

JUSTICE

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הארגון הבינלאומי של עורכי-דין ומשפטנים יהודים (ע"ר)
THE INTERNATIONAL ASSOCIATION OF JEWISH LAWYERS AND JURISTS (R.A.)

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The International Association of
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10 Daniel Frisch St.
Tel Aviv 6473111, Israel
Tel: +972 3 691 0673
Tel: +972 3 691 0673
Fax: +972 3 695 3855
IAJLJ@goldmail.net.il
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President's Message

At the time this issue of JUSTICE goes to press, and as the day honoring human rights took place a few days ago, I feel that special reference should be made to the genocide in Syria. As the whole world watches the horrendous situation perpetrated on Syrian citizens by the Syrian government, Russia, and Hezbollah — murder and the burning of women and children, starving the population, the UN institutions dealing with human rights face this situation without response, though they were founded initially to prevent such hideous acts. Has there been progress through international law since World War II? This will remain an open question. In the next issue of this publication, we will analyze some of the legal aspects of the events that the IAJLJ deals with on a daily basis.



This issue of JUSTICE is devoted to the IAJLJ conference on "Continuing the Dialogue: Combating Antisemitism in Europe through Legal and Other Means," which took place in Paris in September 2016. My opening address at the Conference, followed by the Conference Statement, is cited below:

It is my pleasure to welcome you to our conference, during which we will discuss combating antisemitism in Europe through legal and other means. It was organized by the International Association of Jewish Lawyers and Jurists (IAJLJ) and the Kantor Center for the Study of Contemporary European Jewry at Tel Aviv University, which is the academic advisor to the conference.

The IAJLJ was established in 1969 by three leading jurists — René Cassin, Arthur Goldberg and Haim Cohen. One of its principal goals as an organization advocating human rights is fighting antisemitism. I am positive that the founders of this association would not believe that antisemitism has reached the level of gravity and prevalence that we experience today.

Due to the worsening situation, our organization's current activity involves combating this upsurge of antisemitism. The tragic events that occurred here and in other cities in France are the reason that we decided to dedicate the conference on this subject in Paris. By being here with you, we are conveying the message that in no way will we surrender to such horrendous acts of violence perpetrated against Jews and non-Jews alike.

As a legal organization, we naturally deal with adherence to laws and their fulfillment by the relevant authorities. In the past year, the IAJLJ, together with the

Kantor Center, initiated a series of seminars with the Justice Ministries of the EU countries, in an effort to convince Justice Ministers and legal bodies to accept the working definition of antisemitism. Adopting this definition, we believe, will serve as a common platform for various countries to combat antisemitism in the framework of the law.

Many articles have been written about the meaning of antisemitism, and many have attempted to explain why it exists.

As we are here in France, let us recall the message of Jean Paul Sartre, who wrote in October 1944, two months after Paris was freed from the Nazis in World War II, "Concepts and Thoughts on the Jewish Question." His writings include numerous works dealing with antisemitism.

Sartre argued¹ that antisemitism is not an "idea" in the commonly understood sense of the word: it is not a point of view based rationally upon empirical information calmly collected and calibrated in as objective a manner as possible. It is first of all a passion. It is indeed often a deep and destructive passion.

Voltaire also referred to the Jewish question with radical ridicule and contempt, which is why I am not quoting what he wrote and said about the Jewish people.

Much has been written about antisemitism, but to my regret it has not had any effect on diminishing this plague.

We must remember that in France before World War II, Jews were a central component in French politics. Léon Bloom served as Prime Minister and Georges Mandel as a Minister in various positions. They played crucial roles in the cultural and economic life of France. On the other hand, they were confronted with equally forceful hatred of Jews.

Coming back to present times, reading the 2015 Report written by the Jewish Community Security Service² in cooperation with the French Ministry of Interior department for assistance to those who suffered, a very troubling picture emerges. According to this published report, in 2015 in France, there were 808 antisemitic

1. Jean-Paul Sartre, *ANTI-SEMITE AND JEW* (1948).
2. 2015 Report on Antisemitism in France, Jewish Community Security Service, available at <http://www.antisemitisme.fr/dl/2015-EN.pdf> (last visited Jan. 2, 2017).

incidents that were reported to the police. In fact, due to the many unreported incidents, the actual number is much higher.

For the first time in recent history, antisemitism in France reached new heights unrelated to the armed conflict in the Middle East.

According to this Report, in 2015, Jews suffered 40% of all racial hate crimes in France and 40% of violent racial assaults, while they constitute less than 1% of the population. These numbers illustrate a grossly antisemitic reality in France.

Such a situation should not be allowed to continue and warrants a major change in approach to combating this threat to Jews everywhere. We all know that the law is only one means that society uses to defend itself against such activities. In my mind, education is the most significant avenue in combating antisemitism, as it teaches openness to accept the stranger as a free citizen entitled to equal human rights. In this avenue, there should be considerable investment.

At this conference, we will deal with antisemitism as viewed from different angles. We will, of course, relate to the working definition of antisemitism, the activities of the authorities and the influence of social media and

all media including newspapers, on antisemitism, terror, and other related issues.

I close with two citations from an article entitled "Is it Time for the Jews to Leave Europe?" by Jeffrey Goldberg,³ National Correspondent of The Atlantic. Manuel Valls, the Prime Minister of France, said that "the choice was made by the French Revolution in 1789 to recognize Jews as full citizens." "To understand what the idea of the Republic is about, you have to understand the central role played by the emancipation of the Jews. It is a founding principle."

A student interviewed after the attack on the magazine Charlie Hebdo, said there were signs, pins and stickers everywhere proclaiming "Je suis Charlie." However, after the attack on the supermarket and other Jewish targets, there were no signs, pins or stickers "Je suis Juif."

Irit Kohn

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3. Jeffrey Goldberg, *Is it Time for the Jews to Leave Europe?* THE ATLANTIC, Apr. 2015, available at <http://www.theatlantic.com/magazine/archive/2015/04/is-it-time-for-the-jews-to-leave-europe/386279/> (last visited Jan. 2, 2017).

PARIS CONFERENCE STATEMENT

The International Association of Jewish Lawyers and Jurists, in cooperation with the Kantor Centre for the Study of Contemporary European Jewry at Tel Aviv University, held an international conference in Paris in September 2016. The conference, entitled: "Continuing the Dialogue: Fighting Antisemitism through Legal and Other Means," was generously supported by the European Jewish Fund, established by Dr. Moshe Kantor. The participants' deliberations demonstrated the importance of adopting a working non-legally binding definition of antisemitism.

The combination of a working definition that may serve as the basis for specific legislation and legal measures is the key for enforcement agencies and judicial systems that would present a firm united stand.

At the conference, we presented, among other important

topics, the historical and factual reasons for the rise of antisemitism in Europe over the past decade and discussed how the printed and the electronic media are replete with disinformation and lies about the Jewish people and the State of Israel, and how antisemitism relates to terror.

As the significance of the issue is clear, we, as lawyers and scholars, presented both firm and feasible solutions at the conference:

- Adopting the working definition of antisemitism;
- Enacting specific laws relating to antisemitism in the EU and other international bodies, while amending relevant, current laws that contain lacunae vis-à-vis antisemitism.
- Increasing the enforcement of such current laws by using the above-mentioned measures.

Employing a Working Definition of Antisemitism

Rabbi Andrew Baker

In the spring of 2002, Javier Solana, the foreign policy chief of the EU, was visiting Washington. He met with the U.S. Secretary of State, as was his regular pattern, but this time he also met with Members of Congress. His advisors had recommended these conversations as a way to build broader American support for his transatlantic activities. I had the occasion to see him that same evening. While he expected to take some heat on his analysis of the Israeli-Palestinian conflict, he told me he was surprised at the number of Members who voiced concern about the increased antisemitism in Europe. “I don’t see it,” he said.

Some of us recall the difficulties in those years—notably in France but in other Western European countries as well—in getting governments even to acknowledge there was a problem. Jewish communities themselves began to record and enumerate antisemitic incidents. As very few governments were yet identifying hate crimes as a special category, they had no similar record of their own.¹ But even when specific events were acknowledged by state authorities, there was still resistance to consider them antisemitic. In Paris, the perpetrators were generally understood to be young males from the *banlieues*. Authorities had two very different explanations to offer, both rejecting the antisemitic label. At times, they were grouped together with numerous other attacks on non-Jewish property and labeled as general acts of vandalism carried out by disadvantaged and unemployed youth. But when the Jewish nature of the target could not be denied, those same authorities would highlight the Middle Eastern background of the attackers and explain that they were political acts carried out by people who were angry at Israel over its treatment of Palestinians. Either way, it shouldn’t be characterized as antisemitism, they said.²

We know that reasoning could not be sustained, and eventually political leaders were forced to concede that attacks on synagogues and Jewish schools were antisemitic, even if the motivations did not necessarily follow the more traditional pattern of the past.

The steady increase in antisemitic incidents throughout that year and the next led the European Monitoring Center on Racism and Xenophobia (EUMC) to prepare its own analysis and report on antisemitism in the fifteen-Member European Union. This too was not without controversy.

The EUMC initially commissioned the Berlin Center for the Study of Antisemitism to compile the report, but then decided not to release it. It maintained that this first report was uneven and incomplete and would instead carry out the work itself. Some critics claimed that the EUMC leadership was embarrassed that it highlighted the new sources of antisemitism stemming from Arab and Muslim communities in Europe. Although the EUMC’s own study drew similar conclusions, its press summary of the report instead emphasized the more traditional sources of attacks generated by neo-Nazi, white power and other groups on the extreme right.³

The EUMC relied on its own network of monitors in each EU country to provide input for its report, drawing on what could be gleaned from a number of opinion surveys and limited data primarily compiled by civil society organizations. At the same time, the EUMC conducted interviews with 35 leaders and representatives of Jewish communities in eight EU countries. The “empirical data” presented a mixed picture, not so bad in some places and a bit worse in others, while the picture that emerged from the personal interviews was significantly darker. Jewish leaders were uniformly pessimistic about the climate, and a number of those interviewed had serious doubts about what the future would hold. The EUMC did not try to reconcile these differences; in fact, it presented them in two separate volumes. Some observers suggested that these European Jews exaggerated the problem, implying that the traumatic Holocaust experience that a number of them had endured clouded their present day assessment abilities. But it was

1. Manifestations of Antisemitism in the EU 2002-2003. European Union Monitoring Centre on Racism and Xenophobia (2004), p. 26, available at http://fra.europa.eu/sites/default/files/fra_uploads/184-AS-Main-report.pdf (last visited Oct. 23, 2016).
2. American Jewish Committee meeting with French Foreign Minister Hubert Védrine. Opening of the United Nations General Assembly, Nov. 2001.
3. Kenneth S. Stern. ANTISEMITISM TODAY: HOW IT IS THE SAME, HOW IT IS DIFFERENT, AND HOW TO FIGHT IT (2006), p. 97.

also possible that this same experience might have heightened their awareness and ability to sense things coming that others would not yet see.

It is important to recall that in the aftermath of this examination, the EUMC presented its own lengthy discussion about the need and the difficulty in defining antisemitism. Among the points it raised for debate and clarification:

1. Are attacks on Jews by definition antisemitic? What if the perpetrators didn't know they were Jews? Conversely, even if the victims were not Jews, if they were perceived as such and targeted for that reason, shouldn't they be considered antisemitic?
2. Additionally, one must account for what may be termed the "imaginary Jew," who frequently serves as the focus of antisemitic invective as well as motivation for an attack. This is the Jew of conspiracy theories, the manipulator of world economies and the media, simultaneously responsible for communism and capitalism and all the ills of the world. This is a form of antisemitism that can exist even in places where Jews themselves are absent.
3. Already at the time of this study, there was what some termed the "new antisemitism," or new manifestations of antisemitism. Most notably this referred to antisemitism as it relates to the State of Israel. In the area of hate crimes, this debate centered on whether attacks on Jewish targets motivated by animus toward Israel should be considered antisemitic. (As noted above, some authorities instead considered them political in nature.) But what is really so different in holding a Jewish community in Paris or Brussels responsible for the perceived misdeeds of Israel today than it was to blame it for causing the Plague in previous centuries?
4. Perhaps still more complicated—and controversial—was whether anti-Zionism itself should be considered a form of antisemitism. For some of the EUMC commentators, the focus should be on the motivation of the hostility. If it stemmed from viewing Israel through a conventional antisemitic lens, it should count, they argued. But if it was politically oriented, it should not. However, motivations whether in act or expression are hard to determine. Instead, others maintained that the focus should be on the observable nature and intensity of the attack. They sought a way to measure crossing the line from criticism to something more. Demonizing Israel and questioning its right to exist were some examples. Portraying Israel with the traditional images and stereotypes of anti-Jewish hatred was another.

Less controversial, but still significant elements of antisemitism can be traced to traditional Christian teaching

of Jews as a benighted and debased people, eternally responsible for the death of Jesus. This may have diminished as a problem in an increasingly secular Western Europe and with a Catholic Church that had revised its own view of Judaism. But this was not the case in Eastern Europe, including in countries that would eventually become Members of the European Union. In these countries, religious identity played a much stronger role and the impact of the Second Vatican Council on interreligious tolerance had not really taken root.

The same could also be said for Holocaust denial. Western Europe had over half a century to confront its Holocaust-era history. For some, this included the adoption of legislation that prohibited denying the Holocaust or classified it as a punishable form of racial incitement. Eastern Europe was only just beginning to confront its own complicated history. And if not outright denial, the distortion of Holocaust history was—and in some cases very much still is—a serious challenge.

It was both the limited, and at times conflicting, data on antisemitism in the EU and the recognition that it is a complex phenomenon (whether old or "new") that led the EUMC to develop a Working Definition of Antisemitism that was released on January 28, 2005.⁴

We have now the benefit of over a decade to observe the situation in Europe—incidents of antisemitism, the responses of governments, the efforts to monitor and record data and to educate. What do we find?

- Antisemitic incidents as recorded by governments and civil society monitors have steadily increased. Times of heightened conflict between Israel and the Palestinians appear to trigger a surge in these incidents. They may diminish in the aftermath but still level off at a plateau that is higher than at previous times. There is certainly an improvement in recording data, which may also partially account for the increase. At the same time, we are mindful that the EU's Agency for Fundamental Rights (FRA) survey of Jews in eight EU countries found that 75 percent of those responding said they did not report what they witnessed or experienced.⁵

4. Dina Porat, *The International Working Definition of Antisemitism and Its Detractors*. 5 ISRAEL JOURNAL OF FOREIGN AFFAIRS (2011), p. 93, available at http://www.kantorcenter.tau.ac.il/sites/default/files/DinaPorat5%209_0.pdf (last visited Oct. 23, 2016).

5. Discrimination and hate crimes against Jews in EU Member States: experiences and perceptions of antisemitism. FRA-European Union Agency for Fundamental Rights (2013), p. 13.

- There has been growing recognition by governments and international organizations of the severity of the problem. That FRA survey revealed high levels of anxiety and uncertainty on the part of Jews in the EU. A follow-up survey—unfortunately not scheduled until 2018—will tell us if those fears have increased, as many believe to be the case.
- There is little doubt today that a significant source of antisemitic incidents can be traced to parts of the Muslim and Arab communities in Western Europe. This is reflected in the FRA survey, where Jewish respondents say the largest number of the incidents come from “someone with an extremist Muslim view.”⁶ But it is not so easy to find empirical data to support this conclusion. Hate crime reporting often includes no description of the perpetrators, even where that information is known. Only a few reports will disaggregate information based on ideology, describing them as holding right-wing extremist, left-wing extremist or Islamic extremist views. Some countries are prevented by law from identifying religion in any data collection. Others avoid it for fear of “stigmatizing” one religious community. But where more detailed survey data is available—e.g., a Forum for Living History survey of Swedish students in 2010⁷ and a Fondapol survey of French Muslims in 2014—we see that European Muslims have a significantly higher level of anti-Jewish sentiments than others in their society.⁸
- European Jewish communities continue to serve as targets for anti-Israel animus. Attacks on synagogues and community buildings have become less frequent, no doubt due in some measure to the increased security at these sites. But, Jewish community leaders and activists offer abundant anecdotal evidence of rhetorical abuse. Their own activities and programs and even their own private movements may be restricted or inhibited by anti-Israel demonstrators or those who harbor strong, anti-Israel sentiments or the fear of encountering such people. Jewish organizations that choose to mount their own public demonstrations in support of Israel must brace for openly antisemitic counter-demonstrators.
- There is less doubt today than a decade ago that anti-Zionism is frequently a mask for antisemitism. There was a time early in the 20th century, and well before the Holocaust, when many Jews themselves may have questioned the Zionist goal of reestablishing a Jewish state in its historic homeland. In the early days of the state, there were those who maintained that adherence to Zionist principles obligated all Jews in the Diaspora to immigrate to Israel. But today, Zionism is widely understood to mean the right of the Jewish people to their own state in the land of their ancestors—no more

and no less. With such an understanding, it is very hard to argue that anti-Zionism is merely a form of political criticism of Israeli policies.

These various, multiple manifestations of antisemitism are identified in the Working Definition, which in May 2016 was also adopted for use by the 31-Member International Holocaust Remembrance Alliance (IHRA).⁹ Currently the German Chairmanship of the OSCE is making efforts to secure a similar consensus agreement by its 57 participating States. A growing number of governments and civil society organizations already make use of the working definition as a tool for police training, for educating prosecutors and judges, and for monitoring and data collection. It is a useful guide for identifying antisemitism, and when standardized and endorsed by international organizations, it is more useful still.

With all the work and genuine effort that has been directed at combating antisemitism, it is sadly still present. But no one today can say, “I don’t see it.” ■

Rabbi Andrew Baker is AJC Director of International Jewish Affairs. He serves as Personal Representative of the OSCE Chairmanship-in-Office on Combating Antisemitism.

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6. *Id.* at 27.
 7. The many faces of intolerance: A study of Swedish upper secondary school students’ attitudes in Sweden 2009/2010 school year. Living History Forum (Jan. 2010), p. 101, available at http://www.levandehistoria.se/sites/default/files/wysiwyg_media/report_the_many_faces_of_intolerance_.pdf (last visited Oct. 23, 2016).
 8. Dominique Reynié, *Anti-Semitic Attitudes in France: New Insights*. La Fondation pour l’innovation politique (2014), p. 6, available at www.fondapol.org/wp-content/uploads/2015/03/Anti-Semitic-Attitudes-in-France-New-Insights-20151.pdf (last visited Oct. 23, 2016).
 9. Press Release, International Holocaust Remembrance Alliance (May 26, 2016), available at www.holocaustremembrance.com/sites/default/files/press_release_document_antisemitism.pdf (last visited Oct. 23, 2016).

