Israel, international law and peace

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by David Matas

Within the overall theme of this symposium, the topic I am addressing, "Israel, international law and peace", I chose myself. Yet, I must confess that my initial reaction to the topic is scepticism. I wonder whether international law can help at all to bring peace between Israel and its neighbours.

The Utility of International Law

There are four different reasons I have for this scepticism. One is that the law of peace is a relatively underdeveloped component of international law.

The primary source of international law is treaties[1]. If there is a peace treaty, then international law helps keep the peace among those who signed the treaty.

However, law does not oblige states to sign peace treaties. International law has a lot about the law in war, how to conduct and not to conduct war, but comparatively little about the law of war, whether to go to war or not.

There is a amendment to the statute of the International Criminal Court which adds the crime of aggression. That amendment was activated in July this year. Only nationals of states parties which have ratified the amendment can be prosecuted for the crime, absent a referral from the Security Council.

The Palestinian Authority has claimed to be a state, which raises its own questions of

[1] Statute of the International Court of Justice, Article 38

international law, and has ratified this amendment. However, not one generally recognized state in the Middle East has ratified this amendment.

Canada has legislated a number of international law universal jurisdiction criminal offences. However, the crime of aggression is not one of them. Canada has not signed the aggression amendment to the statute of the International Criminal Court.

The Kellogg-Briand pact of 1928 was an attempt through treaty to outlaw war. Most states in existence at the time signed the treaty, including Persia, which is now Iran. Frank Kellogg was the US Secretary of State at the time. Aristide Briand was the French foreign minister. The treaty did not prevent World War II even though Italy, Japan and Germany were all signatories. It has no enforcement mechanism.

The United Nations Charter empowers the Security Council to authorize collective action to promote peace. However, Security Council action is subject to the veto power of the permanent five. That veto power is exercised politically and not according to the dictates of international law.

So, that is one problem, a relative void in international law when it comes to the law of peace. A second problem is the marked disrespect for international law generally among the neighbours of Israel in the Middle East. The neighbours of Israel in the Middle East form a region of the world where international law comes to die.

The ongoing conflicts in Yemen, Libya, Iraq, Syria and Afghanistan have all been no holds barred. These conflicts are proxy battles between other states in the region, notably between Saudi Arabia and Iran.

Iran is a global exporter of terrorism. I, myself, this July was the target along with others

of a planned terrorist attack of a meeting in Paris I attended in support of respect for human rights in Iran, an attack thankfully thwarted by the French police.

Among the neighbours of Israel, the principles of international humanitarian and human rights law have been violated with abandon. International law appears to have no practical impact on Israel's neighbours.

So, that is the second problem with international law as a vehicle for peace in the region. The third problem is this - the way international law has been misused and abused against Israel. When it comes to international law and Israel, anti-Zionists have turned ploughshares into swords.

Anti-Zionism, as the very name indicates, has as its objective the destruction of the State of Israel as the expression of the right to self-determination of the Jewish people. For anti-Zionists, war and terrorism have been a means. But so also has been abuse and misuse of international law to demonize and delegitimize Israel. For anti-Zionists, abuse of international law and terrorism are different means to the same end, the destruction of the State of Israel.

So, that is third reason for my scepticism about the value of international law as a force for peace between Israel and its neighbours. The fourth is this, the simple difference between "is" and "ought". Much to my amazement as an international lawyer, many people who are not lawyers view international law as a moral code. Yet, international law, like all law, is something that is, not something that ought to be. It is no more or less moral than national laws, provincial laws or municipal by laws.

The confusion between "is" and "ought" is found in the very title of my talk. Peace is something that ought to be. International law, on its own, can no more lead to peace than

can any law on its own lead to a desired result. To get from international law to peace we have to figure out how to use the law.

Law of all sorts, international as well as others, is morally neutral. It can be a force for good. In the wrong hands, it can also be force for evil.

Indeed, that is my concern in this area. International laws and mechanisms have been twisted and distorted, to blame Israel.

All this Israel blaming is misplaced. Palestinians are victims of human rights violations, but Israel is not the victimizer. Rather the victimizers are those who incite to hatred, terrorism and war against Israel; it is they who victimize the Palestinians. When anti-Zionists incite Palestinians to attack Israel and Jews and Israel defends, both Palestinians and Jews suffer.

At the question and answer session after the presentation I made and the comments of UN Special Rapporteur Michael Lynk several questions were asked about what could be done to help alleviate the plight the Palestinians face now. Concern was expressed about the checkpoints.

Though this is not the same question as asking how we get to peace, the answer is the same. Stop the incitement and the terrorism. If there were no terrorism, no incitement to terrorism, no threat of terrorism, the checkpoints would disappear.

Blaming Israel for defending against terrorism may give satisfaction to anti-Zionists. But it has a perverse effect, making a bad situation worse by inflaming existing prejudices and goading would be terrorists to action.

Right now, when it comes to peace between Israel and its neighbours, international law has

not been not part of the solution. Rather its manipulation and distortion have been part of the problem.

Given my scepticism about international law as a vehicle for peace between Israel and its neighbours, do I think that there is any use at all for international law as a vehicle for peace between Israel and its neighbours? Well, yes I do.

My general view about the law, not just international law, but all law, is that, if you do not like the law, do not ignore it. Work to change it. If the problem is the texts, work to change the texts. If the problem is the implementation, work to change the implementation.

So, let me suggest eighteen different ways in which international law can change course and be a force for peace in the Middle East rather than a form of incitement to hatred, terror and war against Israel, eighteen ways that the ship of international law can be turned round in the direction of peace between Israel and its neighbours.

I have grouped these eighteen suggestions into six components - two about Iran, three about refugees, three about the UN, two about terrorism, three about NGOs, three about the Palestinian Authority, and two about Israel.

Before I run through those eighteen suggestions, I want to make one more preliminary remark, about sequencing. Peace negotiations between Israel and its neighbours have been layered or sequenced. First have been the peace treaties between Jordan and Egypt. Second have been the peace talks with the Palestinians on interim measures. Third there are to be peace talks with the Palestinians on final status. Fourth there are to be the negotiations between Israel and its other Arab neighbours. Fifth but far from least is the issue of peace between Israel and Iran.

The position of the Arab states, other than Jordan and Egypt who have already signed peace treaties, is that they will enter into peace treaties with Israel only after the Palestinian Authority does. Iran takes a different position, asserting that, even after a peace treaty between the Palestinian Authority and Israel, they will remain at war with Israel and seek its destruction.

There is some value to the sequencing but it creates problems. The position of the Palestinian Authority in negotiations with Israel has been that the problems between Israel and the Arab states or the problems between Israel and Iran are not their problems. They can not negotiate on behalf of these states and take no position on what these states should do.

