Preface to the First Paperback Edition

This book posed and attempted to resolve a paradox: How is one to account for so much controversy swirling around a conflict that, judging by the past (historical record), present (human rights record), and desirable future (legal-diplomatic record), is remarkably uncontroversial? The answer I proposed is that the vast preponderance of controversy surrounding the Israel-Palestine conflict is a contrivance to divert attention from, and sow confusion about, the documentary record. In this new preface I will illustrate these points with material that has become available since publication of the original hardback edition in 2005.

1. UNCONTROVERSIAL RECORD

HISTORICAL RECORD

No aspect of the history of the Israel-Palestine conflict used to arouse more passion than the origin of the Palestinian refugee problem. The

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mainstream interpretation, put forth by Israeli officials and echoed in the scholarly literature, was that Palestinians left during the 1948 war after Arab leaders, primarily via radio broadcasts, ordered them to clear the field for invading Arab armies. Beginning in the late 1980s Israeli academics, notably Benny Morris, concluded after examining newly opened Israeli archives that this standard interpretation was false. Today there is broad consensus among scholars that Palestinians suffered an ethnic cleansing in 1948, although debate continues on the secondary question of whether or not this ethnic cleansing was premeditated.1 Just how much narrower the controversy has become is vividly illustrated by the publication of former Israeli foreign minister Shlomo Ben-Ami's study Scars of War, Wounds of Peace.2 Ben-Ami, who is also a respected historian, provides this capsule summary of the "reality on the ground" during the 1948 war: "an Arab community in a state of terror facing a ruthless Israeli army whose path to victory was paved not only by its exploits against the regular Arab armies, but also by the intimidation, and at times atrocities and massacres, it perpetrated against the civilian Arab community." Sifting the evidence, he concludes that in fact Israel premeditatedly expelled Palestinians in accordance with the Zionist "philosophy of transfer," which "had a long pedigree in Zionist thought," framed Zionist leader David Ben-Gurion's "strategic-ideological" vision, and "provided a legitimate environment for commanders in the field actively to encourage the eviction of the local population." Thus, on what was once the most hotly contested question regarding the history of the Israel-Palestine conflict, a former Israeli foreign minister situates himself at the pole of the (much narrower) spectrum most critical of past Israeli policy.³

I. See pp. 2-3, 53n29 of this volume.

^{2.} New York, 2006.

^{3.} Ibid., pp. 25–26, 42–45. To be sure, one still hears echoes of the official Israeli position among diehard academic apologists. In a review of *Beyond Chutzpah*, Marc Saperstein of George Washington University asserted not only that Palestinians weren't ethnically cleansed in 1948 but that "the only ethnic cleansing that occurred in 1948 in Palestine was *by Arabs of Jews*" (his emphasis). See *Middle East Journal* (Winter 2006), pp. 183–85, as well as my "Communication" and Saperstein's rejoinder in *Middle East Journal* (Spring 2006), pp. 407–10; a fuller version of my reply can be found on my website (www.normanfinkelstein.com, under "*Middle East Journal* Enlists a Hatchet Man"). For the party line outside academia, see any Anti-Defamation League (ADL) publication, which typically asserts that "many of the Palestinians who fled did so voluntarily to avoid the ongoing war or at the urging of Arab leaders"—although in a grudging bow to reality it will add that "some Palestinians were forced to flee by individuals or groups fighting for Israel" (*Israel and the Middle East: A resource for journalists* [2005], pp. 3–4, 33; see also David Meir-Levi, *Big Lies: Demolishing the myths of the propaganda war against*

In this connection it merits taking note of Ben-Ami's reflections in *Scars of War, Wounds of Peace* on the theory and practice of Zionism, Israel's relations with its Arab neighbors, and the history of the peace process. It is not an exaggeration to say that, although constituting the conventional wisdom among knowledgeable scholars, the former foreign minister's statements on these topics would be considered not just controversial but veritable heresies in U.S. media and public life.⁴

Israel [Los Angeles, 2005], pp. 21–22). Among other propagandistic claims in the ADL "resource for journalists" one might mention these: the "Arab forces were significantly larger" than Israel's during the 1948 war (p. 2); "by May 1967, Israel believed an Arab attack was imminent" (p. 6); it was "understood by the drafters of the [U.N. 242] resolution" that "Israel may withdraw from areas of the West Bank and Gaza Strip consistent with its security needs, but not from all the territories" (p. 9); "Israel has shown the greatest possible restraint and makes a determined effort to limit Palestinian casualties" (p. 27); "Most Palestinian casualties are individuals who are directly engaged in anti-Israel violence and terrorism" (p. 27); "Settlements . . . do not violate international law" (p. 31); and "Neither international law nor international statute calls for a Palestinian 'right of return' to Israel" (p. 32). These assertions have been wholly refuted both by Ben-Ami and by the mainstream scholarship cited in this volume.

^{4.} An inventory of these statements (by no means exhaustive) would include the following: Zionism was partly "a movement of conquest, colonization and settlement ... that was forced to use the tools of colonial penetration" (p. 3); "building" a Jewish state in Palestine "implicitly meant evicting and expelling" the Arab population (p. 13); in the "inherently Western-orientated inclination of Zionism ... Israel could not, some also believed . . . should not, peacefully integrate within the Arab Middle East" (p. 18); "the endorsement of partition along the lines of Resolution 181 by Ben-Gurion [in 1947] was essentially a tactical move . . . to gain time until the Jews were strong enough to fight the Arab majority" (p. 34); the Zionists' failure to conquer the West Bank in 1948 "for years, until 1967, would remain in the minds of generals and politicians as 'unfinished business'" (p. 41); "Israel's invasion of Lebanon in 1982 might have looked like the sudden whim of a warmonger Minister of Defense, Ariel Sharon, but it was actually an operation embedded in a concept with a long pedigree and in Israel's mainstream strategic thinking from the very early years of the State" (pp. 58-59); an "aspiration [Ben-Gurion] always had was to reshape the map of the Middle East in a way that would guarantee Israel's existence as a hegemonic regional power" (p. 82); there was a "policy of creeping annexation of the West Bank that all the governments, right or left, subscribed to after 1967" (p. 122); "there was no Israeli peace initiative [after the June 1967 war], and there was no credible and thoughtful response to the initiatives coming from others" (p. 125); "in the winter of 1971 Israel was clearly responsible . . . for the subversion of a unique opportunity for peace. . . . It was clearly Israel that did not miss an opportunity to miss an opportunity in those years of dramatic change in Egypt's strategic thinking from confrontation to peacemaking" (pp. 135-36); a "two-state solution to the Israeli-Palestinian conflict ... had hesitantly started in the PLO in 1974" but "there was no psychological or popular readiness for such a step" in Israel (pp. 151-52); "at Camp David [in 1977], Begin reached the limits of his career as a peacemaker. Once the peace treaty was concluded he did all he could to derail the talks for Palestinian autonomy. . . . It was clear that the autonomy talks were nothing but camouflage behind which [there was] a renewed drive of settlements expansion throughout Judea and Samaria" (pp. 174-75); "A popular prejudice in Israel about the Arabs is that 'they only understand the language of force.' But this can just as well be said of the Israelis" (p. 188); "one of the meanings of the 1993 Oslo Accord was that the PLO was eventually Israel's collaborator in the task of stifling the Intifada and cutting short what was clearly an authentically democratic

Indeed, in a recent interview Ben-Ami, one of Israel's chief negotiators at Camp David in 2000, stated, "If I were a Palestinian I would have rejected Camp David as well." This was the same offer for which Prime Minister Ehud Barak was uniformly lauded in the U.S. media and for the rejection of which Arafat was uniformly vilified.

HUMAN RIGHTS RECORD

If real controversy on the history of the Israel-Palestine conflict is minimal, it can fairly be said that on Israel's human rights record in the Occupied Palestinian Territory controversy is nonexistent. This is for many reasons quite remarkable. In the first place, human rights law is a relatively new branch of international law and hence many gray areas remain in its definition and application. In addition, Israel-Palestine is among the areas of the world most heavily monitored by numerous independent human rights organizations. Finally, much of human rights work is vulnerable to human error, what one might call the "Rashomon" factor. It consists, for example, of observing a demonstration to see which side initiated the clash and the circumstances surrounding it. Did Palestinians initiate the clash and if so did they use stones or live ammunition and were the perpetrators amidst or on the periphery of the assembled crowd? Or did the Israeli soldiers initiate the clash and if so were they in a life-threatening position? Did they fire

struggle for Palestinian independence" and "Israelis conceived of Arafat as a collaborator of sorts, a sub-contractor in the task of enhancing Israel's security" (pp. 191, 211); Israel was "encouraged to move to a settlement with the PLO by their perception that the peace process would eventually secure them strategic portions of, and key settlement areas in, the West Bank" (p. 204); "[Prime Minister] Netanyahu's designs for a final settlement, a Palestinian state on 40 percent of the land, and his wild policy of settlement expansion destroyed any chance of a constructive dialogue with the Palestinians" (p. 218); "neither Rabin nor, especially, Peres wanted the autonomy [under Oslo] to usher in a Palestinian state" (p. 220); "to protect her strategic interests and defend the settlements from their dispossessed Palestinian neighbors, Israel built throughout the West Bank an impressive network of bypass roads, all strictly for Israeli use, that became for the Palestinians one more sad reflection of an increasingly unbearable colonialist system of domination and land grab" (p. 230); "Israel's disproportionate response to what had started as a popular uprising with young, unarmed men confronting Israeli soldiers armed with lethal weapons fueled the [second] Intifada beyond control and turned it into an all-out war" (p. 267); "the confinement of a Palestinian homeland within scattered enclaves surrounded by Israeli settlements, strategic military areas and a network of bypass roads for the exclusive use of the Israeli occupier, remain, in broad lines [Prime Minister Sharon's] grand design" (p. 297); "Israel is forced to make concessions for peace only under the impact of military pressure and major setbacks" (p. 314); "Peace breakthroughs in the Arab-Israeli conflict began almost invariably thanks to Arab, not Israeli, moves" (p. 317). 5. Democracy Now!, transcript (14 February 2006).

warning shots and did they shoot to injure or to kill? In light of all these factors—imprecision of human rights law, multiplicity of monitoring organizations, human fallibility—one might expect that opinions would sharply diverge on Israel's human rights record in the Occupied Palestinian Territory. Yet, perusing thousands of pages of human rights reports covering very diverse issues in a fifteen-year period I came across only one case of one demonstration where two human rights organizations differed on one tiny point.⁶

It might be wondered how the claim that Israel's human rights record is uncontroversial can be reconciled with the contradictory accounts of human rights violations typically reported in the U.S. media. An example at the time of this writing will perhaps clarify the point. On 9 June 2006 eight Palestinian civilians were killed and dozens of others wounded in an explosion on a Gaza beach, the tragic figure of a ten-year-old wailing beside her dead father memorably captured on camera. Whereas the Israeli government denied responsibility, pinning blame on Hamas, an extensive on-site inquiry by Human Rights Watch (HRW) found that "the evidence overwhelmingly supports the allegations that the civilians were killed by artillery shells fired by the IDF [Israel Defense Forces]." Subsequent research by HRW (and others) provided fresh evidence of Israeli culpability, while the official Israeli investigation exonerating Israel was "based exclusively on information gathered by the IDF and excluded all evidence gathered by other sources."7

It might be assumed that between an independent nongovernmental organization like HRW and the representatives of the Israeli state, any serious journalist would attach greater credibility to the former's findings. This is so not only because Israel is an interested party but also because of its damning track record. "The state authorities, including the defense establishment and its branches," respected analyst Uzi Benziman wrote in the Israeli newspaper *Haaretz* after Israel disclaimed culpability for the Gaza beach deaths, "have acquired for themselves a

^{6.} See p. 112n35 of this volume.

^{7.} HRW, press release, "Israel: Investigate Gaza beach killings" (13 June 2006); HRW, press release, "Israel: More evidence on beach killings implicates IDF" (15 June 2006); HRW, press release, "Israel: Gaza beach investigation ignores evidence" (20 June 2006). See also Chris McGreal, "The battle of Huda Ghalia—who really killed girl's family on Gaza beach? *Guardian* investigation casts doubt on Israeli claim that army was not to blame," *Guardian* (17 June 2006), and Dion Nissenbaum, "New Evidence Raises Questions About Israel's Role in Beach Explosion," *Knight Ridder Newspapers* (22 June 2006).

shady reputation when it comes to their credibility." Although Benziman reports that even "many Israelis" distrust official Israeli pronouncements, this skepticism does not extend to the American media. In fact, the media not only credited the Israeli account of the Gaza beach deaths but gave it far greater coverage than HRW's findings. Thus, a case of "overwhelming" evidence of Israeli culpability—at any rate, pending further independent investigation, which HRW called for but the Israeli government rejected—became a "controversial" incident in which the burden of proof and weight of doubt was put not on a state with a "shady reputation" for truth-telling but on a respected human rights organization. Indeed, within weeks the *Times* explicitly absolved Israel of all responsibility because the eight Palestinian deaths resulted "from an explosion that Israel said was not from any shell it fired that day." HRW's contradictory findings were no longer even noted. For

8. "Until Proved Otherwise," *Haaretz* (18 June 2006). After an earlier case where the government blatantly lied about Palestinian civilians killed, B. Michael observed in *Yediot Ahronot* that "the official communiqués published by the IDF have progressively liberated themselves from the constraints of truth" and "require a reader to wade through a heavy morass of half-truths, twisted information, misdirection, total nonsense and simple lies" ("Of Liars and Hunters," *Yediot Ahronot* [3 September 2005]). For internal Israeli investigations having "rarely uncovered the truth," see HRW, *Promoting Impunity: The Israeli military's failure to investigate wrongdoing* (June 2005), and pp. 101–2 of this volume. The HRW report found that Israel's "investigative practices and procedures are not impartial, thorough, or timely." "At the heart of the problem," it concluded,

is a system that relies on soldiers' own accounts as the threshold for determining whether serious investigation is warranted. . . . The frequent discrepancies between IDF accounts of civilian deaths and injuries, on the one hand, and video, medical, and eyewitness evidence on the other hand, is the result in part of the IDF's practice of asking soldiers to "investigate" other soldiers from the same unit or command, without seeking and weighing testimony of external witnesses. Exculpatory claims of soldiers are taken at face value. . . . Another critical weakness . . . is the absence of victim involvement in the investigative process, and the demonstrated failure of the IDF to solicit or take seriously testimonies of victims or non-IDF witnesses as a basis for checking the reliability of soldiers' accounts. (pp. 3–5)

The report further notes that Israel rarely even investigates IDF killings of Palestinians, even less often issues indictments and only once inflicted a punishment (two months' imprisonment) (pp. 31–32; for this one conviction, see also p. 99 of this volume). It is also worth quoting HRW on Israel's "surreal public relations war, in which the IDF first publishes inaccurate and self-serving accounts of victims' deaths and later claims moral victory on the very few occasions when it finally agrees to investigate them" (p. 14).

- 9. The *New York Times* devoted seven times as many words, the *Washington Post* one and one-half times as many words, and the *L.A. Times* four times as many words to the official Israeli position as to HRW's findings. See Patrick O'Connor, "U.S. Corporate Media Misses Target in Israel's Aerial Assault on Gaza" (www.electronicintifada.net/v2/article4844.shtml).
- 10. Steven Erlanger, "After Writer and King Nudge, Abbas and Olmert Talk," *New York Times* (23 June 2006). The same explanation was repeated in all subsequent *Times* references to the Gaza beach killings, with no mention of HRW's findings.

blind deference to a foreign state, such reporting probably hasn't been matched since the pages of the *Daily Worker* during Stalin's purges.

The same blind deference of the U.S. media to official pronouncements despite contrary authoritative opinion was on display ten months earlier during Israel's "disengagement" from Gaza. Israel's announcement that it would withdraw Jewish settlers and the IDF and dismantle settlements won high praise in the American media as a major step toward ending the occupation of Palestinian land. Human rights organizations and academic specialists were less sanguine, however. In a study entitled One Big Prison, the respected Israeli human rights organization B'Tselem observed that the crippling economic arrangements Israel had imposed on Gaza would remain in place. In addition, Israel would continue to maintain absolute control over Gaza's land borders, coastline, and airspace, and the Israeli army would continue to operate in Gaza. "So long as these methods of control remain in Israeli hands," B'Tselem concluded, "Israel's claim of an 'end of the occupation' is questionable."11 HRW was yet more emphatic that evacuating settlers and troops from inside Gaza would not end the occupation: "Whether the Israeli army is inside Gaza or redeployed around its periphery, and restricting entrance and exit, it remains in control."12 The leading scholarly authority on the Gaza

In August and September 2005, Israel unilaterally withdrew approximately eight thousand settlers, along with military personnel and installations, from the Gaza Strip and four small settlements in the northern West Bank near Jenin. While Israel has since declared the Gaza Strip a "foreign territory" and the crossings between Gaza and Israel "international borders," under international humanitarian law (IHL), Gaza remains occupied, and Israel retains its responsibilities for the welfare of Gaza residents. Israel maintains effective control over Gaza by regulating movement in and out of the Strip as well as the airspace, sea space, public utilities and population registry. In addition, Israel declared the right to re-enter Gaza militarily at any time in its "Disengagement Plan." Since the withdrawal, Israel has carried out aerial bombardments, including targeted killings, and has fired artillery into the northeastern corner of Gaza.

See also John Dugard, Report of the Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied Since 1967 (27 September 2006), which

^{11.} B'Tselem (Israeli Information Center for Human Rights in the Occupied Territories), One Big Prison: Freedom of movement to and from the Gaza Strip on the eve of the Disengagement Plan (March 2005), pp. 74-75 (emphasis in original). A year after the Israeli "disengagement" was completed, B'Tselem stated that insofar as Israel maintained "effective control," Gaza remained occupied territory and the "laws of occupation apply to Israel" (B'Tselem, Act of Vengeance: Israel's bombing of the Gaza power plant and its effects [September 2006], pp. 30-31).

