

The Hague Initiative for International Cooperation

Why

No other nation on earth has been the subject of so much attention, criticism and condemnation by the international community as Israel in the last seven decades.

Israel is the only member of the United Nations that so far has not been eligible for representation in the Security Council. US Ambassador Samantha Power admitted in December 2016 that Israel has been the subject of inordinate discrimination in the UN General Assembly, which in 2016 passed 18 resolutions directed against Israel. Outgoing UN Secretary-General Ban Ki-Moon confirmed in his final speech that the U.N. has a “disproportionate volume of resolutions, reports and conferences criticizing Israel,” and that “in many cases, rather than helping the Palestinian cause, this reality has hampered the ability of the U.N. to fulfill its role effectively.”¹ Israel has been and still is the object of a disproportional criticism by UN Human Rights institutions.² Thirty percent of the resolutions concerning specific states adopted by the UN Human Rights Commission in the forty years of its existence were against Israel. In the last few years this percentage was even 50%.³ Israel is the only country that warrants a dedicated place on the agenda of the UN Human Rights Council. A number of leading specialists in the field of international law ardently promote the view that Israel is one of the world’s foremost infringers of international law. An army of current and former prominent politicians⁴ and theologians⁵ spare no effort to publicize the view in the media that Israel is guilty of serious breaches of international law, and even that Israel and its leaders should be prosecuted for crimes against humanity. Prominent non-governmental organizations (NGOs) such as Amnesty International and Human Rights Watch devote proportionally more attention to alleged human rights offences in Israel and the Palestinian territories than any other nation. A plethora of non-governmental organizations have been established to promote the cause of the Palestinians and condemn Israel for breaches of international law, many of which receive significant funding from Western nations and institutions.

Public discourse focuses with almost religious intensity on the “vision of two States” - “an independent, sovereign, democratic, contiguous and viable State of Palestine living side by side in peace and security with Israel on the basis of the pre-1967 borders”⁶. What was initially conceived as a pragmatic, political objective to be achieved through diplomatic means has today become an item of faith, increasingly seen as the only possible solution for the conflict. Those who question the “two-State solution” – for whatever reason - are often accused of standing in the way of peace. In late December 2016, soon before leaving office, former US Secretary of State John Kerry stated that the two-state solution is “the only possible way of ending the Israeli/Palestinian dispute”, and therefore any

¹ <https://www.breakingisraelnews.com/80352/un-head-ban-ki-moon-admits-anti-israel-bias-departing-speech/#YPwOE0k9oCBD16Ji.9>

² The UN Commission for Human Rights and (since 2006) the UN Human Rights Council.

³ UN Watch, *The United Nations and Anti-Semitism*, Report Card, 46, footnote 147, (2004-2007).

⁴ For example, former US President Jimmy Carter calls Israel an “apartheid state”. Former Prime Minister of The Netherlands Dries van Agt is one of the foremost critics of Israel in Europe.

⁵ For example: Archbishop Desmond Tutu, John Stott, Stephen Sizer, Henri Veldhuis, Hebe Kohlbrugge and other European and Anglo Saxon theologians.

⁶ G. A. Res. 67/19, para.4.

actions that impede that solution are themselves obstacles to peace and in contravention of international law. It is increasingly alleged that international law requires Israel to withdraw to the so-called 1967 borders (perhaps with some minor amendments or land swaps), and mandates the creation of the new Islamic state called “Palestine” with “East Jerusalem” as its capital.

The widely-accepted opinion now seems to be that Israeli settlements in Jerusalem and the West Bank are illegal and the main impediment to the negotiations between the Palestinians and Israel, the creation of the State of Palestine, and therefore a major obstacle to world peace. International law, it is declared, demands an end to “the occupation that began in 1967”, the removal of all “Israeli settlements”, the division of Jerusalem and the creation of a Palestinian State based on the so-called pre-1967 borders. Some argue that the world community is entitled – perhaps even required – to impose measures such as boycotts, divestments and sanctions to achieve this end.

The European Union and its Member States are taking a lead role in this approach, which is primarily being played out within the UN institutions. Since the early 1970s, EU policy has been committed to the establishment of a Palestinian state based in principle on the “pre-1967 borders”. In recent years there has been increasing pressure within the EU to impose measures such as the labeling of products, and stimulation of boycotts, divestments and sanctions in order to force Israel to dismantle its settlements and remove the security barrier, in accordance with the 2004 Advisory Opinion of the International Court of Justice (ICJ)⁷.