Yet, all the various animosities towards Israel are interconnected. It is difficult to impossible to ignore the looming threat coming from all directions and to focus exclusively on one direction.

Several of the suggestions I have to make are not directed specifically to the Palestinian Authority. However, I suggest that the Palestinian Authority should not be indifferent to them.

While Palestinian Authority can not control the Arab states and may have little influence over Iran, the positions the Palestinians take on the various peace issues which are not theirs can help to resolve those issue. For the Palestinian Authority to say that we accept peace with Israel but whether others do so is none of our concern is not a credible negotiating position. The direct Palestinian Israeli peace negotiations should address all international law issues related to the conflict between Israel and its neighbours.

Iran

1) My first international law suggestion about Iran relates to cross border crimes and the international law of extradition. A suicide bomber in March 1992 attacked the Israeli Embassy in Buenos Aires Argentina, killing 29 and injuring 242. A second suicide bomber attacked AMIA, the Jewish community centre in Buenos Aires, Argentina, in July 1994, killing eight five and injuring over 300.

There is compelling evidence that both attacks were orchestrated by Hezbollah and directed by the regime of the mullahs in Iran. Argentina requested Red Notices from Interpol for eight Iranians wanted for their role in the Jewish community centre bombing. The Government of Iran contested the request. Interpol issued Red Notices against five of the eight. Those Red Notices remain outstanding today.

The five were then Iranian Intelligence Minister Ali Fallahijan, then Iranian cultural attache in Argentina Mohsen Rabbani, then third secretary of the Iranian embassy in Argentina Ahmad Reza Asghari, then commander of the Islamic Revolutionary Guards Corps Quds Force Ahmad Vahidi and then commander in chief of the Islamic Revolutionary Guards Corps Mohsen Rezai.

These sequential suicide attacks against the Israeli embassy and the Jewish community centre highlight three features of anti-Zionism. One is that there is a strong connection between incitement to hatred and terrorism and actual terrorism. Second there is a strong connection between anti-Zionism and antisemitism. Third the Jewish diaspora is vulnerable to these attacks. Anti-Zionism puts Jews everywhere at risk.

There is no extradition treaty between Argentina and Iran, but there is one between Argentina and Russia. In July of this year, Argentina asked Russia to extradite Ali Akbar Velayati who was visiting Russia at the time. Velayati was Iranian Foreign Minister at the

time of the Jewish community centre bombing and, according to Argentinean prosecutors, one of the ideological masterminds behind the attack. Russia did not respond publicly to the request, but it was obviously refused, since Velayati returned from Russia to Iran unhindered.

There is more that Canada can do. Canada could include the accused in its Special Economic Measures Act sanctions lists and the list under the Justice for Victims of Corrupt Officials Act, the Sergei Magnitsky Law.

The Islamic Revolutionary Guard Corps should be listed as a terrorist entity. The House of Commons passed a resolution to that effect in June, but it has not yet been implemented.

The AMIA crime strikes at the very heart of the peace process - incitement and terror to murder Jews around the world because of the existence of the State of Israel. There are international law mechanisms available to address this crime which have not been used. Those who are serious about wanting to use international law to help the peace process should use international law to help bring these accused to justice.

2) My second international law suggestion about Iran relates to the law on incitement to genocide. The Iranian regime has been systematically engaged in incitement to genocide against the Jewish and the Jewish state. The rhetoric was worse under the presidency of Mahmoud Ahmedinejad. But it continues under the presidency of Hassan Rouhani.[2]

During the Rouhani presidency, Iranian state television has broadcast a computerized simulation of Iranian missiles bombing Tel-Aviv, Haifa, and Ben-Gurion airport. Iranian

[2] Irwin Cotler "Rouhani Is No 'Moderate' When it Comes to Human Rights" The Huffington Post, 05/07/2014,

https://www.huffingtonpost.ca/irwin-cotler/human-rights-rouhani_b_5283081.html

leaders threaten to wipe Israel off the map. The Ayatollah Khameini, the Supreme Leader, has referred to Israel as the "rabid dog in the region" and to its leaders as "beasts" that "cannot be called human". A Twitter account under his name stated: "The Holocaust is an event whose reality is uncertain and if it has happened, it's uncertain how it has happened." In June this year, his Twitter account tweeted that "Israel is a malignant cancerous tumour in the West Asian region that has to be removed and eradicated".

The Genocide Convention, which prohibits incitement to genocide, has 149 states parties, including Iran. Any state party can bring any other state party to the International Court of Justice in the Hague for violation of the Convention. Canada could and should do that, in consort with as many other signatories to the Convention as possible.

The International Criminal Court, also in the Hague, can prosecute individual Iranians, no matter what their position in the Government of Iran, for incitement to genocide. Iran is not a state party to the Rome Statute of the International Criminal Court. However, the Court has jurisdiction over a situations where crimes with the jurisdiction of the Court appear to have been committed, provided the situation has been referred by the Security Council. The Security Council should refer to the Court the Iranian incitement to destroy Israel.

Refugees

3) My first international law suggestion about refugees relates to the legal definition of refugees. The definition of refugees which applies to Palestinians is different from the international law definition for refugees. The two definitions should be consistent.

Palestinian refugees have their own international institution responsible for their welfare, the United Nations Relief and Works Agency (UNRWA). Unlike other refugees, their status

is hereditary.[3]

The Office of the United Nations High Commissioner for Refugees recognizes derivative refugee status under the principle of family unity. A person who obtains that status as a child can maintain it after reaching the age of majority.[4]

However, unlike UNRWA refugees, that status is subject to individual determination of the person from whom status is derived. As well, derivative refugees under the mandate of the Office of the United Nations High Commissioner for Refugees are subject to the cessation and exclusion clauses of the Refugee Convention, when these clauses apply either to them or to the persons from whom their status is derived. Moreover, a person who has nationality of another country can not obtain derivative status even if the family member has status.

Second, Palestinian refugees maintain their refugee status even if they hold nationality in another state. For every other refugee, refugee status is a form of surrogate protection, where there is no state of nationality able or willing to protect. There are an estimated two million Palestinians who have refugee status with UNRWA despite having Jordanian nationality.[5]

Third, Palestinian refugees need only to have been living in British Mandate Palestine for two years, between June 1946 and May 1948, to be eligible for UNRWA refugee status. They did not have to have nationality or even permanent residence in British Mandate

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[3] www.unrwa.org

[4] Procedural Standards for Refugee Status Determination under UNHCR's Mandate, "Processing Claims based on the Right to Family Unity", section 5.1 "Derivative Refugee Status"

[5] At the UNRWA Web site, click on "Fields" and then "Jordan."

Palestine to be considered UNRWA refugees. They could have been merely migrant workers.

Others must have nationality in the country where they claim a fear of persecution in order to qualify as refugees.[6] Only those persons who have no nationality can claim refugee status against a country where they have habitual residence.