^{12.} HRW, "'Disengagement' Will Not End Gaza Occupation" (29 October 2004). HRW's World Report 2006 reiterated this position:

Strip, Sara Roy of Harvard University, predicted that Gaza would remain "an imprisoned enclave," while its economy, still totally dependent on Israel after disengagement and in shambles after decades of deliberately ruinous policies by Israel, would actually deteriorate. ¹³ This conclusion was echoed by the World Bank, which forecast that if Israel sealed Gaza's borders the disengagement plan would "create worse hardship than is seen today." ¹⁴

The dismal aftermath of Israel's much-ballyhooed "withdrawal" from Gaza more than bore out these dire projections. In June 2006, in the course of ongoing Israeli sanctions and mutual armed hostilities, Palestinian militants in Gaza captured an Israeli soldier and demanded the release of Palestinian women and minors in Israeli prisons in exchange for the soldier's release. (Israel was holding some 10,000 Palestinians prisoner, hundreds of them women and minors.) Rather than negotiate, Israel used the incident as a pretext to launch "Operation Summer Rains" against Gaza, killing hundreds of people, a majority noncombatants, nearly a quarter children (one Israeli soldier was killed by friendly fire). It bombed and demolished civilian infrastructure such as residential and government buildings, bridges, schools, a new emergency hospital, and the airport; fired hundreds of artillery shells daily into Gaza (Palestinians fired eight to nine homemade rockets per day into Israel; five Israelis had been killed by these rockets in the previous six years); and broke the sound barrier over Gaza, creating sonic booms that "caused widespread terror among the population, particularly children" (UN Special Rapporteur John Dugard). Israel arrested and jailed tens of Palestinian legislators and ministers "to serve as hostages for the release" of the Israeli soldier (Meron Benvenisti). It destroyed Gaza's only power plant—a "war crime," according to B'Tselem—which left Gaza with catastrophically reduced water supplies, sewage treatment, refrigeration, and medical services; and it sealed off Gaza economically from the

found that "Statements by the Government of Israel that the withdrawal ended the occupation of Gaza are grossly inaccurate.... Gaza remained under the effective control of Israel.... In effect, following Israel's withdrawal Gaza became a sealed-off, imprisoned society.... The actions of [the] IDF in respect of Gaza have clearly demonstrated that modern technology allows an occupying Power to effectively control a territory even without a military presence" (para. 8).

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13. Sara Roy, "Praying With Their Eyes Closed: Reflections on the disengagement from Gaza," *Journal of Palestine Studies* (Summer 2005), p. 9; see also Meron Benvenisti, "The Rafah Precedent," *Haaretz* (17 November 2005).

^{14.} World Bank, Disengagement, the Palestinian Economy and the Settlements (23 June 2004), p. i.

outside world, withholding Palestinian customs and tax revenues, and bulldozing workshops, greenhouses, agricultural lands, livestock farms, and irrigation networks, all of which resulted in a precipitous decline in already desperate living standards (nearly half of Gazans were left unemployed and 80 percent of Gazan households were left living in poverty).

Under brutal economic and military sieges a year after Israel's socalled disengagement, Gaza was "dying . . . its people are on the edge of starvation. . . . A whole society is being destroyed. There are 1.5 million Palestinians imprisoned in the most heavily populated area in the world" (Patrick Cockburn); "in its worst condition ever. . . . The Israeli army has been rampaging through Gaza—there's no other word to describe it—killing and demolishing, bombing and shelling indiscriminately.... This is disgraceful and shocking collective punishment.... Frightened children, traumatized by what they have seen, huddle in their homes with a horror in their eves that is difficult to describe in words.... No security excuse can explain the cycle of madness, and no civic argument can excuse the outrageous silence of us all" (Gideon Levy). And predictably, Gaza stood poised on the precipice of fratricidal civil war. "The experiment was a success: The Palestinians are killing each other," Amira Hass wryly observed. "They are behaving as expected at the end of the extended experiment called 'what happens when you imprison 1.3 million human beings in an enclosed space like battery hens."15

Israel's real human rights record illuminates other aspects of the Israel-Palestine conflict as well. After Hamas's electoral victory in January 2006 the United States orchestrated an international boycott of the

^{15.} John Dugard, Report of the Special Rapporteur, para. 25; Donald Macintyre, "Gaza: The children killed in a war the world doesn't want to know about," Independent (19 September 2006); Meron Benvenisti, "The Legal Status of Fighters," Haaretz (21 September 2006); B'Tselem, Act of Vengeance ("war crime" at pp. 26, 33); Sara Roy, "The Gaza Economy," Palestine Information Center Brief #143 (2 October 2006); The Humanitarian Monitor: Occupied Palestinian territory (August 2006; www.domino.un.org/UNISPAL.NSF/361eea1cc08301c485256cf600606959/ffcd03d2dc30903e852571f50060 febo!OpenDocument); United Nations Office for the Coordination of Humanitarian Affairs, Access and Protection (August 2006); United Nations Development Program, Assessment of Damages Caused by the Israeli Defense Forces Operations in the Gaza Strip, 26.06.2006–28.08.2006 (www.undp.ps/en/newsroom/publications/pdf/other/Damages%20in%20Gazafinal.pdf); Patrick Cockburn, "Gaza Is a Jail: Nobody is allowed to leave. We are all starving now," and "Palestinians Forced to Scavenge for Food on Rubbish Dumps," Independent (8, 9 September 2006); Gideon Levy, "Gaza's Darkness," Haaretz (3 September 2006); Amira Hass, "Not an Internal Palestinian Matter," Haaretz (4 October 2006).

new government until it renounced violence, battering the Palestinian economy yet further.¹⁶ The demand that Hamas cease attacks on Israeli civilians was surely reasonable. Yet, although several times as many Palestinians as Israelis had been killed since the beginning of the second intifada, 17 no comparable demand was put on Israel to renounce violence. One often hears that Hamas's deliberate targeting of civilians cannot be compared to Israel's "unintended" killing of them. However human rights organizations report that Israel's use of live ammunition is "indiscriminate" (HRW) and "on many occasions ... deliberately targeted" civilians (Amnesty International), and accordingly conclude that the purported distinction between Hamas and Israeli violence "makes no difference" (B'Tselem).18 If Hamas were to declare after blowing up a crowded civilian bus that it had only meant to kill a military officer in the vehicle and not the other passengers, it would rightly be ridiculed. Yet how different is it when Israel drops a one-ton bomb on a densely populated Gaza neighborhood in order to liquidate a Hamas military commander and then declares that the fourteen civilian deaths were unintentional?¹⁹ In his authoritative study on the laws of war, Israeli legal scholar Yoram Dinstein observes:

Indiscriminate attacks differ from direct attacks against civilians in that "the attacker is not actually *trying* to harm the civilian population": the injury to the civilians is merely a matter of "no concern to the attacker." From the standpoint of LOIAC [Law of International Armed Conflict],

16. See International Crisis Group, *Palestinians*, *Israel*, and the Quartet: Pulling back from the brink (13 June 2006), pp. 21-31.

18. See pp. 98-102 of this volume.

19. See pp. 105-6 of this volume. After an internal investigation of the Gaza bombing an IDF spokesperson issued this statement: "The procedures followed in the IDF operation were correct and professional, as were the operational assessments... At the same time the inquiry found shortcomings in the information available, and the evaluation of that information, concerning the presence of innocent civilians.... The IDF and the [Israel Security Agency, ISA] stated that if their information had indicated with certainty the presence of innocent civilians..., the timing or the method of the action would have been changed" (cited in *Promoting Impunity*, p. 36n89). And if Hamas had only known innocent civilians would be on the bus...

^{17.} See pp. 96–98 of this volume. For the period 29 September 2000–15 June 2006, B'Tselem put the total number of Israelis killed by Palestinians at 1,005 and the total number of Palestinians killed by Israelis at 3,540. On both sides civilians killed made up some two-thirds of the total. In recent reports such as *Take No Prisoners: The fatal shooting of Palestinians by Israeli security forces during "arrest operations"* (May 2005), B'Tselem further documented Israel's murderous activities in the Occupied Palestinian Territory. This report found that under the guise of arresting Palestinians Israel was carrying out "assassinations," and that it was aiming lethal fire at any Palestinians in the vicinity of such operations, resulting in the deaths of nearly one hundred Palestinians in 2004 alone.

there is no genuine difference between a premeditated attack against civilians (or civilian objects) and a reckless disregard of the principle of distinction: they are equally forbidden.²⁰

Even if, for argument's sake, we assume that Israel's attacks on civilians are unintentional and accordingly that the worst it can be accused of is "reckless disregard of the principle of distinction," it is still the rankest hypocrisy to require of Hamas that it cease violent attacks yet not put a comparable requirement on Israel to cease what is "equally forbidden."

LEGAL-DIPLOMATIC RECORD

The legal-diplomatic record registering the terms for settlement of the Israel-Palestine conflict is likewise devoid of controversy. This can be seen in the milestone July 2004 World Court advisory opinion on the legality of the wall Israel has been constructing in the West Bank.²¹ In order to reach its decision, the Court had to render judgment on a cluster of crucial questions bearing on the Israel-Palestine conflict—borders, East Jerusalem, and settlements. These are often called the "final status" issues of the peace process, deferred to the last stage allegedly because they are so complex and contentious.

The Court found that, based on Article 2 of the United Nations Charter and numerous U.N. resolutions barring the acquisition of territory by force, Israel had no title to any of the territories it captured during the June 1967 war. Thus, contrary to what Israel's supporters often maintain, this is not "disputed" territory but, as the Court repeatedly stated, Occupied Palestinian Territory, over which Israel cannot claim an atom of sovereignty and the whole of which has been designated for the exercise of Palestinian self-determination. From this it follows that East Jerusalem, which Israel also captured during the June 1967 war, is not, as Israel proclaims, its "eternal and undivided capital" and an integral part of Israel. Instead East Jerusalem is Occupied Palestinian Territory, the Court ruled, recalling that U.N. Security Council and General Assembly resolutions had declared Israel's annexation of East Jerusalem

^{20.} Yoram Dinstein, *The Conduct of Hostilities Under the Law of International Armed Conflict* (Cambridge, 2005), p. 117. The internal quote is from the *International Review of the Red Cross* (emphasis in original).

^{21.} For analysis of this opinion, see the new Postscript to this volume, from which I will be quoting here.

illegal and null and void.²² Finally, the Court cited U.N. Security Council resolutions that, based on Article 49 of the Fourth Geneva Convention, Israeli settlements "have no legal validity" and constitute a "flagrant violation" of international law,²³ from which the Court itself concluded that "Israeli settlements in the Occupied Palestinian Territory (including East Jerusalem) have been established in breach of international law."

What is most noteworthy about these World Court findings is how little dissent they generated among the fifteen sitting judges. Although fourteen of these judges ultimately agreed that Israel's construction of the wall was illegal under international law, six of them wrote separate opinions expressing disagreement (sometimes sharp) with this or that contention of the majority opinion. Not one of the fourteen judges, however, registered any dissent from the key points just cited. On borders, East Jerusalem and settlements—the allegedly controversial "final status" issues—the majority opinion and the separate opinions fully concurred. Indeed, even the one judge voting against the fourteen-person majority condemning the wall, Thomas Buergenthal from the United States, was at pains to stress that there was "much" in the advisory opinion "with which I agree"; for example, on the crucial question of settlements he concurred with the majority that they violated the Fourth Geneva convention and accordingly were in breach of international humanitarian law.

The last of the "final status" issues—the rights of Palestinian refugees—is equally uncontroversial. The United Nations has repeatedly and overwhelmingly upheld the "right of return" of Palestinian refugees, in accordance with General Assembly Resolution 194 (1948), which "resolves that the refugees wishing to return to their homes and live at peace with their neighbors should be permitted to do so at the earliest practicable date, and that compensation should be paid for the

^{22.} A December 2005 General Assembly resolution, "Jerusalem" (A/RES/60/41), that "Reiterates its determination that any actions taken by Israel to impose its laws, jurisdiction and administration on the Holy City of Jerusalem are illegal and therefore null and void and have no validity whatsoever" passed 153-7 (Costa Rica, Federated States of Micronesia, Israel, Marshall Islands, Nauru, Palau, United States), with 12 abstentions.

^{23.} A December 2005 U.N. General Assembly resolution, "Israeli Settlements in the Occupied Palestinian Territory, Including East Jerusalem, and the Occupied Syrian Golan" (A/RES/60/106), that "Reaffirms that Israeli settlements in the Palestinian territory, including East Jerusalem, ... are illegal" passed 153–7 (Australia, Federated States of Micronesia, Grenada, Israel, Marshall Islands, Palau, United States), with 10 abstentions.

property of those choosing not to return." A December 2005 General Assembly resolution that passed 161 to 1 (Israel) with 11 abstentions "Notes with regret that repatriation or compensation of the refugees, as provided for in paragraph 11 of General Assembly resolution 194 (III), has not yet been effected" and "reiterates its request" for "implementation of that paragraph." Similarly, respected human rights organizations have "urge[d] Israel to recognize the right to return for those Palestinians, and their descendants, who fled from territory that is now within the State of Israel, and who have maintained appropriate links with that territory" (HRW), and "call[ed] for Palestinians who fled or were expelled from Israel, the West Bank or Gaza Strip, along with those of their descendants who have maintained genuine links with the area, to be able to exercise their right to return" (Amnesty). Secondary of the content of the c

The broad consensus on the "final status" issues of borders, East Ierusalem, settlements, and refugees forms the bedrock of the two-state settlement to resolve the Israel-Palestine conflict. As understood by the whole of the international community, apart from Israel and the United States (and this or that South Pacific atoll), such a settlement calls for full Israeli withdrawal from Palestinian territories captured in the June 1967 war, the formation of an independent Palestinian state in these territories in exchange for recognition of Israel's right to live in peace and security with its neighbors, and a resolution of the refugee question that acknowledges the Palestinian right of return.²⁶ A December 2005 U.N. General Assembly resolution listed these principles and components for a "peaceful settlement" of the conflict: "inadmissibility of the acquisition of territory by war"; "illegality of the Israeli settlements in the territory occupied since 1967 and of Israeli actions aimed at changing the status of Jerusalem"; "right of all States in the region to live in peace within secure and internationally recognized borders"; "two-State solution of Israel and Palestine, living side by side in peace and security within recognized borders, based on the pre-1967 borders"; "withdrawal of Israel from the Palestinian territory occupied since

^{24. &}quot;Assistance to Palestine Refugees" (A/RES/60/100). A companion resolution, "Persons Displaced As a Result of the June 1967 and Subsequent Hostilities" (A/RES/60/101), that "[r]eaffirms the right of all persons displaced as a result of the June 1967 and subsequent hostilities to return to their homes or former places of residence in the territories occupied by Israel since 1967" passed 161–6 (Grenada, Israel, Marshall Islands, Federated States of Micronesia, Palau, United States), with 5 abstentions.

^{25.} See pp. 349-51 of this volume.

^{26.} See pp. 337-45 of this volume.

1967"; "realization of the inalienable rights of the Palestinian people, primarily the right to self-determination and the right to their independent State"; "resolving the problem of Palestine refugees in conformity with . . . resolution 194 (III) of 11 December 1948." The resolution passed 156–6 (Australia, Israel, Marshall Islands, Micronesia, Palau, United States), with 9 abstentions. According to U.S. Ambassador to the U.N. John Bolton, the General Assembly's overwhelming approval of this and related resolutions on the Israel-Palestine conflict showed "why many people say the U.N. is not really useful in solving actual problems. Truly it is cause for perplexity why the world won't follow the useful lead of the United States and Palau.

The peace process looks rather different in light of the two-state settlement reported in the legal-diplomatic record. Thus, all sides acknowledge that during the 2000 Camp David negotiations Palestinians agreed to let Israel retain illegal settlement blocs in East Jerusalem and the West Bank in an equal land swap, to divide Occupied East Jerusalem with Israel, and to limited implementation of the right of return. Contrariwise, Israel demanded retention of illegal settlements blocs in an unequal land swap, near-total control of Occupied East Jerusalem, and no recognition of the Palestinian right of return.²⁹ In relation to the consensus terms of the two-state settlement, Palestinians acquiesced in much less than they were entitled to while Israelis demanded much more. Nonetheless the received wisdom has been that the Camp David summit collapsed due to Palestinian intransigence.³⁰ Similarly, after Hamas's electoral victory the United States set as a condition for suspension of its boycott that Hamas explicitly recognize Israel. The first and most obvious question—as Danny Rubinstein posed it in Haaretz—is: Why should Hamas have recognized Israel if Arafat and the PLO's recognition of it in the Oslo agreement yielded "only suffering and misfortune" for Palestinians and the "liquidation" of their "national hopes"?³¹ In point of fact, however, Hamas officials did issue many statements gesturing toward support of the international consensus for resolving the

^{27. &}quot;Peaceful Settlement of the Question of Palestine" (A/RES/60/39).

^{28. &}quot;Bolton Says Palestinian Resolutions Demonstrate UN Irrelevance" (1 December 2005; http://quote.bloomberg.com/apps/news?pid = 10000080&sid = aMtyi.vxeA5Q#).

^{29.} See pp. 352-55 of this volume.

^{30.} See ibid. and Norman G. Finkelstein, Dennis Ross and the Peace Process: Subordinating Palestinian Rights to Israeli "Needs" (Washington, D.C., 2007).

^{31.} Danny Rubinstein, "Why Recognize Israel?" Haaretz (25 September 2006).

conflict.³² Were they truly committed to the conflict's resolution on these terms, the United States and Israel could have tested Hamas's pronouncements in negotiations. Even granting the ambiguity of Hamas's stance,³³ it is still cause for wonder why the United States (and the European Union) didn't subject Israel, which has consistently and unambiguously rejected all the terms of the two-state settlement, to censure, let alone a crippling economic boycott.³⁴

While the Palestinian people were being economically devastated due in part to some Hamas statements calling for Israel's destruction, Israel was given a free hand to dismember not in words but in actions the prospective Palestinian state. It proceeded apace on construction of the wall deep inside the West Bank, annexing some of the most productive land and water resources as well as East Jerusalem and effectively bisecting the West Bank.³⁵ In addition, it signaled its intention to retain the Jordan Valley as well as a settlement bloc in the north which would yet again sever the West Bank.³⁶ The choice for Palestinians, according to *The Economist*, will be between "a Swiss-cheese state, comprising most of the West Bank but riddled with settlements, in which travel is severely hampered," or Israel "pulling out from up to 40 percent or 50 percent of the West Bank's territory unilaterally.

- 32. Khaled Hroub, "A 'New Hamas' Through Its Documents," *Journal of Palestine Studies* (Summer 2006); and Khaled Hroub, "Hamas is Being Punished for Moderate Behavior," *Daily Star* (26 October 2006).
 - 33. See Palestinians, Israel, and the Quartet, pp. 3-6.
- 34. For the European Union's de facto disregard of "its own hard legal obligations to respect human rights in the case of Israel," see Euro-Mediterranean Human Rights Network, A Human Rights Review on the EU and Israel: Mainstreaming or selectively extinguishing human rights? (December 2005).
 - 35. See pp. 201-2 of this volume.
- 36. B'Tselem, "Israel Has De Facto Annexed the Jordan Valley" (13 February 2006); Amira Hass, "PA: Massive new IDF checkpoint aims at creating 'canton,'" Haaretz (30 October 2005); Amira Hass, "Israel Cuts Jordan Rift from Rest of West Bank," Haaretz (13 February 2006); Chris McGreal, "Israel Unveils Plan to Encircle Palestinian State," Guardian (8 February 2006). According to a recent B'Tselem study, Means of Expulsion: Violence, harassment and lawlessness against Palestinians in the southern Hebron hills (July 2005), beyond displacing Palestinians from and restricting entry of Palestinians into Palestinian territories west of the wall and in the Jordan Valley, Israel has repeatedly sought the "expulsion" of other Palestinians such as close to one thousand farmers and herders in the southern Hebron hills, using specious security pretexts and settler violence abetted by the military. Regarding the settler violence, it reports:

The common method of intimidation is setting dogs at children while they are grazing the sheep and goats or on their way to or from school. In many cases of violence, firearms are also used.... One of the most grievous cases of abuse took place... when settlers spread poison in the grazing areas used by residents...,

while keeping most of its settlements."37 Small wonder that "many Palestinians" construed the unilateral demand put on Hamas to recognize Israel as "another instance of double standards." Palestinian prime minister Ismail Haniyeh complained that Western leaders "are not asking anything of Israel.... They should be making the same demands of them that they make of us."38 In this connection it merits notice that, according to Israeli commentator Meron Benvenisti, "most Palestinians" support a two-state settlement on the June 1967 borders "as long as [the Palestinian state] enjoys all the trappings of sovereignty and is free of settlers," whereas "the majority of Israelis who ostensibly support a Palestinian state are vehemently opposed" to such a Palestinian state and instead "support an entity that will have partial control over about half the West Bank, with no control over the border crossings, immigration policies, water resources, coastal waters, and airspace."39 Thus, the Palestinian people suffered harsh collective punishment after electing Hamas to power although supporting the two-state settlement whereas Israelis suffered no punishment although opposing it.

