

# **The Delegitimization Threat: Roots, Manifestations, and Containment**

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In his address before the AIPAC Policy Conference on May 22, 2011, President Barack Obama stated, “You also see our commitment to Israel’s security in our steadfast opposition to any attempt to delegitimize the State of Israel.” Quoting from a previous statement to the United Nations General Assembly, the President asserted that “efforts to chip away at Israel’s legitimacy will only be met by the unshakeable opposition of the United States.”<sup>1</sup> In a major policy address delivered three days earlier on the Middle East and North Africa, President Obama emphasized that “for the Palestinians, efforts to delegitimize Israel will end in failure.”<sup>2</sup>

The recurring references by the President of the United States to efforts to delegitimize the State of Israel testify to the salience of the issue in any current discussion of Israel’s national security. This paper describes and analyzes the delegitimization threat: it traces the roots of delegitimization, attempts to define what constitutes delegitimization, and examines the two main components of current delegitimization efforts – BDS (boycott, divestment, and sanctions) and lawfare. It then assesses the actual damage and threat to Israel posed by these efforts and looks at possible responses available to Israel.

## **The Roots of Delegitimization**

Efforts to delegitimize the very idea of a Jewish state in the land of Israel preceded the establishment of the State of Israel and continue unabated to this day. This tenacious effort is perhaps explained by the fact that Israel is a state established by the international community and supported by enlightened world opinion in the face of rampant vehement opposition in the surrounding countries. The decision of the United Nations General Assembly on November 29, 1947 in favor of partition and the establishment of a Jewish state and an Arab state in Palestine was rejected unequivocally by the entire Arab world.

The Arabs of Palestine, backed by the Arab states organized in the framework of the Arab League, denied the moral legitimacy of the UN resolution and declared their intention to prevent its implementation, through force of arms as well as by any other means at their disposal. Since then, Israel has faced the trifold challenge of conventional warfare, terrorism, and ongoing attempts at delegitimization (including, inter alia, diplomatic and economic boycotts). There is to some degree a relationship between these three forms of warfare or challenges – as one wanes, another intensifies. To paraphrase Clausewitz, if war is the continuation of diplomacy by other means, then delegitimization is the continuation of war by other means.

Following the Arab defeat in Israel's War of Independence and the signing of the ceasefire agreements in Rhodes in 1949, the Arab League declared an economic boycott against Israel. The boycott was not aimed only against Israel but included a secondary and tertiary boycott, i.e., a boycott of companies that dealt with Israel and a boycott of companies that dealt with companies that dealt with Israel. A subsequent landmark event in the Arab delegitimization effort was the infamous UN "Zionism is racism" resolution of November 10, 1975<sup>3</sup> – a resolution that was subsequently revoked by the General Assembly on December 16, 1991.<sup>4</sup>

A major episode that has had significant influence on the direction and extent of the delegitimization effort is the Six Day War and Israel's subsequent occupation of the West Bank and Gaza. The reality of three million Palestinians who do not live in an independent country of their own and who over the past 44 years have been subject to varying degrees

of Israeli military control is a major theme of any delegitimization campaign. Whether or not it is an authentic core argument or an excuse, that is, whether or not its absence would change much, “the occupation” has become the rallying cry for most delegitimizers.

The closing decade of the twentieth century saw a sharp decline in the delegitimization effort. This was the cumulative result of the breakup of the Soviet Union – which had been a major supporter and actor in the delegitimization campaign; the 1991 Madrid Conference; and above all, the Oslo Accords of September 1993. The feeling in those years was that the Israeli-Palestinian conflict was on the verge of resolution, and peace was around the corner. This sentiment changed, however, by the beginning of the following decade. The euphoria of the early days of the Oslo agreements had long vanished and with the failure of the Camp David summit in July 2000 and the outbreak of the second intifada in September 2000, it became clear that the Israeli-Palestinian conflict was entering a new bloody phase. These events resulted in a resurgence of the delegitimization efforts, which gained strength and impetus and grew into a massive campaign that has intensified over the decade. Material for the kickoff of the new delegitimization campaign included the decisions adopted at the UN-sponsored World Conference on Racism in Durban in September 2001 (the first Durban Conference). The years since then are evidence that in the first decade of this century delegitimization came of age and became a serious threat to Israel.