Fourth, persons claiming refugee status who are not Palestinian are excluded from refugee protection if they have the substantive rights of nationality of the country in which they have taken up residence, even if they are not nationals.[7] That is not the case for UNRWA, which has no such exclusion clause.

Fifth, other refugees are considered to have local integration as a durable solution. According to the Office of the United Nations High Commissioner for Refugees (UNHCR), "there is no formal hierarchy among the durable solutions." Resettlement and local integration have the same status as durable solutions as does voluntary repatriation.[8]

Palestinian refugees in the West Bank and Gaza are locally integrated. In principle, then, because of that local integration, they should no longer need a durable solution elsewhere. There are 1.1 million Palestinian refugees in Gaza and about 900,000 in the West Bank for whom UNRWA provides assistance, protection, and advocacy.

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[6] Refugee Convention Article 1A.

[7] Convention relating to the Status of Refugees, 189 United Nations Treaty Series 150, Article 1E.

[8] UNHCR "Resettlement Handbook," chap. 1, "Resettlement within UNHCR's Mandate," sec. 1.3.2, "Complementarities of the three durable solutions."

Sixth, other refugees have resettlement as a durable solution. Palestinian refugee advocates reject resettlement as a durable solution for this population.

Then Prime Minister Jean Chrétien in April 2000 and Foreign Affairs Minister John Manley in January 2001 offered to resettle Palestinian refugees in Canada. PLO spokesman Ahmed Abdel Rahman rejected the Prime Minister's offer, saying, "We reject any kind of settlement of refugees in Arab countries, or in Canada".[9] John Manley, in response to his offer, was burned in effigy near the West Bank city of Nablus.[10] Hussum Khader, head of the largest Palestinian Fatah militia in Nablus, said, "If Canada is serious about resettlement, you could expect military attacks in Ottawa or Montreal."[11]

Seventh, every other refugee, in order to be eligible to seek protection from the international community has to renounce armed activity. A determination has to be made of the genuineness of that renunciation[12]. That is not the case with UNRWA and Palestinian refugees. There is no ineligibility provision based on intent to use force, or actual use of force.

Eighth, non-Palestinian refugees cannot be complicit in acts of terrorism. The Refugee Convention excludes those about whom there are serious reasons for considering that the

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[9] Robert Fife, "Policy Chaos as PM Stumbles Again," National Post, April 13, 2000.

[10] Mike Trickey, "Angry at a Reported Offer of a Home, Palestinians Burn Manley in Effigy," Ottawa Citizen, January 19, 2001.

[11] "Canadians Might Understand Now," Canadian Jewish News, February 22, 2001.

[12] "Operational Guidelines on Maintaining the Civilian and Humanitarian Character of Asylum," United Nations High Commissioner for Refugees, September 2006.

person has been guilty of acts contrary to the purposes and principles of the United Nations;[13] terrorism is such an act. [14] That is not true, though, of Palestinian refugees. UNRWA has no exclusion or ineligibility clause based on complicity in terrorist acts.

There are real Palestinian refugees, Palestinians who fit squarely within the United Nations Refugee Convention definition, but they are not refugees within the jurisdiction of UNRWA. They are refugees from the West Bank and Gaza fleeing Hamas, the Palestinian Authority and non-state extremists against whom the Palestinian Authority offers no protection. These refugees make protection claims in Canada and are often accepted. I see them in my law practice.

If you are a Palestinian and you advocate in the West Bank or Gaza what I am asserting here, you too could become a Palestinian refugee, a real refugee with a well-founded fear of persecution. Anyone in the West Bank or Gaza who shows any sympathy for Zionism faces grave danger. These are the Palestinian refugees which international law should be mobilized to protect.

4) My second international law suggestion about refugees relates to Jewish refugees and displaced persons. There were more Jews displaced from Arab countries by this conflict than Arabs from the territory that now forms Israel. Folke Bernadotte, in his mediation report to the United Nations of October 1948, reported that there were 472,000 Arab refugees created by the conflict. He expected the number to rise to slightly over 500,000[15].

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[13] Refugee Convention, Article 1F(c).

[14] *Pushpanathan v. M.C.I.* (1998), 1 S.C.R. 982, para. 120.

[15] Progress Report of the Acting Mediator for Palestine, submitted to the secretary-general for transmission to the members of the United Nations, UN Document A/689, October 18, 1948.

Jews forcibly displaced from Arab countries because of the conflict numbered 820,000[16]. There were an additional 57,000 Jews forcibly displaced from Iran[17].

So, the number of Jewish refugees and displaced persons as a result of the conflict is not just more than Palestinian refugees. It is much more.

Jews forcibly displaced from Arab countries and Iran were real refugees. The Office of the United Nations High Commissioner for Refugees took the position that these victims "may be considered *prima facie* within the mandate of this office"[18], something the Office of the United Nations High Commissioner for Refugees has never said about Palestinian refugees.

Security Council Resolution 242 of November 1967 which laid down principles for a peaceful settlement in the Middle East, stipulates that a comprehensive peace settlement should necessarily include "a just settlement of the refugee problem". No distinction is made between Arab refugees and Jewish refugees.

A just settlement would require reparations. A just settlement should include compensation for property seized and damage suffered. It should include an acknowledgement, in detail, of what happened.

The drafting history of the resolution shows that the generic term "refugee problem" was

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[16] Jewish Virtual Library.

[17] "Jewish Population in Arab Countries 1948-2001." In Maurice Roumani, *The Case of Jews from Arab Countries: A Neglected Issue* (World Organization of Jews from Arab Countries, 1983), and American Jewish Yearbook: 1958, 1969, 1970, 1978, 1988, 2001 (Philadelphia: The Jewish Publication Society of America).

[18] United Nations High Commissioner for Refugees Document No. 7/2/3/ Libya, which is the letter from Dr. E. Jahn for the Office of the High Commissioner to Daniel Lack, legal adviser to the American Joint Distribution Committee, on July 6, 1967.

meant to refer to both Jewish and Arab refugees. An earlier draft of the resolution referred only to Palestinian refugees and met with opposition, because of the exclusion of Jewish refugees. [19] The generic phrasing was the result. That generic phrasing was explained as intending to encompass Jewish refugees. [20]

When it comes to Jewish refugees, one response on the Palestinian side is that this is not our problem, that it can be addressed in the later pan-Arab negotiations, after a final Palestinian Israeli peace treaty. This position ignores the fact that some of the Jewish refugees generated by the wars against the existence of Israel came from the West Bank and Gaza, about 40,000. UNRWA, using an earlier neutral refugee definition, initially took responsibility for some 17,000 Jewish refugees who had lived in and fled from the territory of British Mandate Palestine seized by Arab forces during the 1948 war.[21]

Even if negotiations between the Palestinian Authority and Israel were limited only to refugees from British Mandate Palestine, the Palestinian Israeli peace negotiations should address the issue of Jewish refugees.