Recent Efforts by the Catholic Church to Abate Antisemitism in the Wake of the Holocaust

Dina Porat

On December 10, 2015, at a press conference held in the Vatican, the Pontifical Commission for Religious Relations with the Jews issued an unprecedented declaration of utmost historical importance, titled "For the Gifts and the Calling of God Are Irrevocable: A Reflection on Theological Questions Pertaining to Catholic-Jewish Relations." It marked the 50th anniversary of the "Nostra Aetate" ("In Our Time"), the 1965 declaration that was at its time a watershed in Jewish-Christian relations.

Yet it should be noted that prior to the issuing of this declaration, "a very special general audience" was organized, according to the desire of Pope Francis, on October 28, 2015, exactly on the day *Nostra Aetate* was promulgated. A major conference, with hundreds of participants, held on that day in the Pontifical Gregorian University in Rome, was addressed by the Pope, who spoke quite emphatically about interreligious dialogue and cooperation.¹ Why was there a need to issue the December declaration, in addition to the very warm and clear address the Pope delivered barely a few weeks before?

Let us first take a close look at the *Nostra Aetate* of 1965, and at the documents issued by the Catholic Church between then and the 2015 events, and then present the December 10th Pontifical document, in light of our topic: the recent efforts of the Church to abate antisemitism.

Nostra Aetate – "In Our Time" – is the Declaration on the Relations of the Church to non-Christian Religions, proclaimed at the end of the second synod, better known as the Second Vatican Council. Initiated by Pope John XXIII, formerly Angelo Giuseppe Roncalli, this impressive gathering took place over a period of three years, from 1962-1965, and was attended by some 3,000 cardinals and bishops from the world over. In his capacity as the Vatican's delegate in Istanbul, Roncalli met members of the rescue delegation from the Yishuv, as well as members of the Jewish community in Palestine under the British Mandate between the two World Wars, and learned from them about the horrors of the Holocaust. Roncalli, a warm and open person, was deeply moved and was in tears when he heard about the sinking of the *Struma*, the loaded refugee boat that was denied access to Turkish ports, and

more so when he was presented with the Protocols of Auschwitz. He did his best to extend help, wrote intensively to Pope Pius XII and to heads of European countries he had contacts with, in an attempt to alleviate the plight of their Jewish communities.² After the war, when the establishment of a Jewish state was at stake, Roncalli became instrumental in the behind the scenes diplomatic efforts to gain U.S. members' votes by facilitating audiences with Zionist activists and high level Vatican officials.³

Once Roncalli became Pope, he did not forget the Holocaust, or its implications for the Jewish people. At the second Vatican Council, he initiated a revolution in the ways of the Church at large, where the volume published in its wake included a page and a half that came to be known as "the Jewish Document" or the *Nostra Aetate* Declaration. This short document marked a theological revolution, a watershed in Christian-Jewish relations. Due to the importance the wording of such a declaration carries, and to the fact that this wording serves as a basis for subsequent Papal documents published in subsequent years, let us explore its significance: "The Church cannot forget that it received the revelation of the Old Testament through the people with whom God in His inexpressible mercy concluded the Ancient Covenant." "Maria, and her son Jesus, were Jews," the text goes on,

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1. Presentation of the 8 page abstract of the December 10, 2015 Document, by Cardinal Kurt Koch, took place at a Tel Aviv University special conference, on December 14-15, 2015. For the text of the abstract *see* http://www.vatican.va/roman_curia/pontifical_councils/chrstuni/relations-jews-docs/rc_pc_chrstuni_doc_20151210_ebraismo-nostra-aetate_en.html (last visited Jan. 5, 2017).
 2. *See* Dina Porat and David Bankier, *RONCALLI AND THE JEWS DURING THE HOLOCAUST: CONCERNS AND EFFORTS TO HELP* (Yad Vashem, Jerusalem, 2014), p. 135.
 3. *See* State of Israel, *THE FOREIGN MINISTRY: THE FIRST 50 YEARS* (Moshe Jaeger, Yoseph Govrin and Arie Oded, eds., Keter, Jerusalem, 2002) (Hebrew), pp. 998-1002.

and the Church "also recalls that the Apostles, the Church's main-stay and pillars, as well as most of the early disciples who proclaimed Christ's Gospel to the world, sprang from the Jewish people." Moreover, "Since the spiritual patrimony common to Christians and Jews is thus so great, this sacred synod [the second Vatican Council] wants to foster and recommend" mutual understanding and respect.

Having said that as an introduction and background, the text then presents three points, each of which had been awaited for almost two thousand years by Jews, as individuals and as a nation:

The first states that "the Jewish authorities and those who followed their lead pressed for the death of Christ; still, what happened in His passion cannot be charged against all the Jews, without distinction, then alive, nor against the Jews of today."

The second one is no less surprising, taking into account the centuries-long persecution of Jews and their thoroughly ugly and demonic image that the Church fostered: "Although the Church is the new people of God, the Jews should not be presented as rejected or accursed by God, as if this followed from the Holy Scriptures."

The third and final one "decries hatred, persecutions and displays of antisemitism, directed against Jews at any time and by anyone."⁴

Such words were unheard of throughout the long history of mutual Christian-Jewish relations, and went contrary to popular deeply rooted Christian beliefs. The charge of deicide was finally revoked, the right of the Jewish people to continue God's covenant in a manner equal to that of His new people, the Christians, was reinstated, and antisemitism in all times and forms was denounced unequivocally.

A long line of Papal documents was written in the years that followed, continuing the spirit and wording of the *Nostra Aetate*. The insistence on the same spirit and wording, by a number of Popes and Vatican committees, shows that the change in the Catholic attitude toward the Jewish people was not a momentary event that accompanied a well-attended meeting such as the Second Vatican Council, but rather a long and genuine process. Indeed, in 1974, during the papacy of Paulus VI, the Papal committee for relations with the Jews issued directives and suggestions aimed at helping the believers to internalize the *Nostra Aetate*: this was a milestone in the history of Jewish-Christian relations, said the committee members, a milestone that was influenced by the memory of the persecution of the Jews and their annihilation in Europe before and during World War II. The committee reminded the believers that the spiritual and historical ties that bind the Church with Judaism denounce every form of antisemitism and discrimination as contrary to

the spirit of Christianity, and strongly recommended that Christians strive for a better knowledge of the components of Jewish tradition.⁵ These words are indeed a new phenomenon, reflecting a profound change: antisemitism as contrary to the Christian spirit.

In 1985, the same committee issued a much longer and detailed document on "the Right Way" to present Jews and Judaism in Catholic education and preaching. The text relies again on the *Nostra Aetate* and emphasizes that the uniqueness of the Jewish people is exemplary; that Jesus was and remained a Jew in Jewish Palestine in the first century and – again – that any form of antisemitism and discrimination is contrary to the very spirit of Christianity.⁶ This document was issued during the long papacy of John Paul II, who insisted time and again on rapprochement between the two religions and advanced it in a variety of ways. Much as it impacted on John XXIII, the Holocaust had a deep impact on John Paul II's conduct as Pope. He witnessed the disappearance of his childhood Jewish friends from his home town in Poland and was a member of the Polish underground during the war.

Among the many speeches, addresses and papal documents issued during this long papacy (1978-2005), some stand out with special significance and pinpoint the continuing change: The papal committee on religious relations with the Jews carried on its work, and in March 1998, on the eve of the third millennium, published the Pope's letter to the believers, "We Remember": Reflections on the Holocaust." This address, which by now is

4. The *Nostra Aetate* has been formally translated into Hebrew, under "Paulus the VI (second Vatican Council) A declaration on the Church's attitude to non-Christian Religions, 'In our Time'." For the English text see Declaration on the Relation of the Church to Non-Christian Religions, *Nostra Aetate*, Oct., 28, 1965, available at www.vatican.va/archive/hist_councils/ii_vatican_council/documents/vat-ii_decl_19651028_nostra-aetate_en.html (last visited Dec. 17, 2016).
5. Guidelines and suggestions for implementing the Conciliar Declaration "Nostra Aetate" (n. 4), Commission for Religious Relations with the Jews, available at www.vatican.va/roman_curia/pontifical_councils/chrstuni/reasons-jews-docs/rc_pc_chrstuni_doc_19741201_nostra-aetate_en.html (last visited Dec. 17, 2016).
6. Notes on the Correct Way to Present the Jews and Judaism in Preaching and Catechesis in the Roman Catholic Church, Commission for Religious Relations with the Jews, available at www.vatican.va/roman_curia/pontifical_councils/chrstuni/reasons-jews-docs/rc_pc_chrstuni_doc_19820306_jews-judaism_en.html (last visited Dec. 17, 2016).

considered one of the most central expressions of the development in the Vatican in this regard, outlines the long history of Jewish-Christian relations. While some parts of the Pope's thoughts and historical facts as he presented them might be debatable, the following is beyond doubt: the depiction of the Holocaust as a merciless indelible crime, a tragedy beyond words, never to be forgotten, and the appeal, nevertheless, to the Jewish people to hear the Christians with open hearts, despite the fact that many Christians did not protest against the persecution and killing of their Jewish neighbors – and that the Church is deeply sorry about the mistakes and failures of these believers. The letter, it should be noted, does not mention the collaboration of many Christians with the Germans in the actual round-ups and killings. The address reminds its readers that Jesus was a descendent of King David, that the Jews "are our very beloved brothers," if not the elder brothers, and a warning against the evil seeds of anti-Judaism and antisemitism that should never be rooted again in any human heart.⁷

The basic agreement between the State of Israel and the Holy See signed in 1993 — a historical milestone in itself — includes in its second item a commitment by both sides to appropriate cooperation in the struggle against antisemitism in all its forms and all types of racial and religious intolerance. The Holy See used this opportunity to reiterate its renouncement of hate, persecution and other expressions of antisemitism directed against the Jewish people and against Jews as individuals at any time or place.⁸

One may mention as well the "Antisemitism: A Sin towards God and Humanity" declaration of September 1990, the "Antisemitism; A Wound to be Healed" of September 2003, and a host of other declarations and statements. In March 2000, during his visit to Israel, Pope John Paul II placed a moving personal note in the stones of the Western Wall, in which he asked God, the God who chose Abraham and his offspring, to bring His name to all nations and to forgive those who caused suffering to God's children. Pope Benedictus XVI went along the same *Nostra Aetate* line in his two volume biography of Jesus, in which he reiterated his and his disciples' Jewish origins, and the exoneration of the Jews from the accusations of deicide that embittered their lives for centuries.⁹

The above mentioned documents form an incomplete list, and one could go on quoting more speeches, addresses, letters and the like. This brings us back to the question with which we opened: why should Pope Francis have issued one more emphatic declaration in December 2015, that followed the many already existing clear cut documents that were written since 1965, including the *Nostra Aetate* and the October 2015 event that marked

its 50th anniversary? A close look at Pope Francis' December declaration might perhaps provide an answer.

The more than 30- page document was first issued in Rome on December 10, 2015 and its abstract was brought to Tel Aviv a few days later by Cardinal Kurt Koch, who leads Jewish-Christian relations in the Vatican. Cardinal Koch presented it at the opening of a special conference, attended by the heads of most religious denominations in Israel, emphasizing that it was the Pope's wish to have it presented in the Holy Land right after it was first published in Rome. This is a unique document that summarizes all the documents that preceded it, and still depicts Jewish-Christian relations in an unprecedented manner, imbued with deep respect toward the Jewish people in a clear and unequivocal way.

This declaration, much as the previous ones, takes up the *Nostra Aetate* as a starting point, yet it "broadens and deepens" its principles, while recalling the Jewish roots of Christianity, the first of which was that "Jesus and his early followers were Jewish, shaped by the Jewish tradition of their time" (p. 1 of the abstract). This is a study document, said and wrote Cardinal Koch, "whose aim is to deepen the theological dimension of the Catholic-Jewish dialogue" (p. 3). This dialogue has a good chance now, since "from enemies and strangers we have become friends and brothers" in recent decades (p. 4). Moreover, a very close and unavoidable family relationship has developed, so much so that the present dialogue is not inter-religious but rather an intra-familial one (p. 5).

There is indispensable harmony between the two testaments, the Old and the New one, and special relations between the Old and the New Covenants: "The covenant offered by God to Israel is irrevocable ... the new Covenant has its basis and foundation in the Old one ... the New Covenant is neither the cancellation nor the replacement but the fulfillment of the promises of the Old Covenant (pp. 5-6).

Both the original full document and its abstract do not sweep difficult problems under the carpet, like how can Jews be part of God's salvation if they do not believe in Jesus as a Christ and a messiah? This, says the Pope, and the abstract quotes, "remains an unfathomable divine mystery" (p. 6). Another thorny issue is that of the traditional wish to convert the Jews. "The Catholic Church

7. Pope John Paul II, Apostolic Letter *Tertio Millennio Adveniente*, Nov. 10, 1994, 33:AAS (acta apostolicae sedis 87 91005), 25.

8. AAS, vol. LXXXVI (1994), n.9. pp. 716-728.

9. Joseph Ratzinger, POPE BENEDICTUS XVI, JESUS OF NAZARETH, three volumes (Ignatius Press, Rome, 2011-2012).

neither conducts nor supports any specific institutional mission work directed towards Jews," while it may be directed at members of other religions. This is an additional earthquake, since for centuries Christians prayed for the conversion of Jews, as they did in the Good Friday prayer, and attempted forced and often cruel conversions as well. Moreover, if Christians approach Jews to explain the principles of Christianity, or are still reciting the Good Friday prayer, they should do so in "a humble and sensitive manner," because the Jews are the bearers of God's word, and because they had undergone the great tragedy of the Shoah (p. 7). Notably, the traditional ending of Papal documents is a wish for a common struggle against all manifestations of racial discrimination against Jews and against all forms of antisemitism (p. 7).

The December declaration includes more utterances that were not included in the abstract. For example, a Christian can never be an antisemite, mainly because of the Jewish roots of Christianity; mutual respect is both a pre-condition for an inter-religious dialogue and its purpose; one more basic purpose of the dialogue is coming to know each other. Regarding mutual acquaintance, the following is an inspiring sentence, one that can be cherished: "one can only learn to love what one has gradually come to know, and one can only know truly and profoundly what one loves." Repeated emphasis is placed on the Holocaust as the starting point for change in the Vatican: It was the dark terrible shadow of the Holocaust over Europe during the Nazi era, says the declaration, that has led the Church to re-think its ties with the Jewish people.¹⁰

The above mentioned documents reflect an enormous change, a revolution, in the attitude of the Catholic Church to the Jewish people, from centuries-long hostility and antisemitism in a variety of forms, to expressions of friendship, kinship and respect. The change is of utmost importance: there are more than a billion Catholic believers world-wide today, and such Papal declarations, coupled by the visits of the Popes to Jerusalem, are bound to have a positive impact. Also, the manner and tone – *et c'est le ton qui fait la musique* – in which the change is introduced, is essential to its reception by audiences in the various countries. Indeed, it is both the warm open personality, and the contacts with Jews, that made the music: John XXIII, John Paul II and Francis had close friendship with Jews – Roncalli with the rescue delegation in Istanbul, John Paul II with his childhood friends, some of who survived and with whom he maintained contact throughout his life, and Francis with his bosom friend Rabbi Avraham Skorka whom he befriended when he was Cardinal of Buenos Aires. Indeed, the three of them,

much more than other Popes that sat on the Holy See during and since the Holocaust, initiated and maintained a revolutionary change toward the Jews.

Still, a number of problems accompany this development.

One of them concerns timing: Pope Francis' declaration was issued in the midst of a wave of immigrants, mainly from Moslem countries, who are flooding Europe. Terror and antisemitism are on the rise for the last decade. The Moslem world has been watching with great concern the process of rapprochement between the Church and the Jewish people, and the December 2015 document was no exception.¹¹ Is it the wish of the present Pope to form a sort of a Jewish-Christian coalition that would be a barrier to violence and terror that may originate in extreme radical Islamist circles, or will he have to find a way to keep a kind of co-existence with the Moslem world as well, in order to maintain some balance in the Vatican's foreign relations?

The other problem concerns politics: Half of the Catholics today reside in third world countries, whose political leadership traditionally supports the Palestinian cause. Moreover, these leaders have been under the Soviet umbrella for decades, until 1989, and now Putin's Russia is trying to maintain this influence. Is the Vatican taking a political risk when issuing such pro-Jewish declarations? Part of the answer lies in the wish and duty of the Church to defend and protect its followers in the Middle East, and especially on Israeli territory. The Christian communities that live as a minority under the threat of the Moslem population around them are dwindling, and good relations with Israel are needed, since the Israeli authorities are their main source of support.

Yet perhaps the answer lies in another direction, since Israel is bound to defend all of its citizens, with or without Papal declarations: these declarations are meant for internal Catholic use, and are part and parcel of the internal theological debate taking place among the Church's high echelons. This debate does not take into consideration the Arab and Moslem world, since it is declared and defined as an internal theological debate, not a political one. Although the Jewish communities or authorities are not direct partners to the process, nor do they have any direct impact on the deliberations, Jewish representatives are members of the bilateral committees established by the Vatican since 1980. Moreover, Israel as the state of the Jewish people is not mentioned in the

10. For the abstract, *see supra* note 1.

11. Meir Litvak and Esther Webman, *FROM EMPATHY TO DENIAL, ARAB RESPONSES TO THE HOLOCAUST* (Hurst & Company, London, 2009), ch. 4.

documents, except, naturally, for the basic agreement signed in late 1993 between the two states.

The documents are not distributed to the outside world – nor are they translated by the Vatican so as to be read by non-Catholic audiences. This is at least part of the explanation for the fact that these astonishing documents, imbued with respect and well-wishing for the Jewish world, are almost unknown in Israel or among Jews. This state of affairs also explains why there is no Jewish, rabbinical or Israeli response to the positive spirit emerging from Rome: it is simply unknown to most Jews. Another serious question is, how much of these documents' contents is known and seeping down from the high echelons into the Christian world at large; in small villages, in conservative communities, and other Christian places in the world. In Latin America and Eastern Europe, for instance, it is unclear how long will it take for the process and its good intentions to be understood and accepted by large audiences.

