable that Barghouti also warns Israel and the United States that reliance on the status quo, which seems so comfortable from Tel Aviv's perspective in recent years, is dangerously shortsighted: "security cannot be achieved without peace." And further by implication, although not expressed in these words, "peace cannot be achieved without justice." In this spirit of defiant nationalism, Barghouti also affirms that a right of resistance belongs to the Palestinian people, but its exercise should be sensitive to the limits of international law—"The tortured and oppressed Palestinian people have the right to defend themselves by all means approved by the UN Charter and international law. Total resistance is the most effective." Barghouti in his responses strongly stresses the importance of moving to fulfill the tentative agreement between Fatah and Hamas to achieve Palestinian unity, while restating his awareness that resolving the refugee issue is central to a just solution while reaffirming his faith in an eventual Palestinian victory.

Both Kerry and Barghouti reject a one-state solution as not of any political interest, unfortunately leaving the peace process where it currently belongs—in an undurable limbo of indefinite extension. Netanyahu and Kerry have a Plan B that might really be their Plan A. It involves what Netanyahu shamelessly calls an 'economic peace,' a persistence of the occupation and status quo, but in a manner that makes life materially somewhat better for West Bank Palestinians (Gazans are nowhere

to be found on this most dubious 'map of conscience.'). It cannot be a coincidence that at this time Kerry is peddling a scheme to induce \$4 billion of investment in the West Bank, presumably to convert the occupation and Palestinian statelessness into a new kind of 'golden arch.' The moment may have arrived to chase the moneychangers from the temple!

In pondering this dismal landscape of peace talk without peace, one wonders what became of 'the roadmap' and 'the Quartet.' It may be a small blessing that their irrelevance is being tacitly acknowledged. These creations never seemed more than a thin and deceitful veil thrown over a one sided American control over Israel/Palestine diplomacy. [For compelling documentation see Rashid Khalidi's *Broker of Deceit* (2013)] In this sense the boldness of Kerry's statecraft and Barghouti's implicit recognition that the peace ball is in America's court at least moves in the direction of 'eyes wide open.' For Kerry this means another set of grand gestures, for Netanyahu it means remaining immobile in the comfort zone created by the Palestinian shift away from the tactics of violent resistance, for Barghouti it means a call for resistance, a plea for more solidarity, and a kind of longing for an Israeli, or even an American, France's DeGaulle or South Africa's De Klerk who both dramatically ruptured prior expectations by replacing confrontation with accommodation. Until something as drastic as this occurs, although not necessarily the work of a charismatic counter-hero, we need at least to have the honesty to admit that the end of the tunnel is dark except for occasional flickers of light. I discern such a flicker in the undertakings of those engaged in a legitimacy war against Israel, step by step gaining the high moral and legal ground, which may soon uncover political tipping points that will abruptly alter the relations of forces in support of Palestinian justice claims. The Palestinian Legitimacy War combines Palestinian resistance with a global solidarity campaign that is being waged on a global battlefield.

When Sunni and Shiite extremists make war

Daniel Pipes, *National Review Online*, 5 June 2013

<http://www.danielpipes.org/12961/syria-sunni-shiite-extremists>

In his article "[The Muslim Civil War](#)," Bret Stephens of the *Wall Street Journal* disagrees with my argument about Syria. He characterizes the position I hold this way:

If al Qaeda fighters want to murder Hezbollah fighters and Hezbollah fighters want to return the favor, who in their right mind would want to stand in the way? . . . If one branch of Islam wants to be at war with another branch for a few years — or decades — so much the better for the non-Islamic world. Mass civilian casualties in Aleppo or Homs is their tragedy, not ours. It does not implicate us morally. And it probably benefits us strategically, not least by redirecting jihadist energies away from the West.

Wrong on every count.

Why wrong and on how many counts? Actually, Stephens points to just one count: He looks back on the Iraq-Iran war of the 1980s, arguing that it harmed both the West's interests and its moral standing. He assesses its impact on the West:

It's true that the price of crude declined sharply almost every year of the war, but that only goes to show how weak the correlation is between Persian Gulf tensions and oil prices. Otherwise, the 1980s were the years of the tanker wars in the Gulf, including Iraq's attack on the USS Stark; the hostage-taking in Lebanon; and the birth of Hezbollah, with its suicide bombings of the U.S. Marine barracks and embassy in Beirut. Iraq invaded Kuwait less than two years after the war's end. Iran emerged with its revolutionary fervors intact — along with a rekindled interest in developing nuclear weapons. In short, a long intra-Islamic war left nobody safer, wealthier or wiser.