Second, and more important, the issue of refugees is central to the peace negotiations. The notion that there could be peace, even meaningful peace negotiations, without reference to refugees is not tenable. Yet, it is impossible to discuss one refugee population without discussing the other.

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[19] S/8236, discussed by the Security Council at its 1382nd meeting of November 22, 1967, notably at paragraph 117, in the words of Ambassador Kouznetsov of the Soviet Union

[20] Goldberg, Arthur J., "Resolution 242: After 20 Years", published in Security Interests, National Committee on American Foreign Policy, April 2002

[21] Don Peretz "Who Is a Refugee?" 9/4/2018 Palestine-Israel Journal: Vol.2 No.4 1995

5) My third refugee focused international law suggestions relates to the right of return. Palestinian refugees, rather than seek local integration wherever they happen to be as a durable solution, claim a right of return to the territory of Israel. This is an assertion of the right of Palestinian refugees to move to Israel permanently from wherever they are, whatever their status is now in the territory in which they live, and whatever their status is or was in Israel.

If one thinks of this right being asserted generally, what is it? It would be the right of descendants to move to the country that now has jurisdiction over the territory in which their ancestors once lived or worked temporarily. Yet, one would scour the international instruments in vain looking for such a right. Palestinian rights activists assert this right for Palestinians, but neither they nor anyone else asserts this right for any other group.

Some Palestinian refugees are former nationals of British Mandate Palestine, a country which no longer exists. The successor state for Palestinian refugees is not the Jewish State of Israel. It is rather the Arab state which would be created out of the old British Mandate Palestine when the peace process leads to the creation of such a state.

Israel has a law of return which gives access to Israeli nationality to Jews around the world. The West Bank and Gaza, when they become a state with the power to enact their own nationality laws, could do the same, giving access to Palestinian nationality to Palestinians wherever they happen to be. This sort of nationality law is permitted by international law, but international law does not require it.

The United Nations

6) My next cluster of international law suggestions relates to the United Nations. I mentioned earlier the abuse of international law to demonize and delegitimize Israel.

We see this graphically at the UN Human Rights Council. There have been 27 special sessions of the UN Human Rights Council since its inception in 2006. Eight have been focused on Israel, more than on any another country. Only one country – Israel – has a Human Right Council dedicated agenda item.

Israel is the only country with a special rapporteur who has a mandate without an end date limit. The current special rapporteur is my designated commentator, Michael Lynk. There are other country rapporteurs. But all these other rapporteurs have mandates which end on specified dates.

There is an avalanche of resolutions and reports against Israel at the UN every year. At the UN Human Rights Council in March of this year, there were five resolutions and reports against Israel, and no more than one of either on any other country. The language used against Israel in these resolutions is vituperative, far stronger than that used in the other country specific resolutions.

The UN Human Rights Council has regional blocs and often bloc voting. The Asian and African blocs form a majority of the Council. The Organization of the Islamic Cooperation states have, since the inception of the Council, formed the majority or close to the majority of both the Asian and African blocs. The Organization of The Islamic Cooperation states, when it comes to Israel, mostly defers to the Palestinian Authority, which is ruled by Fatah.

The Organization of the Islamic Cooperation states at the UN General Assembly have 58 votes. *(check*) Israel has only one. If Israel had 58 votes at the UN General Assembly and the Organization of the Islamic Cooperation states had only one, the vote tally for all these anti-Israel UN resolutions would be far different.

The word Fatah in Arabic does not mean peace; it means victory or conquest. The main opposition to Fatah is Hamas, an organization dedicated through terrorism to the destruction of the State of Israel which they describe, with Orwellian phrasing, as "liberating historic Palestine through armed resistance".

Khaled Elgindy, in an article in the periodic Foreign Affairs, written in 2011, wrote that the recourse of Fatah to international instances to criticise Israel is a strategy with two different aims. One is to pressure Israel to adopt a stance more favourable to the Palestinian position in future negotiations. The second, stemming from a conclusion that the peace process is taking too long and not going anywhere, is an attempt to get through the UN system as much as they can independently from the peace process.

Yet, these two motivations are contradictory. One can not come to the UN both to aid in negotiations and as an alternative to negotiations.

The first motivation may be real, but it is does not make much sense. Abuse of international instances to discredit Israel has not impacted on the Israeli negotiating position in a manner favourable to the Palestinian Authority and is unlikely to do so. On the contrary, to Israelis it looks as if the Palestinian Authority is using the UN, not as part of negotiations, but rather as an alternative to negotiations, which indeed, at least in part, they are.

As for the Palestinians' getting what they want out of the UN rather than through peace negotiations, that can only work in part. Resolutions, special sessions, a UN rapporteur and so on, can not take the place of peace. Moreover, there are negative fall outs.

One is the discrediting the UN as an institution. When the UN is so easily and often manipulated to serve a partisan agenda of one political faction in one small part of the world,

the UN itself is discredited. Every minute the UN spends on phoney claims of Israeli human rights violations to suit Fatah is a minute lost in aiding real human rights victims around the planet.

A second negative fallout is the reinforcement of global antisemitism. Jews everywhere are seen as actual or presumed supporters of a demonized Jewish state.

Even in peaceful Canada, a country largely supportive of Israel, antisemitism is the leading anti-religious bigotry by far, exceeding anti-Muslim sentiment and incidents, both per capita and in absolute numbers. A major component of that antisemitism is demonizing anti-Zionism which the constant parade of anti-Israel efforts at the UN fuels.

The problem at the UN is not just a Human Right Council problem. However, the problem is highlighted at the Council because of the distortion of the voting system, the effective leverage the Palestinian side has over it and the importance of human rights.

The continuing efforts of the Palestinian side to seek condemnation of Israel at the UN are a bell wether of the peace process. The current stance of the Human Rights Council against Israel both indicate that Palestinian professions that they seek peace can not be taken seriously and, by the incitement effect they have, make peace more difficult to achieve.

Here the remedy is simple. Just stop attempting to manipulate the UN to endorse an anti-Israel agenda.

7) The United Nations Relief and Works Agency presents other international law problems besides its distorted refugee definition. It runs schools in the West Bank and Gaza which, according to a detailed study updated to June 2018, use textbooks which incite children to hatred, terrorism and war against Israel. The study covered 118 textbooks.

UNRWA schooling in the West Bank and Gaza is not education; it is indoctrination. These schools perpetuate the conflict into the indefinite future.

UNRWA has justified its behaviour on the basis that it is following the curriculum of the host authority, that is to say the Palestinian Authority. It has attempted to add to Palestinian Authority other materials which promoted UN values. For its pains, the Palestinian Authority in April 2017 temporarily suspended ties with UNRWA asserting that UNRWA attempts to counter incitement in the textbook materials amounted to "a betrayal of the Palestinian narrative".

