



Selected Updates – February 2016

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- ◆ [Publications and Updates](#)
- ◆ [90 Words on...](#)
- ◆ [Inside Israel](#)
- ◆ [International Developments Concerning Israel](#)
- ◆ [International Developments](#)

Publications and Updates

- **Emily Landau**, a senior research fellow at the Institute and the head of the Arms Control and Regional Security Program, discusses the Comprehensive Test Ban Treaty (CTBT) that Israel signed on in September 1996, and the Israeli security concerns for ratifying the Convention. Although the idea raised by Executive Secretary of the CTBT organization, that Israel and Iran will ratify together this treaty, is not feasible under the present circumstances, the idea of a Nuclear Test Free Zone, is in Emily's opinion deserves examination ([Insight](#), February 11).
- On February 16, the INSS held an event "[Between Security and Terrorism](#)", in which the movie "**Wounded Land**" directed by Erez Tadmor was screened. Tadmor alongside leading actor Roy Assaf participated in the event. At the event, held at Cinema City Gilot, Dr. Tzipi Israel presented an opinion poll regarding the impact of the wave of terrorism on society, and MK Mickey Levy shared with the audience his experiences as a Police commander of Jerusalem district during the second intifada. After the movie, a discussion was held with the director and the actor, along with the audience.
- On February 18 the INSS held the [Tshetshik Prize in Security Studies](#) [in Hebrew]. The award winners this year are Gen. (res.) Amos Gilboa who wrote the book "Mr.

Intelligence" and Dr. Shimon Golan who wrote the book "Yom Kippur War". Honorable mentions were given to Dr. Daniel Sobelman's thesis on "conflict management between a state and a non-state actor" and **professors Stuart and Amichai Cohen on their Book "Shooting and Judging"**, which presents a legal analysis of the political history of security policy in Israel. Ceremony was accompanied with the discussion on "Does Terror have a new face? ", attended by MK Avi Dichter, General (res.) Yaakov Amidror Mr. Yoram Schweitzer.

- Several articles by researchers of the INSS were published in the Institute's Blog "**Shorty**"[in Hebrew]:
 - **Ido Sivan-Sevilla** discusses the ECJ decision regarding the abolition of the privacy protection agreements between EU and USA, and examines the economic implications of the move, the balance between the right to privacy and security needs from the countries' prospective and the impact of the decision on Israel ([Shorty](#), February 9).
 - **Adam Hoffman** discusses the fight of the social network "Twitter" against the Islamic state and its effectiveness ([Shorty](#), February 9).
 - **Michal Hatuel-Radoshitzky** discussed the strengthening of the human rights discourse in the UN Security Council and the effect of this trend on Israel ([Shorty](#), February 28).

90 Words on...

Deportation of terrorists' families

The deportation of family members of terrorists who do not pose any danger, and is intended only for the purpose of deterrence of others, is prohibited under international law and Israeli administrative law. Such deportation would be considered collective punishment.

Deportation of residents of the West Bank who pose a significant danger for the security of the region is also problematic under international law (in light of Article 49 of the [Fourth Geneva Convention 1949](#)). This step has not been taken by Israel in recent decades.

Inside Israel

Bills

Authorities for Protecting Public Safety (Amendment No. 5 and Temporary Provision) Law 2016

On February 1st, the Knesset passed the [Authorities for Protecting Public Safety \(Amendment No. 5 and Temporary Provision\) Law 2016](#) [in Hebrew]. The amendment, dubbed the "Law of Palpation", focuses on expanding the powers of police to conduct body searches. This is a milder version of the amendment, which, in its original form, after the [first vote](#), was stricter and granted police officers with an authorization, unlimited in time, to carry out "stop and frisk" practices in gathering places and places nearby, such as clubs, bars and

sports fields, without the requirement for “a reasonable suspicion” regarding the carrying of weapons or fear of violence on behalf of the suspected would-be perpetrators.

The final version of the amendment grants body search powers in two situations:

One - Search for the purpose of prevention of criminal violence empowers policemen to “stop and frisk” a suspect **whenever there is a reasonable suspicion that he is about to commit a violent offense against another person**, in order to check whether he unlawfully carries a weapon (For this purpose, a reasonable suspicion may arise from a person’s violent behavior in a public place, including verbal violence or threats, or a behavior that is otherwise threatening or frightening.).