### **What is Delegitimization**

As Tony Blair aptly remarked about delegitimization, “Many of those engaging in it, will fiercely deny that they are doing so.”<sup>5</sup> Rather, the individuals and groups referred to by Blair claim that they are engaged in legitimate criticism of Israeli actions that are illegal, violate international law, constitute an infringement of basic human rights, or are otherwise morally reprehensible. The question that arises, therefore, is when does any given opinion or action constitute delegitimization, and when does it represent legitimate criticism of the actions or behavior of the Israeli government, Israeli institutions, or the IDF. Various suggestions for criteria to differentiate between the two have been posited. Natan Sharansky has

suggested the “three Ds” criterion: when criticism of Israel constitutes demonization, unequivocal delegitimization, or is based on a double standard, we are dealing with genuine delegitimization. However, this criterion does not always answer the question, since in certain circumstances it is hard to objectively determine when criticism constitutes demonization or when it is based on the application of a double standard.

Indeed, as in many other areas, some cases are uncontested and others fall in a grey sphere, with varying degrees of fuzziness. Denial of Israel’s right to exist as a Jewish state (as defined in its Declaration of Independence as well as in the UN partition resolution), as well as sweeping defamation of Israel’s character are clear examples of delegitimization. Criticisms by governments or organizations of various actions undertaken by the Israeli authorities, such as settlement activity, are examples of legitimate criticism. BDS and lawfare pose a definite challenge and threat to Israel, and therefore, although one can argue whether they constitute delegitimization, they are relevant subjects for this essay.

To this day there still are many voices in the Arab and Islamic worlds that deny Israel’s right to exist – foremost is Iran and groups such as Hamas and Hizbollah. In the Western world, such voices are far less prevalent and do not represent any one unified group. Nonetheless, hostility towards Israel is not rare on university campuses or within some liberal circles in Western Europe and the United States. In many cases, representative statements will include the dismissal “the creation of Israel was an historic mistake.” Ironically, Jews can also be found amongst proponents of this proposition. A quintessential example of the underlying hostility towards Israel in certain circles is the remark by the British ambassador to France who referred to Israel, albeit at a private dinner party, as “that shitty little country.”

In any event, Israel is the only member state of the United Nations whose very right to exist is at all subject to question. However, the threat of delegitimization facing Israel today is not primarily the challenge to the state’s right to exist. Events of the last three decades have made it difficult for even Israel’s enemies to question its existential legitimacy or to support calls for its demise, albeit such calls can still be heard. Israel has peace treaties and diplomatic relations with Egypt and Jordan, and

the Arab Peace Initiative of 2002 – supported by almost all of the non-Arab Muslim-majority countries – speaks of the possibility of recognizing and establishing normal relations with Israel.<sup>6</sup> In a document signed by Palestinian leader Yasir Arafat, the PLO, the recognized representative of the Palestinian people, recognized “Israel’s right to live in peace and security.”<sup>7</sup> Israel maintains diplomatic relations with 120 countries, including extensive economic, commercial, and cultural relations. It is a member in good standing of the United Nations and of other recognized international bodies, and in 2010 was accepted as a full member in the OECD.

The ongoing delegitimization campaign against Israel is of a different nature. Its aim is to portray Israel as a pariah state, a country that is repeatedly violating international law, human rights law, and accepted international norms; practices apartheid; and is guilty on a massive scale of war crimes and crimes against humanity. Its goal is to have Israel become an international outcast, leading to its total isolation. The essence and goals of this delegitimization campaign were clearly laid out in the final declaration of the NGO forum at the first Durban Conference, which called for “a policy of complete and total isolation of Israel as an apartheid state” and “the imposition of mandatory and comprehensive sanctions and embargoes,” as well as a “full cessation of all links...between all states and Israel.”<sup>8</sup> These goals are still far from met, though not for lack of desire or efforts by a host of organizations active in the ongoing delegitimization effort.