He finds that the fighting left the West morally tainted.

The U.S. embraced Saddam Hussein as a counterweight to Iran, and later tried to ply Iran with secret arms in exchange for the release of hostages. Patrolling the Strait of Hormuz, the USS Vincennes mistakenly shot down an Iranian jetliner over the Gulf, killing 290 civilians.

Stephens concludes that "inaction only provides moral safe harbor when there's no possibility of action."

I'll start my reply by praising Bret Stephens as one of the finest foreign-policy analysts writing today and someone I recently congratulated on his winning the [Pulitzer Prize for commentary](#). I like him and respect his views. That said, here is my response:

1. The Iraq-Iran war of 1980–88 and the Syrian civil war differ in a decisive way. The former directly involved the world's energy center, the latter does not. The Iraq-Iran war threatened the global economy, the Syrian conflict does not.
2. Stephens focuses on relatively minor disadvantages of the Iraq-Iran war. Seen from the perspective of a quarter-century later, the conflict did bring the major benefit of weakening both combatants. Khomeini enjoyed a vast reach among Muslims at the war's start but lost this power by its end; not a single other country experienced an Iranian-inspired Islamic revolution, and the much-feared domino effect fizzled. Similarly, Saddam Hussein's Iraq never recovered from the terrible costs of its war with Iran; although still powerful enough to conquer defenseless Kuwait in 1990, its forces were no match whatsoever for the American-led troops in 1991 and 2003.
3. The civil war in Syria has also benefited the West until now: It set Sunni extremist against Shiite extremist, weakened the governments of Iran and Syria, harmed the Hezbollah and [Hamas](#) terror organizations, caused the malign AKP government of Turkey to stumble badly for the first time in its ten-year reign, and created troubles for Moscow in the Middle East. More broadly, a region that constantly threatens the outside world has become so focused on its own travails that its capacity to make trouble for others is reduced.
4. As for the moral question: I emphatically agree with Stephens that we who have the means should help those in need. But does he really believe that a victory by either the Islamist rebels or the Assad government, given their horrific battlefield records, would signal an improvement in civilian conditions? I suggest instead that Western powers use their influence to get the battling forces out of the populated areas.

The fighting now underway benefits those of us outside the Middle East. May it weaken both combatants even as our governments take meaningful steps to help civilians caught in the crossfire.

Palestinians and the hands of time

Jonathan Tobin, *Commentary Daily*, 5 June 2013

<http://www.commentarymagazine.com/2013/06/05/palestinians-and-the-hands-of-time-latrun-erekat/>

This week marks the 46th anniversary of the Six-Day War and it cannot be said that the Palestinian Authority has neglected to remember the occasion. Earlier this week the PA's chief "peace negotiator" Saeb Erekat schlepped a group of foreign journalists to Latrun, the crossroads town that once served as the choke point for the 1948 siege of Jerusalem to remind them—as well as Palestinians and Israelis—that what he is asking for is not negotiations for peace but an attempt to turn back the hands of time and return the region to the moment in history before the Israeli victory in 1967 changed the strategic balance in the region. As the *New York Times* reported:

"I am sure many of you are asking why is Saeb Erekat bringing you to this point," Mr. Erekat said to a group of diplomats and reporters as he stood against a backdrop of green fields, a reservoir and an Israeli settlement of red-roofed houses in the valley below.

"It is not because I want to demarcate the maps or finalize the negotiations," he said, referring to the intensive efforts of Secretary of State John Kerry to get the Israelis and Palestinians to return to peace talks. "I just want to stand here and say, 'It is 46 years later.'"

Erekat's candor is in a sense quite commendable. Latrun is a potent symbol of the nature of the Israel that existed in those halcyon days before the obstacle to peace was the presence of Jews in the West Bank and in which a small state with indefensible borders and a capital that could be isolated with ease stood on the precipice of destruction as Arab armies began to mass on its borders. Erekat was

sending a clear message to Israelis that if they thought the PA would ever accept the fact that the world had irrevocably changed in those 46 years they could just keep dreaming.