I will address Palestinian Authority incitement shortly when I talk about the cluster of international law issues relating to the Authority. But here I want to address only what the UN is doing.

UN agencies may not have the power to prevent violations of international law in territories where the operate. Yet, they certainly should not be contributing to violations of international law on the basis that this is what their hosts want the UN to do. UN agencies always have the power to say no. That is something UNRWA should be doing when the Palestinian Authority asks the agency to join with them in inciting to hatred, terrorism and war against Israel.

8) The International Court of Justice in 2004 gave an advisory opinion, on a request from the General Assembly, that the security barrier Israel built to keep West Bank suicide bombers from entering Israel was contrary to international law.[22] Canada and 32 to other countries intervened in the Court proceedings to no avail, submitting that issues about the fence should be left to negotiations. The request for an advisory opinion and the advisory

[22] David Matas, *Aftershock: Antisemitism and Ant-Zionism*, Chapter Six: The Fence/Wall

opinion itself are prime example of the abuse of international law to serve the anti-Zionist agenda.

The question here though is how the damage inflicted by this opinion can be neutralized by a beneficial use of international law. It could be just ignored. It is an advisory opinion only, binding on no one. The principle in Canada and many other countries that court judgements create legal precedents does not exist in international law.[23] Nonetheless, I think it is useful, if we are not to ignore international law, if we are to take international law seriously as a contribution to peace between Israel and its neighbours, to recognize expressly the limitations of the judgment.

There are several, about which I have written at length, but I would mention only three here. One is that the United Nations General Assembly resolution requesting the advisory opinion was far from neutral, filled with pre-judgements, endorsing anti-Zionist rhetoric. To take but one example the General Assembly request called the barrier a wall though the barrier is a fence for 95% of its length and a wall for only 5%.

Second, one of the judges who issued the advisory opinion, Judge Nabil Elaraby of Egypt, shortly before he was appointed to the Court, had expressed the view in a newspaper interview that the presence of Israel in the West Bank and Gaza was an occupation in violation of international law. He further decried what he called Israel's policy of "establishing new facts" a criticism that the Court subsequently levied against the barrier. Israel asked the Court to remove the judge from the case, but the Court, with one dissent, refused.[24]

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[23] Statute of the International Court of Justice, Article 59

[24] Order of January 30, 2004

Third, after its request to remove Judge Elaraby from the case was refused, Israel, in my view wisely, did not participate further in the case. That meant that one side of the issues before the Court was not fully argued.

It may not be necessary to get into detail about the opinion. However, an express putting to side of this particularly flawed opinion, in the name of international law, would I suggest be useful.

Terrorism

9) Right now, there is no treaty prohibiting terrorism. The reason is the insistence of the Organization of the Islamic Conference States on an exception to the prohibition of terrorism that allows for terrorism against Israel and Jews.

There is an International Convention for the Suppression of the Financing of Terrorism which defines terrorism as any act

> "intended to cause death or serious bodily injury to a civilian ... in a situation of armed conflict, when the purpose of such act ... is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act."[25]

In a nutshell, terrorism is targeted killing or injury of civilians with a political motive.

Although many states in the Middle East have signed on to this Convention and its definition, the Organization of Islamic Conference nonetheless, formally, rejects this definition. The 1999 Organization of Islamic Conference Convention on Combatting International Terrorism excludes from its definition of terrorism acts committed in

> "people's struggle including armed struggle against foreign occupation, aggression,

[25] Article 2(1)(b)

colonialism and hegemony aimed at liberation and self-determination."[26]

This is an exception which swallows the rule, since virtually all contemporary terrorists, including the attack on the World Trade Centre, justified their attacks in this way. According to the Organization of Islamic Conference, targeted killing of innocents for a political purpose is acceptable as long the purpose is the right one. Put another way, the Organization of Islamic Conference states accepts terrorism as it is practised in everyday reality.

The reason the Organization punches such a gaping hole in the definition of terrorism is that it wants to excuse and justify terrorism directed against innocent Israeli Jewish citizens. The exception is a verbal cover for this terrorism.

The Canadian Islamic Congress head Mohamed Elmasry has said that all Israeli civilians over the age of 18 are "legitimate targets" for suicide bombers.[27] Elmasry justified his statement by asserting that Israel is "an occupying power", one of the exceptions to the Organization of Islamic Conference ban against terrorism. The OIC itself considers Israel an occupying power.

About the labelling of Israelis as an occupying power, I will say something in a minute. But here I want to suggest that if we want to use international law to promote peace, the OIC has to drop its insistence on a definition of terrorism which makes an exception for terrorist attacks motivated by anti-Zionist ideology.

10) The second way the international law on terrorism can help is addressing the terrorism

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[26] Article 2

[27] Marina Jimenez "Israelis Legitimate Targets, Canadian Muslim Says" Globe and Mail October 23, 2004

of Hezbollah and Hamas. Israel left Southern Lebanon and was replaced by Hezbollah. Israel left the Gaza Strip and was replaced by Hamas. Both Hamas and Hezbollah are terrorist entities which have used their newfound location and power to launch terrorist attacks on Israel.

Israel is not going to repeat this behaviour a third time, abandon security control of the West Bank only to have their forces replaced by terrorist entities who use their new-found location and power to launch terrorist activities against Israel. The question becomes how international law can prevent that from happening.

The launching pad experience has been the reality for Israeli withdrawals from Gaza and south Lebanon. In Gaza, Israeli forces were replaced by Hamas. In south Lebanon, Israeli forces were replaced by Hezbollah. Any similar result for the West Bank is a non-starter.

Yet, if Israel were to withdraw unilaterally from the West Bank today, that could easily happen. The Palestinian Authority professes the contrary. But their hold on the West Bank is tenuous. A better gauge of what would happen with Israeli withdrawal is popular West Bank opinion. That opinion is steeped in anti-Zionist propaganda, which the Palestinian Authority continues to allow and foment despite the Oslo Accord.

Hamas fires rockets and directs flaming balloons and kites to Israel on an almost daily basis. It is not credible to say that the existence and behaviour of Hezbollah and Hamas is regrettable, but Fatah will be better. For one, there is no guarantee that Fatah will remain in control of the West Bank forever. Indeed, given the constant incitement against Israel and anti-Zionist indoctrination in the West Bank, it is possible, even likely, that a democratic election held in the West Bank today would lead to the election of Hamas.

The quartet of the United States, the European Union and the United Nations in April 2003 proposed a roadmap for peace with the end result of a Palestinian state living side by side in peace with Israel. In November 2003, the Security Council adopted Resolution 1515 which endorsed the roadmap and called on all parties to achieve the vision of two States living side by side in peace.

