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## Human Rights as a Security Threat: Lawfare and the Campaign against Human Rights NGOs

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In this article, I show how the term lawfare is being deployed as a speech act in order to encode the field of human rights as a national security threat. The objective, I claim, is to hinder the work of human rights organizations that produce and disseminate knowledge about social wrongs perpetrated by military personnel and government officials, particularly evidence of acts emanating from the global war on terrorism—such as torture and extrajudicial executions—that constitute war crimes and can be presented in courts that exercise universal jurisdiction. Using Israel as a case study, I investigate the local and global dimensions of the securitization processes, focusing on how different securitizing actors—academics, nongovernmental organizations, think tanks, policy makers, and legislators—mobilize the media, shape public opinion, lobby legislators and policy makers, introduce new laws, and pressure donors to pave the way for a form of exceptional intervention to limit the scope of human rights work.

Following the dawn of the new millennium, neoconservative forces within liberal democracies have been at the forefront of a campaign against what they call the “politicization of human rights.” This relatively new campaign is intricately linked to the war on terrorism and is part of a backlash against the mounting success of liberal human rights organizations and cause lawyers in subjecting warfare to legal analysis and oversight. The objective of the campaign is to undermine human rights nongovernmental organizations (NGOs) that have been providing evidence in criminal suits brought against military and government officials in courts that exercise universal jurisdiction.

In this article, I examine how the term lawfare, which combines the words law and warfare and is defined as the use of law for

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realizing a military objective, is being mobilized by neoconservatives to reframe liberal human rights NGOs as a security threat. The term lawfare has engendered a lively debate in the scholarly literature over the past decade, mainly about its definition and normative underpinnings (Crane 2010; Dunlap Jr. 2001; Ogoola 2010). While practically all of the studies treat lawfare as a descriptive term, I, by contrast, focus on *what lawfare does*. My claim is that lawfare is not merely used to describe certain phenomena, but that it also operates as a speech act (Austin 1975; Wæver 1998) that *reconstitutes the human rights field as a national security threat*.

Lawfare was originally linked to the exercise of universal jurisdiction but has eventually become the framework through which human rights work in liberal democracies more generally is being securitized. It is, in other words, the point of entry through which numerous “securitizing actors” are coalescing to construct human rights as a security threat. These actors have been mobilizing the media, shaping public opinion, lobbying legislators and policy makers, introducing new laws, pressuring donors, and employing a variety of other methods to pave the way for a form of exceptional intervention against rights organizations (Buzan, Wæver, & de Wilde 1998). Their objective has been to limit the scope and impact of rights work carried out by liberal human rights NGOs so as to enable primarily Israel and the United States to carry out military campaigns unhindered. While this is particularly striking in the Israeli case, it can potentially become a strategy used to curb the work of liberal human rights NGOs in other democracies.

The analysis of how lawfare has been put to use sheds light on a number of issues relating to the broader discussion about the influence of the transnational human rights regime on state behavior (Hafner-Burton & Ron 2009; Hafner-Burton & Tsutsui 2005; Hathaway 2002; Neumayer 2005; Simmons 2009), and how “the power of the local” mediates and shapes the appropriation of human rights in the domestic sphere (Goodale & Merry 2007; Merry 2008). Challenging some of the key findings of the literature examining the impact of transnational networks of human rights NGOs on states (Keck & Sikkink 1998; Risse, Ropp, & Sikkink 1999), Anja Jetschke (2010) has shown that when human rights organizations draw on international human rights norms to describe an event and introduce political claims, governments can reframe the same event as a security threat to their authority or the country’s territorial integrity and in this way limit the impact of the human rights campaign.<sup>1</sup> Building on these insights into how security can be poised against human rights, this article describes the

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<sup>1</sup> Jetschke’s argument is actually more complex and has numerous levels of analysis. See particularly Figure 2.2 in Chapter 2 (Jetschke 2010: 50).

way *human rights organizations themselves*—and not merely the events they document—are *increasingly being constituted as a security threat* in democracies who have declared themselves as advocates of the war on terror.

Second, I underscore the important role played by nonstate actors in the securitizing process. Most studies focus on the struggles between human rights organizations, on the one hand, and governments, on the other, while I highlight *the clashes between liberal human rights NGOs and neoconservative NGOs and civil society movements*, detailing the role of the latter in the securitization process. In this sense, I draw from Clifford Bob's (2012) work on clashes of networks and his effort to place more emphasis on the role played by conservative nonstate actors in global politics. Following Bob, I examine the network building of Israeli conservative groups and their mobilization of lawfare in order to produce an "us" versus "them" binary that pits liberal human rights NGOs as the "them" while invoking a security paradigm to undermine their work.