Finally, a thought that is entirely my own: let us assume that indeed all the documents that have been presented here are of a pure theological nature, and serve theological

needs and purposes, and therefore do not involve any political risk for the Popes who initiate them or go along with them. Still, they could be interpreted as having political importance, by both the Arab and Moslem world, and the Israeli-Jewish one. Let us dwell on one possible interpretation: The repeated declaration, since *Nostra Aetate* until Pope Francis, that God's covenant with the Jewish people is irrevocable and has actually never been broken means that the Jews were unjustly considered an accursed and detested people, and that their punishment for not accepting Jesus as the Christ, to be on exile among the nations, was unjust as well. If so, the Jews are entitled to come back to the land of their ancestors, and to rebuild their national existence, as it had been before the unjust exile. This interpretation certainly has political significance, for which we have to deeply thank the Catholic leaders – for this and for the kind friendly hand extended from Rome to Jerusalem. ■

Dina Porat, Chief historian of Yad Vashem, is Professor Emerita in the Department of Jewish History and head of the Kantor Center for the Study of Contemporary European Jewry, both at Tel Aviv University.

The Return of Anti-Judaism in Contemporary Liberation Theologies

Giovanni Quer

Introduction

The social revolution of the 1960s led to a radical change in world politics and in the Christian world. In the aftermath of the Second Vatican Council, the Catholic Church opened up the new ideas of liberation theologies and paved the way for a revolutionary theological movement that also influenced the Protestant world. This movement intended to elaborate on a theology directed at the poor and the oppressed, interpreting the scriptures in light of social conflicts and encouraging social mobilization on the basis of Christian thought.

Liberation theologies brought a new understanding of God, religion, and the churchmen's role in societies, addressing inequality and calling for action toward justice. The spirit of equality and openness that renewed the Christian world also included overtures to more pluralistic views in relation to other cults and religions. As part of this process, the rehabilitation of Judaism in the eyes of the Church through the recognition of the validity of the Covenant was a major step toward the beginning of a new era of appreciation and dialogue between Christians and Jews, aimed at breaking away from traditional approaches of anti-Judaism.

While liberation theologies and Jewish-Christian rapprochement are both rooted in the same spirit of openness and a quest for justice that pervaded social movements in the 1960s, liberation theologies' principles now seems to be serving a growing movement that promotes the delegitimization of Israel and the mystification of Zionism.

Palestinian Liberation Theology: A New Replacement Theology?

The advent of Jesus as the Messiah in early Christianity resulted in the obliteration of the Covenant between God and the Jews. Coupled with the accusations of *decide*, this theological position consolidated the view of Judaism as an obsolete religion characterized by sterile legalism and arrogant particularism. By refusing Jesus as the Messiah and allegedly killing him as the son of God, Judaism became to Christian eyes a blasphemous perversion of the scriptures. Jews were cursed to perennial exile as punishment for their perfidy and denial of the true faith.

This approach culminated in replacement theology, which posited that the Church is the new Israel, consequently invalidating Judaism. During the 19th century, a new theological thought known as dispensationalism sought to reinstate the validity of the Jewish Covenant. It is, however, only after the Holocaust, that Christian Churches revised replacement theology and fully recognized the validity of Judaism. Yet, replacement theories still exist and seem to make their way through new Christian theological-political movements.

A new movement emerged in the late 1980s, under the name of Palestinian liberation theology. Confronting a political reality where the Jewish state represents the political expression of Jewish national identity, Palestinian liberation theology reflects upon the Palestinian cause by elaborating on a Christian answer to the conflict that is entirely directed to oppose Zionism through novel readings of the Bible and an international advocacy that includes support for BDS (boycott, divestment, and sanctions) against Israel. The supporters of this movement appeal to those Christian organizations and congregations that are active in human rights and social justice projects in order to advance a political agenda that mystifies Zionism as a political movement incompatible with Christian values, promotes the re-interpretation of the Bible in light of a Palestinian narrative, and encourages boycott initiatives against Israel.

The misleading approach to the Arab-Israeli conflict, which includes the historical inversion of victim and oppressor, criticism of Israel as a nation-state, and Palestinian resistance as the ultimate struggle against (Zionist) imperialism, is elaborated in a Christian perspective. This theological enterprise has far-reaching negative consequences in terms of damaging consideration towards Judaism and regressing on the achievements of the Jewish-Christian dialogue.

The accusations formulated against Zionism continue anti-Judaic views that Christianity revised. First, Palestinian liberation theologians and their sympathizers portray Zionism as a form of nationalistic, religiously inspired ideology that perpetuates a tribal conceptualization of God as entrenched in the *Torah* and as opposed to the humanist prophetic tradition embodied in Jesus' teachings.

Secondly, they elaborate a novel theological replacement that aims to associate the State of Israel with a biblical empire, while advancing the idea of Jesus as a Palestinian. Finally, they advocate for BDS against Israel as a form of Christian duty to resist what seems to be the ultimate injustice against the Palestinian people.

In an effort to delegitimize Israel's legitimacy, these theological formulations continue traditional anti-Judaic accusations of Jewish particularism and perversion of the scriptures, claiming that Zionism perpetuates a nationalistic reading of the Bible in opposition to Christian universality. The denial of Jewish statehood relegates Judaism to a historical role of perennial victim. In the Diaspora, a disempowered and persecuted Judaism embodies the victim *par excellence*, an ethical mission that Zionism seems to have betrayed, by embracing Jewish national politics. As a result of this betrayal, Israelis have become oppressors to be included in the long list of biblical usurpers, like the Assyrians, the Pharaohs, or the Romans. Forging a biblical indigenous narrative, Palestinian liberationist activists portray the State of Israel as a foreign, anomalous entity that oppresses the indigenous Palestinian population by referring to liberation narratives of the Bible, whereby the Palestinians take the place of the oppressed Hebrews, and Israel the place of the Pharaoh, or, likewise, Palestinians take the place of the Jews and Israel the place of the Roman Empire. This novel theological replacement has dangerous precedents in Christian history, while it currently manifests itself in the discourse on justice and human rights.

In line with this new biblical hermeneutics that advances a Palestinian reading of the Bible, other theologians go so far as to invert the historical significance of biblical notions, whereby biblical Jews become the oppressed Palestinians and contemporary Israelis become foreign occupiers as ancient Romans or enslaving Pharaohs. Through Marxist readings of the Gospel of Marx, Israel becomes a wicked empire just as cruel as the Roman, guilty of suffocating the local economy, oppressing freedom, controlling resources, and expelling indigenous people to exile. According to Mitri Raheb, Israel represents an empire that dominates "Palestine," just like historical predecessors such as the Assyrians, the Romans, the Byzantines, the Crusaders, the Turks, and the British.¹ Jesus himself, as the leader of the oppressed who encourages resistance and rebellion, becomes a Palestinian under foreign occupation who preached resistance against the Roman usurper and the condescending Jewish elites of the time. Consequently, Jesus embodies the plea of the Palestinian people for liberation from Israeli occupation and Zionist distortion of the Bible. Jesus' practice inspires Christian resistance against injustice substantiated in what Michael

Prior calls a "cosmic Intifada" toward righteousness.²

Christian Militancy and the Arab-Israeli Conflict

One basic principle of liberation theology is "God's preferential love for the poor," whereby the whole biblical narrative is reduced to a story of God's militancy in favor of the oppressed, who have a duty to resist against evil and sin, embodied in powerful regimes, military forces and rich elites.³ Developed in Latin America in the late 1960s and 1970s, this theological thought is designed to empower oppressed masses. Galvanized by the belief that "God is on their side," the poor need to take action against oppression as an act of faith, in order to restore justice. Acting against injustice involves, according to some theologians, a precise choice for nonviolence, in line with Jesus' teaching. On the contrary, other Christian thinkers condone violent struggle aimed at the greater good of pursuing justice.

The centrality of the "poor" in liberation theologies is developed in diverse social and economic contexts. Often, liberationist theologians use biblical references, describing contemporary quests for justice as a struggle against what Leonardo Boff defines as today's "Pharaohs"⁴ or against the oppressive Romans of Jesus' times. In this picture, Jesus becomes a revolutionary who preaches radical change, encourages revolt against foreign occupiers and opposition against cooperationist elites. The revolutionary views elaborated by liberationist theologians often borrow from Marxist concepts and methodology, which led to harsh criticism from within the Church. As Joseph Ratzinger warned, denouncing the political re-reading of the Scriptures,

"theologies of liberation," that reserve credit for restoring to a place of honor the great texts of the prophets and of the Gospel in defense of the poor, go on to a disastrous confusion between the "poor" of the Scripture and the "proletariat" of Marx. In this way, they pervert the Christian meaning of the poor, and they transform the fight for the rights of the poor into a class fight within the ideological perspective of the

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1. Mitri Raheb, *FAITH IN THE FACE OF EMPIRE: THE BIBLE THROUGH PALESTINIAN EYES* (2014), p. 99.
 2. Michael Prior, *JESUS THE LIBERATOR – NAZARETH LIBERATION THEOLOGY (LUKE 4.16-30)* (1995), p. 201.
 3. See Leonardo Boff and Clodovis Boff, *INTRODUCING LIBERATION THEOLOGY* (1988).
 4. *Id.* at 50.

class struggle. For them, the "Church of the poor" signifies the Church of the class which has become aware of the requirements of the revolutionary struggle as a step toward liberation and which celebrates this liberation in its liturgy.⁵

The inherent revolutionary message appealed to a number of "oppressed" people around the world, offering a political-theological belief that includes social action against ethnic discrimination, racial discrimination and systematic dispossession of masses. The emphasis on "praxis,"⁶ *i.e.* action against structural injustice, is further stressed by the 1985 South Africa Kairos Document, the first political-theological manifesto addressing the segregationist regime of apartheid South Africa. This document calls for mobilization against racial oppression, condemns the misuse of the Bible for justifying wicked policies, and attacks the Church for not engaging in the struggle. Palestinian liberation theology has drawn from these ideas for elaborating a theology that addresses the Arab-Israeli conflict, including claims to the land, Jewish statehood, and resistance against Israel's policies in the post-1967 territories.

One of the pioneers of Palestinian liberation theology, Reverend Naim Ateek, has initiated a new biblical hermeneutics that is focused on justice and the land. In his book "Justice and Only Justice," Ateek began the contextualization of liberation theology with the Palestinian cause. Regarding the legitimacy of claims to the land, he explains that the land is not promised to one people, but rather is a gift to those who inhabit it, and national claims to it reverberate a "tribal" conceptualization of God as entrenched in the Torah are opposed to the universalist tradition of the prophets and the New Testament. Therefore, Zionism, as a national movement whose goal is the establishment of a national home for the Jewish people in its ancestral homeland,

is a retrogression of the Jewish community into the history of its very distant past, with its most elementary and primitive forms of the concept of God. Zionism has succeeded in reanimating the nationalist tradition within Judaism. Its inspiration has been drawn not from the profound thoughts of the Hebrew Scriptures but from those portions that betray a narrow and exclusive concept of a tribal God.⁷

Portraying Palestinians as the oppressed, Palestinian theologians attack Zionism as a form of power that abuses

the Bible in order to justify the dispossession of the Palestinians. Referring to the Biblical story of Naboth's vineyards, expropriated by the wicked king Ahab eventually punished by God, the conflict becomes a story of land dispossession at the hands of the wicked Zionists. Furthermore, this imperialist enterprise stems from an inherent supremacist consciousness that is supposedly entrenched in the Torah and is opposed to the humanist vision of man and God that is developed by the prophets and Christianity. This theological interpretation of Zionism is alarmingly related to the old accusations of particularism that for centuries have falsely condemned the Talmud for propagating racism against Gentiles and blamed Jews for sticking to obsolete traditions. Such views are expressed, for instance, in the thought of Bruno Bauer, whose theological-political reflections on Jews condense the several accusations of particularism, and attack Judaism as unfit for modernity.⁸ Similarly, modern accusations of tribalism seem to advance the idea that Zionism and the whole project of Jewish statehood is unfit for the international values of humanism, pluralism, and justice.

BDS Initiatives and the Negation of Jewish Statehood

These political-theological views bear many consequences on Judaism directly. Not only Zionism, as the expression of Jewish political accomplishment of liberation and statehood, is the result of biblical distortions that explain Jewish statehood as a nationalist enterprise opposed to the Christian universalist tradition, but also Judaism, which is consigned to eternal exile as an ethical mission. It seems that Judaism acquires legitimacy only through suffering and disempowerment, in which solely Jews can fulfill their historical mission of "ultimate victim." Jewish Diaspora incarnates dispossession and victimhood, which is all that is good and just in the eyes of liberationist theological thought. Accordingly, Jewish statehood tragically acquiesces with oppression and inevitably

5. See Congregation for the Doctrine of the Faith: Instruction on Certain Aspects of the "Theology of Liberation," The Holy See, available at www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_19840806_theology-liberation_en.html (last visited Nov. 4, 2016).
6. See Duncan B. FORRESTER, *THEOLOGY AND POLITICS* (1988), p. 63.
7. Naim Stifan Ateek, *JUSTICE AND ONLY JUSTICE: A PALESTINIAN THEOLOGY OF LIBERATION* (1989), p. 101.
8. Bruno Bauer, *DIE JUDENFRAGE* (1843).

performs abuse, as a result of the Zionist project, which condemnably reverted history through misleading biblical interpretations, making the victim an oppressor.

In the attempt to delegitimize Israel, these theological views also deny historical continuity of biblical and contemporary Jews, often advancing quasi-racial arguments whereby European Jews would not even be “Semites” and, therefore, do not belong to the Middle East,⁹ or presenting Palestinians as the only indigenous population entitled to claim an uninterrupted bond with the land.¹⁰ Incorporating the indigenous narrative, Palestinian Christians become the only real native population that, having uninterruptedly lived on the land since the times of Jesus, can claim a real historical bond to the land. This assumption, which artificially distinguishes between biblical Israel and the modern State of Israel, is often endorsed by those Christian organizations and Churches that promote boycott policies of institutions and companies active in the post-1967 territories.

These concepts are encapsulated in the 2009 “Kairos Palestine Document,” the political-theological manifesto of Palestinian liberation theology.¹¹ Defining the occupation as “a sin against God and humanity,” the document denounces Zionism and calls for opposition against it. While condoning violence, the Kairos Palestine Document calls for “creative resistance” in light of Jesus’ refusal of violence, and supports the boycott of Israel as a Christian response to the unrighteous policies of Zionists.

This call was endorsed by diverse Christian churches that are connected to a wide network of organizations, programs and activists who advance anti-Zionist theological views. The United Methodist Kairos Response, the Israel-Palestine Mission Network of the Presbyterian Church, the Australia-Palestine Network, Kairos-Europa, the Palestine-Israel Ecumenical Forum, the Ecumenical Accompaniment Program in Israel and Palestine of the World Council of Churches, the Ecumenical Action Group for a Just Peace in Israel-Palestine of the United Church of Christ are some of the groups that promote Kairos Palestine and boycott initiatives grounded in Palestinian liberation theology. These groups advance the Christian perspective on Zionism as developed by Palestinian liberation theologies, promoting BDS initiatives in Christian Churches and organizations through a distorted dialogue on human rights. In the debates concerning the Arab-Israeli conflict in Christian congregations, associations, and Churches’ pension funds, human rights concepts and humanitarian law concepts are used to encourage divestment and boycott actions against Israel, held as solely responsible for the violations of international law in the conflict. Legal appreciations of the conflict epitomize what is believed to be an ongoing oppression

of the Palestinians, an inherently discriminatory approach toward Palestinian citizens of Israel, and an outrageous illegality of Israel’s presence in the post-1967 territories. Often, these discussions endorse the distinction of biblical Israel and the modern State of Israel, as well as the necessity to act for restoring the injustice caused by Israel, debate Israel’s supposed apartheid system, racist policies, and brutality. As a Christian response, BDS initiatives are an integral part of the theological-political activism that supports the Palestinian cause.

Furthermore, these concepts have also been translated into liturgy, by incorporating prayers against the occupation and a modern view of Jesus’ way of the cross, which through twelve steps commemorates Jesus’ trial, walk through Jerusalem, crucifixion, death and resurrection during the Christian festivity of Easter. These “steps” are replaced by central elements of the Palestinian narrative, from the establishment of the State of Israel (the *Nakba*, “catastrophe” in Arabic), the construction of the defense barrier (known in activists’ circles as the “apartheid wall”), to the military confrontations with Hamas in Gaza.¹² The replacement of Jesus with the Palestinian people has pervaded not only biblical hermeneutics but also liturgy, in a new Christian approach to Israel and Zionism. Other examples are deducible from prayers and pilgrimages promoted by Christian organizations that advance the religious endorsement of the Palestinian narrative.¹³

The attempt to deconstruct Zionism is common to intellectual efforts that condemn Zionism as a colonialist, imperialist, and even racist enterprise, which created a polity whose values are supposedly incompatible with international values. Yet, the theological enterprise of “de-Zionizing the Bible” has far-reaching consequences, in that it impacts the core of post-Holocaust Jewish-Christian relations. The deconstruction of Zionism

9. *Supra* note 7, at 105.

10. *Supra* note 1, at 11-19.

11. See *A moment on truth: A word of faith, hope, and love from the heart of Palestinian suffering*, The Kairos Palestine Document (2009), p. 3, available at <http://www.kairopalestine.ps/sites/default/files/English.pdf> (last visited Nov. 4, 2016).

12. Sabeel Ecumenical Liberation Theology Center, *CONTEMPORARY WAY OF THE CROSS: A LITURGICAL JOURNEY ALONG THE PALESTINIAN VIA DOLOROSA* (2008).

13. See, for instance, the liturgical materials elaborated by the Palestine-Israel Ecumenical Forum, an inter-denominational Christian group active in the Arab-Israeli conflict, available at pief.oikoumene.org/en/world-week-for-peace/resources (last visited Nov. 4, 2016).

presupposes the negation of Jewish statehood on the basis of arguments that portray Israel as an inherently unjust, illegal, and illegitimate entity, whose existence is contrary to values and principles of international justice. The Christian deconstruction of Zionism adds to this argument a consideration of Judaism that not only echoes old accusations of biblical perversion and religious illegitimacy, but also denies Jewish statehood as a result of what Robert Wistrich described as a “Christianization of Judaism,” which entails the vision of the Jew as the paradigmatic victim of history. Consequently, Zionism is condemned because it represents just the opposite of the role assigned to the Jews as witness of dispossession and disempowerment, i.e. power politics and military force. This “betrayal” of the mission to which Diaspora Judaism is relegated implies, according to Wistrich, antisemitic views “of traditional Christian replacement theology” because they “[negate] the legitimacy of an independent Jewish *political* existence in Zion.”¹⁴ It seems that the only way to righteousness is through powerlessness, and Jewish power, embodied in Zionism and the State of Israel, deprived Judaism of what that preferential love for the poor that liberation theologies conceptualize and which lies today in Palestinian hands.¹⁵ As Ellis put it, “just as the renewal of Christianity in the West rests largely in Jewish hands, that is, with those who lived on the other side of Christian power, so too is it today the Palestinians, who have lived on the other side of Jewish power, who call the Jewish community to account.”¹⁶

The liberation of Palestine acquires in this theological operation an eschatological significance that aims to liberate the Bible of what is construed as Zionist misreading.¹⁷ This actually results in the deprivation of biblical and historical Jewish relevance. Neglecting Jewish roots of Christianity and relegating Judaism to a perpetual victim of history, which solely in disempowered, powerless condition finds theological legitimization by fulfilling its ethical mandate of ultimate “oppression,” Palestinian liberation theology denies Jewish nationhood and statehood by introducing a novel replacement hermeneutics that supplants the Hebrew biblical narrative with the Palestinian national narrative.

