The Myth of International Law

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The High Court of Justice recently ruled that the separation barrier built to protect Israelis against Palestinian terrorist attacks was morally justified as well as legal. While ordering some changes in the routing to limit the impact on Palestinians, the Israeli court rejected the International Court of Justice's advisory opinion, which called the barrier illegal. The ICJ's majority had erased the context of terrorism, and focused exclusively on distorted political claims related to the legal status of "occupied territory."

Judge Aharon Barak and his colleagues rebuked the ICJ, but could not yet bring themselves to state that international law has become another weapon in political warfare, without any moral authority.

But this is the reality, as also shown in the example of Daniel Machover, a lawyer living in London who exploits the idea of human rights to promote a very narrow crusade against Israel. Accompanied by a chorus of NGOs singing hymns to international law, and empowering himself, via the British courts, as a neo-colonial high commissioner over Israel's democracy, Machover brands Israeli leaders as war criminals. (A few months ago, he also promoted the academic boycott of Israel.)

SUCH CLAIMS regarding international law and universal human rights norms, whether made with respect to Israel, the United States, Britain, or other countries do not reflect any consistent moral position. Instead, they are used to pursue a political and ideological agenda that is essentially anti-democratic. If the principles of universal justice were the objectives, rather than simply the means for supporting personal goals, then Palestinian, Syrian, Saudi and other terrorists would have been tried in Britain for war crimes and human rights violations long ago. And the same is true for their European weapons suppliers, bankers, etc.

The basic weaknesses of international law and human rights are not in the theory, which seeks to establish a moral code of conduct that encompasses the entire world, to prevent genocide, terror campaigns, and slavery. These objectives, which were added to traditional law governing less explosive issues such as trade disputes and piracy on the high seas, are entirely worthy. And as peace and democracy spread in parts of the world, the relations between such nations are indeed governed by common principles and negotiations, and less by force and violence.

But most parts of the world, particularly in the Middle East, are not governed by the principles of democracy. As a result, the claim that international law in practice can be determined by majority decisions of political organizations like the UN made up primarily of totalitarian
regimes is nonsense. Similarly, there is no moral basis for claims by the unelected leaders of non-governmental organizations, such as Machover and Human Rights Watch's Ken Roth, to speak for “civil society.” They can only speak for themselves and the organizations they head, and their opinions on morality and human rights have the same value as anyone else's – no less, and no more.

In this reality, the principles that are said to constitute “international law” lack the two central properties required for any legitimate legal system: the consent of the governed, and uniform and unprejudiced application. International law and the claims made in its name fit neither criteria.

In a democratic framework, the legal system gains legitimacy through the consent of the citizens, and accountable to democratic procedures. We accept the limitations placed on us by the system of laws and the role of the police in enforcing these laws as part of the requirements for justice and order in any functioning society. But we do not accept limitations imposed from the outside, without our consent. Thus, the claims of the UN, the International Court of Justice, the International Criminal Court, and campaigns run by obsessed extremists in Europe, lack any legitimate moral foundation or standing in democratic societies with their own legal system.

Similarly, when judges sitting on the Israeli High Court base decisions on international law, they are attempting to impose an external framework which lacks the legitimacy provided by the consent of the governed.

THE OTHER problem with the use of international law is the absence of equitable implementation. No legal system that focuses its attention selectively can be considered legitimate. Thus, the routine condemnations of Israeli or American policy by the UN, the ICJ, and accompanying NGOs have no moral or legal validity when the principles are not applied uniformly.

In contrast to these destructive polemics, in order to promote a meaningful universal moral code, it is necessary to recognize the need for the consent of the governed and for consistent and universal enforcement. International law based on justice, and not ideology, remains a worthy objective. But the substitution of political rhetoric that invokes the myths and rhetoric for the real thing is entirely counterproductive.

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