These developments are at the very least remarkable when one considers that in 1922 – only some 90 years ago – the general opinion of states (as expressed in the League of Nations) was that Jerusalem and all the territories that are now normally referred to as “occupied territories” were in principle to be reserved for the establishment of a Jewish homeland. Granted, from the 1930s onwards, the world community explored dividing this territory west of the Jordan River – which was simply known as Palestine – into two separate states (one for the Jews, the other for the Arabs). But at no time prior to the early 1970s did other States question the “legitimacy” of the State of Israel, or consider the mere existence of Jews in the Old City of Jerusalem and the “West Bank” as illegal under international law, or the creation of an Arab-Palestinian state as mandatory as a matter of law.

The position of the State of Israel in the international community today is unique. It can be compared with that of the individual Jew in the diaspora during the ages. Alan Dershowitz, Felix Frankfurter Professor of Law at Harvard Law School, has called Israel “the Jew among nations”. Indeed, the Jew living in the nations was different. He was typically the subject of scorn, persecution, discrimination and even extermination, often in the name of law and high-sounding principles. So today, the nation-state of Israel is consistently the subject of criticism, condemnation and disproportionate attack in media and international relations. Somehow, whatever Israel does, it just does not seem to be accepted as a legitimate, equal member of the community of nations.

The growing criticism of Israel in recent decades based on international law can be classified under four main headings:

⁷ See for example the letter by thirteen Foreign Ministers to (then) High Representative Baroness Catherine Ashton in 2013 urging her to create a regime concerning the labeling of products made in the West Bank.

The first set of claims concerns the legitimacy of Israel as a “Jewish” state. The Jewish State of Israel – a state in which the Jewish people give expression to their own identity as a nation - is regarded as an apartheid, racist, discriminatory and colonial enterprise. Zionism is illegitimate. The state was established, and continues to exist, at the expense of the indigenous Arab population. The Mandate was a colonialist initiative of European powers imposed at the expense of the indigenous population. The Jews ethnically cleansed Palestine of the Arab population (or at least intended to do so) in the conflict of 1947/9, and continue to do so. The Palestinian refugee problem was caused by the establishment of the State of Israel, and the refugees have a right to return to Israel. The Jewish State of Israel should be dismantled.

The second kind of criticisms focuses on the status of the land, and notions of territorial sovereignty. The West Bank and Gaza “belong” to the Palestinians. Israel is illegally occupying "Palestinian" land which it took in 1967. Israel is accused of building settlements in order to effect “creeping annexation” of the territories captured in 1967. All Jewish settlements in Jerusalem and the West Bank outside the Green Line are illegal, and Israel’s refusal to remove them is an obstacle to peace.

The third category of claims looks at the conflict from the perspective of the human rights of the non-Jewish Palestinians, who are regarded as the truly indigenous people and now simply referred to as “Palestinians”. Israel is infringing and obstructing Palestinian human rights – especially the right of the Palestinian people to self-determination and political independence. This line of argument was originally focused on challenging Israel’s presence in the so-called occupied territories, but has extended to undermine the legitimacy of the State of Israel as such.

Finally, there is the question of the conduct of Israel’s leaders and army in combating terrorism. Israel, it is said, has been guilty of war crimes since 1973, in particular the use of force to eliminate combatants in neighboring territories. Of special concern are the invasions of Lebanon in 2006 and Gaza in 2008/9, 2012 and 2014, and the Flotilla incident in 2010.

Core to this change in the way we look at Israel and the Jewish people is the use of the term “Palestine”. Up until the mid 20th century, “Palestine” meant the whole of the area covered by the British Mandate – including all of what is today recognized as the state of Israel, plus Gaza and the West bank and even the territory covered by the state of Jordan - and all inhabitants of that land – including Jews – were referred to as Palestinians⁸. Today, the name “Palestinian” is used in the media and by political leaders and international organizations, and even international jurists including judges of the International Court of Justice⁹, to refer exclusively to the non-Jewish, Arab-speaking inhabitants of the land, with the implication that they alone are the rightful owners of part of the land.

All of this raises many questions. Why has public opinion towards Israel and the Jewish people changed so dramatically in the course of a single generation? Why is Israel consistently singled out for criticism for its breaches of international law? How is it that international law now seems to recognize

⁸ In fact, up until the mid 20th century a significant part of the Arab population in Palestine preferred to be identified as “Arabs”, rather than as “Palestinians”, seeing their identity as part of the pan-Arab world.