Since Palestine is occupied on biblical grounds, its liberation acquires a transcendental meaning for Christianity as a whole, which is called to act for the restoration of justice in the Holy Land, pervaded by evil forces that in the name of God assumedly oppress, dispossess, and murder the native Palestinian people. Such theological construal reinvents biblical narrative for portraying the whole Zionist enterprise as antithetical to religious and secular conceptualization of justice as in the past. The biblical narrative was reinterpreted for

portraying Judaism as antithetical to modernity.

After the Second World War, the Jewish-Christian dialogue has devoted considerable efforts to overcome these traditional views on Judaism that now are emerging in the Christian discourse on human rights. In an effort to advocate for the Palestinian cause, international support for Israel after the Holocaust is directly attacked. Referring to a “Christian guilt” for anti-Judaism, which ideologically contributed to antisemitic persecutions including the genocidal Nazi government, Palestinian liberationist theologians associate the Holocaust to the *Nakba* and accuse contemporary supporters of Israel to be as those Crusaders who mishandled the Scriptures in order to justify military assaults on the Middle East.

In this sense, some activists replicate liberationist theologians’ accusations against First World Churches of being detached and insensitive to the reality of poverty and exploitation, by addressing their criticism to the core of the Jewish-Christian dialogue and condemning Jewish-Christian rapprochement as a movement developed at the expense of Palestinians.¹⁸ Christian supporters of Israel are accused of neglecting the inherent danger of Zionism as a nationalist, racist, and militarist ideology that reverses the biblical message and continuously enacts injustice. Their theological and political backing of the Zionist project is considered a mere consequence of guilt for the Holocaust and Christian antisemitism.¹⁹ Moreover, the Holocaust discourse serves to prevent any discussion on the Palestinian question within Jewish-Christian cooperation. According to Mitri Raheb, “this myth of the Judeo-Christian tradition is unequivocally part of imperial theology that sees and believes itself as supreme. It is

14. Robert Wistrich, *THE LETHAL OBSESSION: ANTI-SEMITISM FROM ANTIQUITY TO THE GLOBAL JIHAD* (2010), p. 502.

15. See Naim Ateek, *JUSTICE AND ONLY JUSTICE: A PALESTINIAN THEOLOGY OF LIBERATION* (1989), pp. 160-61, where the author argues that by pursuing power politics and a statehood project, Jews have somehow lost their moral superiority that is embedded in victimhood.

16. Marc H. Ellis, *Jewish Theology and the Palestinians*, 19 *JOURNAL OF PALESTINE STUDIES*, 39 (1990), p. 52.

17. See, for instance, point 2.3 of the Kairos Palestine Document, which articulates a universal mission of liberation bestowed upon Palestine. This mission appears to be the liberation of the land and of the scriptures, believed to be used for justifying Palestinians’ dispossession (see also point 2.2.2).

18. See Mitri Raheb, *I AM A PALESTINIAN CHRISTIAN* (1995), pp. 57-59.

19. See Naim Ateek, “Forward” in *THE BIBLE AND THE PALESTINE ISRAEL CONFLICT*, ed. Naim Ateek *et al.* (2014), pp. 19-21.

utilized theologically and implicitly against the Palestinian people and within the context of the clash of civilization against Islam.”²⁰

Conclusion

The ramification of Palestinian Liberation Theology in peace-making projects of Christian organizations and boycott initiatives advanced by Christian congregations and pension funds is just one aspect of this new theological phenomenon. The real jeopardy lies in the consideration of Judaism as a whole and the mystification of Zionism, capable of imperiling the significant advancement in post-Holocaust Christian thought, since the employment of theology in the effort to deny Jewish statehood results in the perpetuation of traditional anti-Judaism. ■

Giovanni Quer holds an LLM and a PhD in International Studies from the University of Trento, Italy. He specializes in human rights and minority protection. He is currently a postdoctoral fellow at the Comper Centre for the Study of Anti-Semitism and Racism at the University of Haifa. His research focuses on Christian human rights activism in the Middle East, analyzing the connections between theological and legal discourses.

20. *Supra* note 1, at 65.

Industry of Lies

Ben-Dror Yemini

A few years ago, I attended an event in Boston related to Israel. As I approached the building, I saw two amiable young women carrying signs protesting the “genocide” perpetrated by Israel against the Palestinians. I walked up to them and a friendly conversation ensued. I asked them what seemed to me a straightforward question: How many Palestinians were killed in the genocide? They looked at each other. One tried her luck, suggesting that it was “millions.”

“Millions?” I asked. “Where did you get that number?”

They then rattled off a few names of scholars who had written about the “genocide” against the Palestinians. The conversation continued. They shared with me their belief that Israel commits crimes against humanity more or less on a daily basis, and again cited scholarly works to back up these beliefs. Both women, it should be noted, were active in an organization called the Jewish Voice for Peace. They were young women driven by a clear political and humanitarian sensitivity, and a desire to make the world a better place. They did not appear antisemitic in the least.

Though the temptation to argue with them was great, I found myself more curious than combative. How did well-meaning, well-read students come to believe outright falsehoods about a conflict they seemed to care about? They engaged in political activity because they believed in human rights and the important Jewish concept of *Tikun Olam*, repairing the world. They said that their activity had led them to discover the “atrocities that Israel commits.”

One of them had a grandmother who was a Holocaust survivor. Her parents were Zionist activists. She had asked them about the appalling things that Israel allegedly does: ethnic cleansing, genocide, apartheid. “I told my parents,” she said, “that if they love Israel, it can’t be blind love.” Her parents did not provide satisfactory answers. Over time, she became more and more active in the cause.

As for the other woman, her professor—a department chair, actually—had introduced his students to “Israel’s array of crimes.” She, too, became an activist out of a concern that her Jewish identity had been compromised and was commandeered by what her professor described as Israeli “fascism.”

While truth is often a casualty of heated political debates, what makes the distortions about Israel unusual is the extensive involvement of academic scholars, bringing

with them a presumption of objectivity and the prestige of their institutions to inject claims into the public debate that are easily shown to be untrue.

Israel is accused, with varying degrees of explicitness, of genocide, ethnic cleansing, colonialism, apartheid, and war crimes. It is also accused, via representatives in western countries and especially the United States, of hijacking other countries’ foreign policy decisions to further its nefarious agenda. For many of the writers making such claims, Israel is not the subject of study but an enemy, and they have built an industry of lies to ensure that enemy’s defeat.

The Israel depicted by these scholars has virtually no relation to the actual Israel, or its history, intentions, or influence. These scholars rely, whenever they can, on fabricated or discredited sources, on true facts taken grotesquely out of context, and on narratives that serve neither truth nor peace. They have built a web of pseudo-scholarship, a paper trail that allows each writer to cite the works of others in the circle, sharing a unified purpose that is political rather than scholarly: To discredit a country and to rally troops to that end.

Probably the most talked-about example in recent years is *The Israel Lobby and U.S. Foreign Policy*, a book written by the renowned scholars John J. Mearsheimer, of the University of Chicago, and Stephen M. Walt, of Harvard. Published in 2007, *The Israel Lobby* claimed that “a loose collection of individuals and organizations that actively works to move U.S. policy in a pro-Israel direction” was responsible for radically distorting the decisions of successive administrations and Congress.

America’s unflinching support for Israel, they argued, flew in the face of the nation’s obvious interests in the Middle East, encouraged terrorism, and alienated more natural allies. “Now that the Cold War is over,” they wrote, “Israel has become a strategic liability for the United States. Yet no aspiring politician is ever going to say so in public, or even raise the possibility.”¹

No one has ever denied the existence of pro-Israel groups like AIPAC trying to influence policy in Washington, but *The Israel Lobby* radically inflated their

1. John J. Mearsheimer and Stephen M. Walt, *THE ISRAEL LOBBY AND U.S. FOREIGN POLICY* (2007), p. 5.

influence, took a marginal perspective on American interests and assumed it to be mainstream. It then went on to blame the lobby for everything from the decline of American prestige around the world to the Iraq war.

The Israel Lobby's success—it was a national best-seller and continues to be seen as a milestone in the U.S. foreign-policy debate—came despite the book's obvious intellectual flaws. Writing in the *New York Times*, Leslie H. Gelb called the book "mostly wrong, and dangerously misleading."² Indeed, the book was transparently problematic to anyone familiar with American politics.

Similarly, to ignore the fact that much more money is poured into influencing Washington by foreign governments that make up a far larger "anti-Israel lobby" is to knowingly distort the picture. One needs only to mention the infusions of cash from Saudi Arabia and Qatar directly into media outlets, think tanks, public policy departments and direct lobbying.

Responding to an earlier essay on the same subject that Mearsheimer and Walt published in the *London Review of Books* in 2006, Christopher Hitchens, who could never be called an ardent defender of Israel's policies, said the following about their thesis: "Wishfulness has led them to seriously mischaracterize the origins of the problem and to produce an article that is redeemed from complete dullness and mediocrity only by being slightly but unmistakably smelly."³

But Walt and Mearsheimer were building on a movement that was decades in the making: A much larger camp of scholars, less well known in the United States, built whole careers on even more glaring fabrications about Israel.

A little more than a decade ago, after many years as a peace activist but still gaining my footing as a journalist, I came across a bizarre little article by a scholar named Ilan Pappé, of Haifa University, appearing in the widely read Egyptian weekly *Al-Ahram*.⁴ Pappé told his Egyptian readers about Israeli attitudes to the idea of transfer—Israeli shorthand, borrowed from English, for the forcible eviction of Palestinians from the West Bank and Gaza Strip. This idea had been floated on and off over the years by a small number of loud but marginal activists on the extreme right—most notably through the banned Kach party led by Meir Kahana, and later in a less extreme version through the far-Right Moledet party led by Rehavam Ze'evi.

According to Pappé, however, transfer was anything but a fringe idea in Israel. In his rendition, talk about transfer was not just acceptable in public; it reflected the dominant view in the Jewish state. "High-level ministers in the Labor party submitted to the government a proposal for transfer," he told his readers. Worse: there were, as he

put it, "professors and media people who openly recommend transfer," and one "academic institution has, officially and morally, made transfer the institution's preferred option." In fact, he concluded, "very few in Israel dare oppose transfer."

None of this was arguably true, but Ilan Pappé went on to make a career out of campaigning that Israel has no right to exist, and introducing the libel of "genocide" in describing Israeli policies, despite the notable absence of actual genocide. Over a decades-long career that includes writing books with titles like *The Ethnic Cleansing of Palestine* (2006) and eventually taking a post at the University of Exeter after his support for boycotting Israeli universities, he has grown in influence largely on the strength of his prolific writing that indulges in fabrications, distortions, and selective readings ("At best, Ilan Pappé must be one of the world's sloppiest historians," wrote the historian Benny Morris. "At worst, one of the most dishonest").⁵

But he is far from alone. Articles of the type he wrote in *Al-Ahram* in 2002 have multiplied in the last decade, pasting a scholarly patina on what is essentially a modern-day blood libel, helping drive falsehoods about Israel far beyond the traditional, marginal arenas of anti-Israel extremism and conspiracy theory, and into the western mainstream.

Other scholars have joined in, as well, abandoning any sense of dispassionate analysis to attribute demonic motives and actions to Israel and the Zionist movement that created it. Thus, for example, the same Mearsheimer has argued forcefully that "what has happened to the Palestinian people since 1948 is one of the great crimes of modern history."⁶ He has also gotten into the habit of labeling supporters of Israel in the United States as "the

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2. Leslie H. Gelb, *Dual Loyalties*, *NEW YORK TIMES*, Sept. 23, 2007, available at www.nytimes.com/2007/09/23/books/review/Gelb-t.html (last visited Dec. 28, 2016).
 3. Christopher Hitchens, *Overstating Jewish Power*, *SLATE*, March 27, 2006.
 4. Ilan Pappé, *Demons of the Nakbah*, *AL-AHRAM WEEKLY*, May 16, 2002.
 5. Benny Morris, *The Liar as a Hero*, *THE NEW REPUBLIC*, March 17, 2011.
 6. Mearsheimer, endorsement of "Brokers of Deceit" by Rashid Khalidi. Mearsheimer expressed the same idea on other occasions as well.

New Afrikaners," a reference to the South African apartheid regime.⁷ Another prominent scholar, Juan Cole of the University of Maryland, argues that Israel's actions in Gaza "are the worst outcome of western colonialism anywhere in the world outside the Belgian Congo".⁸

Neither of these professors is marginal. Both are leading scholars with a significant following inside and outside of academia. They embody the web of falsehood that is taking over the study of the Israeli-Arab conflict, and are providing the fuel for a much larger impetus to demonize Israel and ultimately isolate and destroy the country.

You don't have to be ill-intentioned to fall for the lies—you only need to be somewhat lazy and, for one reason or another, convinced that you don't want to be fully on Israel's side, and a whole battery of books and articles and eloquent public figures cataloguing the great evils of the Jewish state is instantly there to support, enrich, and deepen your anger.

If I get particularly upset with this kind of writing, it's not just because I'm an Israeli who is convinced that such statements are transparently preposterous to anyone with a little knowledge and an honest, critical eye. It's also because of my very deep connection with the Israeli Left and the peace movement.

For many years, I believed that these scholarly lies were not important enough to focus on. I believed that even though the world is full of haters, antisemites, and crazy people, in areas of high politics and civilized discourse, it would always be possible nonetheless for serious people on both sides to recognize the benefits of peace through creative compromise, and to agree on the basic facts of history. The main obstacle to peace was stubbornness, not slander.

As time went on, it became clear that I was wrong. In recent decades, the public debate over Israel across the western world has shifted, notably from a conversation about the possibility of reaching a comprehensive peace agreement to a conversation about whether or not Israel should be boycotted and condemned, sometimes as an evil regime along the lines of Nazi Germany and apartheid-era South Africa.

The lies have now become the central issue. Over the course of a generation, claims like those of Pappé, Mearsheimer, and Cole have spread far beyond their own disciplines. As Martin Kramer, an Israeli-American political scientist who has held positions at Tel Aviv University, Harvard University and the Washington Institute for Near East Peace, has documented, the Middle East Studies Association (MESA) has been at the core of this sea of change, voting overwhelmingly in 2015 to begin a process of considering a full-scale boycott.⁹

In recent years, the anti-normalization camp has become

a driving force across the western world as well. Their principal focus, known as BDS (Boycott, Divestment, Sanctions), is modeled explicitly on the anti-apartheid movement of the 1980s that led to South Africa's international isolation and contributed to the apartheid regime's downfall. It has gone far in captivating the minds of self-styled cultural activists, with major artists such as Roger Waters, Elvis Costello, and Lauryn Hill publicly refusing to perform in Israel. On hundreds of American college campuses, anti-Israel student protesters have increasingly sought to boycott Israeli products such as Sabra hummus and Israeli-made SodaStream soda machines, or pass resolutions calling for divestment from Israel.

BDS supporters have explicitly rejected the two-state solution to the Israeli-Palestinian conflict—meaning that they have no interest in dialogue, reconciliation, peaceful resolution, or anything that the peace camp has traditionally advocated. Academic associations, such as the American Studies Association (ASA), are constantly debating whether to ban contact with scholars from Israeli universities—effectively shutting off career paths to young Israeli scholars—while religious movements such as the Presbyterian Church debate divestment from Israel. All this, on the grounds that Israel allegedly commits "genocide," ethnic cleansing, and "crimes against humanity."

The industry of lies applies itself on a wide variety of intellectual and emotional levels. In the United States, for example, it has become entwined in the debates over race and the treatment of African-Americans by local police—with pro-Palestinian activists joining in and lending fuel to protests in Ferguson and Baltimore, even claiming that police tactics used against minorities are

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7. John J. Mearsheimer, *The Future of Palestine: Righteous Jews vs. the New Afrikaners*, in Antony Loewenstein and Ahmed Moor, eds., *AFTER ZIONISM: ONE STATE FOR ISRAEL AND PALESTINE* (2012), pp. 135-53.
 8. These words appear in Cole's blog: Juan Cole, *Right-Zionists Try to Silence Walt at the University of Montana*, INFORMED COMMENT, Sept. 17, 2007.
 9. Martin Kramer, *Radicals Strap Suicide Belt on MESA*, SANDBOX, Feb. 18, 2015, available at www.martinkramer.org/sandbox/tag/middle-east-studies-association/. For deeper background, see Martin Kramer, *IVORY TOWERS ON SAND: THE FAILURE OF MIDDLE EASTERN STUDIES IN AMERICA* (2001).

influenced by the training they received from Israeli police.¹⁰

In Europe, a prevailing post-national sentiment has made it exceptionally easy for people to identify Zionism with all the ills of militant nationalism that they see as the core cause of the Holocaust—and in the process they draw a facile parallel between Israel and Nazi Germany. When a major Swedish tabloid, *Aftonbladet*, alleged in 2009 that the IDF was harvesting the organs of Palestinian prisoners who had died in custody, no apology or retraction was made, despite strident objections from around the world, and despite a complete lack of actual verifiable evidence sourcing of the claim. The country's top officials defended the article as a part of a functioning free press.

Needless to say, it is entirely legitimate, even necessary, to criticize Israel. Propagators of lies will tell you that defenders of Israel insist that the Jewish state "can do no wrong." This is another falsehood; indeed, one would be hard pressed to find any people on earth as earnestly and compulsively self-critical as the Israelis. But criticism does not justify abandoning basic standards of intellectual integrity. It does not justify the lies. In the Israeli-Arab conflict, the lies have become the essence, the point. They hide the true picture.

Neither is it all that surprising that some of the most vocal proponents of the industry of lies, like Pappé, are themselves Israelis, enjoying tenured positions at prominent universities and writing tendentious op-eds in the most prestigious Israeli newspapers. Israel is a democracy, and its public debate is a free and boisterous one; every democracy allows room for the privileged elites who, for one reason or another, see fit to publicly critique the foundations of society in the name of academic freedom. The difference is that with Israel, there exists a global movement that delights in promoting these outliers, funding their book tours and making them celebrities.

