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## BDS – A Strategic Threat or an Irritating Nuisance?

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The campaign of Boycott Divestment and Sanctions (BDS) which is staged against Israel and some others who are associated with it, is aimed at undermining Israel's legitimacy, and is part of the larger campaign for delegitimization of Israel operating in the political, legal, academic, economic and cultural fields. While these campaigns may have had their effects, and may have included also direct actions such as lawfare, flotillas, academic boycotts, demonstrations, and marches, these campaigns are not a strategic threat to Israel, undermining its existence. But nor are they also a mere irritating nuisance. These campaigns have costs and ramifications in different fields, and are associated at times with, and may encourage, dangerous anti-Semitism. A comprehensive and multifaceted strategy is required to combat BDS and the wider delegitimization campaign.

Individuals or groups who instigate or support the BDS and delegitimization campaigns often state as their underlying cause the occupation, and allegations of violations of human rights or the laws of war. One can also see, in many cases, the footprints of anti-Semitism, as well as rejection of the two state solution, support for the creation of one state only – Palestine, and an intent to bring about the complete destruction of Israel.

The campaigns have had an effect. Young students at universities have been swept by the hype of allegations of human rights abuses as have academics, anxious businessmen, artists and diplomats,

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to name a few. Often these vocalize strong accusations against Israel, not wanting to, or unable, to look behind the smoke screen and check the details and veracity of often spurious accusations. While to date most companies doing business with Israel which are faced with this issue are not swayed by these blatantly political campaigns, some have chosen to bow out of a situation.

The BDS and delegitimization movement have used numerous legal and strategic venues as part of their strategy. Some of these tactics included initiating legal cases in foreign and international courts against Israel, its soldiers or leaders, with allegations of violations of human rights or the laws of war, as well as cases against globally operating companies. They have also instigated and supported international investigations against Israel, lobbied for regulations limiting trade from Israeli Settlements, lobbied for boycott of all trade with Israel, attempted to influence international institutions, human rights forums, foreign politicians and diplomats against Israel and Israeli interests, produced academic writing undermining Israel's legitimacy, gained the support of well-known artists against Israel, sent Flotillas to Gaza, staged protests and demonstrations in front of businesses and supermarkets, made wide use of social media against Israel, and more.

Specifically focusing on the BDS (or more economic) part of the delegitimization campaign – one should note that efforts for boycott of Israel are not new. The Boycott from Arab States exists already for dozens of years. There were a limited number of businesses refraining from doing business with Israel or Israelis well before the BDS campaign became operating as such. So far, the majority of efforts of the BDS movement to affect Israel economically have failed, and their macro-economic effect on Israel is, to-date, negligible. In fact, Israel's status as a "Start-Up Nation" has brought in significant new investments in the last years, often from the most important business actors. However, lately, some of the limited successes of the BDS movement have taken on a magnified importance, particularly in their symbolic and political ramifications. For example, in the Western European countries, and in particular Great Britain, where the BDS movement has been extremely vocal and persistent, there is a real challenge. Other challenges have been relating to the labeling of products from Settlements, the Horizon 2020 negotiations, as well as European regulations on these issues.

On a wider scope, increasingly damaging are the untruths which many times are spread on Israel, the IDF, and Jews worldwide, by many of the delegitimization campaign instigators and followers. These take on a life of their own, may increase in magnitude, and may influence public opinion, political decisions, and actions of international institutions and courts. One example is the

outrageous Goldstone Report, which played into the hands of those intending to weaken Israel's ability to defend itself and wrongly and dangerously influence the interpretation of the laws of war and the ability of democratic states to fight terror. This factually false and misleading report, instigated rampant worldwide unfounded accusations against Israel, which circulated for years, and indeed continue to circulate. Similarly, false depictions of historical events, and false depictions of current events, are rampant, and can be heard almost daily by campaign supporters in different venues worldwide. The new media age, including the internet, and social media, provide a platform for quick dissemination of falsities, with a growing effect on a larger public and requiring a strategy for response.