One may ask why Israel alone is the subject and target of a vehement delegitimization campaign. Some say it is a result of the occupation that began in 1967 and deprives millions of Palestinians of the ability to exercise their right to self-determination. Others contend that it stems from age old anti-Semitism, Muslim anti-Semitism, and latent Christian anti-Semitism. As such, Israel bashing is merely the new and more politically correct form of traditional anti-Semitism. Still others argue that it is simply a continuation of the Arab refusal, dating back to the years leading up to 1948, to come to terms with the existence of a Jewish state in the Middle East. According to this view, the Palestinians, aided by the Arab and Muslim world, are taking advantage of, if not hijacking, the human rights

agenda that drives many liberal circles in Western Europe and the Anglo-Saxon world.

Whatever its source, the existence of the delegitimization atmosphere is beyond doubt. However, it is not this sentiment itself or the outright delegitimization that is Israel's main concern, rather the numerous campaigns undertaken by the multitude of organizations involved in the day-to-day delegitimization or anti-Israel activities. The overall atmosphere constitutes the underlying infrastructure for these activities, but the campaigns themselves are the primary cause of concern to Israel and pose the potential for serious damage. The far flung and worldwide anti-Israel campaign is waged on two major tracks: BDS and lawfare.

## **BDS**

The wide ranging BDS effort includes diplomatic, economic, academic, cultural, and artistic boycotts and sanctions against Israel. On May 10, 2011, *Der Spiegel* reported that German National Railways (Deutsche Bahn), in charge of electricity and communications control for the high-speed Tel Aviv-Jerusalem train line, decided to terminate its participation in the project. The reason given for the decision was that the route passes through "Palestinian territories" and may be in violation of international law.<sup>9</sup> As the company is a fully owned government company, the decision was in effect taken by the German government<sup>10</sup> – generally considered to be one of Israel's major supporters. The decision was the outgrowth of mounting pressure over a period of months by German, Palestinian, and Israeli elements, headed by the Coalition of Women for Peace (CWP), and was the culmination of a strong pro-Palestinian campaign.<sup>11</sup> The legality of the train line is debatable; the decision by Deutsche Bahn is in any case damaging to Israel.

Other major boycott and divestment efforts have been directed towards the economic sphere, although with limited success. Efforts have been made to boycott Israeli products, especially but not only those grown or produced in the West Bank, as well as stores and outlets carrying such products. In many instances, extensive pressure and public campaigns are directed against business firms or economic institutions that do business with Israel. One example is the failed effort led by Human Rights Watch

(HRW) to force Caterpillar to end sales to Israel. A more successful effort was the decision in 2009 by a number of Belgian municipalities to boycott a bank due to its business dealings with Israel.<sup>12</sup>

Major organizations are also lobbied to divest from Israel, i.e., sell shares they own in Israeli companies and withdraw any investments they may have in Israel. Primary targets of divestment efforts are universities, church groups, labor unions, and pension funds. A flag project of CWP, the “Who Profits.org” online data base aimed at “exposing firms and corporations that profit from the occupation,” was influential in convincing Swedish and Norwegian state pension funds to divest from Elbit Systems, a major Israeli defense contractor.<sup>13</sup>

On the academic front, the Senate of the University of Johannesburg decided to discontinue an academic program run jointly with Ben Gurion University.<sup>14</sup> In late May 2011, the British National Union of Students (NUS) adopted a motion branding Israel an “apartheid regime” and calling for students to participate in flotillas to Gaza. The resolution also called upon Israel to endorse the Palestinians’ “right of return.”<sup>15</sup> At the same time, the Student Union of the University of London (ULU) voted to implement a boycott and divestment campaign against Israel.<sup>16</sup> On June 5, 2011, Britain’s largest academic trade union, the University and College Union (UCU), representing some 120,000 members, decided to propose at its annual conference a resolution calling for a full academic and cultural boycott of Israel. Indeed, already in 2010 the UCU voted to support the boycott, divestment, and sanctions’ campaign against Israel and to sever ties with the Histadrut, Israel’s organization of trade unions. These are some recent examples of the damaging effects of the BDS campaign.<sup>17</sup>

At the heart of the BDS campaign and indeed at the heart of the entire modern delegitimization effort lies the rise in importance of non-government organizations (NGOs).<sup>18</sup> For most of the twentieth century, the major actors in the international community were governments and supra-state organizations (such as the UN). The 1970s saw the rise of NGOs active in the areas of human rights and international law, and within a short time, NGOs became important actors in the arena of international diplomacy.<sup>19</sup> As of today, there are over 4,000 NGOs accredited by the United Nations Economic and Social Council.<sup>20</sup> NGOs have privileged

access to UN bodies, and many UN activities and have become major players in the area of human rights.