One of the most important outcomes of this industry of lies is that it has inflated the Israel-Palestine conflict, far beyond its actual comparative importance in the world. It seems that everyone agrees that the Israeli-Palestinian conflict has for many years been the most publicized conflict in the world.

Indeed, the veteran journalist Matti Friedman, who spent half a decade in the AP's Jerusalem bureau, recently pointed this out: "When I was a correspondent at the AP," he writes, "The agency had more than 40 staffers covering Israel and the Palestinian territories. That was significantly more news staff than the AP had in China, Russia, or India, or in all of the 50 countries of sub-Saharan Africa combined. It was higher than the total number of news-gathering employees in all the countries where the

uprisings of the "Arab Spring" eventually erupted."¹¹

Because the industry of lies is so powerful, resulting in a radically disproportionate amount of public discussion, the greatest efforts are also taken to resolve it. Thus, for example, U.S. Secretary of State John Kerry visited Israel nine times in the course of 2013 (and many more times during 2014). During that year, 2013, tens of thousands of people were killed in dozens of other conflict zones around the world—including over 30,000 in Syria alone. In the course of that year, 36 Palestinian were killed. Yes, 36 too many, but less than the average daily tally of other conflicts that got much less of his attention.

Peace efforts should be lauded. All too often, however, such diplomatic efforts flow from a belief, sometimes implied but often stated outright, that the Israeli-Palestinian conflict is actually the most important problem, and the main source of violence, not only in the Middle East but around the world.

This mistake has been taken as axiomatic by a large number of highly influential people. Yet this belief, which the former diplomat Elliott Abrams has called the "epicenter theory" and others have dubbed the "myth of centrality," has no basis in reality.¹² Israel has no connection to, and never had a connection to, any of the bloodiest wars that have been waged since the State of Israel's inception.

Israel had no connection to the Korean War, the blood-stained Chinese Cultural Revolution, the genocide in Rwanda, the killing fields in Vietnam, Cambodia, the Congo, Chechnya and dozens of other hubs of violence. Neither can any trace of a link be shown between Israel and the harshest African conflicts such as in Sudan, or in Somalia, Nigeria, Congo and the Central African Republic.

Hundreds, and even thousands, are killed in these conflicts every month. Tens of thousands every year. The world's newspapers barely cover them. Far fewer research institutes and university chairs deal with them. But the Israeli-Arab conflict, whose relative contribution to

10. Rania Khalek, *Israel-trained police "occupy" Missouri after killing of black youth*, THE ELECTRONIC INTIFADA, Aug. 15, 2014, available at electronicintifada.net/blogs/rania-khalek/israel-trained-police-occupy-missouri-after-killing-black-youth (last visited Oct. 28, 2016).

11. Matti Friedman, *An Insider's Guide to the Most Important Story on Earth*, TABLET, Aug. 26, 2014.

12. Elliott Abrams, *What Now for Israel?* MOSAIC, Sept. 1, 2014. See also David Hazony, *The Anti-Semitism We Never Talk About*, 23 THE TOWER MAGAZINE, Feb. 2015.

violence and to the number of refugees in the world is marginal, has mysteriously become "the most dangerous country to world peace"; the focus on it is nothing short of obsessive.

It is often said that the Israeli-Palestinian impasse sits at the heart of what causes conflict in the Arab or Muslim world, and also fans the flames of fury in Muslim communities around the world, galvanizing global terror. When asked by Jon Stewart what were the real motives behind the 2015 murder of the cartoonists and editors at the French satirical weekly *Charlie Hebdo*, former President Jimmy Carter's first words were, "Well, one of the origins for it is the Palestinian problem."

For a generation, top political advisors in Washington, affiliated with both major political parties, have been claiming that addressing the Palestinian issue is the central key not only to stability across the Middle East, but also to restoring America's position around the world. Even former American President Bill Clinton, who could not be reasonably accused of being anti-Israel, expressed an argument in this vein. Solving the conflict, he said, "will take about half the impetus in the whole world—not just the region, the whole world—for terror away.... It would have more impact by far than anything else that could be done."¹³

This line of thinking, as Abrams writes, "has always been nonsense." Despite much rhetoric to the contrary, Israel did not have any significant connection to the bloodiest conflicts in the Arab-Muslim world that have combined to destroy the lives of so many millions in the last decade: Iraq, Syria, Libya, Yemen, Pakistan, Afghanistan, Sudan, and Somalia. Nor can the sudden rise of radical Islamic terror groups like Al-Qaeda, Boko Haram, Islamic state, Al-Nousra, Al-Shabaab, Lashkar e-Taiba, or the Muslim Brotherhood in Sudan—or the major terror attacks these groups committed in New York and Washington, London or Madrid, Paris or Brussel or Mumbai or Mogadishu — remotely be connected to Israel, regardless of the rhetoric they may employ.

With the passage of time, more and more conflicts have emerged, brutal and cruel, in Nigeria, Mali, Ukraine, Chechnya and Dagestan. Again, none of them have had any connection to the Israeli-Arab conflict. The various warring denominations were built and strengthened, and their enemies targeted, without any connection to Israel. The same is true for the Muslim Brotherhood, the strongest movement of all in Sunni Islam, which was founded well before Israel existed and gathered strength and spread without any connection to Israel.

These phenomena are caused mainly by internal developments in the Muslim world—including, among other things, the massive wealth from oil and natural gas

that has been poured into study centers and *madrassas* (Muslim schools) in places such as Pakistan, Afghanistan and, later on, other countries including Muslim centers in the West, which also funds the arming and training of terror groups that seek to kill "infidels"—mostly other Muslims—who are always described as being secretly in the service of the United States or of Israel.¹⁴ Israel has no actual connection to any of them. It has become the scapegoat however, accused of being connected to and blamed for everything.

Yes, the Israeli-Arab conflict must be resolved, as all conflicts must be resolved. But there is no need for illusions. Resolving the Israeli-Arab conflict will not reduce the bloodletting around the world, and will also not lower the level of radical Islamic fury against the West.

Even when uttered with the best of intentions, such claims as these are an important part of the vast web of false or distorted statements made about Israel and Palestine, which continue to be spun by an entire industry aimed at changing the way westerners look at the Jewish state and thereby erode its global support.

Grappling with this dissonance is no simple task. The number of political activists, scholars, reporters, and artists that have been recruited is enormous, and most of them cite external, purportedly objective sources to back them up: Every journalist points to two historians, every historian points to two politicians, every politician points back to two journalists.

An immense echo-chamber has been built, and the line is always the same: Israel is not allowed to be seen as a country like any other, not an ordinary worldly power like the U.S. or France that sometimes commits crimes or even atrocities but is basically to be judged on a reasonable and proportional human scale; it is, rather, evil at its core, born in sin, and must be fought and destroyed, rather than engaged with reasonably.

Zionism, a movement whose only actual claim was that Jews have a right to their own sovereign nation-state just like any other people, has in our day become more an epithet than a political reality, more a scandal than a vibrant movement for self-emancipation.

There is no denying that the Arab-Israeli conflict has

13. *Bill Clinton: Mideast peace would undercut terror*, JERUSALEM POST, Oct. 6, 2010.

14. Anthony Glees and Chris Pope, *WHEN STUDENTS TURN TO TERROR: TERRORIST AND EXTREMIST ACTIVITY ON BRITISH CAMPUSES* (2005); *Saudi Time Bomb? – PBS Interview with Vali Nasr*, Oct. 25, 2001.

caused a great deal of suffering on all sides, including among the Palestinian Arabs who were displaced or lost their lives. There is no doubt that the experience of being uprooted, of being refugees, of a catastrophe—of *Nakba*—is the formative experience of the conflict from the Palestinian point of view.

Zionism, too, is the product of many centuries of Jewish exile and persecution, of homelessness, of pogroms and, ultimately, of genocide. But when subjective narratives clash so irreconcilably, it is imperative that ordinary people who wish to see a day of peace maintain a handle on objective historical facts.

Can we honestly say there was any real difference between the Palestinian refugees and the tens of millions of others who were forced to leave their homelands during the same period of time? Did Israel carry out a vast and irreconcilable "crime," or are we talking about one of many population exchanges amidst an armed struggle, the kind that took place in many other places in those post-World War II years—at a vastly higher cost to life than what befell the Palestinians?

There is no need to hide or downplay the actual tragic events—including very few atrocities that do need to be accounted for—that befell the Palestinians at the hand of the Zionists and, later, Israeli forces over the last seven decades. At the same time, one should endeavor to separate the historically accurate claims from those that have not withstood scrutiny, and to put things into context and proportion.

Israel has never carried out genocide, either in intention or in fact. The number of casualties of the overall Israeli-Arab conflict, and the specific Israeli-Palestinian conflict, is among the lowest in the history of such conflicts. Israel has never instituted apartheid, and nothing of the kind ever existed; it is mainly a product of the propagation of lies. Israel's control of the West Bank and Gaza has not gotten in the way of Palestinian prosperity; by all actual measures, it only has accelerated the rate of development in these areas—despite, not because of, the best efforts of the Palestinian national movement.

The industry of lies created one of the greatest frauds of the recent decades—a fraud of historic, even epic, proportions. It is chilling. But the fraud was not created by professional propagandists. These are not public relations people, but members of academia, the media, and human rights organizations. Many of them are

straightforward, decent, well-intentioned people. They want a better world.

That does not lessen the severity of the fraud; it only increases our difficulty in dealing with it. The lie is victorious. This fraud has transformed the State of Israel, according to global polls, into one of the countries considered most dangerous to world peace.¹⁵ The great fraud in the West, enshrined not only in journalism and academia but also important global institutions such as the UN Human Rights Council, joins up with a campaign of incitement and enmity against Jews and Israel in the Muslim world. Thus a coalition has been formed—a terrifying and dangerous coalition that has no relation to human rights and no relation to *Tikun Olam*.

The result is that Israel has become the Devil incarnate in the eyes of many otherwise good and reasonable people—people who genuinely would want to see peace, but inadvertently contribute to the creation of a monster. The tragedy is that they are not helping the Palestinians. They are not promoting agreement or reconciliation. They lend legitimacy to the most fallacious claims of the most extreme activists, empowering not moderates but the worst of the radicals who have no interest in attaining peace.

There was once a powerful peace camp, in Israel and abroad, that advocated "two states for two peoples." Today they are being drowned out by a camp that says "Boycott Israel." The boycott camp is, systematically and methodically, transforming Israel into an anathema. One does not make peace with an anathema.

Exposing the lies will contribute to *Tikun Olam* and achieving peace. When the industry of lies is shut down, when Israel is seen as a normal country with achievements and mistakes like any other—only then will the chances for peace be greatly enhanced for the benefit of Muslims and Jews, Palestinians and Israelis. Amen. *Inshallah*. ■

Ben-Dror Yemini is a senior journalist with the Hebrew daily *Yediot Ahronot*. He has conducted extensive research on anti-Israel propaganda. His latest best-seller, "THE INDUSTRY OF LIES" (Hebrew), was published in Nov. 2014, and is about to be published in English and French. This article is based on his introduction in that book. Yemini lectures at leading universities and parliaments. His articles are published in many leading newspapers around the world.

Countering the BDS Movement against Israel through Legal Measures*

Talia Naamat

During the past decade, supported and inspired by the BDS anti-Israeli boycott movement, some organizations, companies, churches, student councils and academic associations in countries across Europe, the U.S., Canada and Latin America, have applied either a wholesale boycott or a boycott of Israeli products, companies and universities with connections to the Israeli settlements. The movement has been especially prominent on California university campuses, where all student government councils approved divestment resolutions.¹ The anti-Israeli boycott movement, also known as the Boycott, Divestments and Sanctions movement ("BDS," or "Anti-Israeli boycott movement") began in 2005 with a campaign endorsed by Palestinian civil society organizations.² While the BDS movement has cast itself as a rights-based organization, in effect its far-reaching demands, aiming to undermine Israel's future as the Jewish State, have cast a doubtful light on their actual, underlying motivations: Is this a "peace-seeking movement" or one that incites discrimination and hatred against one country, its companies, universities and citizens? The prevalence of BDS activities in recent years has induced national states to decide on the legal status of anti-Israeli boycotts within their jurisdictions. Some countries have unequivocally declared that boycotting Israeli products is against the law.³ The basis for justifying these pronouncements, however, differs in each country, based on its own legal framework and culture. On the contrary, other countries like the Netherlands and Sweden have declared that anti-Israeli boycott activities are protected under the constitutionally protected right to freedom of expression.

This article presents some of the legal arguments raised against the BDS movement, including those based on (1) international human rights non-discrimination principles, (2) international trade agreements, (3) national incitement to discrimination prohibitions as well as (4) the *ultra vires*⁴ nature of non-governmental entities calling for a boycott of a foreign state.

Argument I: The Anti-Israel Boycott Is in Violation of the Guarantee of the Equal Treatment to all Nations

Generally speaking, a call to boycott or sanctions may be made according to Article 41⁵ of the UN Charter, which

authorizes the Security Council to initiate economic sanctions against a country when it deems there are threats

* This article is based on a research paper by the author titled "The Anti-Israeli Boycott as Discrimination against Jewish Groups and Israeli Persons: International, European and National Legal Trends," commissioned by and submitted to the Combating Antisemitism Division at the Israel Ministry for Diaspora Affairs.

1. Jennifer Medina and Tamar Lewin, *Campus Debates on Israel Drive a Wedge between Jews and Minorities*, N.Y. TIMES, May 9, 2015, available at www.nytimes.com/2015/05/10/us/campus-debates-on-israel-drive-a-wedge-between-jews-and-minorities.html?_r=0 (last visited Dec. 2, 2016).
2. Omar Barghouti, one of its founders, has described the movement's three main objectives: "ending the occupation, ending the racial discrimination in Israel and the system of apartheid and the right of return." Source: Glenn Greenwald, *Interview with BDS co-founder Omar Barghouti: Banned by Israel from traveling threatened with worse*, The Intercept, (May 13, 2016) available at theintercept.com/2016/05/13/interview-with-bds-advocate-omar-barghouti-banned-by-israel-from-traveling-threatened-with-worse/ (last visited Dec. 2, 2016).
3. The distinction between boycotting Israeli settlements and the wholesale boycott of Israel will not be discussed in this article, as it is not relevant to the arguments raised against BDS activities. The distinction is relevant, however, to arguments made by the BDS campaign against Israel, namely, the "obligation of non-recognition" argument: in essence, that third-parties are obligated to limit or cease economic activities with the Israeli settlements, the West bank and the Golan Heights, so as not to give any legal effect to an occupying entity's human rights violations. For a discussion on this argument, and the counter-argument, see Eugene Kontorovich, *Economic Dealings with the Occupied Territories*, 53 COLUM. J. TRANSNAT'L L. 584 (2015), available at jtl.columbia.edu/economic-dealings-with-occupied-territories/ (last visited Dec. 2, 2016).
4. "*Ultra vires*" – acting beyond one's vested powers or authority.

or breaches to the peace or acts of aggression.⁶ While the right to carry out economic boycotts or sanctions is recognized under the UN Charter, a boycott must nevertheless adhere to the rules of international human rights norms.

On the basis of the UN Charter articles guaranteeing the equal treatment to all nations,⁷ the International Covenant on Civil and Political Rights, and the International Convention on the Elimination of Racial Discrimination ("CERD"), Aleksandra Gliszczynska-Grabias, of the Poznan Human Rights Center at the Polish Academy of Sciences, argues that the anti-Israeli boycott and the calls to boycott in UN forums may involve actions that constitute discrimination on the basis of nationality or incitement to hatred or violence against Israelis, and are thus in violation of the UN Charter's guarantee of equal treatment to all nations.⁸ That is to say, the call to boycott may be deemed a case of discrimination against Israeli citizens if they are singled out on the basis of their nationality.⁹ It is important in this respect to note some examples of the unequal treatment of Israel by the UN Human Rights Council, which has been extensively documented and commented on.¹⁰

The UN's and the EU's treatment of Israel has been widely criticized as a "singling out of Israel," holding it to higher standards than those demanded of other countries.¹¹ The UN Human Rights Council in March 2016 voted to create a "blacklist" of companies operating in the West Bank, East Jerusalem and the Golan Heights, a motion that passed with 32 countries voting in favor, and none against. "The United Nations and Antisemitism" Report Card¹² states as follows: "Paradoxically, one of the greatest violators on the UN Charter's equality guarantee has been the UN body charged with establishing and enforcing international human rights, the Human Rights Council."