As Erekat well knows there now exists a broad consensus within Israel about the desirable nature of a two-state solution. That consensus includes Prime Minister Netanyahu and most of the members of his government. Indeed, even the Israeli right knows that if the Palestinians ever offered a complete end to the conflict and recognized the legitimacy of a Jewish state no matter where its borders were drawn they would find the majority ready to make painful territorial sacrifices. But by laying down a marker on Latrun—a place that no Israeli in his right mind would ever consider leaving—Erekat was making it clear their real priority was not peace but an effort to merely continue the conflict on more advantageous terms.

Indeed, reminding Israelis of the Israel that existed from 1949 to 1967 is not exactly the way to reassure his ostensible peace partners of the PA's good intentions. But of course what else can you expect of a peace negotiator that has boycotted peace talks for the past four and a half years?

The actions of Erekat and his boss PA leader Mahmoud Abbas show just how much of a fool's errand Secretary of State John Kerry has sent himself on by seeking to revive talks with the Palestinians. The PA says it will talk with Israel but only if Netanyahu promises in advance to use the armistice lines that stood until June 4, 1967 as the starting point for negotiations with the clear implication that they will accept little if any alterations to them.

Though Kerry and those American Jews who are cheering his efforts on seem to forget, Israel offered the Palestinians an independent state in almost all of the West Bank, Gaza and a share of Jerusalem in 2000, 2001 and 2008 and were turned down every time. The latter offer even included a codicil from Ehud Olmert abandoning Jewish sovereignty over the Old City and the Western Wall. But even those terms were not enough to tempt Abbas to give up the conflict.

If the Palestinians were really interested in peace, they could do what President Obama asked them to do this past spring and negotiate without preconditions as Netanyahu has always been prepared to do. But since doing so would put them in a position where they might be forced to either say yes to an accord, which is unthinkable given the realities of Palestinian politics, or no, which would demonstrate that it is not the Israelis who don't want to make peace, they will continue to find excuses to stay away from the table.

But instead of negotiating, they continue to talk about forcing the Israelis to accept the so-called "right of return" for the descendants of the Palestinian refugees of 1948—something that means the end of the Jewish state and grandstanding at Latrun—which reminds Israelis of what a return to the 1967 lines would mean.

Instead of trying to move the clock ahead to a time when Palestinians will have finally rejected the politics of hate and war, Erekat and Abbas continue to appear more interested in turning it back to a moment when there was not a single Jew living in the West Bank, Eastern Jerusalem or the Old City. It is no small irony that there was not only no peace when there were no settlements but also no Palestinian independence. If the PA ever truly wants a state as opposed to a never-ending conflict, the Israelis will be ready. History cannot go backward even if the Palestinians wish it could.

Painting a Green Line through Jerusalem

Emily Hauser, *The Daily Beast*, 5 June 2013

<http://www.thedailybeast.com/articles/2013/06/05/painting-a-green-line-through-jerusalem4.html>

There is a green line that runs through the city of Jerusalem.

It exists only on maps, and pretty much only on maps not printed by the State of Israel or other Jewish institutions, but it exists, and it represents a part of the international border between Israel and the West Bank as of June 4, 1967.

It exists even though official Israel and its supporters have done everything within their not-inconsiderable power to erase it in word and deed, creating a municipal behemoth that is currently one hundred times larger than the city was a century ago, pushing Palestinians out of neighborhoods and family homes and rendering fundamentally unholy the very city towards which Jews pray three times a day.

An activist paints a literal Green Line on June 5, 2013 in Jerusalem, Israel. (A. Daniel Roth)

Today is June 5, of course, the anniversary of the opening salvos of the 1967 Six Day War in which Israel captured Jerusalem and the West Bank from the Jordanian army, the day to which many Israeli and Diaspora Jews look as the beginning of a miraculous liberation of our holy city—which is why a small group of Israeli and Diaspora activists chose this day to remind the world that no amount of governmental sleight-of-hand can change the fact that a border exists, and it runs through the very heart of a city that is endlessly declared Undivided.