This point is exemplified by the fact that of the three frameworks established by the first Durban Conference, one was the NGO Forum that included thousands of representatives from some 1,5000 organizations.<sup>21</sup> The Durban resolutions cited above were adopted by the NGO forum but were removed from the text of the governmental forum as a result of intense pressure by several European countries (that threatened to follow in the steps of the American and Israeli delegations and leave the conference). Nevertheless, the ramifications of the resolutions adopted by the NGO forum were far reaching and gave a huge boost to the delegitimization effort. The internet has facilitated the establishment of NGO networks with at least hundreds of member organizations and thus greatly enhanced their power.<sup>22</sup>

As far as the delegitimization effort and more specifically the BDS campaigns are concerned, one should differentiate between NGOs dealing primarily and in many cases exclusively with the Palestinian issue, and those having a much wider agenda. The former include Palestinian NGOs such as the Palestinian Center for Human Rights (PCHR), al-Haq, and al-Mezan,<sup>23</sup> Israeli NGOs such as CWP, and a large number of NGOs outside the region, primarily in Europe (especially in Great Britain) and on the US West Coast (primarily in the San Francisco area). The bulk of the delegitimization work and BDS activities are conducted by this type of NGO, but vital assistance is in many instances rendered by the second type of NGO, which includes prominent groups such as Amnesty International (AI) and Human Rights Watch. A classical example of such support is the accusations with regard to the IDF action in Jenin during Operation Defensive Shield in April 2002. The Palestinians accused the IDF of a “massacre” in the Jenin refugee camp. Palestinian and pro-Palestinian NGOs repeated these claims and were supported by AI and HRW, both of which claimed that Israel had committed serious breaches of international human rights and humanitarian law, including war crimes.<sup>24</sup> A subsequent UN investigation determined that 55 Arabs had been killed, the majority of whom were armed belligerents.



The BDS campaign is two-pronged: the creation of an anti-Israel climate by defamation and demonization of Israel through inflammatory incitement with Israel cast as a racist, fascist, totalitarian, and apartheid state; and concrete actions geared at specific groups, authorities, and organizations around the world that focus on specific Israeli diplomatic, economic, academic, and cultural targets. Especially damaging and effective rhetoric is the identification of Israel with apartheid, not only because apartheid is synonymous with the defunct South African regime but because it is defined as a crime both by the International Convention on the Suppression and Punishment of the Crime of Apartheid<sup>25</sup> and by the Rome Statute creating the International Criminal Court (ICC). Under the Rome Statute, apartheid is considered a crime against humanity, and the ICC can exercise jurisdiction in this regard if the requisite conditions are present.<sup>26</sup> NGOs involved in delegitimization expend much effort in organizing an annual Israel Apartheid Week (IAW) on college and university campuses throughout the world. So far they have had little success in this endeavor, but the number of campuses hosting such an event, although few and far between, is increasing.

The most successful, visible, and damaging case of defamation of Israel is the Goldstone Report on Operation Cast Lead, Israel's military campaign in Gaza (December 2008-January 2009). Formally the effort was initiated and led by Arab and Muslim-majority countries, which succeeded in having the UN Human Rights Council adopt a resolution for the establishment of an official inquiry, resulting in the appointment of the Goldstone Commission and the eventual issuance of the Goldstone Report. Nevertheless, it was NGOs that played a crucial role in the formulation of the Goldstone Report, which accused Israel of committing war crimes and possibly even crimes against humanity.<sup>27</sup> This was by far the best singular achievement of the delegitimization movement and had multiple ramifications for Israel and the IDF.