### **The Effect of Globalization**

The age of globalization is providing the delegitimization campaign instigators and followers with an increasingly growing arena for operation. The significant development of international institutions, the increasing amount of areas in which international norms and regulations are created, the economic interdependency of states, the growing need for international cooperation in numerous cross border areas and the growth in power of international dispute settlement mechanisms, are increasingly shifting regulating and decision making powers from domestic to the international arena. This revolution poses challenges and opportunities for states, and has profound implications for states' interests, including vital national security interests.

Furthermore, international institutions that have been created by states have many times taken on a "life of their own", increasing their power and decision making abilities at the "expense" of the nation states. Including abilities to create new regulations affecting states.

International monitoring groups, international expert groups, international committees, international investigation teams, and other specialized bodies regularly monitor the compliance of states of the different international norms.

International courts and forums for international dispute resolution have immensely proliferated during the past few decades, expanding their jurisdiction and power, increasingly interacting with multinational corporations, NGO's and civil society.

Economic blocs are increasingly branching out into areas traditionally under the sovereignty of a state, forming integrated policies on what were previously domestic foreign policy and political issues.

Traditional alliances have also changed. The traditional alliances between states emanating from major political or economic shared interests are now evolving, as the range of interests have proliferated. If before one could predict alliances between states (or economic blocs) now alliances are increasingly subject matter dependent rather than predominantly politically oriented. States find themselves in alliances in certain areas with many unusual bedfellows – having a ripple effect into other areas and ramifications.

The increasing dialogue and interdependency between the different areas subject to the international regime, including between security, trade, foreign policy, human rights and others, also affect traditional alliances and internal decision making processes, and require new considerations by states, analysis, and techniques for negotiations.

A state wishing to be part of the global economy cannot disengage itself from many of these institutions and developments. Nor can a state ignore the benefits of cooperating with other countries or multinational companies in many global challenges that affect and threaten it as well. All of these mechanisms and institutions have their internal politics, and their decisions are affected by the states who make up and operate in them and by their delegates. They increasingly invite, and are affected, by NGO's and others campaigning for a cause. An incremental delegitimization of Israel, and operation within these establishments against Israel as part of the campaigns, may quietly take its toll in the ability of Israel to operate, and advance its interests in these institutions and the global arena.

### **The Israeli response**

Israel has well taken note of these campaigns. While there is certainly much more to be done, there is no complacency, and this is recognized as another challenge that must be confronted head on. Numerous efforts have been undertaken, both on the diplomatic and political front from the Prime Minister's Office, the National Security Council, the Ministry of Justice, the Foreign Ministry, and others.

In terms of combating lawfare, for example, while I was in government it had become apparent that lawfare had become a new systematic effort against Israel, Israeli soldiers, and Israeli leaders. Cases alleging human rights and laws of war violations were being attempted or initiated in foreign courts, the International Criminal Court, and other venues, in an increasing pace. Threats of arrests of Israeli soldiers and leaders in foreign states, as well as civil cases, were also part of the campaign.

International investigations were initiated, with similar claims. It was clear that a comprehensive coordinated strategic and ongoing response was necessary. My request for the formation of a specialized unit within the Ministry of Justice to comprehensively and systematically deal with lawfare and universal jurisdiction cases, had the immediate support of all, including the cabinet. We recruited who is now my successor as Deputy Attorney General to head the unit, as well as other exceptional lawyers who specialize in this area, who worked together with lawyers from other departments and ministries, as well as foreign experts, in a coordinated effort to counter the lawfare. Our work included defending a range of complex cases in foreign and international courts and working on ongoing multifaceted complex international investigations launched against Israel, including work at international institutions. The work also included proactively holding discussions with NGO's in Israel and abroad about their complaints, publishing reports on Israel's actions, and internally taking steps so that allegations are promptly looked at or investigated by the appropriate Israeli authorities, and that credible information on investigations by Israel or allegations made against it are transparent and made publicly available online countering many of the falsities published by others. There were successes in heading off many of the legal challenges at the time, and the work is of course ongoing.