Anti-occupation collective All That's Left brought out paint and brushes, got down on the ground, and painted a literal green line where it exists on maps and should exist in political reality. Presumably because they're good citizens (in Hebrew parlance, *yeladim tovim Yerushalayim*), rather than paint directly on the ground, they painted on long pieces of cardboard, and as they painted, they engaged with onlookers.

"Some have joined in the painting, others have yelled 'Jerusalem is only for Jews!'," activist A. Daniel Roth tweeted as he painted, and later: "Religious Jewish woman agrees extremism is a problem, but won't concede the occupation is the cause.... Now the police are reading our literature and asking about the greenline that we are painting."

Activist Emily Schaeffer explains: "It's disturbing to me that the average Israeli or visitor to Israel is able to go about daily life without noticing the occupation and oppression that exist on the other side of the Green Line, and that is because that line has been erased, both literally and conceptually."

And of course, Israel has erased the international border, the Green Line, in many, many places, all up and down the West Bank, via settlement construction, Israeli-only roads, and the land-grabbing Security Barrier. The simple act of brushing green paint down a Jerusalem sidewalk was intended, activists say, to call attention to the entirety of occupation—not just that in the nation's capital—on the anniversary of its beginning.

Yet it's undeniable that the occupation is most easily denied in Jerusalem. Israeli and Diaspora Jews know what and where the West Bank is—they might support Israel's settlement in that land, but they can't fool themselves that it's anything but a military occupation, at least for now.

But the average Israeli long ago stopped thinking of Gilo, Pisgat Ze'ev, Ramat Eshkol, and French Hill as settlements. They're just neighborhoods. Nice places to live, where the kids can run through the hilly yards behind sandstone apartment blocs.

Reminding them, the Diaspora community, and the world at large that these neighborhoods (and many more like them) are every bit as illegal as the West Bank hilltop communities they see on the nightly news is an important, subversive act.

Because if American and Israeli Jews are going to support the settlement project and all it entails—occupation, human rights violations, a possible end to the two-state dream—they need to be honest about it. They need to actually see what it means, especially in our holy city.

Green paint and cardboard are a good place to start.

You can't be for a weak United States and a strong Israel

Jennifer Rubin, *The Washington Post*, 4 June 2013

<http://www.washingtonpost.com/blogs/right-turn/wp/2013/06/04/you-cant-be-for-a-weak-united-states-and-a-strong-israel/>

On both the far left and far right a curious sentiment has arisen. It goes like this: *We should be a great friend of Israel, but we need to cut defense spending, cut foreign aid and retreat from conflict.* Unfortunately, those two sentiments are inherently contradictory. In fact the worst possible thing for Israel is a power vacuum left in the wake of U.S. retrenchment.

Let's look at a couple concrete examples. If we don't modernize our Navy, then we won't be able to put carriers in the region to deter aggression. If we refuse to act in Syria, then Hezbollah surges in and threatens war on Israel's northern border. If we race for the exits and fail to work out a status of forces agreement in Iraq, then we empower and encourage the genocidal Iranian regime. In the 1960s and early 1970s, as U.S. power ebbed, the Soviet Union moved into the Middle East to bolster and encourage Israel's enemies.

Conversely when we do act, we advance our own self-interest and that of Israel. In the case of the Yom Kippur war, we supplied and resupplied Israel and raised the alert status of our nuclear forces to fend off the Soviets; not only did Israel survive the war but also Egypt's defeat helped dislodge Anwar Sadat from the Soviet orbit and make peace with Israel. In that case Israel had a willing partner in Sadat, but without U.S. resolve in the Yom Kippur war it is hard to conceive of a peace treaty between Egypt and Israel.

This isn't to say every intervention is wise or that we haven't made mistakes in managing wars and choosing friends. Intervention is not always appropriate. The need for a forward-leaning U.S. foreign policy doesn't resolve the dispute over the advisability of the Iraq war (although only in the aftermath of the U.S. action did the Iranian mullahs turn off the centrifuges). But it does not mean President Obama's policy of retreat, avoidance and retrenchment is good for us or the Israelis. Take a look at the Middle East if you have any doubts. Sure we can say we have Israel's back; but Israel is safest when the U.S. is the predominate super power in the region.