That remains a viable formula today. Instead what we have with Hezbollah and Hamas is Israelis and Arabs living side by side in hostility.

Israel has not required, as a precondition for peace talks with the Palestinian Authority, the end to terrorist threats from Hezbollah and Hamas. It is nonetheless a practical precondition for peace.

Right now, the reason we do not have peace negotiations are Palestinian Authority preconditions.[28] Israel has no preconditions for peace talks. One of the Palestinian Authority preconditions is Israeli acceptance of a two-state solution.

Talk of a two-state solution is short hand which obscures two important questions. One is what exactly is the solution proposed? And what is the problem that this solution is supposed to solve?

From an Israeli perspective, the only two state solution which makes sense is one where there are two states living side by side in peace with each other. A two-state solution where the Palestinian state becomes a launching pad for attacks on the Jewish state is no solution at all.

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[28] Dov Lieber "Amid talk of new peace pushes, Palestinians hold firm to preconditions" The Times of Israel 28 August 2016
Adam Rasgon "PA Minister ambiguous on Palestinian preconditions for peace talks" Jerusalem Post JULY 18, 2017

Also, what is the problem for which two states are supposed to be a solution? The first answer might be the absence of a peace treaty. But that is a surface answer, just a restatement of the question. What lies behind the absence of a peace treaty?

The anti-Zionist agenda is destruction of the State of Israel. As long as anti-Zionism is a significant force in Palestinian politics, we will never get to peace. Setting up two states without marginalizing anti-Zionism does not resolve the problem of the absence of peace; on the contrary it would exacerbate that problem.

Although Israel has not set out any preconditions for negotiations, the effective end to anti-Zionism has to a precondition for the successful termination of those negotiations. Yet, the prospect of that end is so far off in the future it is indiscernible.

There are a couple of available legal recourses to address this situation. One is to bring the perpetrators of Hezbollah and Hamas terrorism to justice. I do not mean that Israel should do this, although that would be welcome. I suggest that rather Lebanon and the Palestinian Authority should do this.

Instead we see the Palestinian Authority going in the other direction. The Palestinian Authority provides funding to families of terrorists in Israeli prisons. It glorifies their terrorist acts, calling suicide bombers martyrs. Another one of the Palestinian preconditions for the resumption of negotiations is the release of Palestinian terrorists from Israeli jails.

The Palestinian Authority, to its credit, does make some effort in cooperation with Israeli authorities, to prevent terrorism. However, that effort needs to be a lot more systematic and a lot more legal.

The other legal step which both Lebanon and the Palestinian Authority should take is banning. Hezbollah should be banned in Lebanon. Hamas should be banned in the Palestinian controlled territory. Both Hezbollah and Hamas are designated terrorist entities in Canada, prohibited from functioning in Canada. They should be treated the same way in Lebanon and the Palestinian controlled territory as in Canada.

I realize that the politics of Lebanon and the Palestinian controlled territory makes such a treatment unlikely to impossible in the near future. But what that, unfortunately, tells us is that peace between Israel and its Arab neighbours is unlikely to impossible in the near future.

Israel will not hand over an eastern front to a potential terrorist threat. Something has to be done to address the disastrous results from its evacuation of northern and western territories before peace with the Palestinian Authority is possible. That something could be the effective use of legal remedies.

NGOs

11) My first international law suggestion directed to non-governmental organizations, NGOs, relates to the boycott, divestment, sanctions movement. There is a movement of boycott, divestment and sanctions directed against Israel, particularly products coming from the West Bank or investments in the West Bank.

These boycotts, divestments and sanctions are harmful to Palestinians in the West Bank because the boycott, divestment and sanctions are directed against initiatives which provide employment in the West Bank. The boycott, divestment and sanctions movement is more anti-Israel than the Palestinian Authority.

Although the Palestinian Authority supports a wide variety of anti-Israel initiatives, this is one effort they do not support. In December 2013, Palestinian Authority Chairman Mahmoud Abbas stated that the Authority does not support a boycott of Israelis products or investors.[29]

The boycotts, divestments and sanctions movement is advocacy for discrimination. Several jurisdictions including Manitoba prohibit this form of discrimination. The Manitoba Discriminatory Business Practices Act[30] provides that

> "No person shall ... seek or provide a statement ... to the effect that any goods or services supplied ... do not originate ... in a specific location, territory or country."[31]

So, my eleventh international law suggestion is to drop this boycotts, divestments and sanctions activity. It is contrary to international standards against discrimination and for equality.

12) The second NGO stance on Israel with which I take issue is the charge against Israel that it is an apartheid state.[32] Basic to apartheid was the denationalization of blacks, because they were black and allocation of nationality in state created bantustans or homelands. Blacks assigned to bantustans were subject to influx controls and pass laws.

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[29] Liran Ofek "The Palestinian Authority, the BDS Movement, and Delegitimization" Memorandum No. 169, Tel Aviv: Institute for National Security Studies, September 2017, http://www.inss.org.il/publication/palestinian-authority-bds-movement-delegitimization/

[30] C.C.S.M. c. D80

[31] Section 3(3)

[32] *Aftershock: Anti-Zionism and Antisemitism*, by David Matas, published by Dundurn Press Toronto, 2005, Chapter Three, "Accusations of Israeli human rights violations: Apartheid"

The objective of apartheid was to denationalize all blacks, to assign every black to one of ten bantustans. Blacks were forcibly removed from where they lived to their designated bantustans.

Israel has not since its inception taken away vested Israeli citizenship of even one Palestinian for the reason that the person is ethnic Palestinian. Israel has not created designated territories within its borders to which it has forcibly removed its own citizens who are ethnic Palestinian.

The evidence of apartheid which is used to support the charge are the mundane realities of border controls and security checkpoints. Yet, that sort of evidence would justify a charge of apartheid against every state, since every state has border controls and security checks for flights directed to its country.

To make a charge of apartheid against Israel, aside from its inaccuracy, its political motivation, and its incitement to hatred, is a disrespect, a trivialization of the suffering of the true victims of apartheid. Amongst other reasons, to pay proper respect to the international law against apartheid, the attempt to apply the label of apartheid to Israel should be dropped.

13) The third NGO issue I would raise is the definition if antisemitism. The International Holocaust Remembrance Alliance has adopted a definition of antisemitism which includes among its elements denying the Jewish people their right to self-determination for example by claiming that the existence of the State of Israel is a racist endeavour.

The International Holocaust Remembrance Alliance is an inter-governmental alliance. It has 31 member countries, two liaison countries and nine observer countries. It has sufficient membership that its definition of antisemitism has achieved the status of

customary international law.

The NGO community should accept this definition as well. Doing so distances them from the slur that Israel is an apartheid state and defends them from suggestions that criticism they may have of Israel are antisemitic.