⁹ See Legal consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, 2004 I.C.J. (July 9th).

Arab sovereignty over large parts of Palestine that were previously intended to allow Jewish settlement? Does international law prohibit Jews from living in these territories? Does it require the creation of a Palestinian state on territory that was previously intended for the reconstitution of the Jewish homeland? If so, has international law itself changed, or have the facts on the ground so radically changed that the application of international law demands an opposite result? Or have some other factors come into play to cause many in the international community to change their perception of international law, and its role in resolving conflicts of this nature? What role has public perception of international law played in this metamorphosis? Does international law deliver solutions to this seemingly intractable conflict, or do we need to look beyond international law for such solutions?

The Hague Initiative for International Cooperation (thinc.) has been established to address these questions. One way of doing so is by tracing the way international law has been used in the last century in relation to Israel and its relationship with other nations.

While there have always been critics of Israel, and those who have challenged its legitimacy from the start, over the last 40 years or so the nature of the public debate regarding the so-called Israel-Palestinian conflict has hardened in its condemnation of Israel.¹⁰ We argue that it is necessary to distinguish between legitimate and illegitimate criticism. There is nothing wrong in principle with criticism of the conduct of Israel or the Jewish people, on the basis of international law or otherwise. Israel itself, as a robust democracy, promotes criticism from within and is not opposed to criticism from without. As a member of the community of nations, mutual criticism is an expected and acceptable part of national life. In fact, given its history and place in the world, it is perhaps to be expected that Israel will be the subject of extraordinary attention and even criticism and approbation. The story of the Jewish people, and the creation of the modern State of Israel are, after all, unique in world history.

However, criticism of the State of Israel is often expressed in terms of questioning the very right of the State to exist as an expression of the right of the Jewish people to self-determination. Some of the opponents of Israel quite openly admit that their aim is to "delegitimize" and "criminalize" Israel.¹¹ We will argue that such use of (international) law to prosecute Israel and the Jews in the theater of public opinion and other international fora is itself unfair and illegitimate. .

In fact, this disproportionate focus on Israel and the one-sided interpretation of international law not only results in an unjust treatment of Israel, it threatens to destroy the credibility of the international legal system itself as an instrument capable of contributing to the maintenance of the rule of law, and ultimately to the creation of conditions more likely to advance rather than undermine real peace,

¹⁰For a detailed assessment of these matters, see Robin Shepher, [A State Beyond the Pale – Europe’s Problem with Israel](#), Weidenfeld & Nicholson, 2009.

¹¹ The 2001 Durban NGO conference "provided the strategy for the ensuing NGO-led political war against Israel, using the weapons derived from the rhetoric of human rights and international law, and conducted via the UN, the media, churches, and university campuses. The subsequent battles, such as the Jenin "massacre" claims (April 2002), the campaign against the separation barrier ("apartheid wall") that peaked in 2004, the academic boycott effort in 2005, and the ongoing church-based divestment activities, were all based on this strategy." Steinberg, G. "The centrality of NGOs in the Durban strategy", *Yale Israel Journal*, July 11, 2006.

prosperity and justice in this world. Granted, international law, being a creature of states, is inevitably influenced by moral and political choices, and it is impossible to completely separate international law from the political processes within which it is developed and applied. The application of international law requires room for creativity and flexibility, and there will inevitably be differences of opinion about the way moral choices should be made. Nevertheless, we argue that international law will only retain its credibility and usefulness as a set of international norms if it is applied fairly, objectively, reasonably and with full regard to the context. Our thesis is that - instead of being an instrument based on principles of objectivity, equality and neutrality – the international legal system (especially that of the UN) has in recent decades been twisted and manipulated in the Israel/Palestine debate to suit pre-conceived political objectives. Worse still, it is being used by those with specific moral agenda's that are in conflict with the very principles of fairness, equality, neutrality and the rule of law which are the foundations of a robust legal system and at the basis of civilized society.

Our contention is that, in many respects, international law is much more complex and less certain than is often suggested. While it is often used to justify criticism of Israel, we will demonstrate that it simply does not – or at least not uncontrovertibly – support those claims. Moreover, the incessant emphasis on international law belies a (willing?) determination to ignore the underlying dynamics and forces at work in this conflict.