These and other such activities are conducted regularly by a host of NGOs in many countries, primarily in Western Europe. Their efforts are facilitated by a strong human rights agenda that has become increasingly prevalent in large parts of the international community and particularly among democratic nations. In the cultural area, boycott efforts have

succeeded in convincing a number – albeit limited – of celebrities (performers, actors, authors) to cancel planned visits and performances in Israel. Boycott campaigns have also been organized against various cultural events in Europe and North America that included Israeli films, art, or other exhibits or Israeli performers. One example was the 2009 Toronto film festival which included a number of films related to the 100<sup>th</sup> anniversary of the founding of Tel Aviv.<sup>28</sup>

### **Lawfare**

Over the past decade, Palestinians and their supporters have initiated a number of campaigns of what many Israelis term “lawfare,” judicial “warfare” through the use of legal forums. Of these campaigns, perhaps the most prominent have been the consideration by the International Court of Justice of the West Bank separation barrier, the use of universal jurisdiction to target Israeli soldiers and officials, and the attempt to establish jurisdiction for the International Criminal Court. The resulting legal decisions related to specific Israeli actions or policies, but Palestinians and their supporters viewed them as opportunities to taint Israel’s image generally, thus aiding other delegitimization efforts.

The 2003 decision by the International Court of Justice on the West Bank separation barrier provided Palestinians and their supporters with a legal victory that they likely hoped to translate into sanctions activity against Israel. The Palestinians and others argued before the court that the separation barrier then under construction in the West Bank violated international law. By an overwhelming majority, the court’s judges accepted that position<sup>29</sup> and added that states had the “obligation, while respecting the United Nations Charter and international law, to ensure compliance by Israel with international humanitarian law as embodied in [the Fourth Geneva Convention].”<sup>30</sup> Although the ruling was a non-binding “advisory opinion,” the call for states to act against the barrier matched a general strategy of delegitimization, in this case internationalizing the conflict and legitimating punitive state actions against Israel. Also important was the parallel that Palestinians and their supporters could draw between the ICJ ruling on the separation barrier and its 1971 ruling against South African control over Namibia, connecting Israel in the public mind with apartheid South Africa.

The years of the second intifada saw increased use by Palestinians and their supporters of statutes in Europe providing for universal jurisdiction over alleged war criminals. Under these statutes, a number of European states permit their courts to exercise jurisdiction over war criminals regardless of where alleged crimes were committed and regardless of the nationality of the alleged victims. On that basis, accusers filed a number of claims against Israeli leaders, officials, and soldiers. To date, no arrests have been made and no cases have proceeded to trial, but the threat of prosecution remains. In 2001 a Belgian judge launched an initial investigation against former Prime Minister Ariel Sharon,<sup>31</sup> and a Spanish tribunal nearly allowed claims to proceed against a number of Israeli officers and political leaders in 2009.<sup>32</sup> Many Israeli officials continue to avoid entering Britain for fear of arrest.<sup>33</sup> While the British government is in the process of changing the country's universal jurisdiction statute in order to prevent the arrests of Israelis, the matter remains a thorn in bilateral relations.<sup>34</sup> Thus throughout Europe, the use of universal jurisdiction has provided a promising avenue for lawfare strategy.

Finally, the Palestinian Authority has taken another step towards targeting individual Israelis for prosecution, with its attempt to enable jurisdiction by the International Criminal Court (ICC). Under the treaty that established the ICC, the court has jurisdiction over the nationals of a state that is a party to the treaty, acts that take place in the territory of a state that is a party to the treaty, or any situations referred to the ICC prosecutor by the UN Security Council.<sup>35</sup> Israel is not a party to the treaty, and a Security Council referral is highly unlikely. Therefore, the Palestinians have sought to have ICC jurisdiction applied at least territorially to the West Bank and Gaza Strip.<sup>36</sup> To that end, the Palestinian Authority has tried to establish that "Palestine" is a state, since the language of the treaty indicates that only states can become parties to the treaty and provide the ICC with jurisdiction.<sup>37</sup> Israel and its supporters have argued that "Palestine" is not a state and as such cannot provide the ICC with jurisdiction.<sup>38</sup> The matter will be decided by the ICC prosecutor, who to date has not ruled on the matter.