Decades-long singling out activities have undoubtedly prepared the ground for the anti-Israeli boycott movement. Holding one member state to a higher standard than others is in breach of the right to equality. The EUMC Working Definition of Antisemitism determines that this singling out and holding of Israel to higher standards not expected or demanded of any other democratic nation is an example of antisemitism.¹³ In a complementary manner, from a legal perspective, this treatment is discriminatory and unequal. Israel, like any other country, has the right to a balanced, equal, non-selective application of the rule of law. Some legal scholars have pointed to the European Union's treatment of Israel as another example in the international arena, that may be seen as an unequal and inconsistent treatment of Israel, as compared to its handling of other countries with disputed territories.¹⁴

Argument II: Anti-Israeli Boycotts May Be in Violation of International Trade Agreements

Economic sanctions against Israel may violate specific trade and commerce treaties; specifically, World Trade Organization agreements. For example, WTO's Government Procurement Agreement requires all

5. U.N. Charter art. 41: "The Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the Members of the United Nations to apply such measures. These may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations."
6. U.N. Charter art. 39 is also relevant: "The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security."
7. The U.N. Charter, which binds all its Member States, also determines that nations must be treated equally (art. 1(2) and 2(1)).
8. Aleksandra Gliszczynska-Grabias, *Anti-Israeli Boycotts: European and International Human Rights Law Perspective* in *DECIPHERING THE NEW ANTISEMITISM* (Alvin H. Rosenfeld ed., 2015), pp. 430-453.
9. *Id.*
10. For a comprehensive summary, see, *The UN and Israel, Key Statistics from UN Watch*, UN Watch (Aug. 23, 2016), available at www.unwatch.org/un-israel-key-statistics/ (last visited Dec. 2, 2016).
11. Hillel Neuer, *The Demonization of Israel at the United Nations in Europe Focus on the Human Rights Council and Specialized Agencies*, Jerusalem Center for Public Affairs (2014), available at jcpa.org/demonization_of_israel_at_the_united_nations/ (last visited Dec. 2, 2016).
12. *The United Nations and Anti-Semitism, 2004-2007 Report Card*, U.N. Watch, Nov. 1, 2007, available at www.ajc.org/atf/cf/%7B42d75369-d582-4380-8395-d25925b85eaf%7D/UNWreport112007.pdf (last visited Dec. 6, 2016).
13. EUMC Working Definition of Antisemitism, European Parliament Working Group on Antisemitism, available at www.antisem.eu/projects/eumc-working-definition-of-antisemitism/ (last visited Dec. 2, 2016).
14. For an elaboration of this argument, see Talia Naamat, *The Anti-Israeli Boycott as Discrimination against Jewish Groups and Israeli Persons* (2016), Kantor Center, Tel Aviv University, available at antisemitism.org.il/webfm_send/174 (last visited Dec. 2, 2016).

signatories to "treat suppliers equally." In this vein, the UK Government stated that since both the EU and Israel were signatories, any trade between them would fall under the agreement's provisions — and any discrimination against Israeli suppliers in this regard would violate this Agreement.¹⁵ The Policy Note also states that any procurement boycotts are in breach of international trade agreements. As both the EU and Israel are signatories, this would include any trade between the UK and Israel. The Policy Note determines that "Any discrimination against Israeli suppliers involving procurements would therefore be in breach of the Agreement." Therefore, the UK's interpretation of its provisions, stating that the boycotting of Israeli products violates this agreement, is significant beyond the scope of UK domestic law and could be argued to have implications on all EU countries and their economic relations with Israel. Similarly, the United States-Israel Trade and Commercial Enhancement Act of 2015 declares that: "[T]he boycott, divestment, and sanctioning of Israel by governments, governmental bodies, quasi-governmental bodies, international organizations, and other such entities is contrary to the General Agreement on Tariffs and Trade (GATT) principle of non-discrimination."¹⁶

Generally speaking, the U.S. free trade agreement with Israel has been interpreted as applying to Israeli settlement products.¹⁷ On February 24, 2016, the "Trade Facilitation and Trade Enforcement Act" of 2015 became law. This Act includes the United States-Israel Trade and Commercial Enhancement Act.¹⁸ Section (b) of the law states:

Congress –
 – 3. (...);
 4. opposes politically motivated actions that penalize or otherwise limit commercial relations specifically with Israel such as boycotts, divestment or sanctions;
 5. notes that the boycott, divestment, and sanctioning of Israel by governments, governmental bodies, quasi-governmental bodies, international organizations, and other such entities **is contrary to the General Agreement on Tariffs and Trade (GATT) principle of non-discrimination**;
 6. – 8. (...).

According to U.S. Federal law, therefore, boycotts against Israel are considered a violation of WTO agreements. Thus, both the U.S. and the UK governments have stated that in their view, the boycott against Israeli products was in breach of WTO agreements. It is important to reiterate that the boycott violates these agreements on the basis of

its breach of the non-discrimination principle guaranteed therein.

Argument III: The Anti-Israel Boycott Constitutes Discrimination on the Basis of Nationality

France has been considered a pioneer in its utilization of legal tools to counter the BDS movement.¹⁹ At least ten court cases have already been tried against anti-Israel boycotters.²⁰ Two separate court cases involving anti-Israel boycott activists were upheld in 2016 by the French Cassation Court, the highest court of final appeal, which convicted them of inciting to discrimination (also of hate crimes, when involving the base offense of vandalism),

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15. United Kingdom, Procurement Policy Note: Ensuring compliance with wider international obligations when letting public contracts, Information Note 01/16, Feb. 17, 2016, available at <https://www.gov.uk/government/publications/procurement-policy-note-0116-complying-with-international-obligations> (last visited Dec. 2, 2016). Press release, Gov.UK, Putting a stop to public procurement boycotts (Feb.17, 2016), available at <https://www.gov.uk/government/news/putting-a-stop-to-public-procurement-boycotts> (last visited Dec. 2, 2016).
 16. H.R. 1907, 114th Cong. (2015), § 608 (The United States-Israel Trade and Commercial Enhancement), available at www.congress.gov/bill/114th-congress/house-bill/1907/text#toc-H120DCF285460437E86AE86CCD2241263 (last visited Dec. 2, 2016).
 17. *Recent Legislation*, 129 HARV. L. REV. 2029 (2016), available at cdn.harvardlawreview.org/wp-content/uploads/2016/05/2029-2038-Online.pdf (last visited Dec. 2, 2016).
 18. H.R. 644, 114th Cong. (2015), § 909 (United States-Israel Trade and Commercial Enhancement), available at <https://www.congress.gov/bill/114th-congress/house-bill/644/text> (last visited Dec. 2, 2016). Section (a) of the Act: "More than \$45 billion in goods and services is traded annually between the two countries in addition to roughly \$10 billion in United States foreign direct investment in Israel."
 19. It should be noted, however, that France has long been against advocating for boycotts, well before the current boycott movement against Israel. Interestingly, the same law which is used in France to counter boycotts against Israel is also used to prohibit any boycotts of Iran in protest of its nuclear program.
 20. *BDS a Hate Crime? In France, Legal Vigilance Punishes Anti-Israel Activists*, HAARETZ, Feb. 15, 2015, available at <http://www.haaretz.com/jewish/1.574361> (last visited Dec. 2, 2016).

and fined them with penalties.²¹ The French court rulings highlight the relatively new legal terrain of extreme anti-Israeli rhetoric, and specifically political statements and demonstrations that cross a certain threshold and become prohibited discrimination or incitement to hatred. The answer to this is based on, among other things, the prosecutor's or judge's interpretation of when the one turns into the other. However, two other factors in France's legal framework should also be emphasized in this regard. Firstly, it is helpful that the French incitement law includes protection of "national groups" and thus was employed for convicting hate speech directed at groups based on nationality (i.e., Israeli persons). This has turned out to be effective in prohibiting boycott statements made against Israel, since the boycott is targeting Israeli products. Secondly, French law recognizes the concept of "economic discrimination."

In this sense, France is one of the first countries²² to expressly address, via legal measures, the connection between extreme anti-Israeli rhetoric and prohibited hate speech. Criticizing policies (Israeli or otherwise) is protected under the right to freedom of expression, whereas the use of inciting, hate-filled speech targeting a national group (e.g., Israeli persons) is not. It is important to clarify this distinction, as it is at the heart of the current debate between the right to hold a political opinion and the prohibition to incite against a person based on a protected category. The distinction between expressing a political opinion and the incitement to hatred or discrimination against a national group must be addressed by following France's example and amending incitement laws to include the protected category of "nationality," or "national groups," and to call for training of justice and law enforcement departments across Europe regarding these new forms of hate speech.

The European Court of Human Rights' ruling on *Willem v. France* also illustrates the difference between merely expressing a political opinion and inciting to discrimination. The case involved the applicant, Jean-Claude Willem, former mayor of the French city of Seclin.²³ In 2002, Willem announced during a town council meeting that he intended to boycott the sale of Israeli products in his municipality, as a protest of Israeli government anti-Palestinian policies. After receiving a complaint from the Jewish community, the public prosecutor charged Willem with inciting to discrimination under the Press Act of 1881. Willem was acquitted by the Lille Criminal Court, but the ruling was overturned on appeal in 2003, and he was fined 1,000 euros. The French Court of Cassation upheld the verdict. Willem appealed before the European Court. He argued that since his call to boycott Israeli

products had been part of a political debate that was a matter of public interest, his conviction under the French courts had violated his right to freedom of expression, protected by Article 10 of the European Convention of Human Rights. The European Court ruled that there was a difference between stating a political opinion and inciting to commit a discriminatory act, and that Willem had been convicted of the latter. Since Willem did not merely denounce a certain policy, but had gone further and called for action—a boycott of Israeli products—he had been convicted for this rather than for expressing a political opinion.²⁴ The Court further held that Willem's actions constituted incitement to discrimination that was not protected by the European Convention on Human Rights.

21. The first appeals ruling from 27 October 2015 involved two incidents on 26 September 2009 and 22 May 2010, during which 12 anti-Israel boycott activists held demonstrations in and around a supermarket, handed out pamphlets, and, while calling for a boycott of Israeli products, vandalized the store and threw kosher products on the floor. A local criminal court convicted the activists who planned and took part in the incidents of "calling for discriminatory acts" and a penalty of €12,000 (€1,000 for each perpetrator). The French Cassation Court upheld this conviction and stated that actions undertaken in order to place a boycott were hate crimes and constituted prohibited discrimination. On 30 March 2016, in a second appeals ruling, the French Cassation Court upheld a lower criminal appeals court's ruling which convicted seven boycott activists who had demonstrated in 2010 outside a supermarket selling Israeli products of inciting discrimination and fined them each with a €1,000 penalty. The Cassation Court upheld this conviction in 2016.
22. In Germany, a court in Essen ruled that extreme anti-Israeli rhetoric (chanting "Death to the Zionists") was used as a code for Jews and was therefore deemed to be prohibited incitement. The judgment was upheld by an appeals court. See, Report: *German Court Rejects Appeal of Man Who Shouted 'Death to Zionists' at Protest*, THE ALGEMEINER, May 26, 2015, available at <http://www.algemeiner.com/2015/05/26/report-german-court-rejects-appeal-of-man-who-shouted-death-to-zionists-at-protest/#> (last visited Dec. 2, 2016).
23. *Willem v. France*, Application No. 10883/05, ECtHR judgment of Dec. 10, 2009. There is no official English translation of the judgment (which was issued in French). All translations of the excerpts from the judgment are by Aleksandra Gliszczynska-Grabias, *supra* note 8.
24. *Id.* para 35.

The European Court stressed, however, that while this was the case according to French law, it would give other member states a "margin of appreciation" to handle these matters. That is, since French law and case law was so clear on the matter of boycotts,²⁵ the European Court upheld the French courts' decision in this case. However, if the European Court would be asked to decide upon a call to boycott case originating from a different member state, with different incitement laws, then its ruling may be different as well. At any rate, this court ruling highlights an important point. There is a crucial difference between expressing a critical view of a government and calling for an action that may be deemed discriminatory.

While in the private realm a person is entitled, obviously, to hold a political opinion riddled with double standards, this is not the case when this opinion is catapulted into a call for collective action, which may thus be deemed discriminatory. In this vein, the Israel Supreme Court also considered the boycott as a form of discrimination, stating that: "Discrimination on the basis of affiliation to a country of origin harms the individual based on actions and behaviors that are not dependent upon him, and constitute a sort of "collective punishment" that is inappropriate."²⁶ Moreover, there is also a difference between expressing a political opinion and crossing the line into "hate speech" (forbidden in European countries) that incites to discrimination and hatred against a national group. In recent years, anti-Israeli expressions and activities have been examined in the light of laws prohibiting "incitement to hatred" across Europe, to varying degrees of success.

Argument IV: Anti-Israeli Boycott Measures Are Taken by Non-governmental Entities that Are Not Authorized to Call for a Boycott of a Foreign State

The prevalence of the BDS movement has resurfaced a somewhat basic legal question: who, exactly, is entitled to call for a boycott of another state?

Generally, economic boycotts or sanctions may be carried out under international law.²⁷ Any state may, in principle, sever diplomatic relations, limit or cease its economic relations with another state. But the state must show, according to international law, that its measures do not violate international trade agreements and that – "its actions were taken in response to tortious actions of another state that immediately threatened its security...the reaction should not exceed the harm posed by the acting state."²⁸ That is, an individual person acting on his own behalf has the autonomy to decide for oneself whether or not to buy a certain product. A sovereign state also has the right to decide to sever economic ties with another state (provided this does not violate trade agreements, as shown above). However, entities situated anywhere between a

state and an individual person – town councils, companies, municipalities, persons in official capacities (including representatives of state universities) – do not have an automatic right to call for a boycott, and the lawfulness of any such call must be examined via the applicable domestic framework.

The European Court case of *Willem v. France*, described above, illustrates this point. In calling for a boycott, Willem was deemed to have deviated from the powers vested in him as mayor. The European Court accepted the French public prosecutor's position that only a government authority was authorized to declare sanctions or boycotts from another country. To be clear: if an individual person decides, for him/or herself, to boycott any product for any reason, politically motivated or otherwise, this is obviously protected by the right to the freedom of thought and conscience. But once a mayor, or any person in an official position, imposes such a decision on his constituents, this cannot be considered as remaining within the realm of protected free speech.

25. The following laws and articles are relevant for understanding France's position on boycotts:

(1) Article 225-1 and 225-2 of the French Penal Code, prohibiting unlawful discrimination. This article is also applied to actions contrary to an "ordinary exercise of any economic activities." Moreover, France has well-established case-law which recognizes the concept of "economic discrimination."

(2) Article 24 of the Freedom of the Press Act of 1881 ("Loi Gaysott") on inciting to racial discrimination. This article provides an exception to the protection of the media's freedom of expression, namely any "incitement to discriminate."

(3) Another law adopted in 2003 (the so-called "Lellouche Law") provided higher punishment and further anti-discrimination protection to "national groups," and is also relevant to countering nationality-based discrimination.

26. HCJ 5239/11, HCJ 5392/11, HCJ 5549/11, HCJ 2072/12, *Uri Avineri et al. v. Knesset et al.*, Justice H. Melcer, Supreme Court Justice Decision, summary in English by Adalah, available at www.adalah.org/uploads/Boycott_decision_apri_2015_english_summary.pdf (last visited Dec. 2, 2016).

27. Preston L. Greene Jr., *Arab Economic Boycott of Israel: The International Law Perspective*, 11 VAND. J. TRANSNAT'L L. 77 (1978).

28. *Id.* at 93.

The same argument is seen in the UK Government's Policy Note published in February 2016,²⁹ which aims to "stop inappropriate procurement boycotts by public authorities." It reminds public authorities that only the UK Government is authorized to call for formal legal sanctions. Therefore, any public authorities, including town councils, public bodies and local authorities,³⁰ funded in any way by the Government, may not impose procurement boycotts (i.e., boycotting tenders of suppliers from certain countries) on their own accord.

This line of argument also appears in a law suit regarding the academic boycott of Israel in U.S. academic institutions.³¹ In April 2016, U.S. professors affiliated with the American Studies Association filed a lawsuit in the Federal District Court of the District of Columbia. The law suit alleges, among other things, that the activists who pushed for adopting the Association's resolution to boycott Israel had abused their positions within the association, and thus violated the association's own stated mission of promoting knowledge and advancing the study of American culture.

The suit further claims that since a non-profit must operate in accordance with its own charter, therefore in calling for the resolution, the activists had acted *ultra vires*, beyond the authority vested in them, and were thus in violation of the District of Columbia's Non-Profit Corporation Act. Jerome Marcus, legal counsel to the plaintiffs, argued that non-profits must act within the scope and for the purposes they were established, and on the basis of which they were entitled to non-profit status and benefits. Calling for a boycott was not within this scope. The case is still pending. If the court will decide to accept

the plaintiffs' legal arguments, this will no doubt encourage more law suits countering the academic boycott. ■

Talia Naamat is an attorney and researcher at the Kantor Center at Tel Aviv University.

29. *Supra* note 15.

30. This Policy Note was issued subsequent to three UK councils, passing motions to boycott products from companies operating in "illegal" settlements in the West Bank, between 2010 and 2014. Most striking was George Galloway's call to make the city of Bradford West an "Israel-free zone," that is, free of Israeli persons as well. Jewish Human Rights Watch brought judicial charges against the councils on the grounds that they had ignored their duty to eliminate discrimination and harassment of British Jewish people. In 2016, the High Court ruled in favor of the council, stating that the councils' resolutions did not affect any existing or potential contracts. The organization announced it would appeal the decision. The new guidance extends to central government, executive agencies, non-departmental public bodies, the wider public sector, local authorities and National Health Service bodies.

31. During the past years, the American Studies Association, the Anthropological Association as well as Women's Studies have instituted a boycott against Israeli academia. The academic boycott is based on the premise that all Israeli academic institutions are complicit in "planning, implementing, and whitewashing Israel's regime of oppression." *See supra* note 1.

Antisemitism on the Web: Current Situation and Remedies

Philippe A. Schmidt

For a brief moment of time, we thought that the wound of antisemitism was healed and that Europe had turned this sad chapter of its history. But recent events that occurred all around Europe show that antisemitism is more present than ever. It started at the beginning of the 21st century, with a resurgence of violent and virulent attacks against Jews. Recent years have been marked by such attacks and their commemorations, which remind us that the Jewish community is still a target of hate crimes.

Antisemitism is wildly prevalent in new technologies. One of the main issues today regarding antisemitism is the standardization of this phenomenon on the web, which gives antisemitic speech a tremendously loud and hateful echo. The web is used largely to develop and spread messages, and the message of hate gets wide attention on the web, making the struggle against antisemitism one that needs to be tackled on a national and international scale.

In France, in particular, because of this situation, some Jews have started to question their identity as French Jews. They feel that they must make a choice between being Jewish and being French, as if both were incompatible. Driven by the desire to feel safe and protected, France has been powerless vis-à-vis a large part of the French Jewish community leaving the country for Israel.

Even if antisemitism was always prevalent amongst far-right extremists and branches of neo-Nazis, a trend is becoming more popular among some people from the Muslim community whose origins are from North African and Middle Eastern countries. It is actually more visible offline than online. The phenomenon is even more complex because this segment of the population can also be victim of hateful acts and speech. However, those who denounce the idea of a “double standard” between Jews and Muslims are in fact directly encouraging antisemitism.

Antisemitism is widespread on the web, where we can observe:

- The resurgence of conspiracy theories;
- The development of the trend called “the hidden antisemitism,” whereby people who affirm that they are anti-Zionist are in reality antisemitic. This trend has taken its roots in the geopolitical situation of the Middle East and is linked to the Israeli-Palestinian conflict;

- The stereotypes from the Middle Ages that are resurging today;
- Holocaust denial and Holocaust distortion.

Current Situation of Antisemitism Online: Focus on France

In France, for more than a decade, antisemitism has been part of the societal landscape and is now more than ever a source of concern. All the indicators (police, NGOs) underline a very high level of online antisemitic acts.

LICRA (International League against Racism and Antisemitism), the French partner of the INACH (International Network against CyberHate) network, registered 1,122 hateful reports in 2015. Among the total, 458 have led to legal action and 176 concerned antisemitism: representing 36.6% of the total. The figures presented in the 2015 report by the online French police platform called PHAROS (*Plateforme d’harmonisation, d’analyse, de recoupement et d’orientation des signalements*) are even more disturbing regarding the situation in France between 2014 and 2015:

- Increase of 100% for apology of war crimes and crimes against humanity;
- Increase of 95% for denial of Holocaust.¹

There is no doubt about the consequences of online antisemitic speech. It is a vector for antisemitic violence in the real world. In 2015, according to the French Ministry of the Interior, 805 antisemitic acts were committed and led to filing a complaint, leaving the number of unfiled antisemitic acts largely unknown. Of course, 2015 was marked by the terrible attack of the kosher supermarket in Vincennes, where 29 people were taken hostage and four persons were murdered, three years after the bloodshed at the Ozar Hatorah school of Toulouse.

