LAWFARE, LEGITIMACY AND RESISTANCE: 
THE WEAK AND THE LAW

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I. Introduction

The impact of international law on the Israeli-Palestinian conflict has grown significantly over the past decade. In 2009 alone, the Palestinian Authority submitted a Declaration under Article 12(c) of the Rome Statute to the Office of the Prosecutor of the International Criminal Court; the United Nations (UN) General Assembly demanded that Palestinian authorities in the West Bank and Gaza, as well as Israel, respect and implement obligations to investigate and prosecute war crimes and crimes against humanity as outlined in the Report of the UN Fact-finding Mission to Gaza (FFM Report); and an arrest warrant was issued in the United Kingdom against the former Israeli Foreign Minister, and leader of the current opposition, on charges of war crimes. The significance of international law to the conflict has long been the subject of much cynicism amongst Palestinians, given the politicized nature of the UN Security Council, yet the liberal European and western states, though consistently keen to use the language of human rights in their statements about the conflict, have repeatedly opposed any solid measures to have international law enforced or have contentious issues adjudicated by international tribunals on the basis that when it comes to Palestine, international law and the rights of the Palestinian people must be subordinated to a political process.

Nonetheless, in January 2010, Israel’s Deputy Foreign Minister Danny Ayalon asserted that the necessity for Israel to confront Palestinian engagement with the framework of international law must be one of Israel’s foreign policy priorities “over the coming decade.” Referring to past attacks against Israel, he claimed that while military, economic, and terrorist threats since the 1960s had all failed, “now we see the brunt, which is political warfare – political and legal warfare. […] Today the trenches are in Geneva in the Council of Human Rights, or in New York in the General Assembly, or in the Security Council, or in the Hague, the ICJ.” He decried how “none other than Hamas” was in the UK “using (or abusing) the judicial system against us,” declaring that the increased application of international law to the conflict “directly damages our relations with the Palestinians and any possibility of a smooth and viable political process with the Palestinians, because it doesn’t build too much credibility or trust with us.” In explaining the process by which international law has come to play a central role in the conflict, this essay hopes to promote further debate on the future development of international law in the hope that the steady progress that has been seen over the past decade can be sustained and translated into practical progress in ending the occupation and allowing Palestinians to enjoy the full exercise of their rights.

1 Address by Deputy Foreign Minister Danny Ayalon at the Israel Council on Foreign Relations, Jerusalem: Challenges for Israeli Foreign Policy (Jan. 6, 2010). Available at: http://www.mfa.gov.il/MFA/About+the+Ministry/Deputy_Foreign_Minister/Speeches/DepFM_Ayalon_Challenges_Israeli_Foreign_Policy_6–Jan-2010.htm?DisplayMode=print.