If the prosecutor were to accept the Palestinian argument – for example, in the wake of a UN General Assembly resolution in September – then the process could, in a worst case scenario for Israel, lead to arrest warrants

against Israeli officials, soldiers, or even settlers.<sup>39</sup> That could in turn provide powerful ammunition against Israel in the public diplomacy arena as well as severely limit travel outside Israel for the individuals affected.<sup>40</sup> Yet even if the prosecutor were to rule that the ICC has jurisdiction in the West Bank and Gaza Strip, Israel could raise a series of legal arguments before action were taken against its citizens.<sup>41</sup> For that reason, the worst case scenario could probably be averted, although the risk of an adverse result remains.

While many recognize the relevance of international law, the Israeli policy establishment has yet to reach a consensus on a number of key strategic questions in meeting the lawfare challenge. For example, those in government, academia, and the media continue to debate whether Israel should cooperate with or boycott court procedures and investigatory commissions. This question joins others that will remain important in the years to come, especially if the Palestinians win statehood recognition. Such recognition could better enable the “State of Palestine” to ratify international treaties that grant direct access to additional international forums, including the International Criminal Court.<sup>42</sup>

## **Damage Assessment**

It is not easy to assess the actual damage caused to Israel by delegitimization activity, and more specifically by the BDS and lawfare efforts. On the macro and specifically economic level, the damage seems to be negligible. Fueled primarily by exports, economic growth in Israel over the past few years has averaged 4 percent and is predicted to exceed 5 percent in 2011 – both significantly higher than for most OECD countries. Exports continue to increase both in goods and services. Tourism in 2010 reached its highest level in Israel’s history – over 3,000,000 tourists – and foreign investment in Israel remains high. Israel enjoys a constant rise in foreign currency reserves, a surplus in the balance of payments, and a stable and strong shekel. A demonstration of the limited effects of delegitimization is the interesting fact that in the first quarter of 2011 Israeli exports to Turkey, where Israel was the target of extensive delegitimization as a result of the *Mavi Marmara* incident, were 73 percent higher than in the corresponding

quarter of 2010; Turkey rose to become Israel's third largest export market (after the United States and Holland).<sup>43</sup>

On the micro level, some Israeli industrialists and businesspeople claim it is increasingly difficult to conclude business deals in some West European countries, allegedly as a result of a delegitimization atmosphere. This may in fact be an indication of more difficult times ahead in the economic arena, but given the overall statistics cited, for now it seems that BDS effects, if any, are limited.

The situation with regard to the effects of lawfare is more complicated, since the use of universal jurisdiction has proved to be a serious cause of concern and even difficulty for Israel. The government has had to limit travel by present and former senior officers, officials, and leaders to certain European countries. The fact that Knesset opposition leader Tzipi Livni had to cancel a planned trip to England and that Prime Minister Netanyahu, on an official trip to London to meet with Prime Minister Cameron, could not be joined by his military secretary, Air Force Major General Yochanan Loker (in both cases for fear of being arrested), speaks for itself.

Thus, it would be premature and reckless to ignore or write off the delegitimization campaign. The effects of this campaign may be far more significant and meaningful in the realm of public diplomacy and Israel's image, although unlike in the economic sphere, it is hard to objectively gauge the results of delegitimization efforts in these realms. There certainly are indications that in many European countries, Israel suffers from a negative image and enjoys a decreasing degree of support. It may very well be that the delegitimization campaign has as yet failed to reach a critical mass – the problem is that it is difficult, if not impossible, to determine beforehand what that critical mass is.