In light of the foregoing, the goal of *The Hague Initiative for International Cooperation* is three-fold:

First and foremost, we hope to assist all who are interested or involved in this issue to better understand what international law is, the way it works, and its inherent limitations. In doing so, we hope they will appreciate the complexity of what is often simplistically referred to as “international law”, and in so doing come to realize that the root causes of the conflict go far deeper than Israel's conduct or misconduct.

Second, we seek to explore the legal foundations of the Jewish state of Israel and the legal status of Jews living in the “occupied territories”. Many of the claims that Israel's conduct, including its presence in the so-called Occupied Territories, is in breach of international law, and that the very legitimacy of the state of Israel should be reviewed, are at best unfounded and at worst mala fide.

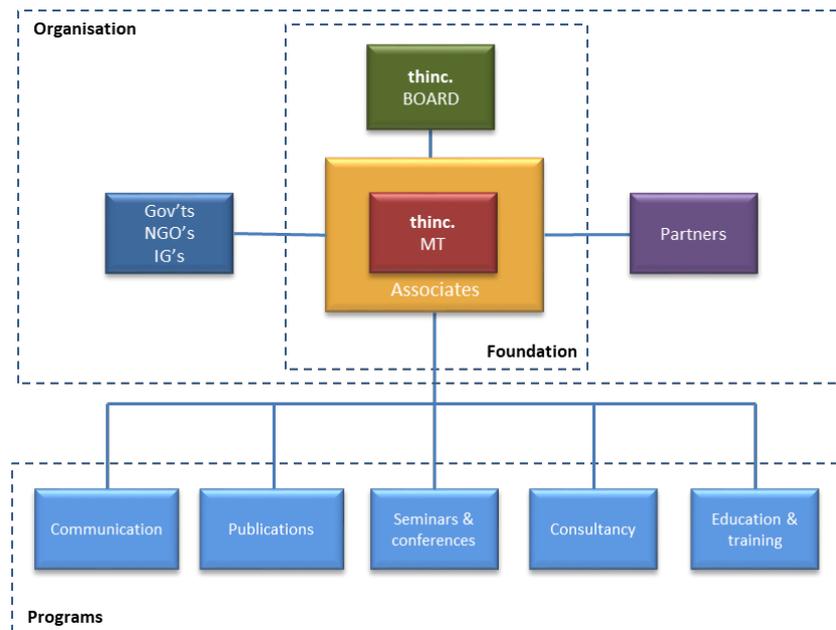
Third, we hope to help challenge leaders, policy advisors and opinion-makers in the nations to reassess the way they rely on international law as an instrument to achieve what is in essence a political goal: the creation of a Palestinian State adjacent to the State of Israel on the basis of the pre-1967 borders. We argue that international law does not require the Two-State solution as an outcome, and certainly does not justify the imposition of the “June 1967 lines” as borders or other conditions that threaten the security and future existence of Israel as a Jewish state. All relevant stakeholders – states, international institutions, NGOs, the media, academia - need to be cautious in the way they describe international law and claim legally-based solutions to the Israeli-Arab conflict.

We hope that this Initiative serves as a useful contribution to the debate, and ultimately to the achievement of that just and lasting peace in the Middle East for which we all long, and which all parties in the region – Jews and non-Jews - deserve.

What

The mission of *thinc.* is to study international law and to apply the results to the relationship between Israel, the Palestinian Arabs and their neighbors, with the objective to make a useful contribution to the political debate, and ultimately to the achievement of a just and lasting peace in the Middle East.

The *thinc.* foundation comprises a network of international lawyers, professional academics and legal experts who endorse the goals of the foundation (*thinc. Associates*).



How

The activities of *thinc.* are organized in programs. The outcomes of the programs are disseminated in various ways, ranging from an online article or report to a presentation at a conference, advice to a Government or NGO, or a specific training course for an interest group (IG).

The foundation plans to develop and offer programs in the following sections:

- Communication; online information, interviews and background stories on issues related to the mandate of the foundation.
- Publications; articles, reports, position papers, etc.
- Seminars and conferences
- Consultancy; advice to governments and organizations in compliance with the goals of the foundation.
- Education & training programs for diplomats, politicians, civil servants, academics, students and journalists.

thinc. collaborates with various partners to fulfill its mission, ranging from public diplomacy movements to law schools of renown universities.