Palestinian Authority

14) The first of the three Palestinian issues I want to address is settlements. A freeze on settlements is the third pre-condition the Palestinian Authority has set for resumption of the peace talks.

The West Bank and Gaza are sometimes called Occupied Territories as if that were their name. However, it is not a name; it is an opinion.[33]

Under the Geneva Conventions on the Laws of War, when there is an occupying power, there is also an occupied State. The Fourth Geneva Convention uses the phrases "Occupying Power" and "Occupied State". Who, for the West Bank and Gaza, is the occupied State?

The only possibilities are Jordan and Egypt. Before the 1967 war, the West Bank and Gaza were under the control of Jordan and Egypt. Jordan and Egypt do not today lay claim to the West Bank and Gaza. They have signed peace treaties with Israel that assert no continuing claim to the West Bank and Gaza. Even if Jordan and Egypt were once partially occupied States, they are no longer.

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[33] David Matas, *Aftershock: Antisemitism and Ant-Zionism*, Chapter Four: The accusation of occupation

The claim of occupation today considers the Palestinian people to be the occupied power. Yet, if the accusation of occupation of the Palestinian people in the West Bank and Gaza is now made against Israel, it should have been made earlier against Jordan and Egypt. It never was made and is not now made in retrospect.

Michael Lynk, the UN Special Rapporteur on the Occupied Territories, commented in response to my presentation, that the claim that Israel is not an occupier at international law was a legal unicorn. I assume that what he meant is that no one else holds this position and not that my existence is imaginary. Yet, this view of the law is held by other international legal scholars, including Canadian international lawyer Jacques Gauthier,[34] former President of the International Court of Justice Stephen Schwebel[35] and international law academic Julius Stone.[36]

Rapporteur Lynk also commented that violators of the Fourth Geneva Convention typically

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[34] Michael Diamond "The Forgotten History of What the Jews gained at the San Remo Conference" July 4, 2017, Canadian Jewish News

http://www.cjnews.com/perspectives/forgotten-history-gained-san-remo

[35] "International Law and the Legality of Jewish Revenant Communities", June 07, 2009,

http://myrightword.blogspot.com/2009/06/international-law-and-legality-of.html

[36] "International Law and the Arab-Israel Conflict", Middle East Facts, February 5, 2015

http://middleeastfacts2015.blogspot.com/2015/02/julius-stone-international-law-and-arab.html

claim that the Convention does not apply to them. I pointed out that Israel has committed to respecting the standards of the Convention even though taking the position that the Convention does not apply to them.

Lynk commented that Israel was violating the Convention by transferring settlers to the West Bank. I responded that the Convention prohibits forcible transfer and not voluntary movement and that Israel was not forcibly transferring Israelis to the West Bank. Israelis moved there on their own initiative.

Lynk conceded that Convention article 49(1) refers to forcible transfers but observed that article 49(6) and the first Protocol to the Geneva Conventions on the Law of War refer only to transfers. As well, the statute of the International Criminal Court refers to transfer, directly or indirectly.

At this point, we ran out of time. Given time, I would have noted that Israel has not signed on to either the first Protocol or the Court statute. Articles 49(1) and (6) have to be read consistently. As well, even if transfer is not forcible, there still has to be transfer. When people move voluntarily to the West Bank, no one is transferring them there.

The International Committee of the Red Cross commentary on article 49 acknowledges that the article is confusing because it deals with two separate subject matters in the same article, transfer of protected persons and transfer of civilians and that it would have been preferable to have two separate articles for the two subjects.

Suppose that is so. Suppose that forcible transfer and transfer are meant to have different meanings. By the same logic, transfer, direct transfer and indirect transfer would also have different meanings. What would those different meanings be?

One can think of examples. Forcible transfer might mean taking a government bus at the point of a gun. Transfer might mean taking a government bus at no cost, but with also with no compulsion to take the journey. Direct transfer might mean going on the government bus non-stop in a straight line. Indirect transfer might mean going on the same bus to the destination in a meandering sort of way with several stops *en route*.

However, what is charged against Israel is something entirely different. What is charged against Israel, to continue to use the example, is that people who pay for their own bus tickets are offered a free lunch on arrival. Israel is charged with violating the Convention by offering incentives, security, infrastructure and social services to Israelis who, on their own initiative, at their own cost and with their own logistic arrangements, move to the West Bank. [37]

This accusation is at best a stretched interpretation of the concept of indirect transfer. Yet the concept of indirect transfer is found only in a Protocol which Israel has not signed and by which it is not bound.

The convoluted effort to find the settlements illegal at international law, in addition to lacking a plausible legal foundation, lacks common sense. It is discriminatory to say that Arabs can live in Israel, but that Jews can not live in the West Bank or Gaza.

The way I would describe the current situation is that Israel and the Palestinian Authority have shared control over the West Bank and that Hamas controls Gaza internally and Israel

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[37] "U.N. commissioner says Jews in Judea, Samaria, eastern Jerusalem a 'war crime'". March 11, 2018 / JNS
https://www.jns.org/u-n-human-rights-commissioner-reports-that-jews-living-in-judea-samaria-eastern-jerusalem-constitutes-war-crime/

controls its borders. The terminology of settlements flows from the terminology of occupation. If there is no occupation, there are no settlements, only Jewish Israeli residents of the West Bank.

It is sometimes said that the settlements are an obstacle to peace. I would put it the other way round, that it is the opposition to Jewish Israeli neighbours living in the West Bank in safety which is an obstacle to peace. The need to evacuate Jews from Gaza for their own safety at the time of the Israeli withdrawal there speaks volumes about the effect anti-Zionist incitement has had. The very concept of Israelis and Palestinians living side by side in peace is undermined if Israelis and Palestinians can not live side by side in peace in the West Bank.

The population of Israel in 2017 was 8,680,000. The Jewish population makes up 6,484,000 (74.7%). The Arab population is 1,808,000 (20.8%)[38]

The population of the West Bank in 2017 was 2,747,943. Approximately 391,000 in 2016 or about 14% were classified as Israeli Jews.[39]

There are far more Arabs in Israel, both in absolute numbers and as a percentage of the total population, than there are Jews in the West Bank. The Palestinian Authority should be willing to accept in the West Bank a Jewish population that in percentage terms at least matches the Arab population in Israel.

Acceptance of Jewish Israeli residents in an independent Palestinian state and safety for these residents is going to take more than international law. But international law can help

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[38] http://www.jewishvirtuallibrary.org/latest-population-statistics-for-israel

[39] https://www.indexmundi.com/west_bank/demographics_profile.html

by ending the invidious and inaccurate labelling of Israeli shared control as occupation and Israeli Jewish neighbours as settlers.