The official position of most West European governments is far more favorable to Israel than public opinion in those countries. The question is whether such a gap and divergence can be maintained in the long run. A highly exacerbated scenario in which under future circumstances involving negative political or security events the intensity, scope, and effectiveness of BDS efforts could quickly become a grave threat to Israel's vital interests is not inconceivable. Tony Blair, when comparing delegitimization with the Iranian threat, noted that the former is "more insidious, harder to spot,

harder to anticipate and harder to deal with.... It is this form that is in danger of growing, and whose impact is potentially highly threatening.”<sup>44</sup>

### **Damage Control: Israel's Response**

What is Israel's response to the delegitimization threat and what options are available to counteract its negative consequences? A prerequisite for the development of an effective response is recognition and internalization by the Israeli authorities of the existence of the threat and an understanding of its gravity and potential damage. It is hard to determine whether this has yet occurred. There is no question that the issue of delegitimization has become more salient in Israeli discourse. The Israeli government did not need President Obama to remind them that there is an ongoing major delegitimization effort against Israel. What remains unclear, however, is how seriously Israeli authorities view this threat and what role it plays in Israel's overall threat perception.

It is not by chance that most of the information about delegitimization and BDS activities presented in this paper comes from non-governmental sources. It is primarily a small number of Israeli NGOs, such as NGO Monitor,<sup>45</sup> the Reut Institute,<sup>46</sup> and others that are active in identifying and documenting the widespread delegitimization effort and are at the forefront of the attempts to combat it. On the official level, the degree of attention and the scope and depth of a coordinated professional response by all relevant government authorities (Foreign Ministry, Finance Ministry, Prime Minister's Office, IDF Spokesman, intelligence agencies, and others) seems to be improving over time, but is far from comprehensive.

As is characteristic of other areas, the military seems to be far ahead of civilian agencies in responding to the threat. It appears that the IDF has internalized the grave threat of the delegitimization trend to its freedom of action on the battlefield and is taking steps to combat it. It has become much more acutely aware of the need to devote more resources to containment and defense against allegations of international law violations. To this end, it has strengthened the Department of International Law within the Military Advocacy General (known by its Hebrew acronym as DABLA) and granted it greater weight in actual operational decisions. The IDF recently inaugurated a special course for liaison officers at the brigade level. Their

mission is twofold: to advise the brigade and battalion commanders on questions regarding treatment of civilians and other civilian matters in their combat zones and to coordinate efforts to prevent any humanitarian crisis.

The civilian response is much more complicated and quite complex. Since at work is a soft power campaign, a highly sophisticated, professional, and coordinated response is necessary. A number of suggestions and proposals have been put forth. These include, inter alia, fighting NGO activity through other NGOs; mobilizing the Jewish communities and other pro-Israeli constituencies in the various countries; delegitimizing the delegitimizers, concentrating on key groups that can be swayed in either direction, and in general vastly increasing efforts, resources, and budgets devoted to public diplomacy and public relations abroad.

A proposal worth investigating is undermining and blocking BDS activity through national legislation. A major blow to the Arab League boycott was legislation enacted in the United States that in effect made the boycott illegal. Under this legislation, companies cooperating with the boycott by answering questionnaires as to their business dealings with Israel or with companies dealing with Israel were subject to a heavy fine. In the absence of a binding resolution by the United Nations or by national authorities or a case of blatant illegal activity, boycott activity by NGOs against a specific country is by its very nature discriminatory and thus could be subject to prohibiting legislation. Convincing European countries or even the United States to pass legislation outlawing BDS activity against Israel is certainly not an easy task and perhaps may be impossible. Nevertheless, it would be a mistake to reject this option out of hand.

It is difficult to foresee developments, but there is good reason to believe that in the coming months the delegitimization threat may become a major issue on Israel's national security agenda.