"In effect, the Palestinian people have been subjected to economic sanctions—the first time an occupied people [has] been so treated," UN Special Rapporteur John Dugard observed in a September 2006 report to the Human Rights Council.

This is difficult to understand. Israel is in violation of major Security Council and General Assembly resolutions dealing with unlawful territorial change and the violation of human rights and has failed to implement the 2004 advisory opinion of the International Court of Justice, yet it escapes the imposition of sanctions. Instead the Palestinian people, rather than the Palestinian Authority, have been subjected to possibly the most rigorous form of international sanctions imposed in modern times.

killing a number of sheep . . . [T]he material was extremely poisonous and was liable to seep into the ground water. (p. 23)

The police and military not only "assist" the settler violence but "tanks and bulldozers from the [nearby] army base . . . routinely drive over the plowed and planted fields" and "aircraft sprayed chemicals over their fields" (pp. 32–34), while the Civil Administration has demolished "dozens" of allegedly illegal "reservoirs and buildings constructed by the residents" (p. 38; see also p. 108 of this volume).

^{37. &}quot;Ever More Separate," *Economist* (20 October 2005).

^{38.} Palestinians, Israel, and the Quartet, p. 6; Chris McGreal, "Hamas Leader Accuses West of Hypocrisy Over Threat to Withhold Cash," Guardian (8 March 2006).

^{39.} Meron Benvenisti, "A Fable for Adults," *Haaretz* (5 May 2005). For relevant poll data see pp. 342-45 of this volume.

"It is interesting to recall," Dugard caustically concluded, "that the Western States refused to impose meaningful economic sanctions on South Africa to compel it to abandon Apartheid on the grounds that this would harm the black people of South Africa. No such sympathy is extended to the Palestinian people or their human rights." 40

2. CONTRIVING CONTROVERSY

Having demonstrated that the actual documentary record is uncontroversial, I devoted the remainder of Beyond Chutzpah to scrutinizing the controversies manufactured by Israel's apologists. I focused on three of them: mystification of the conflict, an alleged "new anti-Semitism," and proliferation of fraud posing as scholarship.

MYSTIFYING THE CONFLICT

It is often alleged that the Israel-Palestine conflict is so complex that a knowledge on the order of rocket science is needed to penetrate its mysteries. Its roots are alleged to reach back to the hoary past, or it is said to be grounded in a cosmic clash of religions, cultures, and civilizations. This mystification of a conflict that, judging by the documentary record, is relatively straightforward serves a dual function. First, it rationalizes suspending ordinary moral and legal standards, which supposedly can't be applied because of the singularity of the conflict. Thus, when Robert Malley, an American negotiator at the failed 2000 Camp David summit, was publicly challenged as to why U.S. aid to Israel continued to flow despite egregious Israeli violations of international law, he replied: "This is really a truly unique conflict." End of discussion. 41 A second, related purpose of this mystification is to preempt the making of obvious analogies—for example, between the fate of Native Americans at the hands of European settlers and Palestinians at the hands of Zionist settlers, and between Apartheid in South Africa and Israeli policy in the Occupied Palestinian Territory.⁴² In the case of the Apartheid analogy it is alleged to be not only inaccurate but also anti-Semitic, and

^{40.} John Dugard, Report of the Special Rapporteur, para. 70.

^{41. &}quot;Transcript—Lessons of Arab-Israeli Negotiating: Four negotiators look back and ahead" (Washington, D.C., 25 April 2005). Malley went on to expatiate on the difference between the Israeli-Palestinian and the French-Algerian conflict, which was plainly irrelevant to the question posed.

^{42.} See p. 7 of this volume.

those articulating it anti-Semites.⁴³ This makes for a rather puzzling list of anti-Semites, including B'Tselem, which observes in a recent report that the Israeli "roads regime" in the West Bank, "based on the principle of separation through discrimination, bears striking similarities to the racist Apartheid regime that existed in South Africa until 1994," and "entails a greater degree of arbitrariness than was the case with the regime that existed in South Africa."44 The roster of supposed anti-Semites making the verboten Apartheid analogy also includes the editorial board of Haaretz, which observed in September 2006 that "the apartheid regime in the territories remains intact; millions of Palestinians are living without rights, freedom of movement or a livelihood, under the voke of ongoing Israeli occupation," as well as former Israeli Knesset member Shulamit Aloni, former deputy mayor of Jerusalem Meron Benvenisti, former Israeli Ambassador to South Africa Alon Liel, South African Archbishop and Nobel Laureate for Peace Desmond Tutu, and "father" of human rights law in South Africa John Dugard. 45 Indeed, the list apparently also includes former Israeli prime minister Ariel Sharon. Pointing to his "fixation with Bantustans," Israeli researcher Gershom Gorenberg concluded that it is "no accident" that Sharon's plan for the West Bank "bears a striking resemblance to the

43. See pp. 49-51, 53, 194 of this volume.

45. "The Problem That Disappeared," *Haaretz* (editorial) (11 September 2006); Roee Nahmias, "'Israeli Terror is Worse,'" *Yediot Ahronot* (29 July 2005) (Aloni); Meron Benvenisti, "Founding a Binational State," *Haaretz* (22 April 2004); Chris McGreal, "Worlds Apart: Israel, Palestine and Apartheid" and "Brothers In Arms: Israel's secret pact with Pretoria," *Guardian* (6 February 2006, 7 February 2006) (Tutu, Dugard, Liel).

^{44.} B'Tselem, Forbidden Roads: Israel's discriminatory road regime in the West Bank (August 2004), p. 3. See also p. 194 of this volume. The B'Tselem report further notes that the roads regime "is based on the premise that all Palestinians are security risks and therefore it is justifiable to restrict their movement. This is a racist premise that [has] led to a policy that indiscriminately harms the entire Palestinian population, in violation of its human rights and of international law" (p. 3); that "[s]ince the occupation began in 1967, Israel has established an extensive system of roads . . . in the Occupied Territories.... Yet it is hard to find one road that Israel built in the West Bank that was not planned to serve and perpetuate the settlements," while concomitantly causing "extensive damage to the West Bank's landscape" (p. 5); that "one of the primary objectives determining the routes of the roads was to 'bypass the Arab population centers' [quoting a government publication]" and "some of the new roads . . . were planned to place a physical barrier to stifle Palestinian urban development" (p. 6); that "the routes set for most of the new roads ran across privately-owned Palestinian land" that was requisitioned or expropriated by the state using legal ruses in violation of international law but upheld by Israel's Supreme Court (pp. 6-8); and that the new road regime has resulted in the deaths of at least thirty-nine Palestinian civilians, including fifteen minors, "following delays at checkpoints or soldiers' refusal to let them cross" (p. 19).

'grand apartheid' promoted by the old South African regime."46 Sharon himself reportedly stated that "the Bantustan model was the most appropriate solution to the conflict."47

PLAYING THE HOLOCAUST AND NEW ANTI-SEMITISM CARDS

To sow confusion about the real historical record and discredit criticism of Israeli policy, Israel's apologists have also played The Holocaust and New Anti-Semitism cards.

In the first decades of Israel's existence, American Jewish elites, fearful of the dual loyalty bogey, kept the Jewish State at cautious distance. After the June 1967 war when Israel became the U.S.'s "strategic asset" in the Middle East, these elites became born-again Zionists and, conveniently "discovering" the Nazi holocaust (another subject on which they had hitherto been conspicuously silent), began to exploit it to immunize Israel from criticism.⁴⁸ Two dogmas underpinned the new Holocaust ideology: first, that Jewish suffering during The Holocaust was unique and, second, that The Holocaust was the culmination of an eternal Gentile hatred of Jews. Although lacking intellectual content and morally abhorrent, these dogmas came to serve as potent weapons in Israel's ideological arsenal aimed at neutralizing criticism of its policy.

In the most bizarre development, Palestinians (and Arabs generally) were either held directly culpable for The Holocaust or seen as lineal descendents of its perpetrators. On the eve of the 1948 war Ben-Gurion depicted the Zionists' enemies as "disciples and even teachers of Hitler, who know only one way of solving the Jewish problem: total destruction," while his stated goal for the Eichmann trial was that it would "ferret out . . . the connection between Nazis and some Arab rulers," especially Egyptian President Nasser. Israeli historian Idith Zertal notes that during the trial "[t]he deeds of Eichmann—and other Nazi criminals—were rarely mentioned without addition of the Arab-Nazi

^{46.} Gershom Gorenberg, "Road Map to Grand Apartheid? Ariel Sharon's South African inspiration," *American Prospect* (3 July 2003).
47. Akiva Eldar, "Sharon's Bantustans Are Far from Copenhagen's Hope," *Haaretz*

⁽¹³ May 2003).

^{48.} See Norman G. Finkelstein, The Holocaust Industry: Reflections on the exploitation of Jewish suffering, 2nd paperback ed. (New York, 2003), chap. 1. For American Jewish elites' fear of the dual loyalty charge, see esp. Zvi Ganin, An Uneasy Relationship: American Jewish leadership and Israel, 1948–1957 (Syracuse, NY, 2005).

dimension," and Israeli press coverage labeled the Palestinian Mufti of Jerusalem as "among the biggest Nazi war criminals," even suggesting that he was the real mastermind of the Final Solution. According to Ben-Gurion, the Mufti was "one of Hitler's close associates in this genocide." A leading Israeli official warned during the trial that "150 meters from the courtroom there is a border, and behind that border thousands of Eichmanns lie in wait, proclaiming explicitly, 'what Eichmann has not completed, we will," while for Ben-Gurion the trial's main legacy was to remind Israelis that "[t]he hatred . . . that brought about . . . the extermination of two-thirds of European Jewry, who had not sinned or done wrong; this hatred is still simmering among the rulers of our neighboring countries, plotting to eradicate us." Deploring this imposition of the Nazi holocaust onto "the Middle East reality, which harsh and hostile to Israel as it was, was of a totally different kind," Zertal observes that it "immensely distorted the image of the Holocaust, dwarfing the magnitude of the atrocities committed by the Nazis, trivializing the unique agony of the victims and the survivors, and utterly demonizing the Arabs and their leaders."49

To justify their "preemptive" attack on Egypt in June 1967 Israeli leaders sounded alarms about "the machinations of the new Hitler" and proclaimed that "[f]or us, Abdel Nasser *is* Hitler." In the more recent past Israel's apologists equated Saddam Hussein with Hitler

49. Idith Zertal, *Israel's Holocaust and the Politics of Nationhood* (Cambridge, 2005), esp. chap. 3 ("ferret" at p. 98, "dwarfing" and "dimension" at p. 100, Mufti at p. 101, "150 meters" at p. 110—emphasis in original, "hatred" at p. 114, "disciples" and "close associates" at p. 173). Regarding the Mufti's actual role in the Nazi holocaust, Zertal writes:

Documents presented to the court indeed showed that the Mufti had tried to interfere with plans to transfer Jewish children out of Bulgaria and Hungary. These were acts of total evil, yet none of the documents proved that it was the Mufti's interference that prevented the rescue of the children, nor could they sustain the claim that he was a major contributor to the Final Solution. Despite this lack of evidence, the Israeli prosecutor insisted on inflating the Mufti's role in the planning and implementation of the Nazi crimes. (p. 102; cf. p. 175, quoting former Israeli prime minister Netanyahu that the Mufti was "one of the initiators of the systematic extermination of European Jewry . . . collaborator and advisor of Eichmann and Himmler in the execution of the plan.")

See also Finkelstein, *Holocaust Industry*, pp. 62-63, and pp. 64, 321-22 of this volume.

50. Zertal, *Israel's Holocaust*, p. 120—emphasis in original. In the war's aftermath, the juxtaposition became standard. Elie Wiesel, for example, wrote: "During the Six-Day War we witnessed a repetition in history. Only the setting had changed, the mechanism had remained the same. The shadow of Auschwitz finally enveloped Jerusalem" ("Postwar 1967," One Generation After [New York: 1978], pp. 174–76).

and opposition to the illegal U.S. war against Iraq with appeasement.⁵¹ (In fact the threat posed by Nasser to Israel in 1967 was on the order of severity of Saddam's in 2003.)⁵² Now it is the turn of Hamas, Hezbollah, and Iran, and among those leading the charge is Holocaust industry poster boy Daniel Goldhagen. His preeminent role confirms, for those still harboring doubts, the symbiosis between the Holocaust industry and Israel's political agenda. It was for Goldhagen an easy transition from expert on Jews and Nazi anti-Semitism to expert on Israel and Islamic anti-Semitism: on the one hand, his best-selling book *Hitler's Willing Executioners* wasn't in reality about Jews and the Nazi holocaust but, as I've shown elsewhere, about Israel and its enemies; and, on the other, he appears to know as much about the latter as he did about the former, substituting in both instances the same vacuous catchphrases like "hallucinatory anti-Semitism" for serious analysis.⁵³

Scrutinizing Hamas's charter, Goldhagen concludes that it "is governed by a Nazi-like genocidal orientation to Jews," mimics "Nazi textbooks," espouses a "hallucinatory" anti-Semitism "recalling the most extreme Nazi ideologues," is "almost classically Nazi" and "unmistakably Nazi-like," and on and on. To judge by Goldhagen, Hamas might even be worse than the Nazis: "The Nazi Party Program of 1920 also contained much anti-Semitism, but compared to Hamas' charter, its demonology and prescriptions were tame." Hamas isn't half the problem, however. For, according to Goldhagen, Hamas is just one tiny link in a vast Nazi-like conspiracy of "political Islam" to destroy the West. Thanks to him, the protocols of these elders of Araby have now been exposed.

"We are witnessing the beginning of political Islam's intensifying social and political mobilization into a new multipronged, intercontinental intifada," Goldhagen intones in a March 2006 New Republic cover story, an intifada that deploys "genocidal rhetoric" and "proto-

^{51.} See pp. 42, 45 of this volume.

^{52.} See Norman G. Finkelstein, *Image and Reality of the Israel-Palestine Conflict*, 2nd ed. (New York, 2003), chap. 5 and Appendix.

^{53.} Norman G. Finkelstein and Ruth Bettina Birn, A Nation on Trial: The Goldhagen thesis and historical truth (New York, 1998), esp. part I, section 3 ("Reflections on the Goldhagen Phenomenon"). A Holocaust lecture circuit favorite, Goldhagen currently focuses on "Political Islam's Offensive and Threat" and "How Vulnerable is Israel?" (www.goldhagen.com/Pages/Talk_Topics.html).

^{54.} Daniel Jonah Goldhagen, "A Manifesto for Murder," Los Angeles Times (5 February 2006). See also pp. 57–58 of this volume.

genocidal violence," "embraces Nazism's hallucinatory anti-Semitism and its murderous logic toward Jews," and aspires to "global rule."55 It is "totalitarian, aggressive, conquering, cocksure about its superiority and destiny to rule, intolerant, bristling with resentment, and only tenuously in touch with aspects of reality." Even if true this would not seem to make political Islam much different from the Bush administration. Trundling forth absurdity after inanity after fantasy, Goldhagen alleges that "political Islam's most threatening military development" in the early 1990s was Saddam Hussein's ruthlessly secular Baathist regime; that Iran secretly orchestrated the widespread Islamic protests against the Danish cartoons just as it "was about to be referred to the U.N. Security Council for possible sanctions over its nuclear weapons program"; that if Israel hadn't destroyed Iraq's reactor in 1981, "we could never have dislodged nuclear-armed, mass-murdering Saddam from Kuwait ten years later"—even if the reactor wasn't producing nuclear weapons and it was probably Israel's strike that impelled Saddam's attempt to acquire them;⁵⁶ and that "[m]uch of the Islamic world is in the throes of political Islam, even if much of it is not. (It's a big world.)" Do tell.

"The really bad news is that Al Qaeda is not the main problem," according to Goldhagen; "Iran is." Iran is "the epicenter of political Islam... political Islam's greatest power." Similarly, the main exponent of political Islam "is not Osama bin Laden" but "Mahmoud Ahmadinejad, the president of Iran." (In one of those signature Goldhagen-isms, Ahmadinejad is said to form a "tag-team of interlocking support" with Hamas.) Apart from suffering from the weird delusion that "the West has, for centuries, constricted, humiliated, divided, and dominated the Muslim nations," the chief defects of the Iranian president are said to be that he is prone to Holocaust denial and "Hitlerian exhortation" to destroy Israel. This exercise over Ahmadinejad's Holocaust denial is peculiar considering that Palestinian president Mahmoud Abbas, the U.S. and Israel's main Palestinian collaborator as well as a breakfast date of Elie Wiesel, wrote his doctoral dissertation, and then published a book, denying the Nazi holocaust.⁵⁷ Beside the Iranian president's

^{55.} Daniel Jonah Goldhagen, "The Radical Politics of Islamic Fundamentalism," New Republic (13 March 2006).

^{56.} See pp. 41-42 of this volume.

^{57.} Deborah Lipstadt, History on Trial: My day in court with David Irving (New York, 2005), pp. 299–300 (Abbas); Erlanger, "After Writer and King Nudge" (Wiesel).

alleged exhortation to destroy Israel Goldhagen juxtaposes his "brazen and cocksure pronouncements of the West's impending doom [that] echo Nikita Khrushchev's bullying prophecy, 'We will bury you.'" If the comparison with the Soviet leader is right, it would seem to belie the literalness of the Iranian president's threat.⁵⁸ Nonetheless, dragging in the all-purpose Nazi analogy Goldhagen warns skeptics to take these threats seriously: "Hitler, too, prophesied the annihilation of the Jews, saying that a world war would result in the 'annihilation of the Jewish race in Europe.' Most treated this as empty bluster."