15) Under the Oslo accords the Palestinian Authority committed to renouncing terrorism. Both sides agreed to

> "seek to foster mutual understanding and tolerance and shall accordingly abstain from incitement, including hostile propaganda, against each other and ... shall take legal measures to prevent such incitement by any organizations, groups or individuals within their jurisdiction."

In the view of legal scholar Geoffrey Watson, the Oslo accords are treaties with international law status. He further observed that

> "The Palestinian Authority has a disappointing record on its obligation to prevent and punish terror and other forms of violence. It has taken some steps to strengthen security cooperation with Israel, but has permitted (and sometimes engaged) in inflammatory anti-Israel propaganda verging on incitement to violence."[40]

That statement was made in 2000 but remains true today. It is difficult to build confidence in compliance with new agreements when old agreements are not respected. The way to peace leads through compliance with agreements already signed, including the Palestinian commitment not to engage in inflammatory anti-Israel propaganda.

There are, of course, many components to the Oslo Accord. From my perspective, compliance with this component ranks higher than others because it the terrorism and incitement to terrorism which drives the conflict.

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[40] "The Oslo Accords: International Law and the Israeli - Palestinian Peace Agreements" 2000

16) The sixteenth international law principle I would propose and the third directed specifically to the Palestinian Authority is the right of any state to choose the location of its capital.[41] The location of capitals is a sovereign prerogative, not a subject matter for international agreement. There is no good reason why the global community should not respect now the Israeli decision to choose Jerusalem as its capital.

When the UN passed the resolution in 1947 in favour of the partition of British Mandate Palestine into an Arab and Jewish state, the resolution proposed that there be a special international regime for the city of Jerusalem. The international regime, according to the UN Resolution, was supposed to last ten years, after which the nature of the continuing regime for the government of the city would be subject to referendum by the city residents.[42] In 2015, Jerusalem was 63% Jewish and 37% Arab.[43] There is little doubt what the result of such a referendum would be.

The official position of the Organization of The Islamic Conference states is that East Jerusalem be the capital of a Palestinian state, not that Jerusalem be internationally administered. The location of the capital of a future Palestinian state would be as much a sovereign prerogative of that state as the location of the capital of the Israel state is its sovereign prerogative.

Israel

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[41] David Matas "Jerusalem as the capital of Israel", Remarks for delivery to the Winnipeg Friends of Israel, 20 February 2018

[42] Part III Section D

[43] Jerusalem: Facts and Trends 2017 The State of the City and Changing Trends http://en.jerusaleminstitute.org.il/.upload/publications/Jeruslaem%20Facts%20and%20Trends%20-%202.Population.pdf

17) Israel is accused of a litany of human rights violations. A lot of the accusations are just hot air, anti-Zionist rhetoric, but without any air of reality to them. Some of the accusations are evidence based and do require investigation and action. However, in all such cases, before the international arena gets involved, two international law principles should be respected - complementarity and exhaustion of remedies.

The principle of complementarity is found in the Statute of the International Criminal Court. The Court statute states that a case is inadmissible in four different instances. One is that the case is being investigated or prosecuted by a State which has jurisdiction over it, unless the State is unwilling or unable genuinely to carry out the investigation or prosecution.[44]

The second is that the case has been investigated by a State which has jurisdiction over it and the State has decided not to prosecute the person concerned, unless the decision resulted from the unwillingness or inability of the State genuinely to prosecute.

The third is that the person concerned has already been tried for conduct which is the subject of the complaint unless the proceedings were conducted in a manner which was inconsistent with an intent to bring the person concerned to justice. The fourth the case is not of sufficient gravity to justify further action by the Court.

Israel is a democratic country with a free media and an independent judiciary which respects the rule of law. Israel is both willing and able to address accusations made against its nationals of grave violation of human rights. If the principle of complementarity were respected, the international arena would not address any allegation of Israeli human rights violations, because Israel itself is more than willing and able on its own to address each and every one.

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[44] Article 17(1)

The Palestinian Authority has taken advantage of its self-proclaimed statehood to sign on to the statute of the International Criminal Court and to file complaints against several Israelis from crimes within the jurisdiction of the Court.[45] Without saying anything about the merits of these complaints, I suggest that they all should be withdrawn or dismissed as inadmissible, because Israeli police, prosecutors and courts are both willing and able to address them.

18) The second international law principle I would apply to Israel is exhaustion of remedies. That is a principle that the petition mechanisms under the international covenants apply when dealing with individual complaints. The mechanisms will not consider international complaints until local remedies have been exhausted.

That is a principle which should apply to complaints against Israel of human rights violations. The international arena should be the last recourse for a remedy for claimed Israeli human rights violations, not the first recourse. Moreover, the international arena should not be an appeal from the Israeli legal system. It should rather function only when the Israeli legal system malfunctions.

Conclusion

The standard Hebrew greeting is shalom which means peace. The standard Arabic

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[45] "International court prosecutor won't be rushed" Associated Press, May 22, 2018 https://wtop.com/middle-east/2018/05/the-latest-palestinians-ask-icc-to-probe-israels-crimes/

greeting is salaam aliakum which means peace be upon you. You would think that peace between Arabs and Jews would be a natural. Yet, unfortunately, that is not so.

If these eighteen principles I set out were accepted and adopted, I believe that we would a lot closer to peace between Israel and its neighbours. Despite my initial scepticism, I do think, provided international law is approached and used in the right way, it can help bring peace between Israel and its neighbours.

The disputes between Israel and its neighbours are not primarily international law disputes. One way to characterize the differences is competing narratives. There is a clash between the Zionist and anti-Zionist narrative.

International law can help here, but only by pointing out that the anti-Zionist narrative is completely wrong. There is no reconciliation possible between these two narratives. The only solution is abandonment of the anti-Zionist narrative to the fringes with the blood libel, the Christ killing, the world Jewish conspiracy and the myriad of other antisemitic myths.

There is also a competition of underdog narratives. The Palestinians see themselves as the underdog facing a large and sophisticated military. The Israelis do not share the same perception, for at least four reasons.

One is the global sweep of antisemitism and anti-Zionism. Second, there is the imbalance in the international arena. Third is the minute geographical and demographic size of Israel in a large, heavily armed, legally and ethically challenged and extremely hostile region. Fourth is the inevitable distortion in perception when one compares a terrorist force, which operates secretly, with a state preventive mechanism, which is highly visible.

International law can help the two underdog narratives converge if international law

relevant to the conflict shifts its focus, and widens its scope. International law should not have a decontextualized focus on Israeli reaction to the terrorist threat alone. International law addressed to the conflict should also deal with the anti-Zionist component of global antisemitism, the politically driven quasi-automatic majority against Israel in inter-governmental fora, the military threat to Israel from the whole region, and the threat to Israel from terrorism, in particular, the incitement component of the threat.

Sometimes, in order to see what is around us, we have to widen our field of vision. International law can, I believe, help us to do that.

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