## Notes

- 1 <http://www.whitehouse.gov/the-press-office/2011/05/22/remarks-president-aipac-policy-conference-2011>.
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- 5 Gerald M. Steinberg, "The Politics of NGOs, Human Rights and the Arab-Israel Conflict," *Israel Studies* 16, no. 2 (2011): 24-54, p. 46.
- 6 See text of the initiative at [http://news.bbc.co.uk/2/hi/middle\\_east/1844214.stm](http://news.bbc.co.uk/2/hi/middle_east/1844214.stm).
- 7 See <http://www.mfa.gov.il/MFA/Peace+Process/Guide+to+the+Peace+Process/Israel-PLO+Recognition+-+Exchange+of+Letters+betwe.htm>.
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- 10 Ibid.
- 11 Juliane von Mittelstaedt, "German Rail under Fire for Controversial Israeli Project," *Der Spiegel*, November 19, 2010.
- 12 "The Politics of NGOs, Human Rights and the Arab-Israel Conflict," pp. 36-37.
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- 19 Ibid.
- 20 Ibid.
- 21 Ibid, p. 29.
- 22 Ibid, p. 27.
- 23 Ibid, p. 28.
- 24 Ibid, p. 30.
- 25 United Nations Treaty Series (UNTS), 1015, p. 243 (entered into force July 18, 1976).
- 26 Rome Statute of the International Criminal Court, U.N.T.S., 2187, p. 90, arts. 12-13 (entered into force July 1, 2002).
- 27 Human Rights Council, twelfth session Agenda item 7, A/HRC/12/48, September 15, 2009.
- 28 Steinberg, "The Politics of NGOs, Human Rights and the Arab-Israel Conflict," p. 37.



- 29 “Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory” (Adv. Op.), July 9, 2004, para. 163(3)(A).
- 30 Ibid., para. 163(3)(D).
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- 32 Eetta Prince-Gibson, “Israel on Trial,” *Jerusalem Report*, March 30, 2009.
- 33 See, e.g., Rory McCarthy, “Israel: Vice-Prime Minister Cancels Trip to Britain, Fearing War Crimes Arrest,” *The Guardian*, October 6, 2009.
- 34 See, e.g., “London Streets Not So Safe for Israelis,” *Jerusalem Post*, May 5, 2011; Martin Bright, “Universal Jurisdiction Reform Goes to Lords,” *Jewish Chronicle*, March 30, 2011.
- 35 Rome Statute of the International Criminal Court, U.N.T.S., 2187, p. 90, arts. 12-13 (entered into force July 1, 2002).
- 36 See “Letter from Palestinian Minister of Justice Ali Khashan” (January 21, 2009), [http://www.icc-cpi.int/NR/rdonlyres/74EEE201-0FED-4481-95D4\\_C8071087102C/279777/20090122PalestinianDeclaration2.pdf](http://www.icc-cpi.int/NR/rdonlyres/74EEE201-0FED-4481-95D4_C8071087102C/279777/20090122PalestinianDeclaration2.pdf).
- 37 See, e.g., John Quigley, “The Palestine Declaration to the International Criminal Court: The Statehood Issue,” at <http://www.icc-cpi.int/NR/rdonlyre/D3C77FA6-9DEE-45B1-ACC0-B41706BB41E5/281882/QuigleyPalestinedeclarationandtheICC1.pdf>.
- 38 See, e.g., Yael Ronen, “ICC Jurisdiction over Acts Committed in the Gaza Strip,” *Journal of International Criminal Justice* 8 (2010): 3-27, at <http://jicj.oxfordjournals.org/content/8/1/3.full.pdf?ijkey=xgXBSjC3cfF4PpU&keytype=ref>; Malcolm N. Shaw, Supplementary Opinion (18 Oct. 2010), available at <http://www.icc-cpi.int/NR/rdonlyres/D3C77FA6-9DEE-45B1-ACC0-B41706BB41E5/282851/OTP2010000035449SupplementaryOpinionMalcolmShaw.pdf>.
- 39 Rome Statute, *supra* note 24, art. 58.
- 40 Ibid., art. 89 (requiring states parties to comply with ICC requests for arrest and surrender of individuals found in their territory).
- 41 Ibid., art. 17.
- 42 See, e.g., Michael Sfard, “The Legal Tsunami Is on Its Way,” *Haaretz*, April 29, 2011.
- 43 Tal Moise, “Turkey – Our No. 3 Export Market in IQ,” *Jerusalem Post*, May 31, 2011.
- 44 Steinberg, “The Politics of NGOs, Human Rights and the Arab-Israel Conflict,” pp. 45-46.
- 45 See at [www.ngo-monitor.org](http://www.ngo-monitor.org).
- 46 Reut Institute, at <http://reut-institute.org/he/Content.aspx?PageId=24&MemberId=9>.