When diehard leftists and right-wing conservatives say we can't be the "world's policeman" what that really entails is leaving Israel and our other allies on their own. In sum, isolationism is incompatible with being a reliable ally to Israel.

There is no more frightening or comical sight than Secretary of State John Kerry lauding the prospects of a peace conference on Syria. Even a high school history student knows that successful diplomacy requires the hard power to back it up and the credibility that we will enforce the terms of a deal.

Obama has been the worst president from Israel's perspective not only because he bullied Israel on the "peace process," but also because his left-wing isolationism, military retreats and broken promises have left Israel exposed and vulnerable to growing forces in the region who have opportunistically acted while the United States turned a blind eye.

Manipulating international law as part of the anti-Israel "lawfare"

Robbie Sabel, JCPA, 2 June 2013

<http://jcpa.org/article/manipulating-international-law-as-part-of-anti-israeli-lawfare/>

- *Israel's record of compliance with international law is remarkably strong. 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. The court has even intervened in actual combat situations.*
- *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.*
- *Israel's detractors invented a new international legal concept called "illegal occupation." In an armed conflict, international law clearly permits military occupation. The UN Security Council has never declared Israeli occupation to be illegal. U.S. occupation of Iraq after the Second Gulf War was universally considered a legal act.*

- *It is often presented manipulatively as a legal axiom that the Green Line already has the status of a legally binding border. By signing a peace agreement, Israel and Jordan have now mutually acknowledged the termination of the Armistice Agreement and its demarcation line. The validity of an armistice line expires with the expiration of the armistice. Therefore, formally, there is no longer any legal validity to the Green Line.*
- *By any accepted legal standard, Gaza is not under Israeli occupation. 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.” Again, there appears to be a unique definition of “occupation” applicable only to Israel.*
- *The essence of any legal system is that law applies equally to all. 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.*

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. All the Arab states that were UN members at the time voted against the resolution, as they objected to any recognition of Israel. The General Assembly has subsequently readopted the part of the resolution concerning the refugees.

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.” 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.

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. 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.

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, U.S. occupation of Iraq after the Second Gulf War was universally considered a legal act and its legality even received explicit confirmation by the Security Council. 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." The major regional human rights treaties explicitly clarify the phrase "their own country" as applying only to nationals of the country. Some academicians believe such a right should also apply to permanent residents, 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.

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.”

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. Those calling the fence the “apartheid wall” make frequent reference to the advisory opinion of the International Court of Justice on the issue. 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, 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.” 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.” Among the prominent features of the South African apartheid policies were: prohibition of marriages between white people and people of other races; prohibition of extramarital sexual relations between white and black people; prohibiting a black person from performing any skilled work in urban areas except in those sections designated for black occupation; prohibiting strike action by blacks; preventing Africans from receiving an education that would lead them to “aspire to positions they wouldn't be allowed to hold in society.” Black students were banned from attending major white universities. 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. 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. One website writes that “apartheid began and is rooted in the very establishment of the colonial Jewish State.” 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.” 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.” 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, and that it should not be “interpreted as prejudicing, in any sense, an ultimate political settlement between the Parties.” 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.” 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. 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-demarcation 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.

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." The Jordanian judge Al-Khasawneh, in his separate opinion, wrote that "There is no implication that the Green Line is to be a permanent frontier." 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."

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." 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." In a later case the court reconfirmed its position, stating that

“Occupation required the exercise of *actual* authority by the foreign forces” (emphasis added). 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.” 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.”

For political reasons the PLO wants to retain Gaza’s status as “occupied” territory. What is more surprising, however, is that the International Committee of the Red Cross continues to maintain that Gaza is under Israeli occupation. 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. Second, measures of self-defense must be proportionate to the threat. 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 and prevent and minimize civilian casualties.

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.” 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 U.S. judges on the court were the only ones who refused to concur with this startling ruling.⁵⁰ 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.”

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.

NOTE: The views expressed in certain articles are not necessarily those of the SAZF

South African Zionist Federation

Tel : (011) 645-2505

Fax: (011) 640-6758

E-mail: froma@beyachad.co.za

Website: <http://sazionfed.co.za>

PBO NUMBER: 930014277