The Jewish Community Security Service highlights in its 2015 annual report that “Once again in 2015, Jews, who represent less than one percent of the total population, are the target of 40 percent of all racist crimes committed in France, and 49 percent of racist violent acts committed against people.” It should also be noted that many victims of antisemitic

1. Islamism on the Internet: Propaganda – Infringements – Counter strategies, Jugendschutz.net (2015).

acts said they preferred not to file a complaint for antisemitic insults, threats or minor violence.²

Traditional Forms of Antisemitism Far-right "Traditional" Antisemitism (Social Networks, Blogs and Websites)

As noted, antisemitism has always been part of the far-right extremist and neo-Nazi speech. On the web, far-right extremist websites and social network groups are quite active demonstrating, through their various publication, the supremacy of the White race and the danger "caused by" the Jewish people in Europe. They promote Nazi theories with strict symbols and codes. Among these far right-wing groups, other kinds of personalities and groups gravitate: political personalities, comedians and anonymous individuals.

Recently in France a political personality became famous on Twitter, Henry de Lesquen, by using typical antisemitic



hate speech. Lesquen is the director of "Radio Courtoisie," a far-right ultra-Catholic radio station and of the far-right think tank "le Club de l'Horloge." He is also planning to run as a candidate for the French presidential elections in 2017.

He published provocative tweets claiming that Jewish people are racist against all non-Jews and strongly believes in the "plot theory," that the Jewish people are responsible for the recent terrorist attacks in Europe. Lesquen's quest is for a homogenous and purely "European" society that belongs to an ideology that promotes a broken society by ostracizing individuals.

The "Fachosphere" (Own Popular Websites and Social Networks):

The "*fachosphère*" ("fascist-sphere") is the French term that denotes the group of the "famous" antisemitic-nationalist and fascist French personalities. It also defines the connections between these personalities, groups and political parties.

One of the well-known personalities of the "*fachosphère*" is Alain Soral. His well-known acolyte Dieudonné was sentenced to jail for antisemitic comments by a Belgian court.³ Soral, as Dieudonné, is also close to extreme-right groups.

Created in 2007, his website "Egalité et Réconciliation," a heap of nationalism, homophobia, sexism and antisemitism, became an association called "Egalité & Réconciliation." It also gave birth to a political party called "Réconciliation nationale."



In 2014, Soral declared: "I am not from the extreme-right, I am a National Socialist."

Using offensive opinions based on antisemitism, Holocaust denial and conspiracy theories, Soral created what is considered by many to be a "fascist business." On his website, an online shop offers books, t-shirts, mugs and lighters. Furthermore, he used each of his trials strategically to build a new media buzz.

Distortion and Denial of the Holocaust

A constant trend in today's antisemitic discourse is Holocaust denial and distortion, and a manipulation of the Shoah for antisemitic purposes. This is always present and popular on the web (mainly on U.S. blogs and websites, as well as video platforms). Many negationists



2. Outcomes of the first International Conference on Online Antisemitism, INACH and ISCA, April 19, 2016, Jerusalem.
3. Liege Criminal Court's judgment of Nov. 25, 2015.

have denied outright what happened during the Second World War, such as Norman Finkelstein in his book *The Holocaust Industry*, Robert Faurisson with his theory about the non-existence of the gas chambers and Vincent Reynouard denying the carnage of Oradour-sur-Glane: all of them have become popular on the web. Their theories are published on blogs, social networks, video channels and open online libraries.

Increasing Popularity of Conspiracy Theories

The resurgence of conspiracy theories is more than popular on the web: these theories accuse “Jews” of being responsible for the most recent and tragic events, in order to supposedly control the world. These theories have been quite popular since the end of the 19th century with the publication of the famously false book *“Protocols of the Elders of Zion.”*

The access to the web gave these theories a “second wind” by using the same approach as a century ago. For



example, conspiracy websites published many articles explaining that the terrorist attacks in Paris in January and in November 2015 were organized by Israel. Some of them also emphasize that ISIS is a creation of Israel. This antisemitic trend is similar to the 9/11 conspiracy theories according to which Jews were informed in advance or were behind the attacks.

Another popular trend on the European web was the explanation of the refugee crisis. The arrival of millions of refugees was part of the Zionist project to destabilize Europe by replacing White and Christian people with Muslims.

New Forms of Antisemitism

The “new” antisemitism shares most of its traits with the “old” antisemitism prevalent in Europe until the end of the Second World War. In many cases, political antisemitism and anti-Zionism are rooted in hatred against Jews. This new trend is becoming popular among some people from the Muslim community who originate from

North African and Middle Eastern countries.

BDS Movement and the Supposed “New Antiracist” Movement

Launched in 2005, BDS is a global movement of boycott, divestment and sanctions against Israel, coordinated by the Palestinian BDS National Committee, active in some European countries, such as the United Kingdom, Spain and France. The main objectives of the BDS are:

- ending its occupation and colonization of all Arab lands occupied in June 1967 and dismantling the Wall;
- recognizing the fundamental rights of the Arab-Palestinian citizens of Israel to full equality;
- and respecting, protecting and promoting the rights of Palestinian refugees to return to their homes and properties as stipulated in UN [General Assembly] Resolution 194.

This movement has been defined as anti-Zionist for many years. However, the line between anti-Zionism, anti-Israel feelings and antisemitism is more than thin and there is no doubt that it is an antisemitic movement.

In France, some legal cases have underlined the presence of antisemitic activists. In April 2016, the Court of first instance of Montpellier (France) condemned two BDS



activists (Boycott, Divestment and Sanctions movement) for “incitement and Holocaust denial.” The case occurred in August 2014: Saadia Ben Fakha, 26, and Husein Abu-Zaid, 58, members of “BDS France 34,” the local branch located in Hérault, South of France, who shared on their public Facebook accounts a photomontage comparing the Israeli army to Nazis. They also published these comments: “Nazis and Zionists are two faces of the same coin” and “What Hitler did to Jews: it was done intentionally to give them rights and make them look appealing to the world.” On their Facebook pages, there were also public photos of dead Israeli soldiers with antisemitic comments, and photos of “quenelle” (Nazi salute) behind Jewish named streets and cities.

Even when the Montpellier local committee of LDH, which often participates in BDS activities, discovered the Holocaust-denial posting and requested its removal, the BDS movement did not explicitly condemn it until LDH turned to justice, and even afterwards absolved their activities of all responsibility. During their trial, both of them reiterated their being victim of bad judgment and judicial harassment.

The Court's judgment of April 6 is clear: a 3,000 euro fine and the two activists had to pay one symbolic euro in damages to each civil party that joined the case.

Another new trend of antisemitic speech is assumed by new organizations, which define themselves as



antiracist associations. One example is the *Parti des Indigènes de la République* (PIR), who have been at the center of many controversies in the past. One of its spokespersons, Houria Bouteldja, has often expressed antisemitic statements. In 2015, she posted a photo on Facebook where she showed her thumbs-up and smile next to a chair where it was written "Zionists at the Gulag." Her latest book is entitled "*The White, the Jews and Us.*" In June 2016, another member of the PIR, Aya Ramadan, tweeted "Dignity and pride! Congratulations to the 2 Palestinians who have led a resistance operation in Palestine #FreePalestine," in reference to the terrorist attack in Tel Aviv where four people were killed.

Terrorism and Antisemitism

Because of the web, incitement to violence against an individual or group is more prevalent today. It is easy to spread hateful and violent messages, and to recruit people. Antisemitism today in its most dangerous forms is more accessible on a global scale: present in mainstream social media, and using technology to access the deep-web, is now much easier. Antisemitism is a tactic used to radicalize, recruit people and promote terrorism around the world, especially in countries where strong Jewish communities live. The use of antisemitism is a key element of their hateful communication for radical groups in order to grow.

The most famous example is, of course, ISIS, which uses antisemitism as a key component of its recruiting process via the online platforms of Twitter and Telegram.

Islamists regularly exploit the conflict in the Middle East for antisemitic propaganda on the web. According to INACH German partner, Jugendschutz.net, "each time when there were new outbreaks of violence in the conflict between Israel and Palestine the propaganda became more extensive and drastic."⁴ Islamists always present Israel as a state that slaughters innocent Palestinian people, especially children. On Islamists' social media accounts, many pictures of children seriously injured are promoted with violent anti-Israeli captions. They portray Jews as "demons" who are conspiring against Islam in order to destroy all Muslims.

Using antisemitism as a recruitment strategy is efficient: most of the users, especially the young ones, are already sensitive to antisemitic speech. They quickly adopt these kinds of views without question, and express and promote the online antisemitic speech to which they are exposed.

Countering Antisemitism on the Web: Global Solutions and Remedies

The Internet can also be a tool to fight antisemitism.⁵

- *Civil society has to be involved in this fight*
Promote and support student-based targeted activism;
Promote, lobby for and support funding for NGOs;
Foster, promote and support awareness-raising programs incorporating core components on antisemitism, hate speech and the Holocaust targeting many audiences, including the wider public;
Make use of positive references of Muslim-Jewish shared common ground using Jewish and Islamic sources.
- *The Internet industry has to be involved. Without them, nothing can be accomplished.*

4. Islamism on the Internet: Propaganda – Infringements – Counter strategies, Jugendschutz.net (2015).
5. Outcomes of the first International Conference on Online Antisemitism, INACH and ISCA, April 19, 2016, Jerusalem.

Call upon the Internet industry to uphold and re-enforce terms of services that preclude hate speech;
Encourage the Internet industry to use technological means to prevent online hate speech, racism and antisemitism.

- *Social media can play a positive and pedagogical role*
Increase coalition building with the social media industry, working on shared goals;
Request and promote precise definitions and terms of service from social media and at the same time urge the social media industry to condemn terrorist exploitation of their services;
Require explanations from the social media industry on their use of algorithms.
- *The importance of legislation dealing with antisemitism*
Promote and support coalition building on an inter-governmental level to apply and enforce existing legislation against hate speech.
- *The importance of tools for reporting, monitoring and eradicating antisemitism*
Establish, identify and develop the capacity of national, regional and local legal units responsible for combatting cyberhate/antisemitism, to make stronger use of existing laws to prosecute cyberhate and online antisemitism and propose to legislators, consistent with the free speech constraints of each country, the enactment of legal grounds to prosecute cyberhate and online antisemitism where such laws are absent.
- Promoting strategy of counter-speech:
Promote the use of humor and irony as powerful weapons in counter speech (e.g. memes, hashtags, pictures, quotations);
Promote and support training on counter-speech.

Projects to Fight Antisemitism on the Web
Project "Get the trolls out"



Standing up against antisemitism in Europe has never been an easy task. In an age where the nature and use of public communication are changing and when people get the news from their social feed engineered by social networks, monitoring media discourses seems likely to achieve limited results. However, with project "Get the trolls out!" all the European partners from Belgium, France, Greece, Hungary and United Kingdom have uncovered examples and provide insights into the use of antisemitic rhetoric that not only reveal patterns, trends and resonances in society, but are sufficient to take action against antisemitic speech.

Identifying antisemitic discourse, aimed at engaging young people around the importance of fighting antisemitism, has been possible only thanks to a team of volunteers and professionals who spend days scanning the web, to find examples of antisemitic discourse in videos, tweets, articles and posts.

In the "Get the Trolls out" project, one of the first actions was:

- Media monitoring focused on the diversity of media outlets regarding political opinions, online platforms and the countries involved. The common point in monitored media is the persistence of antisemitic hate speech.

Complementary to media monitoring action, all the partners have developed several positive actions:

- Mechanisms to publicize complaints: when the project's monitoring efforts detected antisemitic content in the media, the partners exposed and countered this content



using the most appropriate mechanisms: letters to editors, counter-speech on Facebook and Twitter, complaints to regulatory bodies and blogs on the given organization's website;

- Promotion of satirical cartoons;
- Production of video and radio shows;
- Pedagogical actions with students, as for example cinema-conferences and theatre plays focused on combatting antisemitism;

-
- Development of a social media strategy with a project-dedicated website and a social media campaign.

INACH Project: “Research, report, remove: countering cyber-hate phenomena”

The EU-project “Research, Report, Remove: Countering Cyber Hate Phenomena” (2016-2017), developed by the International Network Against CyberHate (INACH), and European partners from Belgium, France, Germany, Netherlands and Spain aims to provide a solid basis to draw sound conclusions on the concept of cyber hate. Systematic knowledge about the phenomenon, its origins and sources, as well as forms and influences, and will be gathered through comparative research. Through this cooperation, the project partners will jointly gather evidence about current trends in cyber hate and subsequently identify EU wide dynamics.

Furthermore, the project aims at developing standards to document and analyze cyber hate, as well as the removal of content. This will be done by establishing guidelines for Internet service providers (ISPs) and social network sites, as well as by providing support and advice to the political, legal and educational communities. It intends to create systems of monitoring and reporting cyber hate that might lead to a European- wide model for bringing new trends and problematic developments to the attention of politicians/decision makers on national and European levels, law enforcement agencies, educational institutions, NGOs; support to policy makers of Internet service

providers and operators from social networking sites.

Establishing a central contact point will help to develop a sustainable and effective cross-border online complaint mechanism available worldwide to all users from their home or mobile device. Regularly undertaken monitoring activities shall furthermore help develop an early warning system by continuously observing and analyzing hateful content on the internet.

The project partners particularly focus on the monitoring of antisemitism, hate against Roma and Sinti, hate against Muslims and homophobia.

Conclusion

In the face of the expansion of new technologies and new problems that come with the unlimited, unchecked and widespread dissemination of all kinds of information, we must develop global cooperation and involvement of all the main actors of the web: Internet industry, social media, intergovernmental and governmental organizations and of course civil society.

Three key points: Taking responsibility, creating awareness and getting involved.

“The price of greatness is responsibility,” said Churchill.

I hope there are many of us today who are ready to pay this price. ■

Philippe A. Schmidt is Chairman of INACH (International Network Against CyberHate) and Vice President of LICRA (International League Against Racism and Antisemitism).

Summary of Select IAJLJ Conference Presentations

Paris

September 21-24, 2016

Compiled by Richard Horowitz

Below are summaries of some of the additional key speeches and papers (in the order in which they were presented) at the Paris conference "Continuing the Dialogue: Combating Antisemitism in Europe through Legal and Other Means."

Professor Amos Shapira, Prof. of Law (Emeritus), Faculty of Law, Tel-Aviv University; Dean, School of Law, Carmel Academic Center, Haifa, Israel

I am honored to welcome you to the opening ceremony of the Paris Conference on Continuing the Dialogue on Combating Antisemitism.

As an Israeli Jew, I wish to note briefly just one aspect of the poisonous malady of antisemitism: its impact on anti-Israelism and vice versa.

Oxford's English Dictionary defines antisemitism as: "Characteristics or influence attributed to Semitic people, especially the Jews . . . Hostility or opposition to the Jews." The Columbia Encyclopedia defines antisemitism as a "form of prejudice against the Jews, ranging from antipathy to violent hatred." It then notes the "upsurge of Antisemitism that followed the Arab-Israeli war of 1967." The Jews in general and the State of Israel are targets of antisemitism. Antisemitism is nourished by antipathy and hatred toward both Jewishness and Israelism.

Many believe, myself included, that one must acknowledge the full legitimacy of criticizing, even harshly, Israeli politics, policies and practices. But when criticism is marked by the application of double standards, virulent hostility and demonizing animosity, it ceases to be legitimate. It is bound to degenerate into antisemitism.

Israel defines itself, both ideologically and constitutionally, as both Jewish and democratic. Its fundamental values suggest it. True, the concept of being Jewish is complex, intricate and can be controversial. Also, the ongoing vengeful Palestinian-Israeli conflict poses hard choices to the Israeli liberal democracy. Yet I believe that most Israelis, Jewish and right-minded people, view Israel as the nation-state of the Jewish people. Denying

Israel's right to national self-determination, the right to exist as a nation like any other nation-state, is tantamount to denying the Jewish people the right to exist. Rejecting Israel's right to exist in whatever territorial size, within whatever boundaries, is illegitimate. It is antisemitism.

Katharina von Schnurbein, European Commission Coordinator on Combating Antisemitism

I am pleased to see that this legal conference with so many distinguished lawyers will address Combating Antisemitism in Europe "through Legal and Other Means." That gives me, as a non-lawyer, a certain justification to be here. Indeed antisemitism won't be eradicated by courts alone (although they do play an important role); rather—as we all know—the response must be comprehensive and holistic.

With 8,000 Jews leaving annually, with the largest Jewish population in Europe and the largest Muslim population, France has become a litmus test for the fight against antisemitism in Europe. We applaud the rigor with which the French government has recently stepped up this fight.

However, antisemitism is not only a French problem, or a Belgian or German problem. Antisemitism is a challenge for Europe as a whole.

As Frans Timmermans, First Vice President of the European Commission, to whom I report directly, reiterated in a speech in Berlin in March 2016: "Anyone who knows anything about our history knows that antisemitism is Europe's most pernicious disease. It is the red-line that we must never, ever cross. Yet we see age-old naked antisemitism on the far right, we see antisemitism that often hides behind anti-Zionism on the far left and sometimes, sadly, even among anti-racism movements, and we see the deadly antisemitism of religious extremism, in particular from Islamist extremists.

Many of you—of us—have been saying it for a long time, incident after incident, for years now. But we have to recognize that as societies we have been too timid, we

have been too silent. We have allowed a huge sentiment of loneliness and fear to develop among European Jews. This cannot be, it must not be our Europe!

Antisemitism is not only a menace for the Jewish community, it is threatening the very core of our social fabric and undermines the values of our democracies.

So what actions are we taking at the European level? There are indeed some legal aspects. We are enforcing legislation at the European level to outlaw Holocaust denial inciting to violence; and hate speech and hate crime more generally. We are opening infringement procedures against Member States that do not comply.

In particular we stepped up our fight against the explosion of illegal hate speech on the internet. In May 2016, the Commission concluded a self-regulatory Code of Conduct with the biggest IT-Companies (Twitter, YouTube, Facebook and Microsoft), in which they agreed to revise and if necessary remove within 24 hours all relevant illegal hate speech flagged to them. They agreed to review hate speech against European and national legislation and to support and train flaggers and NGOs that help them to keep platforms clean.