Furthermore, to ensure full coordination, information sharing and concentrated efforts by all relevant actors, as well as coordinated strategic thinking and planning against lawfare, the current State Attorney and I headed an interministerial committee, which included the Ministry of Justice, the Foreign Ministry, the National Security Council, the Prime Minister's Office, the IDF, the Ministry of Defense and other defense related establishments, to work in a concentrated effort with all relevant government agencies on all aspects of lawfare. This included policy making, strategy planning, and assignment of work, for combating challenges at the ICC, Universal Jurisdiction cases in foreign courts, the United Nations Human Rights Council, reports and investigations on Israel, and more.

This type of work however could not and cannot be done by the government alone. It required and requires much assistance and cooperation of many abroad, including foreign lawyers specializing in different jurisdictions, academics, NGO's, Jewish/Zionist organizations, other supporting organizations, foreign governments, and more, and we worked regularly with many of them. Many of these had extremely important roles in the different efforts and successes. This is a complex global campaign, which requires a set of tools much different than ordinary efforts.

The infrastructure put in place to combat lawfare was not intended to, and indeed is not sufficient to deal with the whole delegitimization campaign including BDS. It covered, as it was intended to, predominantly the lawfare and universal jurisdiction aspect of the phenomenon. The many other broad aspects of the delegitimization campaign also require a structured mechanism, ensuring coordination within government, and with outside supporters, including an ongoing umbrella assessment and comprehensive strategy which takes into account the interconnections between all the different delegitimization areas and ensures coordinated work in all areas.

Last year in a government meeting, the Prime Minister addressed the issue of delegitimization, stating it is a very serious phenomenon aimed at undermining the existence of Israel as a Jewish State and its right to defend itself from its enemies, and that it is a wave that is increasingly growing during the last few years. In an effort to further combat the delegitimization campaign and promote coordinated governmental work, including coordination with Jewish organizations, the Prime Minister announced that the Ministry for Strategic Affairs will lead government efforts in fighting the delegitimization campaign against Israel, through an inter-agency coordinated work, and stated it will be provided with the necessary authority, tools and funds to carry on the mission.

### **Looking Forward**

This is indeed an important step in the right direction.

The delegitimization campaigns often work like a well-oiled machine, using national and global networks which allow them to act quickly and efficiently. They also have committed and dedicated personnel working for and with them, as well as those they have managed to convince for their causes, whether at academic institutions or elsewhere.

Until a negotiated solution to the conflict is reached, and the delegitimization campaign loses at least a part of its momentum, additional significant efforts dedicated to this issue will be required on Israel's part.

It is proposed that a governmental unit dedicated to combating the many aspects of the delegitimization campaign be further advanced, with the appropriate resources allocated to its operation, to be a focal point for coordinated work and strategic planning for all relevant government ministries, including information sharing, strategic planning, and decision making. Information should flow into this unit from all ministries, including information on developments in international institutions, and other relevant places in the global arena, as well as information on

proposed political and policy decisions worldwide. This unit should have the abilities to closely follow developments efforts and operations of the delegitimization campaign worldwide, and work in coordination and relevant information and effort sharing with Jewish organizations, other organizations, foreign governments, academia, supporters of Israel, the Jewish communities, Jewish student associations worldwide, others relevant, and the business community where relevant. This unit can serve to systematically and strategically combat different levels of the campaigns, can assist those within Israel and worldwide with immediate information, reaction, or other assistance as necessary, can serve to disseminate real time credible information online and in social media, train those who need to address the issues in different parts of the world, and can, on an ongoing basis, devise strategies and recommendations for the government and others for operation, including pro-active action, on the various delegitimization fronts.

Particularly at the age of globalization, where government actions can have a butterfly effect, this unit can also serve to provide an analysis as to the potential effect on delegitimization of Israel of proposed government and other actions in areas of international sensitivity, and provide this information to the cabinet as part of its decision making process. This unit could serve to help mitigate and counter the well-organized BDS and the delegitimization movement and efforts, in a systematic organized manner.

BDS and delegitimization cause damage, and indeed may result even in the loss of life when instigating anti-Semitic attacks. They are not a strategic threat to Israel, in the significant sense of the word, but nor are they a mere nuisance. Like other challenges we face, they require serious attention and much care, and a systematic mechanism and strategy so they can be well combated, and do not gain further effect and significance.