Amidst this terrifying global offensive of political Islam, Goldhagen still espies a ray of hope. He singles out for praise German Chancellor Angela Merkel for bracketing Iran and "Nazi Germany in the 1930s" and for admonishing the world not to "repeat the error of the '30s, the inaction of the Western powers in the face of Hitler's bellicose posture, their dismissal of his menacing words as empty rhetoric." The challenge now, according to Goldhagen, is for the world to "prevent Iran from acquiring nuclear weapons—most likely by destroying its nuclear production facilities."

It's hard to say what's more laughable—the extraordinary coincidence that each new Arab/Muslim leader allegedly threatening Israel is Hitler reincarnate, or that the threat posed is routinely compared to The Holocaust while the Holocaust industry simultaneously intones that The Holocaust was unique and any comparison between it and other crimes is a form of Holocaust denial.⁵⁹

The *new anti-Semitism* is a spin-off of the Holocaust industry. Whenever Israel comes under international pressure to resolve its conflict with the Palestinians diplomatically or faces a public relations debacle, its apologists mount a campaign alleging that the world is awash in a new anti-Semitism. As I've demonstrated in Part 1 of this volume, the purpose of these periodic extravaganzas is not hard to find: on the one hand, the perpetrators are turned into the victims, putting the spotlight on the alleged suffering of Jews today and diverting it from the real suffering of Palestinians; on the other hand, they discredit all criticism of Israeli policy as motivated by an irrational loathing of Jews. In the first chapter of this book, "From *Jesus Christ Superstar* to *The Passion of the*

^{58.} See Jonathan Steele, "If Iran Is Ready to Talk, the US Must Do So Unconditionally," *Guardian* (2 June 2006).

^{59.} The Goldhagen article is typical of current fare in the Jewish press; see the March 2006 issue of *World Jewish Digest* headlined *The Price of Appeasement*.

Christ," I pointed to the similarity of the various new anti-Semitism productions such as the Anti-Defamation League's (ADL's) repeatedly whipping up hysteria over anti-Semitism in the film industry.⁶⁰ Coincidentally, in his recent memoir, Norman Jewison, the director of Jesus Christ Superstar, likewise took note of this bizarre phenomenon. Jewison, who is not Jewish, begins his memoir with the words "For as long as I can remember I've always wanted to be a Jew." A highly successful Hollywood director, Jewison eventually directed Fiddler on the Roof, which won him unstinting praise from American Jews and the Israeli government. But when his next film, Jesus Christ Superstar, opened, Jewison recalls all hell breaking loose: "The American release was marred by attacks from the Anti-Defamation League and almost every U.S. Jewish organization. I felt betrayed by many friends, especially after making Fiddler on the Roof." He notes in passing that it was "rather similar to the protest over . . . Mel Gibson's more recent The Passion of the Christ."61 Indeed, the ADL transmogrified both films into useful props for another fictional production: the new anti-Semitism.

Israel mounted the latest revival of the new anti-Semitism after international criticism of its brutal repression of the second intifada. Once Palestinian resistance was successfully broken and Israel returned to the good graces of the West, the tantrums about a new anti-Semitism began to abate. A few years ago it was being alleged that Jewish students on U.S. college campuses were literally the target of pogroms. On its face the allegation seemed preposterous. Colleges are so politically correct nowadays that it is hard to be anti-anything, let alone the ultimate taboo, anti-Semitic. In fact, the alleged instances of anti-Semitism turned out on inspection to be either grossly exaggerated or fabricated out of whole cloth.⁶² Even its fomenters now openly acknowledge that the hysteria was largely a contrivance. "It's a good time to be a Jewish student at an American college," the Chronicle of Higher Education reports. "So said Iewish leaders who gathered here Monday and declared that a golden age of Jewishness on campuses—and not the apocalypse of anti-Semitism—is upon us." Outdoing the Hillel director who hailed the "golden age" of Jewish students, the AIPAC representa-

^{60.} See pp. 22-24 of this volume.

^{61.} Norman Jewison, *This Terrible Business Has Been Good to Me* (New York, 2005), pp. 11 ("always wanted"), 174–91 (Gibson at p. 185, "betrayed" at p. 191). On Gibson's anti-Semitic outburst while intoxicated in 2006, see esp. Andrew O'Hagan, "Mel Gibson Deserves Pity, Not Pillory," *Daily Telegraph* (2 August 2006).

^{62.} See pp. 67-71 of this volume.

tive "told the audience that it was a 'glorious time' not only for Jewish student life on campuses, but for the pro-Israel student movement as well."63 So much for pogroms. Notwithstanding this glorious time, however, Yale University announced in September 2006 the creation of the first university-based center in North America for the study of anti-Semitism in order "to understand the current manifestation of this disease." According to the center's director, "it is too soon to say whether there will be a degree program,"64 but should this come to pass, Yale might consider offering a triple major in Judaic Studies, Holocaust Studies, and Anti-Semitic Studies in a special degree program titled Jewish Navel Contemplation.

A few years back it was sacrilege to argue that hostility to Jews had increased due to Israel's ruthless policies and that the best remedy was for Israel to end the occupation.⁶⁵ In a feature *Haaretz* article marking the fifty-eighth anniversary of Israel's founding, a leading American-Jewish academic now gives expression to the identical analysis. "Israel's reckless behavior and insistent identification of all criticism with anti-Semitism," Tony Judt writes,

is now the leading source of anti-Jewish sentiment in Western Europe and much of Asia . . . [O]ne way to take the sting out of rising anti-Semitism in the suburbs of Paris or the streets of Jakarta would be for Israel to give the Palestinians back their land.66

One also finds astonishing acknowledgments in a recent study of anti-Semitism by Walter Laqueur, a leading academic stalwart of Israel.⁶⁷ Whereas the "new anti-Semitism" mongers have alleged that virulent anti-Semitism is rampant in the heartland of Europe and the United States and that the threat currently posed to Jews rivals that of Nazi Germany, 68 Laqueur asserts that "anti-Semitism in Europe is predominantly Muslim in character," "popular attitudes toward Jews" were "in fact . . . slightly more favorable in 2002 than they had been in 1991," "it is difficult to imagine that anti-Semitism ... will become a

^{63.} Jennifer Jacobson, "At Hillel Summit, Some See a 'Golden Age' for Jews on Campuses, Not an Era of Anti-Semitism," *Chronicle of Higher Education* (23 May 2006). 64. "Yale Creates First University-Based Center to Study Anti-Semitism," *Haaretz*

⁽¹⁹ September 2006).

^{65.} See pp. 78–79, 85 of this volume.
66. Tony Judt, "The Country That Wouldn't Grow Up," *Haaretz* (5 May 2006).

^{67.} Walter Laqueur, The Changing Face of Antisemitism: From ancient times to the present day (Oxford, 2006).

^{68.} See chapters 2 and 3 of this volume.

crucial factor on the American political or social scene," and it "goes without saying" that anti-Semitism today "is in no way comparable to the persecutions of the 1930s and 1940s." Whereas the mongers alleged that anti-Semitism is to be found overwhelmingly on the left wing of the political spectrum, and that left-wing and Islamic anti-Semitism (and its concomitant anti-Zionism) are born fundamentally of irrational hatred of Jews,⁶⁹ Laqueur writes that "it would be an exaggeration to maintain that contemporary anti-Semitism is exclusively or predominantly left wing in character," "anti-Zionism of the far left is post-racialist, mainly motivated by anti-Americanism and America's support for Israel," and "it is absurd to argue that contemporary Muslim anti-Semitism is wholly unconnected with the existence of Israel and the policy of Israeli governments."

On a related note, a tenet of Holocaust ideology and the new anti-Semitism mongers is that anti-Jewish and anti-Israel animus arises "not because of factual evidence but in spite of it" (ADL head Abraham Foxman).71 Laqueur, however, allows that "[a]t times anti-Jewish hostility was predominantly irrational, at other times it was quite rational, and usually there was interplay between these two."72 He cites many instances where anti-Semitism sprang from "economic activities bound to provoke hatred," such as the intermediary role of Jews between exploiters and exploited.⁷³ Indeed, Laqueur partly ascribes anti-Semitism in the past to the "negative features" in the "character and the physical development" of Jews, their "morally questionable" behavior and lack of "good citizenship," and even their sheer numbers, concurring with a Zionist spokesperson in the 1930s that "there were one million Jews too many in Poland."74 The irony is that were not Laqueur a prominent Zionist and defender of Israel, these remarks could easily be construed as anti-Semitic. The double irony is that it's probably because he is a Zionist that Laqueur holds these beliefs, Zionist ideology having mirrored anti-Semitic stereotypes and the anti-Semitic belief that Iews couldn't assimilate.

^{69.} See pp. 40, 78 of this volume.

^{70.} Laqueur, *Changing Face*, "post-racialist" at p. 17, "Europe" and "American" at p. 18, "without saying" at p. 20, "popular attitudes" at p. 126, "left wing" at p. 150, "absurd" at p. 206.

^{71.} See p. 78 of this volume.

^{72.} Laqueur, Changing Face, pp. 37-38.

^{73.} Ibid., pp. 36, 65-66, 79-80.

^{74.} Ibid., pp. 27, 36, 37, 75, 109, 167.

New anti-Semitism promoter Bernard Lewis maintains that anti-Semitism in the Arab world derives principally from its "feeling of humiliation" after having suffered successive military defeats at the hands of Israel. To provide "solace to wounded feelings," Arabs imputed a preternatural evil to Jews. The animus directed at Jews, Lewis emphatically concludes, "has little or no bearing on the rights and wrongs of the Palestine conflict." Breaking with this orthodoxy, Laqueur acknowledges that Palestinians' hostility to Israel and Jews has been an understandable response to the injustice inflicted on them and that, were a just settlement of the conflict reached, Palestinian, and more broadly Arab/Muslim, hostility would largely dissipate:

For the Palestinians, the existence of Israel is bound to remain a trauma for as far as one can think ahead, the loss of part of their homeland being the greatest injustice which can be put right only by violence. It is only natural that they will want this state to cease to exist. Once they have a state of their own, however, problems of daily life will loom large and much of their energy will have to be invested in making this state work. The great urge to reconquer what was lost will not disappear, but it will not be pursued as in the days when this was the only issue. The same is true in particular with regard to the other Arab and Muslim countries and the Muslim communities in Europe. Israel and the Jews will remain an enemy. But it is unlikely to remain the only or even the main enemy. . . . Once the Palestinians have a viable state . . . and once Israel has taken other steps to accommodate Muslim interests—such as the internationalization of the holy places in Jerusalem—there is a reasonable chance that Arab anti-Semitism will decrease even though it will not disappear. The sum of the particular of the sum of the sum of the sum of the holy places in Jerusalem—there is a reasonable chance that Arab anti-Semitism will decrease even though it will not disappear.

Yet, despite what he himself has acknowledged, Laqueur still maintains—at any rate, on different pages in his book—that anti-Semitism has reached near-crisis proportions in Europe. He alleges that "anti-Semitism has been rampant in France since the 1970s," that "the British Labor party launched anti-Semitic attacks," and that "not-too-friendly attitudes toward Jews extended well beyond ...extremist groups" in

^{75.} Bernard Lewis, "The New Anti-Semitism," American Scholar (Winter 2006). In this vein Lewis asserts that the "dominant Israeli military presence in the region" was its sole connection to "the massacre of Palestinians by Lebanese Christian militiamen at Sabra and Shatila in September 1982." That Israel trained the Christian militias, provided them with uniforms and supplies, dispatched them into the camps, monitored the unfolding slaughter, and facilitated it with flares was plainly of no account. See Robert Fisk, Pity the Nation (New York, 1990), chap. 11, and Noam Chomsky, The Fateful Triangle: The United States, Israel and the Palestinians (Boston, 1983), chap. 6.

^{76.} Laqueur, Changing Face, pp. 19-20.

Europe.⁷⁷ Laqueur is most exercised by a diabolical "alliance" allegedly forged between "Islamists" and the political left (notably "antiglobalists"), held together by a mutual loathing of Jews.⁷⁸ To substantiate these sweeping claims,⁷⁹ Laqueur (like the new anti-Semitism mongers) relies on ambiguous and inconclusive survey results⁸⁰ or else innuendo such as the alleged pervasiveness of Holocaust denial in the West.

In a book covering 2,500 years in two hundred pages, Laqueur devotes fully six pages to Holocaust denial. He cites the usual cast of five kooky characters and the usual two kooky periodicals that one regularly finds in Holocaust industry literature, which wildly inflates the reach of Holocaust denial in order to justify yet more "Holocaust education." Casting a very wide net, Laqueur subsumes under the rubric "Holocaust denier" those who argue that "the sole purpose of the great

77. Laqueur, Changing Face, pp. 127 (France), 128 ("not-too-friendly"), 149 (Labor party).

78. He alleges, ibid., that among Muslim demonstrators in Europe there's been a "prevalence of 'kill the Jews' slogans that had not been heard in the streets of Europe since the days of Adolf Hitler" (p. 201); that the "main attack" on Jews "at the present time comes from the populist left-wing, antiglobalist camp" (pp. 14-15); that "antiglobalists regard the Jews as an enemy because of their alleged support of international capitalism" (p. 148); that "antiglobalists" have made common cause with radical Islamists and believe that "the world would certainly be a safer place if Israel did not exist" and that "Jews were the new Nazis" (pp. 186-87); that "one of the fundamental tenets of belief of the extreme left [is] that while other nations have the right to have their own state, the Jews have not" (p. 147); that there has been "a rapprochement between the extreme left and the extreme Islamists" and a "collaboration of the extreme left with anti-Semitic groups" and that "the extreme left . . . has in recent years adopted an anti-Jewish stance" (pp. 148, 150); that "as far as the radical left was concerned ... Israeli leftwingers, whatever their political doctrines, were 'objectively' reactionary and pro-imperialist"; and that "there was a belief on the left that Jews were the main force behind globalism" (pp. 182, 187). When the rhetoric starts getting too overheated Laqueur throws in a token caveat, such as the qualification that his pronouncements don't necessarily apply to "all segments of the left" (p. 183) or to "the more responsible leaders of antiglobalism and the left" (p. 187).

79. For the actual record on France, Muslims in Europe, and "antiglobalists," see respectively pp. 76, 78, 67n2 of this volume.

80. Laqueur cites poll data showing, e.g., that many Europeans believe Jews "had too much influence," "were talking too much about the Holocaust," and "were more loyal to Israel than to their home country," and that many Germans were "critical of the financial restitution that was made to Jews for property stolen under the Nazis and for other damage suffered" (pp. 128, 150, 160). In and of themselves none of these findings demonstrate anti-Semitism; see pp. 71–72, 75n11 of this volume and, regarding Holocaust compensation, Finkelstein, *Holocaust Industry*, chap. 3. On the touchy question of political loyalties, it is worth recalling the opinion of Zionist leaders like Ben-Gurion that the "duty" of Zionists was "to assist the State of Israel in all conditions and under any circumstances . . . whether the government to which the Jews in question owe allegiance desire it or not" (Ganin, *Uneasy Relationship*, p. 119).

81. See Finkelstein, Holocaust Industry, pp. 68-71.

publicity given to the Holocaust decades after the event was to provide political help to the state of Israel"; that "many Jews indeed might have been killed during World War Two, but this had nothing to do with Palestinians or the Arabs, and why should the Palestinians suffer and pay the price for crimes committed in Europe?"; that "while the Holocaust had indeed taken place, it had been exploited and instrumentalized by chauvinist Jews to gain international sympathy, to extort money from the international community in compensation for the funds robbed by the Nazis, and also to justify Israeli politics." Even those who have "fought for the right of the Holocaust deniers to express their views" seem to qualify in Laqueur's view as Holocaust deniers.82 He should perhaps exercise some caution in how far he stretches this definition. In his study he repeatedly states that the total number of Jews killed during the Nazi holocaust was "between 5.1 and 5.9 million."83 Yet, according to the Holocaust industry, to question "whether the Nazis really killed six million Jews" is already heresy.84 In fact the "Holocaust denier" epithet has become the verbal equivalent of spittle, mindlessly expectorated at those critical of Israeli policy. Future generations will undoubtedly wonder how it came to pass that blood descendants of the millions of Jewish martyrs reduced such a colossal chapter in human suffering to a schmate.

Laqueur's study is also littered with disingenuous, politically partisan assertions. For example, to prove that anti-Israel sentiment on the political left long antedated the June 1967 war and accordingly that Israel's occupation cannot account for the hostility directed at it, Laqueur adduces this evidence:

[E]ven in the 1950s and early 1960s, there was an identification in Western radical left-wing circles with Palestinian insurgents, which manifested itself in ideological writings as well as the wearing of the kaffiyeh and the dispatch of Western terrorists ("Carlos the Jackal" and members of the Baader-Meinhof gang) to training camps in Arab countries.⁸⁵

^{82.} Laqueur, Changing Face, pp. 137, 141, 184.

^{83.} Ibid., pp. 121, 138.

^{84.} Kelly Jane Torrance, "Rise of the Tenured Radicals," *American Enterprise Online* (2 March 2006; www.taemag.com/printVersion/print_article.asp?articleID = 19037). Even *Progressive* magazine chief editor Matthew Rothschild and its political editor Ruth Conniff profess the lunacy that it is a form of Holocaust denial to cite Raul Hilberg's figure of 5.1 million Jews killed (www.normanfinkelstein.com/article.php?pg = 3&ar = 67).

^{85.} Laqueur, Changing Face, pp. 182-83.

Leaving aside the unlikelihood that many on the political left had even heard of, let alone supported, Palestinians before June 1967, ⁸⁶ "Carlos the Jackal" was eleven years old in 1960. There's no record of the direct involvement of such individuals with the Palestinians before the late 1960s if not later.⁸⁷

As if to vindicate a central thesis of this book, just after Israel faced another public relations debacle due to its murderous assault on Lebanon in summer 2006, a British all-party parliamentary group led by notorious Israel-firster Denis MacShane MP (Labor) released yet another report alleging a resurgence of anti-Semitism.⁸⁸ To judge by many of the witnesses (e.g., David Cesarani, Lord Janner, Emanuele Ottolenghi, Melanie Phillips) and sources (e.g., MEMRI, Holocaust Educational Trust) cited in the body of the report, much time and money could have been saved had it just been contracted out to the Israel Foreign Ministry.⁸⁹

The single novelty of the report, which mostly rehashes fatuous allegations already disposed of in this volume, is the new thresholds in idiocy it breaks. Consider the methodology deployed for demonstrating a new anti-Semitism. The report defines an anti-Semitic incident as any occasion "perceived" to be anti-Semitic by the "Jewish community."