Two- Temporary order, valid until December 31, 2017, relates to search in areas prone to terrorist activity. The amendment authorizes district commanders of the Israel Police to declare an area as an area **where there is “a real concern” that a “hostile terrorist activity” will be committed**. Such a declaration will result in the authorization of police to conduct a body search of a person to check if he is unlawfully carrying a firearm. The authorization for the search in an area, subject to the above declaration, **applies even if no reasonable suspicion exists**. This declaration should not exceed 21 days, with options for extension and subject to reporting and parliamentary oversight.

For more details see Israel: Expansion of Police Body Search Powers ([Library of Congress](#), February 11).

Law on Prevention of Infiltration (Offenses and Jurisdiction) (Provisional Order), 2016

On February 8, the Knesset passed the [Law on Prevention of Infiltration \(Offenses and Jurisdiction\) \(Temporary Provision\) 2016](#) [in Hebrew]. This is an Amendment No. 5 of the primary law for preventing of infiltration, after the High Court of Justice invalidated three times in the past, various sections of the Law. The amendment allows the holding of infiltrators in residence facilities for a maximum period of up to 12 months, following the Supreme Court ruling in [HCJ 8665/14](#) (08/11/15), which abolished the previous arrangement that allowed the holding of infiltrators in residence centers for up to 20 months.

Today, the normative framework which appears in the Law of Prevention of Infiltration, which was approved by the Supreme Court, allows the holding of infiltrators in custody (detention) for a period of up to three months for the purpose of identifying and extraction procedures for removal, and, as mentioned, the holding of infiltrators in residence facilities for up to 12 months.

Judgements

Houses Demolition - administrative threshold of evidence

The Supreme Court, by a majority of two justices versus the dissenting opinion of Justice Zylbertal, upheld the house demolition of a terrorist who ran over and killed the border policeman, Benjamin Yakubovich. The discussion revolved around the administrative

threshold of evidence required to establish that it was a deliberate terrorist attack and not a car accident. While the two judges held that the evidence by the military commander was of a "sufficient evidentiary value" for the operation of his authority (even if it could carry out further investigation), the dissenting judge Zylbertal believed that weight should also be given to the "lacking" evidence, that nothing prevented their completion (such as an opinion of a traffic examiner, an opinion regarding the condition of the car, background information regarding the driver's past, the purpose of his trip and data pertaining to the rental of the car by the driver etc.). This information could reinforce the evidentiary foundation and rule out the possibility that the incident was a car accident and not a deliberate act ([HCJ 1014/16 Skafi v. Commander of IDF Forces in the Judea and Samaria Area](#), February 28). See also the [opinion](#) of Col (Res.) **Liron Libman** on this Judgment [in Hebrew].

Updated opinion by Israel Security Agency on deterrence of house demolitions

As part of petitions filed with the Supreme Court of Justice against the demolition of houses of two perpetrators, who carried out shooting, Run-Over and Stabbing attacks, Deputy President Justice Rubinstein said that **an updated opinion by the Israeli security Agency was submitted to the court, regarding the demolition's potential deterrence of potential perpetrators**. Justice Rubinstein noted that "The up-to-date opinion which was submitted by the ISA indicates, without going into detail for reasons of privileged sources and identities, that the measure of house demolition does essentially have a real deterring effect upon potential perpetrators who avoid such terror activities due to the concern of demolition. As was held in the past by this court, although exceptions may occur and although the terror which we currently encounter has not yet been eradicated, we are confident that the security forces will incessantly continue to examine the effectiveness of the procedure and it seems that this route is actually being followed". The appeals were unanimously rejected by three judges (Rubenstein, Amit and Solberg) ([HCJ 967/16 Harub v. Commander of IDF Forces in the West Bank](#), February 14).

Money Laundering and Financing of Terrorism

Israel's joining the FATF

On February 19, 2016, the organization « Financial Action Task Force » (FATF) on Money Laundering and terrorist financing, at a meeting held in Paris (17-19.2.16), unanimously decided to [admit Israel into the organization at the role of observer](#). This prestigious organization, whose membership comprises 34 states and 2 foreign organizations, establishes the rules applying to all countries in the fight against money laundering and terrorist financing. This is a significant achievement for the State of Israel, which manages a number of years of professional and diplomatic process to join the organization, which will allow her for the first time to take part in shaping global policy in this area ([Ministry of Justice](#), February 21) [in Hebrew].