What we need now is a link between the virtual world and the real world – a link between what someone writes in his bedroom to his everyday life. How can this be done? By taking online inciters to court, as France has started doing. We hope many other Member States will follow suit. The legislation is there, but it needs to be enforced.

Thirdly, education remains the long-term priority to build up resilience in our societies against antisemitism. Some of the ideas are spelled out in the recent communications on integration and on combating radicalization.

This includes a strategy with concrete measures to prevent and counter violent radicalization which increasingly targets Jews living in Europe. Under Erasmus+, € 400 million are available to develop new policies and projects supporting inclusion and promoting fundamental values, with an additional €13 million to support grassroots initiatives.

Remembrance has always been seen as a key prevention tools and it remains important. But we should ensure that students hear about Judaism not only when it relates to the Holocaust.

Rather, we need to ensure the bridge between the understanding of how the Shoah was possible in an originally rather civilized surrounding and the understanding of the various forms of antisemitism today. As a Jewish representative pointed out recently, our education should not only be about dead Jews. We need to teach the teachers, help them to dismantle their own biases and equip them for the challenges that come with

a multi-ethnic classroom. Thus students will learn about the Jewish contribution to European culture in a holistic way.

Finally, we want to build coalitions. Only when we all stand together, forge coalitions and state loud and clear that we will not accept antisemitism, not in our neighbourhood, cities or countries, will we succeed.

I have been travelling a lot to the various countries, met with Jewish communities, Muslim representatives, other civil society actors, and government officials to see where joint initiatives are possible.

In June 2016, we invited civil society actors and representatives from the Ministries of Justice and Interior for a special session on antisemitism in the context of our High-Level Group on Combating Racism and Xenophobia.

On September 7, 2016, the European Union co-sponsored, together with the U.S., Canada and Israel, the First High-level UN Forum on Global Antisemitism with several hundred participants. This provided a powerful platform for analysis and discussion of modern manifestations of antisemitism and what can be done against it. A good start, but just the beginning.

In December 2016, the European Commission comes together with our Israeli counterparts for the EU-Israel Seminar on Antisemitism for the 10th consecutive year, this time in Jerusalem. In the words of the late Elie Wiesel: "There may be times when we are powerless to prevent injustice, but there must never be a time when we fail to protest." We should not fail to protest. We will not fail to fight – this needs to be said in Paris, for *liberté, égalité et fraternité en Europe*. We will not rest until we have conquered this age old demon, which perhaps can never be entirely put to rest, but can be kept small enough not to infest the rest of our society.

H.E. Aliza Bin-Noun, Ambassador of Israel to France

It is profoundly sad that 70 years after the Holocaust, antisemitism is still a relevant issue. We must talk about antisemitism to raise awareness and draw attention to this plague. Anyone can and must fight this expression of hatred. One year ago, the French Minister of Interior, Bernard Cazeneuve, said: "No antisemitic act should remain unpunished." The French government has kept its word and I pay tribute to its active commitment to fight antisemitism. However, this initiative clearly shows the urgency of the situation.

It is true that antisemitism has slightly declined in 2015 – at least according to official figures. Nevertheless, we cannot acknowledge this decrease without taking into account the vast increase in the number of antisemitic acts and threats which had doubled between 2013 and

2014. Furthermore, 2015 was one of the worst years: the terror attacks on the kosher supermarket “Hypercacher” killed many innocent victims and was an event that was a starting point for a series of bloody and deadly terrorist attacks. Moreover, these figures do not take into account the impact of these acts. How could we forget the scale and the horror of these antisemitic attacks? How can we overcome an attack like “Hypercacher”? And, afterwards, what happened last November, when Paris cried for the lost lives, while in Israel, knife attacks were taking their toll. And, of course, Nice, a vicious attack against the fundamental values of our democracies, and numerous attacks and attempted attacks that took place throughout the year.

The common need to fight terrorism brought Israel and France closer, and the grounds for cooperation have increased. Nevertheless, the fight against antisemitism requires the intervention of specific actors and tools, the tools that lawyers and jurists use brilliantly. The rule of law allows tackling antisemitism of any kind, including its most vicious form: anti-Zionism. I am referring to BDS and its relentless persecution against Israel, which causes confusion regarding antisemitism and anti-Zionism within the international community; an unacknowledged yet widespread hatred. For instance, a few months ago, the celebration of the “*fête de l’humanité*” took place. This so-called French cultural and artistic gathering was actually an opportunity to legitimize the boycott against Israel, with the presence of BDS. Even worse, terrorism was honored: the son of the murderer Marwan Barghouti was invited! This meeting happened with the complacency, and even support, of some elected French politicians. Unfortunately, this is not the only case: taking the terrorists’ position is becoming a tendency for certain mayors, who allegedly show their support for the notorious terrorist Barghouti.

Today more than ever, lawyers and jurists should deploy all available means to legally silence racism and intolerance, and that is what you do. For everything you have already accomplished in this fight, for all the trials you have already won and mostly for your deep commitment against antisemitism, I thank you from the bottom of my heart. We will never give up. Together, we can win the fight.

Adv. Bernard Cahen, President, le Rassemblement des Avocats Juifs de France (RAJF)

We created the French Association of Jewish Lawyers, the RAJF in 1981, in the aftermath of the 1980 Copernic synagogue terrorist attack.

Within the framework of this association, we are daily monitoring and fighting antisemitism, sometimes in legal events or by litigation.

The Paris bar is twinned with the Tel Aviv bar. France benefits from protective legislation. We are facing some daily issues and problems, especially BDS, and the struggle against antisemitism on the internet. Jewish lawyers first felt isolated; we regrouped, and now in our struggle against antisemitism we can count on the vast majority of our colleagues to provide support.

A few months ago, the Paris bar created an association named “The Fraternity of the Bar of Paris” to deal with antisemitism and all forms of racism. It was created after the attacks of November 13, 2015, to show that we will fight antisemitism and terrorism. A Muslim lawyer was appointed as head of our association, and I serve as vice-president.

Jonathan Arkush, President, Board of Deputies of British Jews

Jewish people are numerically insignificant. In the U.S., they constitute less than 2% of the population, worldwide 0.2%. Yet antisemitism is the most pernicious form of racism. We win not by force of numbers but by the intellectual force of our arguments. We can and should use the law to ensure that the rights of Jewish people and Israel are respected. Legal provisions are relevant in extensive areas where we are sought to be attacked or undermined. The UK Legal Friends of Israel organization has done sterling work in effectively addressing abuses committed by our opponents and I would encourage other countries to look at its work and form similar bodies.

Lawfare is waged against us, and I see no reason not to fight back. For example, a recent Palestinian literature festival, promoted to London schools, was more propaganda, less literary. The UK Minister of Education is sympathetic to the argument that both sides must be shown, otherwise it is propaganda, not education, and thus falls foul of education regulations applicable to teaching in schools. Her officials prevented the “festival” from entering London schools. On campus, an Israeli came to speak at King’s College, London University. Opposition disrupted the talk, even though it was Ami Ayalon who is on the Israeli left. At the Board of Deputies’ urging, the University held an inquiry which resulted in students being subject to disciplinary sanctions and one now has a criminal record. Governments are increasingly legislating against boycotts against Israel, and we should be encouraging these important moves. We will not win every battle—Jewish Human Rights Watch initiated a case in the London High Court against city councils who passed boycott resolutions. The case failed, but only on the councils’ admission that their resolutions were symbolic, not binding. So in a sense, the case was not in vain. I urge a proactive vigorous approach and use of the law wherever it can advance our case and protect us.

Dr. Aleksandra Gliszczyńska-Grabias, Assistant Professor, Institute of Law Studies of the Polish Academy of Sciences, Poland

“Defining Antisemitism in Legal Terms”

I do not completely associate with the title of the conference. In my opinion, today, when we speak about antisemitism, there is no place and time for dialogue, although I agree that dialogue is usually the best instrument to reach the desired outcome. I have convincing arguments for this claim, including:

- “Anti-Israeli anger,” paraphrasing André Glucksmann, has permeated many places of Europe and the world, as purely “anti-Jewish anger.” This trend has been aptly captured by “*Le Monde*” several years ago in its editorial.
- Jews in Europe are afraid.
- Prosecutors, both in the “old” and in relatively “young” democracies, do not understand who Adolf Hitler was.
- Europe is turning “brown” and starts to turn a blind eye on hatred – and this hatred, although today largely focused on Muslims and refugees, never forgets about Jews.
- In the Polish city of Wrocław, a mannequin of an orthodox Jew is burnt, undisturbed by the Police, and the Polish Minister of Education, Anna Zalewska, is unable to name the murderers of Jews in Jedwabne and Kielce pogroms.
- I myself was called names for wearing the Star of David, both on a street in Amsterdam and on a streetcar in Poznań – and I do not intend to wait until somebody changes this abuse into a fist punch.

This is why I claim that the time for dialogue is over. It is high time to act. How to do this with legal tools?

1. It is not an easy task to capture a phenomenon like antisemitism in legal terms. However, there are a number of legal instruments, as well as common sense and some intellectual and moral honesty, which help to clearly indicate antisemitic aspects and motifs. Perhaps courage and also readiness on the part of law enforcement officers, judges and prosecutors to face and cope with antisemitism is most important. But equally important is the overall social and political atmosphere in which there is no consent to antisemitism and, at the same time, there is an obvious reaction to all manifestations of antisemitism, also by legal methods.

2. In the jurisprudence of the European Court of Human Rights on antisemitism, we find unambiguous definitions of antisemitism. Yet until today, none of the complaints filed with the Court by persons who voiced antisemitic slogans and who claimed that their freedom of speech was violated, has been found admissible by the Court.

3. There are also legal regulations of individual European

states, which, provided that they are correctly interpreted and applied, constitute a real tool for counteracting antisemitism.

4. Therefore, it seems that lack of methods is not the most important problem today; it is the deficit of will and skills for their proper application and enforcement. Two judgments of German courts on so-called “anti-Zionism” are a good illustration here.

Considering all these elements, is the introduction of a legally binding, separate definition of antisemitism possible? It seems doubtful not only because of the present political environment, but also because of the practicality of such an instrument. We can easily imagine that prosecutors will eagerly focus mainly on factors that are not included in the definition of antisemitism, while the acts themselves might still be antisemitic, creating further lacunae.

As noted by one of the greatest Polish philosophers, Professor Leszek Kołakowski: “Fragile atoms of antisemitism, dispersed and harmless, under favorable conditions can be rapidly grouped together into an immediate mixture which explodes into a crime. Tolerance of antisemitism in its present weakest manifestations is therefore tolerance of the pogroms of tomorrow.”

We must act to prevent such pogroms. Today we do not have any good political and social space to formulate and enforce legally binding definitions of antisemitism. But we can and should efficiently and effectively use the existing legal options, require their observance, promote knowledge about them and indicate possibilities of their application in specific circumstances. We have a number of instruments at our disposal – let us use them and force others to use them.

The post-war, universal and European system of human rights protection, including international law on counteracting racism and xenophobia, were built, among others, on the ashes of Holocaust victims. May we never forget.

Adv. Pascal Markowicz, France
“The BDS Campaign against Israel: The New Antisemitism”

Omar Barghouti’s book, translated into French, expounds upon the theory that it is not a question of challenging Israeli occupation but rather all racist aspects of Zionism; the boycott is a new stage against the hundred year struggle of Palestinians against Zionism; BDS wants a Palestinian state to become a pure Muslim state free from Zionist occupation; a fully comprehensive BDS campaign, including boycott of Israeli academics, medical products, anything related to Israeli research; those who believe in dialogue as seeking illusory peace; another

attempt at the evaporation of Palestinians with acceptance by the West, Egypt, and Jordan.

Some justify the boycott. Desmond Tutu said Israel is making Palestinians pay the price of the Holocaust. Barghouti says that the same boycott that brought down apartheid in South Africa has to be applied to Israel. A Palestinian group said that if the boycott would be successful, they would be hurt economically. It could deprive 30,000 Palestinians of employment. Barghouti's response was – "you can't make an omelet without breaking an egg."

But where is the connection between a boycott and antisemitism? When the city of Nancy (France) tried to organize a boycott, a Jewish student tried to peacefully engage with them. When they asked his name, they said "you're Jewish, you don't have the right to be here." Someone said "bring back the yellow stars and striped prison uniforms." A YouTube video: we'll also start burning you in Arab countries, oil there is cheap. Note the "Manifesto of 2000" petition signed by some political leaders to promote the boycott of Israel, where someone wrote: "Quick, bring back the yellow stars and the striped pyjamas, after the products we will boycott the Jews."

Marc Knobel, Historian, Director of Research at the CRIF (Conseil Représentatif des Institutions juives de France)

"Antisemitism in France in the Last Few Years, Feelings and Reactions in the Jewish Community"

For several years, within the contentious field of antisemitism, we have seen a routine emergence of obscene words, selective outrage and blatant antisemitic assaults. But this violence forms part of a more general pattern, starting from the time of the second Intifada (2000) when anti-Jewish violence swept almost simultaneously across France and throughout all Western democracies. Since then, other attacks have shaken the Jewish community, precisely, regularly, and with lasting effect, making places of worship and schools, worshippers, officials and members of the community equally culpable targets.

Antisemitism from 2000-2015

Indeed, since October 1, 2000, more than 8,000 antisemitic acts have been perpetrated in France, including 744 in 2000; 219 in 2001; 936 in 2002; 601 in 2003; 974 in 2004; 508 in 2005; 571 in 2006; 402 in 2007; 397 in 2008; 832 in 2009; 466 in 2010; 389 in 2011; 614 in 2012 and 423 in 2013, according to the Jewish Community Security Service (SPCJ) and the Ministry of the Interior. Throughout 2014, antisemitic acts occurred nearly without interruption. As the SPCJ explains, the tensions resulting from a climate of antisemitic hate and its legacy, and the accumulation

of varied antisemitic acts have grown as the months progressed. As a result, the number of antisemitic acts identified in France doubled: 851 acts (compared to 423 in 2013), an increase of 101%. From January to May 2015, antisemitic acts increased further by 84% compared to 2014, and 161% compared to 2013. In other words, 508 antisemitic acts compared to 276 in 2014 and 195 in 2013 over the same period. However, despite the "surge" at the beginning of 2016, antisemitic acts were down 1.5% over the first nine months of 2015 compared to the same period in 2014, according to the Minister of the Interior (CRIF National Convention, November 1, 2015).

Questions to Consider

Could it be that hostility toward the Jews has developed among certain youths living in so-called sensitive areas who, facing discrimination, are also in search of their identity? Considering that these young people identify with Palestinians, do they therefore associate attacks against Jews with "revenge"? In short, does the Israeli-Palestinian conflict play a key role in antisemitism? Or, is it not also true that there is, to a certain extent, a pretext that allows the taboo of antisemitism to be continually avoided? Is it true that Islamists prefer disadvantaged suburbs as a location for disseminating their pseudo ideas? We will set out three hypotheses in order to try to elucidate what constitutes antisemitism.

Hypothesis 1

In Durban, antisemitism was stripped of its coarse racist language and replaced by the elegant language of anti-racism, according to the philosopher Pierre-André Taguieff. These "Israelis," "racists," is something that is repeatedly stated, especially and primarily by the extreme left, who have made this conflict their *raison d'être*. Since then, the process of the "Nazification" of Israel has quietly continued in Europe.

Hypothesis 2

Some are driven by a sense of hostility to Israel, exacerbated by the media coverage of clashes in the Middle East. This feeling of hostility therefore facilitates their projection into the conflict, which in their eyes, seemingly reproduces patterns of exclusion and failure in which they feel themselves to be victims in France.

Hypothesis 3

In our book *Haine et violences antisémites, une rétrospective 2000-2013*, we discuss the embarrassment and discomfort of politicians and the media to the idea of denouncing antisemitic acts, under the pretext that some could have been committed by Muslims. Yet, when an individual

acts on behalf of a religion, an identity or an ideology that is detrimental to another individual because of his religion, identity or ideology, the public must be informed. It would, however, be clearly offensive to attribute the violence committed by some individuals to the entire Muslim community.

What Is Going On?

One cannot blame Arab Muslims for supporting the Palestinian cause. Everyone is free to express their point of view, support a cause and show solidarity. The Israeli-Palestinian conflict is extremely important to Muslims who self-identify with the “oppressed” and thus with the Palestinians, and who, all things being equal, make reference to the discrimination to which, from their experience, they have been subjected in France for decades. They therefore become engaged whenever the question of this conflict arises much more so than they are interested in other conflicts, some in which Muslims have been or are being ferociously massacred (sometimes by other Muslims): Iraq, Chechnya, Kashmir, Bosnia, Syria, etc.

The Persistence of Stereotypes

New anti-Jewish passions also feed negative stereotypes that have been inherited from old-style European antisemitism, where resentment is one of its major stimulants: “The Jews have the power,” “they control the media,” “they’re everywhere,” “they occupy all positions of power,” “they have everything, we have nothing.” All these miserable fantasies have been often heard and rehashed for many centuries, as explained so well in *La Judéophobie des modernes* (Paris, Odile Jacob, 2008), by the philosopher Pierre-André Taguieff. In the contemporary collective psyche, the Jews are perceived to be far less vulnerable than they were in the past. A number of our compatriots therefore think they are protected. ■

Richard Horowitz is an American and Israeli attorney and a member of the board of governors of the IAJLJ. He served as the association’s head representative to the United Nations in New York.



הארגון הבינלאומי של עורכי-דין ומשפטים יהודים (ע"ר)
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צדק

ENGLISH: 1. justness, correctness. 2. righteousness, justice. 3. salvation. 4. deliverance, victory. [ARAMAIC: צדק (he was righteous), SYRIAC: זדק (it is right), UGARITIC: *šdq* (= reliability, virtue), ARABIC: *šadaqa* (= he spoke the truth), ETHIOPIC: *šadaqa* (= he was just, righteous)] Derivatives: צדקה POST-BIBLICAL HEBREW: alms, charity. Cp. ARAMAIC צדקתה (= justice). PALMYRENE צדקתה (= it is right). צדק 1. just, righteous. 2. pious.

After Ernest Klein, A Comprehensive Etymological Dictionary of the Hebrew Language for Readers of English. 1987: Carta/University of Haifa

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THE INTERNATIONAL ASSOCIATION OF JEWISH LAWYERS AND JURISTS (R.A.)

10 Daniel Frisch St., Tel Aviv 6473111

Telephone: + 972 3 691 0673 Fax: + 972 3 695 3855

www.intjewishlawyers.org