^{86.} For left-wing support of Israel before June 1967, see pp. 10-11 of this volume. 87. Although referring on multiple pages to "Carlos the Jackal" and Baader-Meinhof in his The Age of Terrorism (Boston, 1987), Laqueur makes no mention of this precocious pro-Palestinian terrorism. Among Laqueur's many similar misrepresentations in Changing Face one might note his claims that early twentieth-century left-wing leader Rosa Luxemburg, who was Jewish, "felt closer to the wretched, persecuted Indians in Putumayo, Colombia, according to her own writings, than to the East European Jews who perished in the pogroms" (p. 156), and that right-wing European parties like Italy's Northern League have in recent years "dissociated" themselves from "racism" (p. 127). In reality Luxemberg wrote that she wasn't partial to the "particular suffering of Jews," but rather "[t]he poor victims on the rubber plantations in Putumayo, the Negroes in Africa with whose bodies the Europeans play a game of catch, are just as dear to me. . . . I have no special corner of my heart reserved for the ghetto. I am at home wherever in the world there are clouds, birds and human tears" (Letter to Mathilde Wurm, 16 February 1917, in Stephen Eric Bronner [ed.], The Letters of Rosa Luxemburg [Boulder, CO, 1978], p. 179). Laqueur clearly knows this because he himself cites the full passage in his A History of Zionism (New York, 1972), p. 435. European Union publications monitoring bigotry have extensively documented the Northern League's racism and uniformly condemned it (see, e.g., European Network Against Racism, Shadow Report-2003 — Italy, pp. 16, 26-27).

^{88.} Report of the All-Party Parliamentary Inquiry Into Antisemitism (September 2006) (hereafter Report).

^{89.} The report's statement that "we received no evidence of the accusation of anti-Semitism being misused by mainstream British Jewish community organizations and leaders" (para. 79) perhaps speaks more to the selection of the witnesses than the reality.

^{90.} Report, para. 3; cf. para. 73.

This is the school of thought according to which it's raining even in the absence of any precipitation because *I feel* it's raining. It is the dream philosophy of paranoids—especially rational paranoids, for whom alleged victimhood is politically serviceable. The report includes under the rubric of anti-Semitic incidents not just violent acts and incendiary speech but "conversations, discussions, or pronouncements made in public or private, which cross the line of acceptability," as well as "the mood and tone when Jews are discussed." The wonder is that it didn't also tabulate repressed anti-Semitic libidinal fantasies. In the category of inherently anti-Semitic pronouncements the report includes "drawing comparisons of contemporary Israeli policy to that of the Nazis" (only comparisons of contemporary Arab/Muslim policy to that of the Nazis are permissible) and "theories about Jewish or Zionist influence on American foreign policy" (even if Jewish and Zionist organizations boast about this influence). Page 12.

Much of the evidence of pervasive British anti-Semitism stretches and strains credulity. The lone item listed under the ominous subheading "The Blood Libel" is a Syrian television series "that would be possible for viewers in the UK to see . . . if they had suitable satellite receiving equipment." The report also cites the warning of the London Assembly Conservative Group that "there is a risk that in some political quarters 'views on international events can, almost subconsciously, lead to subtly different attitudes to, and levels of engagement with, different minority groups.'" The new anti-Semitism business must be

^{91.} Quoted phrases from *Report* "Summary." The police data on an increase in anti-Semitic incidents in themselves prove little because, as the report concedes, the spike might be due to more incidents being reported and a coarsening of British life generally, as well as the "spillover" from the Israel-Palestine conflict (*Report*, paras. 28, 29, 59, 64, and pp. 81ff. of this volume). In addition, there is little evidence of "organized," "politically motivated" anti-Semitic attacks; there is apparently no evidence that perpetrators of anti-Semitic attacks were disproportionately Muslim; and most of the suspects in the incidents were adolescents (*Report*, paras. 55, 56, 58, 151). For 2005 the report cites a couple of incidents that were "potentially" life-threatening (para. 61). It cites no comparative data for other minorities in Britain, although tacitly acknowledging that "the level of prejudice and discrimination experienced by Jews in Britain remains lower," a considerable understatement (para. 17). On a related note, it deplores that "less than one in ten [anti-Semitic] incidents reported to the police resulted in a suspect becoming an accused" (para. 69), but cites no comparative data indicating whether this ratio is aberrant.

^{92.} Report, para. 84, 119; cf. para. 148. The report also expresses disquiet that "the use of language and imagery of the Holocaust has become increasingly widespread in relation to the Israeli-Palestinian conflict" (para. 93). Of course, what's new about such imagery in the West is that it's no longer used only against Arabs.

^{93.} Report, para. 99.

^{94.} Report, para. 104.

going seriously awry when British conservatives start sounding like Lacan. Finally, it is anti-Semitic for student unions to advocate a boycott of Israeli goods because this "would restrict the availability of kosher food on campus." Maybe Israel can organize a "Berlin airlift" of gefilte fish.

Although claiming that, in the struggle against anti-Semitism, "none of those who gave evidence wished to see the right of free speech eroded," and "only in extreme circumstances would we advocate legal intervention," the report recommends that university authorities "take an active interest in combating acts, speeches, literature and events that cause anxiety or alarm among their Jewish students," and it registers disquiet that "classic and modern anti-Semitic works are freely available for ordering on the Amazon.com website," and that "the United States in particular has been slow to take action" in closing down "anti-Semitic internet sites." It is at moments like this that even the least patriotic of souls experiences tingles of pride in being an American.

Behind the shield of the new anti-Semitism and emboldened by the "war against terrorism," Israel's fanatical supporters have indulged in the most egregious racist rhetoric against Arabs and non-Westerners generally. It seems that they find the Israeli ambience especially congenial to such rants. After publishing a notorious interview with historian Benny Morris, 98 Haaretz published in December 2005 a comparable one with Alain Finkielkraut, who has played the leading role in the French adaptation of the "new anti-Semitism," and is regarded in France as a philosopher of comparable stature to Bernard-Henri Lévy, rightly so.⁹⁹ In the interview Finkielkraut lamented that France's soccer team "arouses ridicule throughout Europe" because it was "composed almost exclusively of black players." Stressing that "we must strive to maintain the language of truth" against the current left-wing onslaught against it, he went on to assert that in Israel it is "impossible" even to jail Palestinian children, 100 that colonialism sought to "bring civilization to the savages," that the one and only significant truth about slavery in the West "is that [the West] was the one to eliminate it," and,

^{95.} Report, paras. 203, 204.

^{96.} Report, paras. 74, 75.

^{97.} Report, paras. 183, 189, 220.

^{98.} See pp. 5, 14-15 of this volume.

^{99.} See p. 58 of this volume.

^{100.} See pp. 113-14, 166, 219 of this volume for Israel's treatment of Palestinian minors. As of August 2005 Israel held 276 Palestinian minors in detention (www.btselem.org/english/Statistics/Minors_in_IDF_Detention.asp).

finally, that France did "only good" to Africans. ¹⁰¹ Especially in Algeria, where as many as a million people perished during the independence struggle, and earlier in the French Congo, where "the murders were numbered by the tens of thousands." ¹⁰²

PROLIFERATION OF FRAUD

This book begins by recounting my first public involvement in the Israel-Palestine conflict when I exposed a major literary hoax, Joan Peters's *From Time Immemorial* (1984). Peters's book purported to demonstrate that Palestine had been empty on the eve of Zionist colonization, and that those claiming to be Palestinians had actually entered surreptitiously from neighboring Arab countries in search of economic opportunities after the Zionist settlers had made the desert bloom. An indicator of the book's influence is shown in a recently declassified State Department document in which an official is quoted as saying that "Joan Peters has written the first true account of the roots of the Middle East crisis—'From Time Immemorial'—in which she definitively proves that there is no historical basis for the national/ethnic concept of a Palestinian." As it happened, this "first true account" was—in the words of Israel's leading academic authority on Palestinian national-ism—"a sheer forgery." 104

The fact that the literature on the Israel-Palestine conflict is littered with forgeries is not in itself noteworthy. Nonsense is written on every conceivable topic. What makes the Israel-Palestine conflict unusual is the extent to which these forgeries receive mainstream validation, which in turn makes public exposure of them so difficult. I would surely prefer if it could be said that uncovering the Peters fraud required genuine intellectual talent. In fact, however, the book was so ridiculous that discovering its fraudulence required nothing more than elementary research. The real challenge was not proving the fraud but publicly exposing it: after so many prominent individuals and institutions had

^{101.} Dror Mishani and Aurelia Smotriez, "What Sort of Frenchmen Are They?" *Haaretz* (22 December 2005).

^{102.} E. D. Morel, The Black Man's Burden: The white man in Africa from the fifteenth century to World War I (New York, 1969; first published in 1920 in Great Britain), p. 133 (French Congo).

^{103.} United States Department of State, "For Ambassador Pickering from NEA/IAI Wilcox" (20 June 1985) (CONFIDENTIAL State 170045).

^{104.} Finkelstein, Image and Reality, p. 46 (Yehoshua Porath of the Hebrew University).

sung the praises of, and consequently invested their reputations in, *From Time Immemorial*, it was quite the embarrassment that an obscure graduate student had demonstrated it was a threadbare hoax. It took over a year of tenacious activity, and a serendipitous concatenation of events, before the truth was publicly revealed.¹⁰⁵

It has proven equally challenging to expose publicly Alan Dershowitz's The Case for Israel. Demonstrating that it was an academic fraud, which comprises the bulk of this volume, again didn't require any special skill. One merely had to juxtapose what mainstream human rights organizations and historians have written against Dershowitz's fabrications. The real difficulty arose after the text was completed. In his public persona Dershowitz is a staunch civil libertarian. When I first began to expose his gross scholarly misconduct, he piously declared that he wouldn't respond with a libel action because he believed "so strongly in the First Amendment and full freedom of speech."106 Nonetheless, seeking to block publication of Beyond Chutzpah, he first fired off a barrage of minatory letters at the University of California Press, subsequently boasting that he told it "I will own your company," and then recruited reputedly the most powerful law firm in the country, Cravath, Swaine and Moore, to escalate the pressure. Finally he implored California Governor Arnold Schwarzenegger to intercede with the publisher, but Schwarzenegger refused "because of the clear, academic freedom issue it presents."107 (Dershowitz initially denied writing Schwarzenegger, declaring, "My letter to the Governor doesn't exist," but when pressed on the issue he explained, "It was not a letter. It was a polite note.") Ironically, just as he was threatening University of California Press with expensive and time-consuming lawsuits to prevent publication of Beyond Chutzpah, Dershowitz denounced Holo-

^{105.} See p. 2n2 of this volume.

^{106.} UCLA International Institute, "Alan Dershowitz Speaks on His 'The Case for Israel'" (21 October 2003; www.international.ucla.edu/dershowitz).

^{107.} See Steven Zeitchik, "Behind Beyond Chutzpah," *Publisher's Weekly* (17 May 2005); Scott Jaschik, "First Amendment Furor," *Inside Higher Ed* (27 June 2005); Jon Wiener, "Giving Chutzpah New Meaning," *Nation* (11 July 2005); Jennifer Howard, "U. of California Press to Publish Book That Alan Dershowitz Has Criticized as Anti-Semitic" and "Calif. Press Will Publish Controversial Book on Israel," *Chronicle of Higher Education* (11 July 2005, 22 July 2005); Mandy Garner, "The Good Jewish Boys Go Into Battle," *Times Higher Education Supplement* (United Kingdom) (16 December 2005). For my own observations, see "The Real Issue is Israel's Human Rights Record: A statement by Norman G. Finkelstein upon publication of *Beyond Chutzpah*" (www.normanfinkelstein.com/article.php?pg = 11&ar = 50).

caust denier David Irving, who had sued author Deborah Lipstadt for libel, in these words:

Before Irving lost his case [against Lipstadt], several publishers had refused to issue books critical of Irving, out of fear of his bringing expensive and time-consuming lawsuits. *That* was a chilling of free speech. ¹⁰⁸

In addition, as Beyond Chutzpah was going to press and after its publication Dershowitz embarked on an unremitting campaign of defamation, hurling wild and, frankly, obscene ad hominem calumnies. Disseminating these slanders under such juvenile titles as The Committee to Expose Norman Finkelstein's Close Connections to Neo-Nazism, Holocaust Denial, and His "Big Lie" of an "International Jewish Conspiracy," he asserted that I was a "notorious Jewish anti-Semite" and "Holocaust revisionist," had "praised" Osama Bin Laden, and had been let go from a teaching post due to "mental instability." (He even threatened to show up, at his "own expense," during my tenure process at DePaul University to "document the case against Finkelstein.") He posted on Harvard Law School's official website the insinuation that my mother was—or I believed she was—"a kapo" who had been "cooperating with the Nazis during the Holocaust." Harvard Law School Dean Elena Kagan held that Dershowitz's crude defamation fell within the parameters of what was permissible to post on its website. For the record, my late mother was a survivor of the Warsaw Ghetto, Maidanek concentration camp, and two slave-labor camps; lost every member of her family during the war; and after the war served as a key witness at a Nazi deportation hearing in the United States and at the trial of Maidanek concentration camp guards in Germany. 109

In a new book, *The Case for Peace*, Dershowitz embellished on these smears and went on to proclaim that a "well-orchestrated" conspiracy had been mounted, of which I was one of an "anti-Israel triumvirate" of ringleaders, to ruin his reputation on account of his outspoken support of Israel. When not denouncing the "Chomsky-Cockburn-Finkelstein conspiracy" hatched against him, Dershowitz derided his critics for trafficking in . . . conspiracy theories.¹¹⁰

^{108.} Afterword to Lipstadt, History on Trial, p. 304 (emphasis in original).

^{109.} Dershowitz repeated these accusations in numerous articles, many of which are posted at www.normanfinkelstein.com, under "Beyond Chutzpah" and "Who Was Maryla Husyt Finkelstein?"

^{110.} Alan Dershowitz, *The Case For Peace: How the Arab-Israeli conflict can be resolved* (Hoboken, N.J., 2005), pp. 122 ("conspiracy"), 169-70 ("well-orchestrated"), 180, 187 ("triumvirate").

Apart from recycling ad hominem diatribes and conjuring paranoid conspiracy theories, the thrust of The Case for Peace was to rationalize Prime Minister Sharon's land grab in the West Bank under the guise that Israel was offering Palestinians a "two-state" settlement. In answer to the criticism that the fragmented state being offered Palestinians wouldn't be viable, Dershowitz quotes this piece of geopolitical wisdom: "Palestinians could yet build a Monte Carlo in Jericho, a Vatican state in Bethlehem, a Luxembourg in Ramallah, a Cyprus in Gaza, a Singapore in Nablus."111 Didn't he leave out a Disneyland in Rafah refugee camp? In addition Dershowitz recycled yet again standard Israeli apologetics discredited in mainstream scholarship and human rights reports. 112 And still leaning on From Time Immemorial as a reference, 113 Dershowitz praises Peters for having "contributed an important new element to the debate" on the Palestinians, and maintains that her book contained only a "relatively small number" of errors, which the "hard-left version of literary McCarthyism" inflated, destroying Peters's "promising academic career." 114

On a few occasions during the past year Dershowitz did attempt to answer the specific charges leveled against him in this book. For example, he denied having declared at a conference in Israel that Israel was not bound by international law.¹¹⁵ To demonstrate the inaccuracy of this allegation, he quotes "precisely what I said" at the conference:

^{111.} Ibid., p. 41.

^{112.} For example, he states, ibid., that "until the death of Yasser Arafat, no Palestinian leader was willing to accept statehood for the Palestinians if it also meant acceptance of Israel" (p. 17—but see pp. 338-41 of this volume); that "Arafat refused to accept the offer [in 2000] because it would have required him to give up the so-called 'right of return'" and that "Israel accepted and the Palestinians rejected" the "December 23 Clinton Parameters" (pp. 18, 55—but see pp. 352–55 of this volume); that "there can be absolutely no doubt of the legality of Israel's policy of targeting Hamas leaders for assassination" and "Israel responds [to Hamas terrorism] by targeting guilty murderers it is unable to arrest" and "'ticking-bomb' terrorists" (pp. 77-79—but see pp. 134-37 of this volume); that "there is absolutely no evidence to support the claim of a direct relationship between occupation and suicide bombing" (p. 81—but see Robert Pape, *Dying To Win: The strategic logic of suicide terrorism* [New York, 2005]); that "Palestinian terrorists have also used people pretending to be sick in Red Crescent ambulances to carry bombs" (pp. 82-83—but see pp. 128-30 of this volume); that "Israel's military actions have all been taken in self-defense or in anticipatory self-defense" (p. 108—but see pp. 312-15, 339-40 of this volume); that "Israel ... goes to extraordinary lengths to avoid killing innocent people" (p. 155—but see pp. 316-19 of this volume); that "the numbers" of Israelis supporting "transfer" of Palestinians are "small" (p. 164—but see pp. 344-45 of this volume).

^{113.} Ibid., p. 207, chap. 4, nn 8, 9, 10, 12.

^{114.} Ibid., pp. 176-77, 181.

^{115.} See p. 46 of this volume.

"Your moral obligation to comply with the letter of the rule of international law is voluntary; it is a matter of choice and a matter of tactic, not a matter of moral obligation or democratic theory." If I might quote the title of his best-selling book, this is not exactly what one would call *the best defense*. On the other hand, after devoting the past forty years to defending publicly Israel's "generally superb" human rights record, it seems that he is no longer able fully to block out reality. Delivering the keynote address at a conference at Israel's Bar-Ilan University, Dershowitz "admitted that Israel's human rights record was hardly stellar." 117

Some of Israel's supporters have still refused to concede even this much. Famed Israeli "new historian" Benny Morris, who came out as a raving anti-Arab racist soon after the second intifada began, 118 has continued to insist that during the second intifada Israel reacted with "praiseworthy discrimination" to Palestinian provocations, that "most of the Arabs killed ... were armed fighters, not civilians," and that "Israeli policy was to avoid, so far as possible, harm to non-combatants, and the IDF generally took great operational care to avoid civilian casualties." Readers of this volume can judge for themselves Morris's grip on reality. 119

The task of defending Israel's human rights record was not made any easier after Israeli soldiers serving in the Occupied Palestinian Territory started to speak out against human rights violations they participated in or observed during the suppression of the second intifada. These seemingly unimpeachable witnesses reported "standing orders . . . to open fire on people regardless of whether they were armed or not, or posed any physical threat," including "young children," and that "Gaza was considered a playground for sharpshooters." One soldier recalled being told, "Every person you see on the street, kill him," and after "several incidents when children and teenagers were killed . . . the attitude [in his paratroop unit was] 'so kids got killed. For a soldier it

^{116.} Alan M. Dershowitz, "Response to Beyond Chutzpah," Congress Monthly (September/October 2005).

^{117.} Daphna Berman, "Dershowitz: Boycotts abet terrorism," *Haaretz* (27 January 2006).

^{118.} See pp. 5, 14 of this volume.