Israel's participation in a meeting of EGMONT GROUP

Global meeting of **state authorities of Money Laundering and Financing of Terrorism** held in Monaco (1-5.2.16) under the auspices of **EGMONT GROUP** - an international body that brings together the financial intelligence units of more than 150 states - [decided](#) to intensify efforts and cooperation in the fight against financing terrorism. **Israel has participated in the meeting and presented the experience it has gained in the fight against the financing of terrorism** (February 7, [Ministry of Justice](#)) [in Hebrew].

New English Website of Israeli Office of the National Anti-Trafficking Coordinator

The Israeli Office of the National Anti-Trafficking Coordinator in the Ministry of Justice has a new [English Website](#), which allows, for the first time, free and organized access to a rich variety of information and sources relating to Anti-Trafficking, including legal and academic documents. The website also provides detailed information on Israel's Anti-Trafficking Efforts.

Second edition, updated document "constitutional anchoring of Israel's Vision"

Following the wide public discussion about the various proposed **laws designed to anchor the vision of the state in a basic law**, former Minister of Justice Tzipi Livni appointed Prof. Gavison in August 2013 to write a document's recommendations on this issue. A second edition of [constitutional anchoring of Israel's Vision](#) was published this month by **Metzilah organization**, and includes the original recommendations of Professor Gavison next to the description of the process, a summary of the public debate, and various background materials. You can also watch a [lecture](#) by Prof. Gavison on this topic [in Hebrew].

"Yesh Din" Report on Israel's construction activity in the west bank

"Yesh Din" organization has published a report – **"from occupation to annexation"** in which it argues that Israel is unofficially adopting the "Levi Report", which is presenting a doctrine according to which the law of occupation does not apply to the west bank. According to the report, the normative and the institutional changes the government is executing in the last several years, point out the fact that the government is adopting the Levi report even without any formal decision on the matter. Also according to the report, due to the unclear legal regime the government is establishing in the west bank, it allows itself to operate inconsistently with the law of occupation. Eventually, "Yesh Din" argues that the Israeli policy aims to facilitate, in the end of the process, an official annexation of the C territories to Israel ([Yesh Din](#), February 12).

International Developments Concerning Israel

Boycott, Divestment and Sanctions (BDS)

Canadian Parliament votes against BDS movement

On Monday, February 22, the **Canadian Parliament** [voted](#) in favour of a resolution **condemning the BDS movement**. the resolution stated that in light of the long history of friendship, as well as economic and diplomatic relations, between the two states, the House rejects the Boycott, Divestment and Sanctions (BDS) movement, which promotes the demonization and de-legitimization of the State of Israel, and calls upon the government to condemn any attempt by Canadian organizations, groups or individuals, to promote the BDS movement, both in Canada and abroad. The Canadian newspaper “The Globe and Mail” [reported](#) that the NDP party voted against the resolution, arguing that the vote harms the freedom of speech. The Bloc Québécois Party also voted against the resolution, arguing that the BDS movement is a legitimate movement that criticizes Israel.

Procurement Policy Note by U.K government on boycotts in public procurement

On February 17, the **British government** issued [Procurement Policy Note](#)- rules and guidelines governing the international obligations of public authorities in contractual commitments. The guidelines emphasize that boycotts in public Procurement are inappropriate, except where formal legal sanctions, embargoes and restrictions have been put in place by the UK Government itself.

For further details, see the Briefing Paper of the British House of Commons Library about local authority boycotts ([Briefing Paper 7507](#)).

Eylon Aslan-Levy emphasizes that the Policy Procurement Note, published on February 17, by the UK Cabinet Office, does not constitute a new legal tool against BDS. It rather establishes the existing criteria for the awarding of public contracts, thus shows compliance with wider international obligations. According to Aslan-Levy, public authorities are not allowed to discriminate against foreign suppliers on the basis of national origin. They may not boycott Israeli products simply because they come from Israel, nor may they do so with respect to any country ([Tablet](#), February 23).

