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Israel and the illusion of international justice

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Speaking at a legal conference on January 4, former Supreme Court president Aharon Barak suggested that Israel would benefit from participation in bodies such as the International Criminal Court in order to fight for "its positions and justice." In endorsing Barak's recommendation, a Haaretz editorial ("Join the Court," January 6) contended that such participation would "place Israel on the side of the enlightened nations." Similarly, the argument goes, Israel erred in refusing to cooperate with the UN Human Rights Council's Goldstone Commission and the International Court of Justice proceedings on the security barrier.

While surely well-intentioned, in practice this line of thinking is pure folly. The dominance of nondemocratic and Islamic nations in international organs, and the increasing politicization of these bodies, virtually guarantees that no justice will be done when it comes to Israel or even NATO countries. In such morally corrupt frameworks, international law and human rights have become political weapons, disconnected from legitimate judicial processes and legal systems in democratic societies.

The ICJ's handling of the 2004 case regarding Israel's security barrier is a telling example. The suit was initiated by the UN General Assembly at the behest of the Arab League and the Organization of the Islamic Conference. European-funded advocacy groups such as B'Tselem, aided by NGO superpowers Amnesty International and Human Rights Watch, were central to this effort.

Legal scholars sharply criticized the court for accepting a predetermined political mandate from the UN and for its breach of procedural protocols in deliberations on the matter. The ICJ's resulting advisory opinion negated Israel's right of self-defense and displayed an utter lack of sympathy for terror victims. Its simplistic and troubling legal analysis clearly reflected the influence of the Arab League and politicized NGOs. Hardly an independent judicial inquiry, this distorted proceeding encouraged subversion of the rule of law, rather than its enforcement, by allowing for political manipulation of the judicial process.

Similar problems plague the ICC. Calls for the creation of an ICC were first made in the late 1980s by Caribbean and Latin American countries seeking international support in trying drug traffickers, and were bolstered by the establishment of the International Criminal Tribunals for Yugoslavia and Rwanda in the mid-1990s. Following a massive push by NGOs, the ICC statute was finalized in Rome in 1998, covering the crimes of genocide, crimes against humanity and war crimes, and the court began operations in 2002.

Some complain that the ICC in practice has become an "African court" that lets Western democracies off the hook, but this claim is unjustified. Although NGOs pressed for the ICC to have wide-ranging jurisdiction, it was intended to be a court of last resort for the very worst crimes, adjudicating only those cases that could not be fairly tried in national courts due to the lack of a competent judiciary.

From the beginning, Israel strongly backed the idea of an international court based on the Nuremberg precedent. But, as happened with other international legal bodies, the ICC process was co-opted by nondemocratic forces. Arab and Islamic regimes succeeding in changing the court's statute at the last minute to define Israeli settlement activity as an international crime while omitting terrorism as an offense. This overt politicization of the court forced Israel to withdraw its support.

Following the Gaza war, the PLO pressured ICC prosecutor Luis Moreno-Ocampo to open a case against Israel, even though "Palestine" is not a state and doing so would be a gross violation of the court's treaty. Moreno-Ocampo has admitted to working closely with the Arab League in this process. The Palestinian Centre for Human Rights, funded primarily by European governments, is also deeply involved in this one-sided effort, as are Amnesty and HRW.

These same Arab League members have hypocritically and repeatedly offered shelter to indicted war criminal Omar Bashir of Sudan, refusing to hand him over to the court to stand trial. Thus the countries that dominate the UN system use their power to control and manipulate its institutions for their own interests - not in pursuit of universal justice.

The careful balance that Justice Barak developed in Israeli jurisprudence in weighing human rights claims against security needs receives no respect from the Arab League and its NGO allies, whose political demands international institutions are unable or unwilling to resist. Barak's wishful thinking to the contrary, it would have made no difference if Israel had participated in the ICJ case or even the Goldstone mission. The record clearly indicates that any information provided by Israel would have been twisted and discounted to fit predetermined conclusions. Claims that Israeli cooperation could have changed the outcome have no basis.

Refusing to be a party to this sort of legal travesty does not mean Israel is insensitive to international law or human rights, or that the Jewish state does not wish to be a member of the international community. Nor should this principled position be used to claim that Israel is trying to shield itself from critical inquiry - far from it. Israel's Supreme Court is a leading adherent and innovator of international law and is a major proponent of human rights.

To suggest that Israel could exert any influence on bodies where nondemocratic regimes wield excessive power, however, is a pipe dream that has no connection to today's unfortunate reality.

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