^{119.} Benny Morris, "This Conflict Is About Israel's—Not the Arabs'—Survival," *Guardian* (8 February 2006), and Benny Morris, "And Now For Some Facts," *New Republic* (28 April 2006). See also the devastating reply to Morris by Peter Bouckaert, Emergencies Director for Human Rights Watch, in *New Republic* (19 June 2006).

means nothing.'"¹²⁰ In the meantime the ghastly killing of a thirteen-year-old Palestinian girl shot repeatedly in the head even after she lay dead¹²¹ found a fitting denouement when the Israeli captain charged with the crime was acquitted on all counts, received hefty monetary compensation from the State and a promotion in his rank.¹²² And, while Dershowitz was emphatically asserting that Israel was not a "racist state,"¹²³ the Knesset let him down again, enacting yet another "racist law" (B'Tselem) that barred family reunification between Israeli citizens (mostly Palestinians) and their Palestinian spouses living in the Occupied Palestinian Territory.¹²⁴

It must surely be reckoned a victory that despite the brutal pressures exerted on it, University of California Press went ahead and published *Beyond Chutzpah*, a display of principle for which it was duly commended by the Middle East Studies Association. ¹²⁵ Nonetheless, it should be borne in mind that the victory was partial. Getting a truly controversial book published is half the problem; the other half is getting it noticed among the tens of thousands of other books put out each year. Under normal circumstances a book that had garnered so much pre-publication publicity (due to Dershowitz's libel threats) would have had editors scrambling to be the first to review it. But these circumstances weren't normal. The controversy implicated Israel's egregious human rights record, a senior Harvard Law School professor who had concocted an academic fraud mangling this record, and eminent individuals, institutions, and periodicals that, wittingly or unwittingly, had staked their names singing paeans to the hoax. It was a real scandal

^{120.} Conal Urquhart, "Israeli Troops Say They Were Given Shoot-to-Kill Order" and "Israeli Soldiers Tell of Indiscriminate Killings By Army and a Culture of Impunity," *Guardian* (6 September 2005).

^{121.} See pp. 115-16 of this volume.

^{122.} Chris McGreal, "Not Guilty. The Israeli Captain Who Put 17 Bullets Into a Palestinian Schoolgirl," *Guardian* (16 November 2005), and Amos Harel, "IDF Officer Cleared In Death of Gaza Girl to Receive Compensation From State," *Haaretz* (22 March 2006).

^{123.} See pp. 216-17 of this volume.

^{124.} B'Tselem, "Knesset Enacts Racist Law" (www.btselem.org/English/Special/2005804_Racism_Law.asp). See also B'Tselem and Hamoked (Center for the Defense of the Individual), "Perpetual Limbo: Israel's freeze on unification of Palestinian families in the occupied territories" (Jerusalem, July 2006) for Israel's policy of "racial discrimination" preventing family unification between Palestinian residents of the occupied territories and their spouses from abroad and prohibiting foreign family members from visiting the West Bank or the Gaza Strip.

^{125. &}quot;MESA Academic Freedom Awards 2005" (www.normanfinkelstein.com/article.php?pg = 11&ar = 107).

having real consequences in a real conflict touching on the lives of real people, not just of eminent personalities whose reputations might be tarnished but of the people of Palestine, who daily bear the brunt of the numberless lies that proliferate in the United States. In other words, it was *From Time Immemorial* all over again. Unsurprisingly, *Beyond Chutzpah* did not receive a single mainstream review in the United States. (In Israel, both *Haaretz* and the *Jerusalem Post* reviewed it, *Haaretz* quite favorably.)¹²⁶ I was unable to get on a single mainstream radio, let alone television, program or publish an op-ed piece on the Israel-Palestine conflict, not from a want of trying and notwithstanding that Israel-Palestine was constantly in the news.¹²⁷

Popular as ever, Dershowitz emerged from the affair unscathed, still authoritatively cited and interviewed, his subsequent book *The Case for Peace* being acclaimed by the *Boston Globe* as on a par with St. Thomas Aquinas's *Summa Theologica*. Although repeatedly approached by third parties to debate me, Dershowitz adamantly refused on the ground that he had a "longstanding policy against debating Holocaust deniers, revisionists, trivializers or minimizers," but would instead debate Noam Chomsky. Several anomalies in his position merit notice. I have written two books on the Nazi holocaust. The first, *A Nation on Trial* (co-authored with Ruth Bettina Birn), received glowing praise from the world's leading authorities on the Nazi holocaust, including Raul Hilberg, Christopher Browning, and István Deák, and was named a "notable book of the year" by the

^{126.} Neve Gordon, "The Controversy Surrounding the Origins of the 'New Anti-Semitism,'" *Haaretz* (26 April 2006); Ben Naparstek, "His Own Worst Enemy," *The Jerusalem Post* (12 December 2005).

^{127.} Another factor in the mainstream media blackout was perhaps that if it acknowledged I was right about Dershowitz's misrepresentation of Israel's human rights record, the yet more unpalatable question might arise whether I was also right about the Holocaust industry. Unable to reach an audience through the mainstream media, I went on a cross-country tour speaking at thirty universities. Nearly everywhere campus "pro"-Israeli organizations fomented a hysteria to get my invitation rescinded and, when unsuccessful in preempting my lecture, created a ruckus to disrupt it. See, for example, articles on Columbia University, Georgetown University, Harvard University, and UCLA posted at www.normanfinkelstein.com, under "Beyond Chutzpah." To its credit after I spoke at Harvard Law School, the *Crimson* rebuked the hecklers on two separate occasions ("Keeping It Civil" and "Freedom of Speech: The lifeblood of a university" [8 November 2005, 6 June 2006]).

^{128.} Michael D. Langan, "Dershowitz Makes a Compelling 'Case for Peace,'" Boston Globe (15 November 2005).

^{129.} Statement of Alan M. Dershowitz (www.law.harvard.edu/faculty/ dershowitz/ statement.html).

New York Times Sunday Book Review. The second, The Holocaust Industry, was blurbed by Hilberg, the undisputed dean of Nazi holocaust historians. Referring explicitly to my findings on Holocaust compensation, which Dershowitz claims to find so repellent, Hilberg wrote that "he was actually conservative, moderate... his conclusions are trustworthy.... I am by no means the only one who, in the coming months or years, will totally agree with Finkelstein's breakthrough." Beyond this, Dershowitz has for many years pilloried Professor Chomsky for Holocaust denial. To cite the most recent examples, in The Case for Israel he deplores "Chomsky's flirtation with Holocaust denial," and in The Case for Peace he deplores Chomsky for "supporting, praising, and working with Holocaust deniers." The real reason Dershowitz refused to debate me would seem to lie elsewhere.

Many academic and literary scandals touching on questions that overlap with those posed in this book received wide media play. A duo of Harvard Law School professors, Laurence H. Tribe and Charles J. Ogletree, faced credible charges of scholarly malfeasance. It is noteworthy that, although both these professors share the mainstream liberal politics of the New York Times, and although Harvard is held in reverence by the Times, none of these considerations deterred the Times from giving prominent critical coverage to the HLS scandal. 132 A singular omission in the Times reportage, however, was any mention of the copiously documented and far more serious accusations leveled against Dershowitz, who also teaches at Harvard Law School. Defenders of the Holy State get to play by a different set of rules. The *Times* reporter privately told Dershowitz that she couldn't "even understand" the charges against him. 133 Again, notice must be taken of just how truly impressive such mental discipline is. It makes one positively wistful for those bygone days when commissars couldn't even understand how Stalin's genius in linguistics could be questioned.

Tribe and Ogletree were publicly rebuked, while a popular left-wing

^{130.} Alan M. Dershowitz, The Case for Israel (Hoboken, NJ, 2003), p. 212.

^{131.} Dershowitz, Case for Peace, p. 170.

^{132.} Sara Rimer, "When Plagiarism's Shadow Falls on Admired Scholars," *The New York Times* (24 November 2004).

^{133.} Dershowitz, *Case for Peace*, p. 234n119 (quoting Rimer). For another disingenuous attempt to separate out Dershowitz from Tribe and Ogletree, see M. Aidan Kelly, "Mercy of the Court of Public Opinion," *Harvard Crimson Magazine* (27 September 2006); for my (unpublished) reply, see www.normanfinkelstein.com/article.php?pg= 11&ar = 546.

professor at the University of Colorado was to be stripped of his teaching post after being charged with scholarly fraud and plagiarism. 134 Yet, although their combined scholarly malfeasances paled beside Dershowitz's, he continues to go his merry way at Harvard. Just since Spring 2005, and in addition to his academic derelictions documented in this book, the Public Committee Against Torture in Israel has credibly accused Dershowitz of making "blatantly false and utterly preposterous" statements; the main national Jewish newspaper Forward reported that "not a word . . . is true" in the self-promoting passage of a speech Dershowitz delivered; a respected Amherst College professor suggested in a scholarly review of another of Dershowitz's recent books, Rights From Wrongs, that "parts of Dershowitz's book are in conflict with one another because they were written by different hands"; and senior Harvard Law School librarian Harry S. Martin denied Dershowitz's repeated claim that he (Martin) had exonerated Dershowitz of plagiarism charges. 135

In yet another literary scandal, it was revealed that the author of a book chronicling his redemptive personal odyssey, which became a national best seller after Oprah Winfrey's selection of it for her book club, had fabricated portions of his life. The Times weighed in with no less than sixteen articles in the space of twenty days meditating on the perils of an eroding boundary between fiction and fact, for which postmodernist relativism was held culpable, and of nonfiction straying from "objectivity and veracity." One might have thought that this would be a ripe occasion for the *Times*, finally, to scrutinize the Dershowitz case. But it was not meant to be. 136 Then it was revealed that a Harvard undergraduate had lifted passages from other literary works in her

^{134.} For the University of Colorado case, see "Report of the Investigative Committee of the Standing Committee on Research Misconduct at the University of Colorado at Boulder concerning Allegations of Academic Misconduct against Professor Ward Churchill" (9 May 2006).

^{135.} Regan Boychuk, "The Case Against Alan Dershowitz" (15 April 2005; www.zmag.org/content/print_article.cfm?itemID = 7650§ionID = 107); Kathleen Peratis, "Only Human" Forward [24 February 2006]); Hadley Arkes, "The Rights And Wrongs of Alan Dershowitz," Claremont Review of Books (Fall 2005); "Correction," Harvard Crimson (26 May 2006; www.thecrimson.com/printerfriendly.aspx?ref = 513348). See also Noam Chomsky, "Comments on Dershowitz" (17 August 2006; www.chomsky.info/letters/20060817.htm).

^{136.} After several fruitless phone conversations with the *Times* reporter who covered this story, I spelled out for him in writing the obvious reasons why the Dershowitz fraud merited Times attention: The Case for Israel was also a Times best seller on the nonfiction list; it bore not on personal salvation but rather a burning political issue; the Times Sunday Book Review ran a positive review of it by a Times editorial board member; and so

debut "chick-lit" novel. The *Times* gave extensive coverage to this scandal as well. Unlike the *Times*, Harvard's school paper had the temerity to mention that among similar scandals rocking Harvard in recent years was the Dershowitz case. Predictably Dershowitz fired off an outraged letter denying any parallels.¹³⁷

In a more comic than textbook case of projection, Dershowitz accused two respected academic authors of a working paper critical of the "Israel lobby" of precisely the scholarly derelictions leveled against him in this book:

a compilation of old, false, and authoritatively discredited charges dressed up in academic garb. The only thing new about it is the imprimatur these recycled assertions have now been given by the prominence of its authors and their institutional affiliations ...[T]he paper is filled with errors and distortions that should be obvious to any critical reader ... quotations are wrenched out of context ... facts are misstated ... embarrassingly poor logic is employed ... [T]his study is so filled with distortions, so empty of originality or new evidence, so tendentious in its tone, so lacking in nuance and balance, so unscholarly in its approach, so riddled with obvious factual errors that could easily have been checked (but obviously were not), and so dependent on biased, extremist ... sources, as to raise the question of motive.

Along the way Dershowitz also alleges that "the authors cite quotations to their primary sources, when it's obvious that they did not find the materials there. . . . On at least one occasion, they quote to the primary source incorrectly. . . . Rather than citing to where they actually found the quotation, the authors simply copied a citation without checking the source they were citing." ¹³⁸ These allegations of Dershowitz were widely and respectfully quoted in the major media and serious journals, it not once being so much as hinted that, even if valid (itself highly doubtful), ¹³⁹ he should be the very last one leveling them.

on (email to Edward Wyatt dated 30 January 2006). Like Rimer he couldn't understand; at any rate he never responded. (The quoted phrase in the text came from *Times* book reviewer Michiko Kakutani's contribution, "Bending The Truth In a Million Little Ways," *New York Times* [17 January 2006].)

^{137.} David Zhou, "College Looking Into Plagiarism," *The Harvard Crimson* (27 April 2006); Alan M. Dershowitz, "Plagiarism Accusations Unfairly Characterized" (letter), *The Harvard Crimson* (5 May 2006).

^{138.} Alan Dershowitz, "Debunking the Newest—and Oldest—Jewish Conspiracy" (April 2006; www.ksg.harvard.edu/research/working_papers/dershowitzreply.pdf), pp. 4–6, 19179.

^{139.} See John J. Mearsheimer and Stephen M. Walt, Setting the Record Straight: A response to critics of "The Israel Lobby" (5 November 2006; www.israellobbybook.com).

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Since becoming a born-again Zionist after the June 1967 war Dershowitz has justified each and all of Israel's egregious violations of international law. In recent years he has used the "war on terrorism" as a springboard for a full frontal assault on this body of law. Appearing shortly after the outbreak of the second intifada, his book Why Terrorism Works (2002) served to rationalize Israel's brutal repression of the Palestinian uprising. 140 In 2006 Dershowitz published a companion volume, Preemption: A Knife that Cuts Both Ways,141 to justify Israel's preventive use of force against Iran. It is painfully clear from their content that Dershowitz possessed little knowledge of the timely political topics that purported to be the stimuli for his interventions. 142 In reality each book was keyed to a current Israeli political crisis and sought to rationalize the most extreme measures for resolving it. If Why Terrorism Works used the war on terrorism as a juggernaut to set back the clock on protection of civilians from occupying armies, Preemption used the war on terrorism to set back the clock on the protection of states from wars of aggression. In addition, during the July-August 2006 war in Lebanon, Dershowitz penned a raft of op-eds that took aim at the protection of civilians in times of war.

The central premise of Dershowitz is that "international law, and those who administer it, must understand that the old rules" do not apply in the unprecedented war against a ruthless and fanatical foe, and that "the laws of war and the rules of morality must adapt to these [new] realities."¹⁴³ This is not the first time such a rationale has been invoked to dispense with international law. According to Nazi ideology, ethical conventions couldn't be applied in the case of "Jews or Bolsheviks; their method of political warfare is entirely amoral."¹⁴⁴ On the eve

^{140.} See p. 176n19 of this volume.

^{141.} New York, 2006.

^{142.} The profundity of Dershowitz's insights in *Preemption* can be gauged from these examples: in the event of a smallpox attack, he sagely advises, "an appropriate balance must be struck between too much and too little inoculation," while "as terrorism increases," he boldly predicts, "there will be increasing calls for prior censorship of speech that is believed to incite suicide bombers and others who target civilians" (*Preemption*, pp. 144, 149). His scholarly citations are also up to par of previous books: to document early U.S. plans for a first strike on Chinese nuclear facilities, for example, he cites *Popular Mechanics* magazine (*Preemption*, pp. 299–300n26).

^{143.} Alan M. Dershowitz, "Arbour Must Go," *National Post* (21 July 2006); Alan M. Dershowitz, "Arithmetic of Pain," *Wall Street Journal* (19 July 2006).

^{144.} Helmut Krausnick et al., Anatomy of the SS State (New York, 1965), p. 336 (quoting Himmler).

of the "preventive war" 145 against the Soviet Union, Hitler issued the Commissar Order, which mandated the summary execution of Soviet political commissars and Jews, and set the stage for the Final Solution. He justified the order targeting them for assassination on the ground that the Judeo-Bolsheviks represented a fanatical ideology, and that in these "exceptional conditions" 146 civilized methods of warfare had to be cast aside:

In the fight against Bolshevism it must not be expected that the enemy will act in accordance with the principles of humanity or international law. . . . [A]ny attitude of consideration or regard for international law in respect of these persons is an error. . . . The protagonists of barbaric Asiatic methods of warfare are the political commissars. . . . Accordingly if captured in battle or while resisting, they should in principle be shot.¹⁴⁷

It was simultaneously alleged that the Red Army commissars (who were assimilated to Jews) qualified neither as prisoners of war protected by the Geneva Convention nor as civilians entitled to trial before military courts, but rather were in effect illegal combatants. 148 Plus ça change, plus c'est la même chose.

It is similarly instructive that, although Dershowitz is represented, and represents himself, in the media as a liberal and civil libertarian, the sort of arguments he makes crops up most often at the far right of the political spectrum. For example, in the recent landmark decision Hamdan v. Rumsfeld, the Supreme Court found that the petitioner, a Yemeni national captured in Afghanistan and held in Guantánamo Bay, was entitled, under both domestic statute and international law, to minimum standards of a fair trial, which the Bush administration's Commission Order, setting the guidelines for military commissions, didn't meet.¹⁴⁹ A centerpiece of Judge Clarence Thomas's dissent was that "rules developed in the context of conventional warfare" were no longer applicable because—quoting President George W. Bush—"the

^{145.} Horst Boog et al., Germany and the Second World War, vol. 4, The Attack on the Soviet Union (Oxford, 1998), pp. 38, 39, 517.

^{146.} Krausnick, Anatomy, p. 356.

^{147.} Ibid., pp. 318–19; Boog, Attack, pp. 499–500, 510, 515.

^{148.} Boog, Attack, pp. 497–98, 508. 149. Hamdan v. Rumsfeld et al. No. 05–184. Argued March 28, 2006—Decided June 29, 2006. It is not without interest that the specific features of military commissions that the Court criticized when it struck down their legality—use of secret evidence, hearsay evidence, and evidence extracted by coercion—are typical of Israeli military courts in the Occupied Palestinian Territory. See Lisa Hajjar, Courting Conflict: The Israeli military court system in the West Bank and Gaza (Berkeley, 2005).

war against terrorism ushers in a new paradigm" and "this new paradigm . . . requires new thinking in the law of war." Inasmuch as "we are not engaged in a traditional battle with a nation-state," he went on to argue, the Court's decision "would sorely hamper the President's ability to confront and defeat a new and deadly enemy." It's hard to know where Thomas (and Bush) ends and Dershowitz begins.

The main thrust of *Preemption* is to justify an Israeli assault on Iran's nuclear facilities. Although the book purports to the lofty goal of constructing a jurisprudence for criminal intent prior to commission of an actual crime, Dershowitz's range of historical reference is pretty much limited to the Bible and Israel, and it is plainly not the Bible that is uppermost in his mind.¹⁵⁰ To justify the Israeli assault on Iran, Dershowitz sets up Israel's attack on Egypt in June 1967 as the paradigm of legitimate preemptive war and its attack on Iraq's nuclear reactor in 1981 as the paradigm of legitimate preventive war.¹⁵¹ His argument seems to be that if the legitimacy of the June 1967 attack is beyond dispute and the legitimacy of the 1981 attack has come to be seen as beyond dispute, then the legitimacy of a preventive war against Iran should also be beyond dispute.