U.S legislation against BDS movement

Ron Kampeas describes the current **legal situation in the US**, in which nearly half of the states are considering legislation aimed at countering the BDS movement. Liberal activists claim that backers of this effort are cynically exploiting concerns about anti-Israel BDS to promote legislation that while purportedly about defending Israel, is actually about legitimizing settlements. Kampeas refers specifically to several bills, currently being promoted in New York, Illinois, Washington and Indiana, and elaborates on the public debate

raised within the Jewish community, and outside of it, in light of these efforts ([Forward](#), February 23).

U.S Court Judgement awarding compensation from Iran to victims of terror attack in Israel

The terror victims of the 1997 Ben Yehuda attack and their families won a lawsuit against Iran, a victory that will soon award them more than \$9 million, after 15 years of litigation in the District Court in San Diego, California. [The Israel Law Center](#), filed the lawsuit against the Iranian government and the Iranian Ministry of Defense in 2001, claiming that Iran provided material and economic support to Hamas in carrying out the attack. The Jerusalem Post [reports](#) that Iran might appeal to the Supreme Court, but the court might deny Iran's right to appeal.

International Developments

The Sudden Death of U.S Supreme Justice Court Antonin Scalia

- RIP Justice Antonin Scalia: The Misunderstood Internationalist ([Opinio Juris](#), February 14).
- Scalia on International Law - [C-SPAN Lecture](#).

U.K Referendum on exiting the European Union

- [PM statement](#) following Cabinet meeting on EU settlement (February 20).
- House of Commons Library, [Briefing Paper 07214](#) (February 12).

International Criminal Law

The International Criminal Court (ICC) decision to open an investigation into the situation in Georgia

- Pre-Trial Chamber of the International Criminal Court Authorizes Initiation of Investigation in Georgia ([EJIL: TALK](#), February 1).
- Russia's Short-Sighted Approach to the Georgia Investigation ([Opinio Juris](#), February 13).

Confirmation of charges hearing in the case of The Prosecutor v. Ahmad Al Faqi Al Mahdi

- Confirmation of charges hearing in the case of The Prosecutor v. Ahmad Al Faqi Al Mahdi: Audio-visual materials and photographs ([ICC Press Release](#), March 1).
- The Prosecutor v. Ahmad Al Faqi Al Mahdi, [Case Information Sheet](#).

ICC Draft Policy Paper on Case Selection and Prioritisation

- [Draft Policy Paper](#) on Case Selection and Prioritisation (February 29).
- [ICC Press Release](#) (February 29).

Counter Terrorism Measures

European Commission Action Plan to strengthen the fight against terrorist financing

- The European Commission [Action Plan](#) to strengthen the fight against terrorist financing (Factsheet, February 2016).
- European Commission [Press Release](#) (February 2).

Gil Avriel's Article on Harvard National Security Journal

- Gil Avriel, [Terrorism 2.0: The Rise of the Civilitary Battlefield](#) (Harvard National Security Journal).
- Terrorism Taxonomy: Gil Avriel's "Civilitary Theory" ([Lawfare](#), February 6).

U.S and E.U policy on Terrorist Sanctions

- Terrorist Sanctions: The Clash in US and EU Approaches ([Lawfare](#), February 17).

Laws of War

- Is Money a Legitimate Target? ([Just Security](#), February 10).
- Mapping the Law That Applies to War Crimes in Syria ([Just Security](#), February 1).
- Saudi Arabia, Yemen and the Politicized UN ([Gatestone Institute](#), February 16).
- Report: Documenting War-Wounded and War-Dead in MSF-Supported Medical Facilities in Syria ([MSF](#), February 18).
- Do Child Soldiers Remain Civilians? ([Opinio Juris](#), February 15).
- Report: Studying Under Fire- Attacks on Schools, Military Use of Schools during the Armed Conflict in Eastern Ukraine ([Human Rights Watch](#), February 11).

Human Rights Law

- France lawmakers vote to extend state of emergency ([Jurist](#), February 17).
- Building Civil Liberties Protections Into the EU's Latest Border Discussions ([Just Security](#), February 19).

Refugee Law

- Australia/Nauru: High Court Rules Offshore Detention of Asylum Seekers Is Lawful ([Library of Congress](#), February 5).

Cyber and Internet

National security and the right to privacy: Apple v. FBI

- Not a Slippery Slope, but a Jump off the Cliff ([Lawfare](#), February 17).
- Judge rules Apple doesn't have to unlock Brooklyn iPhone ([The Hill](#), February 29).

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