150. His only other significant historical reference is the clichéd one to justify preventive war: if only the Allies had attacked Germany before the Nazis consolidated their power (*Preemption*, pp. 66–67, 159–61, 173, 188). Because Dershowitz doesn't engage any of the scholarship on this topic it would be a pointless digression to do so here, except to note that political elites in the West were far from united in their assessment of the evil Hitler represented, many of them believing that he was a blessing in disguise, and that, had they been of one mind, collective undertakings short of preventive war could perhaps have contained him. Dershowitz himself quotes Winston Churchill that "the rise of Nazi military power could have been prevented, perhaps even without the use of force." The problem, then, wasn't Allied legal aversion to preventive war but lack of Allied political consensus on whether the Nazi regime warranted it. Analogously, while the Security Council has the legal power to use force in case of perceived threats to peace, the problem is reaching consensus on the existence of such threats.

151. Along the way Dershowitz also justifies Israel's other wars as strictly defensive: the 1948 war was "largely reactive" (pp. 78, 103); the 1956 invasion of Sinai was "largely preventive" (pp. 79, 102); the 1973 war was "entirely reactive" (p. 104; cf. pp. 83–89); the 1982 invasion of Lebanon was "purely preventive" (p. 104; cf. p. 102). Beyond the vulgar apologetics, he seems unaware that on his criteria Arab states had in each war a stronger case for launching the first strike against Israel: for Zionist plans before the 1948 Arab attack to expand beyond the U.N. Partition Resolution borders, see Ben-Ami, Scars of War, p. 34; for Israeli plans already in the early 1950s to attack Egypt, see p. 311 of this volume; for Israeli plans already in 1966 to attack Syria, see Ben-Ami, Scars of War, p. 100; for Israel's opposition to a negotiated settlement with Egypt in 1971 leading to the 1973 attack, see Finkelstein, Image and Reality, chap. 6; for Israeli plans already in 1981 to invade Lebanon, see p. 339 of this volume; for Israeli plans a year before the latest Lebanon offensive to attack Hezbollah, see Matthew Kalman, "Israel Set War Plan More Than a Year Ago," San Francisco Chronicle (21 July 2006).

Before analyzing this argument, it is instructive to look at the current legal consensus on preemptive and preventive war. Dershowitz asserts that an "accepted jurisprudence" doesn't exist. 152 In fact, however, there is an enduring consensus, which recent events haven't shaken. In 2004 a high-level U.N. panel commissioned by the Secretary-General published its report on combating challenges to global security in the twenty-first century. The report reaffirmed the conventional understanding of Article 51 of the U.N. Charter, which prohibits the unilateral use of force by a State except to ward off an "armed attack" or if a "threatened attack is imminent, no other means would deflect it and the action is proportionate," the latter commonly denoted preemptive use of force. 153 The report went on to prohibit the unilateral use of force by a State to ward off an inchoate armed attack, or what's commonly denoted preventive use of force, reaffirming that the Security Council is the sole legitimate forum for sanctioning the use of force in such a circumstance. "For those impatient with such a response," it explained,

the answer must be that, in a world full of perceived potential threats, the risk to the global order and the norm of non-intervention on which it continues to be based is simply too great for the legality of unilateral preventive action, as distinct from collectively endorsed action, to be accepted. Allowing one to so act is to allow all.¹⁵⁴

Although Dershowitz puts forth Israel's attack on Egypt in June 1967 as the paradigm of preemptive use of force, as a matter of both fact and theory this claim is patently untenable. The scholarly consensus is that an Egyptian armed attack was not imminent while it is far from certain that diplomatic options had been exhausted when Israel

^{152.} Dershowitz, Preemption, p. 60.

^{153.} Report of the Secretary-General's High-level Panel on Threats, Challenges and Change, A More Secure World: Our shared responsibility (New York, 2004), para. 188 (emphasis in original). Dershowitz falsely implies that allowing for the use of preemptive force is a new development (Preemption, p. 19). His disingenuous intent is to suggest that if the rules on preemptive force have been modified in light of new, unprecedented threats to global security, why shouldn't those on preventive force be modified as well? Similarly Dershowitz exhorts that "no law or rule of morality will ever succeed in prohibiting all preemptive military actions. Nor should it" (Preemption, p. 89). In fact, this is a red herring because international law has never barred such action (ibid., pp. 200–201, 203). He pretends this is a controversial principle in order to assimilate it to the truly controversial one of preventive war, conjoining them as allegedly disputed principles that are manifestly just.

^{154.} Report of the Secretary-General's High-level Panel, para. 191 (also quoted in Dershowitz, *Preemption*, p. 207).

struck.¹⁵⁵ Dershowitz himself acknowledges that "it is not absolutely certain" that Egypt would have attacked, and that "Nasser may not have intended to attack."¹⁵⁶ He finesses this with the assertion that Israeli leaders "reasonably believed" that an Egyptian attack was "imminent and potentially catastrophic."¹⁵⁷ Yet, apart from some transparently self-serving public statements of Israeli leaders there isn't a scratch of evidence to sustain this claim either. Again, Dershowitz himself cites (in an endnote) the acknowledgment of former Israeli Prime Minister Begin, who was a member of the National Unity government in June 1967, that Israel "had a choice. The Egyptian Army concentrations in the Sinai approaches do not prove that Nasser was really about to attack us. We must be honest with ourselves. We decided to attack him."¹⁵⁸ Even if for argument's sake it were true that Israeli leaders honestly erred, how can resort to preemptive force on the

155. Finkelstein, Image and Reality, chap. 5 and Appendix.

156. Dershowitz, *Preemption*, pp. 82, 83; cf. p. 88. Elsewhere he seems to allege contrariwise that an Egyptian attack *was* imminent (ibid., pp. 200, 204).

157. Ibid., pp. 83, 203.

158. Ibid., pp. 302-3n25. Dershowitz also cites Michael Walzer's argument that Israel couldn't afford the costs of a protracted mobilization of its civilian army (ibid., pp. 82, 305n53). The available documentation does not, however, support this claim; see Finkelstein, Image and Reality, p. 136. The recently released U.S. Department of State collection devoted to the June war, Foreign Relations of the United States, 1964-1966, vol. 19, Arab-Israeli Crisis and War, 1967 (Washington, D.C., 2004), documents that, from the end of May until the eve of Israel's attack on June 5, multiple U.S. intelligence agencies concluded at multiple intervals that an Egyptian attack was not imminent (see Documents 61, 64, 66, 69, 72, 73, 77, 79, 80, 82, 132) and that regardless of the scenario-Israel attacks first, Egypt attacks first, Israel confronts a war on four fronts, Israel is forced to remain on a war-footing for a protracted period—a relatively swift Israeli victory was certain (see Documents 44, 72, 76, 77, 97, 130, 142). Israel occasionally alleged during the lead-up to the war that an Egyptian attack was imminent (see Documents 69, 77, 82) but dropped this claim in the last week before its attack (see Documents 72, 98), while, far from feeling mortally threatened, Israel expressed full confidence throughout the buildup that it would win (see Documents 69, 130, 143). Indeed, on 1 June Israeli Major General Meir Amit, Chief of Israeli Intelligence, told Secretary of Defense Robert McNamara that "there were no differences between the U.S. and the Israelis on the military intelligence picture or its interpretation" (see Document 124). After the war Israel again occasionally alleged that Egypt was about to attack when it opened hostilities (see Document 442), but more often defended its first strike on grounds such as "the military authorities refused to be responsible if a prolonged stalemate occurred. That had led to the June 5 war" (Eban; see Document 488). There is some evidence that Egyptian defense minister 'Abd al-Hakim 'Amer conceived a limited strike toward the end of May which Nasser immediately aborted upon learning of it, while judging by Abba Eban's testimony Israel never got wind of the plan. The depiction of this cluster of crucial issues in Israeli historian Michael Oren's much-acclaimed book Six Days of War: June 1967 and the making of the modern Middle East (New York, 2002) is a travesty of the documentary record; see Finkelstein, Image and Reality, pp. 184-98, and Roland Popp, "Stumbling Decidedly into the Six-Day War," Middle East Journal (Spring 2006), pp. 281-309.

mistaken belief that an attack was imminent constitute the *paradigm* of legitimate use of preemption—or, to use Dershowitz's coinage, how can a "false positive" be the paradigmatic case? Rather the contrary, if the June 1967 war were the paradigm of preemption, it would undercut the legitimacy of *any* such resort to force. Dershowitz seems not to be aware that he has made a case not for but against preemptive war.

Dershowitz next nominates Israel's attack on the Iraqi nuclear reactor as "paradigmatic" of legitimate use of preventive force. 159 He mounts his case from multiple angles, sometimes implicitly, sometimes explicitly, but always unconvincingly. In the first instance, Dershowitz puts preemptive war at one pole of a continuum and preventive war at the opposite pole. 160 Although asserting that "the distinction between preventive and preemptive military action is important," and that there are "real differences between these concepts," 161 he more often than not uses the terms interchangeably. For instance, he goes back and forth depicting the 1981 Israeli attack on Iraq's nuclear reactor and the 2003 U.S. attack on Iraq both as preemptive and preventive uses of force. 162 By collapsing the distinction between them, whereby not even a flea's hop separates the two poles on his continuum, Dershowitz in effect legitimizes preventive war as preemptive war by another name. In like manner he redefines preemption so as to include preventive use of force: "[P]reemption is widely, if not universally, regarded as a proper option for a nation operating under the rule of law, at least in some circumstances—for example, when a threat is catastrophic and relatively certain, though nonimminent."163 If this is preemption, one wonders what prevention would be.

In addition, although acknowledging that the U.N. panel explicitly ruled out preventive use of force, Dershowitz nonetheless maintains that it has come to be seen as legitimate. To demonstrate this he alleges that Israel's 1981 attack on Iraq's nuclear reactor has become recognized as the "proper and proportional example of anticipatory self-defense in the nuclear age" and "the paradigm for proportional, rea-

^{159.} Dershowitz, Preemption, p. 94; cf. p. 220.

^{160.} Ibid., pp. 60-61.

^{161.} Ibid., pp. 104, 156; cf. pp. 59, 157, 169, 320-21n9.

^{162.} Ibid. For 1981, see pp. 76–77, 87, 94, 95–96, 98, 99, 157, 167, 179, 180, 225, 240; for 2003, see pp. 87, 153–73 passim, 196. For this conflation in the case of a possible attack on Iran, see pp. 87, 180, 183, 187, 188.

^{163.} Ibid., p. 223; cf. p. 239, where in the context of nonimminent attacks he urges the authorization of "preemptive military actions."

sonable, and lawful preventive action" in the "emerging jurisprudence of preventive military actions," notwithstanding the "lack of imminence and certainty" of the Iraqi threat to Israel. He bases this resounding conclusion on a single article in *Foreign Affairs* which "would certainly seem to have justified Israel's bombing of the Osirak reactor." Plainly the import of the U.N. panel's findings pales by comparison.

Finally, invoking a philosopher's wisdom that "no one law govern[s] all things,"166 Dershowitz maintains that although preventive war might be illegitimate for all other States, it remains a legitimate option for Israel. This is because the U.N., which is the court of last appeal for inchoate armed threats, is biased against it. Accordingly, unlike all other States, Israel cannot be held accountable to international law or, put otherwise, international law might apply to everyone else but it doesn't apply to Israel: "[I]t cannot expect the United Nations to protect it from enemy attack, and ... with regard to international law and international organizations, it lives in a state of nature."167 To demonstrate the U.N.'s inveterate hostility to Israel, Dershowitz specifically cites "Russia's and China's veto power" in the Security Council, which has allegedly blocked action supportive of it. 168 Yet, not once in the past twenty years (1986-2006) has Russia or China used the veto for a Security Council resolution bearing on Israel. On the other hand, the United States has exercised its veto power twenty-three times during the past two decades in support of Israel. 169 Moreover, due to the U.S. veto

^{164.} Dershowitz, *Preemption*, pp. 94-95, 220.

^{165.} Ibid., p. 220. Taking a different tack he also maintains (ibid., pp. 96–99; cf. pp. 207, 325n26) that Israel's 1981 strike was actually a preemptive response to an imminent threat: that is, had it deferred attacking until the Iraqi reactor went active, Israel couldn't have struck because the radioactive fallout would have killed too many civilians—a contingency, according to him, that the U.N. panel ignored. Yet, the panel issued its strictures barring preventive war after vetting the possibility that a deferred attack might result in "radioactive fallout from a reactor destruction." See Report of the Secretary-General's High-level Panel, para. 189 (also cited in Dershowitz, *Preemption*, p. 206).

^{166.} Ibid., p. 208 (Giordano Bruno).

^{167.} Ibid., p. 77 (internal quotation marks omitted); cf. pp. 180, 208, 211–12, 219, 238, 327n17. Occasionally Dershowitz maintains that the United States also has the right, alone or in concert with Israel, to act as it sees fit, although offering no explanation why *it* can't consult the United Nations first (ibid., pp. 179, 181, 187).

^{168.} Ibid., pp. 210-11, 328n37.

^{169.} www.globalpolicy.org/security/membship/veto/vetosubj.htm. This figure doesn't include many more resolutions critical of Israel that never reached a Security Council vote because of U.S. opposition. In this regard it also merits noting Dershowitz's dismissal of the Security Council on the ground that members don't vote on "any principle other than that of self-serving advantage and realpolitik bias" (*Preemption*, pp. 210–12, emphasis

Israel has been shielded from any U.N. sanctions, although the Security Council has imposed them on member States on some twenty different occasions since 1990, often for violations of international law identical to those committed by Israel. Not for the first time Dershowitz has turned reality on its head.

On a related note Dershowitz correctly observes that Israel "was not condemned by the Security Council" in June 1967,¹⁷¹ although its resort to force violated the U.N. Charter, an armed Egyptian attack having been neither actual nor imminent. The Security Council and General Assembly were both divided on how to adjudicate responsibility for the war. This would seem to suggest that far from being an inherently hostile forum, the United Nations has in fact granted Israel special dispensations. More generally, as former Israeli Foreign Minister Shlomo Ben-Ami observes, it was Israel's policy of creeping annexation that shifted world opinion against it:

Neither in 1948 nor in 1967 was Israel subjected to irresistible international pressure to relinquish her territorial gains because her victory was perceived as the result of a legitimate war of self-defense. But the international acquiescence created by Israel's victory in 1967 was to be extremely short-lived. . . . When the war of salvation and survival turned into a war of conquest, occupation and settlement, the international community recoiled and Israel went on the defensive. She has remained there ever since. 172

Insofar as the professed goal of Dershowitz's book is not descriptive but normative—i.e., to devise ideal laws and institutional arrangements for combating terrorism—it is curious that he doesn't propose reconfiguring the Security Council to mitigate its alleged bias. In this regard another of his claims merits attention: "The UN report fails to address

in original). To judge by frequency of use of the veto, and although Dershowitz passes over this in silence, the United States is by a wide margin least in sync with the collective will of the international community: of the eighty-one Security Council vetoes during the past thirty years (1976–2006), the United States was responsible for sixty-nine of them (nineteen in concert with the United Kingdom and/or France).

^{170.} Yoram Dinstein, War, Aggression and Self-Defense, 4th ed. (Cambridge, 2005), p. 302; David Cortright and George A. Lopez, The Sanctions Decade: Assessing U.N. strategies in the 1990s (Boulder, CO, 2000); Marc Weller and Barbara Metzger, Double Standards (Negotiations Affairs Department, Palestine Liberation Organization, 24 September 2002).

^{171.} Dershowitz, Preemption, p. 202.

^{172.} Ben-Ami, Scars of War, pp. 314-15.

the situation confronting a democracy with a just claim that is unable to secure protection from the Security Council and that reasonably concludes that failing to act unilaterally will pose existential dangers to its citizens."¹⁷³ Yet, the high-level panel report explicitly addresses this concern and devotes one of its four parts specifically to proposals for reforming the Security Council as well as other U.N. institutions, noting preliminarily that

[o]ne of the reasons why States may want to bypass the Security Council is a lack of confidence in the quality and objectivity of its decision-making.... But the solution is not to reduce the Council to impotence and irrelevance: it is to work from within to reform it ... not to find alternatives to the Security Council as a source of authority but to make the Council work better than it has.¹⁷⁴

The reason Dershowitz prefers to shunt aside the Security Council rather than reform it is not hard to find: it is difficult to conceive any configuration of the Security Council that would approve Israel's periodic depredations of neighboring Arab countries. Finally, Dershowitz justifies ignoring the Security Council's strictures on the use of preventive force because its "anachronistic, mid-twentieth-century view of international law" doesn't take into account the threat posed by "nuclear annihilation." It seems he forgot about the Cold War.

Apart from the alleged biases of the United Nations, Dershowitz defends Israel's unilateral right to prevent its neighbors from acquiring nuclear weapons apparently on the ground that conventional nuclear deterrence strategy is anchored in the mutually implied threat of inflicting massive civilian casualties. However Israel's neighbors know, according to him, that it would never indiscriminately target civilian population centers. ¹⁷⁶ Lest there be any doubt on this score he quotes former Prime Minister Begin: "That is our morality." ¹⁷⁷ Lebanese civilians witnessed this morality for themselves in 1982 and witnessed again in 2006 the actions of the "most moral army in the world" (Israeli Prime Minister Ehud Olmert).

The indefeasible right of Israel to wage war as it pleases would seem

^{173.} Dershowitz, Preemption, pp. 211-12.

^{174.} Report of the Secretary-General's High-level Panel, paras. 197–98. The recommendations comprise Part IV of the report.

^{175.} Dershowitz, Preemption, p. 239.

^{176.} Ibid., pp. 100, 323n1; cf. pp. 77, 319n1.

^{177.} Ibid., p. 96; cf. p. 100.

to grant it very broad license: if there's just "five percent likelihood" that Israel might face a compelling threat in "ten years," according to Dershowitz, it has the right to attack now, and apparently regardless of whether this potential threat emanates from a currently nonantagonistic state. This would seem to mean that no place in the world is safe from an Israeli attack at any moment. In Dershowitz's mind, this is the essence of a realistic and moral jurisprudence on war.

. . . .

After the outbreak of hostilities between Israel and Lebanon in July 2006, Dershowitz used the war on terrorism to target yet another branch of international law, the protection of civilians during armed conflict. Before analyzing his allegations, it is necessary to look first at the factual picture.

In August 2006 Human Rights Watch (HRW) released a report devoted mainly to Israel's violations of the laws of war during the first two weeks of the conflict. Its central findings were these: over five hundred Lebanese had been killed, overwhelmingly civilians, and up to five thousand homes damaged or destroyed; "in dozens of attacks, Israeli forces struck an area with no apparent military target"; Israel attacked "both individual vehicles and entire convoys of civilians who heeded the Israeli warnings to abandon their villages" as well as "humanitarian convoys and ambulances" that were "clearly marked," while none "of the attacks on vehicles ... resulted in Hezbollah casualties or the destruction of weapons"; "in some cases . . . Israeli forces deliberately targeted civilians"; "no cases [were found] in which Hezbollah deliberately used civilians as shields to protect them from retaliatory IDF attack"; "on some limited occasions, Hezbollah fighters have attempted to store weapons near civilian homes and have fired rockets from areas where civilians live." The "pattern of attacks during the Israeli offensive," HRW concluded, "indicate[s] the commission of war crimes." 179

Contrariwise, Dershowitz repeatedly alleged in numerous op-ed pieces¹⁸⁰ that Israel typically takes "extraordinary steps to minimize civilian casualties," while Hezbollah's typical tactics were to "live among civilians, hide their missiles in the homes of civilians, fire them

^{178.} Ibid., pp. 95-96, 186-78; cf. pp. 225-26.

^{179.} Human Rights Watch, Fatal Strikes: Israel's indiscriminate attacks against civilians in Lebanon (August 2006). For total casualties at war's end, see Amnesty reports on Lebanon war cited below, n190.

^{180.} See his "Arithmetic of Pain," Wall Street Journal (19 July 2006); "Arbour Must Go," National Post (21 July 2006); "Civilian Casualty? It Depends," Los Angeles

at civilian targets from densely populated areas, and then use civilians as human shields against counterattacks." He adduced no evidence to substantiate these claims, all of which were flatly contradicted by HRW's findings. 181 In addition, Dershowitz juxtaposed the "indisputable reality" that "Israel uses pinpoint intelligence and smart bombs in an effort ... to target the terrorists" against Hezbollah which "targets Israeli population centers with anti-personnel bombs that spray thousands of pellets of shrapnel in an effort to maximize casualties." Yet, HRW documented Israel's use in populated areas of artillery-fired cluster munitions with a "wide dispersal pattern" that "makes it very difficult to avoid civilian casualties" and a "high failure rate" such that they "injure and kill civilians even after the attack is over." 182 Finally, Dershowitz deplored not only the actions of Hezbollah but also of "the U.N. peacekeepers on the Lebanese border [who] have turned out to be collaborators with Hezbollah." Shouldn't he have gotten some credit for a job well done after Israel killed four of these "collaborators" in a deliberate attack on a U.N. compound?

Times (22 July 2006); "Blame the Terrorists, not Israel," Boston Globe (24 July 2006); "How the UN Legitimizes Terrorists," Chicago Tribune (25 July 2006); "Hizbullah's Real Goal is Racist," Christian Science Monitor (27 July 2006); "Hezbollah's Human Shields," National Post (1 August 2006); "Lebanon is Not a Victim," The Huffington Post (7 August 2006; www.huffingtonpost.com/alan-dershowitz/lebanon-is-not-a-victim_b_26715.html).

^{181.} The specific context of the quoted statement regarding Hezbollah's tactics was the 30 July Israeli massacre at Qana. Yet, neither Hezbollah fighters nor rocket launchers were in the vicinity of the village when the building was repeatedly bombed. In addition to *Fatal Strikes*, see HRW press releases, "Qana Death Toll at 28" (2 August 2006) and "IDF Fails to Explain Qana Bombing" (3 August 2006).

^{182.} In addition to Fatal Strikes, see HRW, "Israeli Cluster Munitions Hit Civilians in Lebanon" (24 July 2006). By war's end Israel had indiscriminately fired more than 1.2 million cluster bombs on Lebanon, saturating "entire towns." Fully 90 percent were fired "in the last 72 hours of the conflict, when we knew there would be a resolution" (U.N. humanitarian chief Jan Egeland), and up to a million of them were duds, which have turned "significant portions of southern Lebanon" into "minefields" (Haaretz editorial) and "sooner or later will explode in people's hands" (IDF commander). The extent of "contamination" was historically unprecedented, according to the U.N. Mine Action Coordination, "just off the scale," an average of three Lebanese being killed or wounded each day after the war. Israel also fired phosphorus shells which, according to the International Committee of the Red Cross, are prohibited under the laws of war. See Meron Rappaport, "When Rockets and Phosphorus Cluster," "IDF Commander: We fired more than a million cluster bombs in Lebanon," and "Israel Admits to Using Phosphorus Bombs in Lebanon War," *Haaretz* (12, 13 September 2006, 22 October 2006); "Shooting Without a Target," Haaretz (editorial) (14 September 2006); "UN Denounces Israel Cluster Bombs," *BBC News* (30 August 2006); Patrick Cockburn, "Deadly Harvest: The Lebanese fields sown with cluster bombs," Independent (18 September 2006); "UN Calls Israel's Use of Cluster Bombs in Lebanon 'Outrageous'" Reuters (19 September 2006); "UN: It will take over a year to clear Lebanon of cluster bombs," Haaretz (26 September 2006) (million); Anthony Shadid, "In Lebanon, A War's Lethal Harvest," Washington Post (26 September 2006).

The "new kind of warfare" in the "age of terrorism," according to Dershowitz, underscored the "absurdity and counterproductive nature of current international law." He claimed, for example, that this body of law "fails" to address contingencies such as the firing of missiles "from civilian population centers." International law "must be changed," he intoned, and "it must become a war crime to fire rockets from civilian population centers and then hide among civilians," while those using human shields should incur full and exclusive responsibility for "foreseeable" deaths in the event of an attack. Yet, such a scenario is hardly new and the law has hardly been silent on it: use of civilians as a shield from attack is a war crime, but it is also a war crime to disregard totally the presence of civilians even if they are being used as a shield. 183 Dershowitz further declared that "it should, of course, already be a war crime for terrorists to target civilians from anywhere." It of course already is a war crime. He alleged, however, that "you wouldn't know it by listening to statements from some U.N. leaders and 'human rights' groups." Wasn't his real objection, however, that they didn't denounce only the targeting of civilians by "terrorists" but the targeting of civilians by *states* as well?

International law, Dershowitz alleged, was based on "old rules—written when uniformed armies fought other uniformed armies on a battlefield far away from cities"—whereas nowadays "well-armed terrorist armies" like Hezbollah "don't belong to regular armies and easily blend into civilian populations" that "recruit, finance, harbor and facilitate their terrorism." But these conditions are scarcely novel. In his writings Dershowitz has often cited Michael Walzer's 1977 study *Just and Unjust Wars*. He surely knew, then, that Walzer devoted the chapter on guerrilla war¹⁸⁴ to these issues. Consider this passage:

If you want to fight against us, the guerrillas say, you are going to have to fight civilians for you are not at war with an army, but with a nation.... In fact, the guerrillas mobilize only a small part of the nation.... They depend upon the counter-attacks of their enemies to mobilize the rest. Their strategy is framed in terms of the war convention: they seek to place the onus of indiscriminate warfare on the opposing army.... Now, every army depends upon the civilian population of its home country for supplies, recruits, and political support. But this dependence is usually indirect, mediated by the bureaucratic apparatus of the state or the exchange system of the

^{183.} HRW, Questions and Answers on Hostilities Between Israel and Hezbollah (2 August 2006). See also Dinstein, Conduct of Hostilities, pp. 129-31.

^{184.} Michael Walzer, Just and Unjust Wars: A moral argument with historical illustrations (New York, 1977), pp. 176–96.

economy. . . . But in guerrilla war, the dependence is immediate: the farmer hands the food to the guerrilla. . . . Similarly, an ordinary citizen may vote for a political party that in turn supports the war effort and whose leaders are called in for military briefings. But in guerrilla war, the support a civilian provides is far more direct. He doesn't need to be briefed; he already knows the most important secret: he knows who the guerrillas are. . . . The people, or some of them, are complicitous in guerrilla war, and the war would be impossible without their complicity. . . . [G]uerrilla war makes for enforced intimacies, and the people are drawn into it in a new way even though the services they provide are nothing more than functional equivalents of the services civilians have always provided for soldiers.

If the questions Dershowitz posed on the laws of war were not original, it must be said that his answers were, at any rate coming from someone who claims to be a liberal. He wrote, for instance, that "the Israeli army has given well-publicized notice to civilians to leave those areas of southern Lebanon that have been turned into war zones. Those who voluntarily remain behind have become complicit." In fact, Walzer pondered precisely this scenario in the context of the Vietnam war where, according to the rules of engagement, "civilians were to be given warning in advance of the destruction of their villages, so that they could break with the guerrillas, expel them, or leave themselves. . . . Any village known to be hostile could be bombed or shelled if its inhabitants were warned in advance ... by the dropping of leaflets." In Walzer's iudgment such rules "could hardly be defended" in view of the massive devastation wrought. In the event that "civilians, duly warned, not only refuse to expel the guerrillas but also refuse to leave themselves," Walzer went on to stress.

so long as they give only political support, they are not legitimate targets, either as a group or as distinguishable individuals. . . . So far as combat goes, these people cannot be shot on sight, when no firefight is in progress; nor can their villages be attacked merely because they might be used as firebases or because it is expected that they will be used; nor can they be randomly bombed and shelled, even after warning has been given.

To be sure, Walzer wrote this in the context of Vietnam. Like Dershowitz, he became a born-again Zionist after the June 1967 war and accordingly has applied an altogether different standard to Israel. Whereas Dershowitz plays the tough Jew, Walzer's assigned role has been to stamp as kosher every war Israel wages, but only after anxious sighs. Thus, while HRW was deploring Israel's war crimes, Walzer opined on cue that "from a moral perspective, Israel has mostly been

fighting legitimately," and that if Israeli commanders ever faced an international tribunal, "the defense lawyers will have a good case." 185

Dershowitz purports to make the case that the laws of war need to be revised in the "new" age of terrorism. In fact, his real concern is an old one. A standard tactic of Israel in its armed hostilities with Arab neighbors has been to inflict massive, indiscriminate civilian casualties, and Dershowitz's standard defense has been to deny it. But the credibility of human rights organizations that have documented these war crimes is rather higher than Dershowitz's, which is why he so loathes them. He now uses the war on terror as a pretext to strip civilians of any protections in time of war, dragging the law down to put it on level with Israel's criminal practices.

The main target of Dershowitz's "reassessment of the laws of war" has been the fundamental distinction in the laws of armed conflict between civilians and combatants. "The preservation of this sharp dichotomy," Yoram Dinstein has written, "is the main bulwark against methods of barbarism in modern warfare." However, ridiculing what he deems the "increasingly meaningless word 'civilian'" and asserting that, in the case of terrorist organizations like Hezbollah, "civilianality" is often a matter of degree, rather than a bright line," Dershowitz proposes to replace the civilian-combatant dichotomy with a "continuum of civilianality":

Near the most civilian end of this continuum are the pure innocents—babies, hostages and others completely uninvolved; at the more combatant end are civilians who willingly harbor terrorists, provide material resources and serve as human shields; in the middle are those who support the terrorists politically, or spiritually.¹⁸⁹

^{185.} Ori Nir, "Israeli Military Policy Under Fire After Qana Attack," *The Forward* (4 August 2006). See also Michael Walzer, "War Fair," *The New Republic* (31 July 2006). For Walzer's long record of apologetics for Israel, see Finkelstein, *Image and Reality*, pp. 1–3, 140, and sources cited on p. 20719.

^{186.} See pp. 316-20 of this volume.

^{187.} See pp. 91–94 of this volume. Dershowitz has asserted, for example, that B'Tselem was not a "human rights" organization because it "investigate[s] only Israel and the territories." Respected Israeli journalist and historian Tom Segev recently deplored this sort of argument as "appalling and frightening" because it meant "either the Palestinians do not fall under the category of persons entitled to human rights, or they are not human beings" ("Patriotism Sans Borders," *Haaretz* [10 March 2006]).

^{188.} Dinstein, Conduct of Hostilities, p. 256.

^{189.} He goes so far as to suggest that combatants might deserve more solicitude than civilians in time of war, depending on "the precise nature of the civilian's 'civilianality'" (*Preemption*, p. 247).

He imagines that this revision won't apply to Israel because "the line between Israeli soldiers and civilians is relatively clear." But is this true? Israel has a civilian army, which means a mere call-up slip or phone call separates each adult Israeli male from a combatant. Israeli civilians willingly provide material resources to the army. During the 2006 war Israel reckoned as legitimate military objects, and deliberately and indiscriminately targeted, Lebanese power grids, transmission stations, water and sewage treatment plants, hospitals, commercial enterprises, residential properties, offices, shops, roads, bridges, petrol stations, private and commercial vehicles, ambulances, seaports and airports, ¹⁹⁰ in which case all Israelis residing in the vicinity of such Israeli infrastructure constitute human shields. Israel's recent brutal assault on Lebanon, like its past wars during which massive war crimes were committed, enjoyed overwhelming political and spiritual support from the popula-

190. See Amnesty International, Deliberate Destruction Or "Collateral Damage"? Israeli attacks on civilian infrastructure (23 August 2006). Israel maintained that such infrastructure constituted a legitimate military target because it contributed to the "military operation as a whole"—an interpretation Amnesty called "too wide" and meaning that "there would be no limit to war." Amnesty found that "the country's infrastructure suffered destruction on a catastrophic scale" and that much of this destruction constituted "war crimes that give rise to individual criminal responsibility . . . [T]he commission of these crimes are subject to criminal accountability anywhere in the world through the exercise of universal jurisdiction." A subsequent Amnesty report, Under Fire: Hizbullah's attacks on northern Israel (14 September 2006), found that Hezbollah had also committed "war crimes," such as "deliberately targeting civilians and civilian objects, and indiscriminate attacks . . . as well as attacking the civilian population as reprisal." A couple of points merit attention. First, compare the scale of death and destruction in Lebanon and Israel:

	Total	Civilians	Combatants	
	casualties	(% of total)	(% of total)	
Lebanon	1,200	1,000 (80)*	200 (20)*	
Israel	160	43 (25)	117 (75)	

^{*}estimate

Whether judging by the absolute number of civilians killed or the relative number of civilians to combatants killed, Hezbollah and Israeli "war crimes" were of an altogether different order of magnitude. The respective damage to Lebanese and Israeli civilian infrastructure was of a similarly incommensurate magnitude. Insofar as Israel claimed to be using weapons that could discriminate between combatants/military infrastructure and civilians/civilian infrastructure, the onus on it is yet that much greater. Second, although it is the opinion of human rights organizations that the laws of war prohibit reprisals against civilians, the fact remains that, according to Hezbollah—and Amnesty did not dispute this—it only targeted civilian areas after Israel initiated such attacks and was aimed at stopping them: "Anytime you decide to stop your attacks on our cities, villages and infrastructure, we will not fire rockets on any Israeli settlement, or city. Naturally, we would rather, in case of fighting, fight soldier to soldier on the ground and battlefield" (Hezbollah leader Hassan Nasrallah).

tion.¹⁹¹ "If the media were to adopt the 'continuum' " he has proposed, Dershowitz reflected during the Lebanon war, "it would be informative to learn how many of the 'civilian casualties' fall closer to the line of complicity and how many fall closer to the line of innocence." It would seem, however, that on his spectrum nearly every Israeli would have been complicit.

In light of the revisions Dershowitz seeks in international law, his reasoning begins to verge on the bizarre. He asserted that inasmuch as the Lebanese population overwhelmingly "supports Hezbollah," there were no real civilians or civilian casualties in Lebanon during the recent war: "It is virtually impossible to distinguish the Hezbollah dead from the truly civilian dead, just as it is virtually impossible to distinguish the Hezbollah living from the civilian living." If this be the case, however, it is hard to make out the meaning of Dershowitz's praise of Israel for having only targeted Hezbollah terrorists in Lebanon. Didn't he just say that all of the Lebanese were Hezbollah? Similarly he condemned Hezbollah for targeting Israeli civilians. But Israelis were no less supportive of the IDF than Lebanese were of Hezbollah. Doesn't this mean that Hezbollah couldn't have been targeting civilians in Israel because there weren't any? These are of course quibbles next to the shocking fact that Dershowitz had sanctioned the mass murder of Lebanese. 192

It remains to consider Dershowitz's own location on the continuum of civilianality. Israel could not have waged any of its wars of aggression or committed any of its war crimes without the blanket political and military support of the United States. Using his academic pedigree, Dershowitz has played a conspicuous, crucial, and entirely voluntary public role in rallying such support. As this book amply documents, he has for decades grossly falsified Israel's human rights record and abetted and sanctioned its commission of egregious human rights violations. In *Preemption* Dershowitz goes so far as to boast of having vicariously participated in a targeted assassination while visiting Israel:

I watched as a high-intensity television camera, mounted on a drone, zeroed in on the apartment of a terrorist . . . I watched as the camera focused on the house and the nearly empty streets.

^{191.} See pp. 176-77 of this volume.

^{192.} For scathing replies by HRW and Amnesty to Dershowitz's output during the Lebanon war, see, respectively, Sarah Leah Whitson, "Armchair Sleuths," *Jerusalem Post* (7 September 2006), and Ian Seiderman, "Right of Reply: Biased against Israel? Not at all," *Jerusalem Post* (11 September 2006); see also Aryeh Neier, "The Attack on Human Rights Watch," *New York Review of Books* (2 November 2006).

It seems, however, that he missed the climactic scene: "I was permitted to watch for only a few minutes, and no action was taken while I was watching because the target remained in the house." One wonders whether Dershowitz carefully inserted these weasel words because, as he well knows, targeted assassinations constitute war crimes, and he might otherwise be charged as an accessory to one.

In *Preemption* Dershowitz observes that "there can be no question that some kinds of expression contribute significantly to some kinds of evils." In this context he recalls that the International Criminal Tribunal for Rwanda handed down life sentences to Hutu radio broadcasters for inciting listeners to "hatred and murders." He also recalls the highly pertinent case of Nazi propagandist Julius Streicher. Although Hitler had stripped this self-styled Zionist and expert on Jews of all his political power by 1940, and his pornographic newspaper *Der Stürmer* had a circulation of only some 15,000 during the war, the International Tribunal at Nuremberg nonetheless sentenced Streicher to death for his murderous incitement. 195

On his continuum of civilianality Dershowitz would appear to fall in the proximity of the Hutu radio broadcasters and Streicher—less direct in his appeal, more influential in his reach. If he doesn't meet their fate it is because justice is usually victor's justice and, for all his claims to chutzpah, Dershowitz always keeps his finger cocked in the air checking which direction the winds are blowing. For those who use a moral compass to position themselves in politics, the perils might be greater but so are the rewards of knowing that, if we haven't managed to bring humankind a step closer to a more just world, at any rate we will have resisted those seeking to drag it deeper into the abyss.

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^{193.} Dershowitz, Preemption, pp. 126-27.

^{194.} Ibid., pp. 146-47.

^{195.} Telford Taylor, *The Anatomy of the Nuremberg Trials* (New York, 1992), pp. 150 (Zionist, Jewish expert), 264, 376–78, 481, 590.