Third, the Israeli case study that I offer here reveals how textbook democratic practices, such as mobilizing civil society, raising issues in the public sphere, and lobbying legislators and decision makers, can lend themselves to the securitization of human rights work and thus to processes that ultimately undermine democracy. Finally, I show how the prism of security can be used to vernacularize human rights and alter their function (Goodale & Merry 2007; Merry 2008). The construction of human rights as a security threat, it should be emphasized, is carried out *not* in order to reject human rights *tout court*, but in order to curb what neoconservative groups define as a particular "political" application of human rights. In other words, the objective of constituting liberal human rights NGOs as a national security threat is to replace a certain conception of human rights and to alter certain types of rights work with ones that better suit the existing sociopolitical relations and forms of military warfare. Although the discussion concentrates on processes taking place in Israel, the implications of this campaign are global, as its ultimate aim is to restrict the utilization of human rights as a mechanism of subjecting warfare to legal oversight.

In what follows, I describe how the contribution of liberal human rights NGOs to the exercise of universal jurisdiction in regional and domestic courts has generated a new type of critique emanating from conservative forces in liberal democracies. Next, I provide a thumbnail sketch of the Copenhagen school's insights about how events and actors are securitized, which is followed by a concise outline of the methods and data used. I then turn to the Israeli case study which is divided into six sections. I begin with a

discussion of lawfare, arguing that it should also be conceived as a speech act, and then offer a cursory description of the Goldstone report on the 2008–2009 Gaza military operation and how it spurred the campaign against human rights organizations. After describing the campaign launched by neoconservative NGOs, think tanks, and civil society groups and how it was adopted by government officials and legislators, I discuss its impact on the legislative initiatives, public opinion, donor policy, and discussions within human rights organizations. While I cannot demonstrate a causal relation, the proximity between the campaign and the changes that ensued suggest that it has had a concrete impact. By way of conclusion, I discuss some of the implications of the argument for human rights work.

### **The Critique of Human Rights**

Universal human rights have been subjected to a variety of critiques ever since they appeared on the political stage following the horrors of World War II (Barzilai 2003; Bunch 1990; Donnelly 2003; Forsythe 2012; Gordon, Swanson, & Buttigieg 2000; Gready 2003; Mutua 2001; Simmons 2009). Several of these criticisms relate to “rights work” itself, and over the years human rights practitioners have—at times grudgingly—used the critique as a launch pad to further develop human rights laws and norms, and to establish new institutions and practices that enhance and protect them. One aspect of these developments includes the increasing ability to subject practices deployed during conflict and warfare to legal oversight. This, in turn, has allowed individuals and groups to file suits against government officials and security personnel who allegedly carried out war crimes in courts that exercise universal jurisdiction (Human Rights Watch 2006; Kaleck 2009; Redress & FIDH 2010). One of the newest critiques of human rights has arisen from increasing efforts to exercise universal jurisdiction against U.S. and Israeli officials and is tied to the long-established opposition to human rights voiced by sovereign states that reject any form of external intervention.

Universal jurisdiction is based on the notion that there are acts which are so universally appalling that states have an interest in exercising jurisdiction to combat them (Hajjar 2010; Morrison & Weiner 2010). A basic principle informing universal jurisdiction is the extraterritoriality of international law, namely, the idea that international law can be applied to alleged criminal acts that have occurred outside the state/territory where it is being deliberated, even if the alleged violation has been perpetrated by a nonnational and even if the state’s nationals have not been harmed (Sadat 2000).

Acts that are subject to universal jurisdiction include extrajudicial executions, deliberate targeting of civilians in military operations, torture, enslavement, enforced disappearances, the use of indiscriminate weapons, collective punishment, nuclear-arms smuggling, intentional destruction of civilian infrastructure and numerous other acts that constitute war crimes, crimes against humanity, or genocide. The intensive deployment of universal jurisdiction in the past two decades can be seen as reflecting a certain power shift in the international arena where nonstate actors are increasingly taking part in challenging state agents (Mathews 1997).

In point of fact, the deployment of universal jurisdiction is not new. The Nuremberg trials as well as the Eichmann trial in Jerusalem were based on universal jurisdiction. The International Court of Justice (ICJ) has been providing advisory opinions for half a century about interstate disputes concerning the conduct of armed conflict. But the ICJ only hears cases filed by states, and only in the past two decades has it become more common for individuals and groups to use universal jurisdiction to file suits against alleged criminals. The ad hoc tribunals for the former Yugoslavia (1993) and Rwanda (1994), as well as the establishment of hybrid tribunals in Cambodia, East Timor and Sierra Leone a few years later marked the beginning of a new era. Currently, nonstate actors have three kinds of venues for filing such suits: the International Criminal Court (ICC), a few regional courts (e.g., European Court of Human Rights and the Inter-American Court of Human Rights), and scores of national courts (Kaleck 2009; Redress and FIDH 2010).<sup>2</sup> Indeed, a survey carried out by Amnesty International indicates that 166 (approximately 86 percent) of the 193 United Nations (UN) member states have defined one or more of four crimes under international law (war crimes, crimes against humanity, genocide, and torture) as crimes in their national law, and 147 (approximately 76.2 percent) out of 193 states have provided for universal jurisdiction over one or more of these crimes (Amnesty International 2012). An examination of when these countries amended their laws in order to include or broaden universal jurisdiction in their criminal code reveals that 91 of the 147 countries introduced amendments after the year 2000 and 118 countries introduced changes after 1990, underscoring the relative novelty of this phenomenon. And even though many of these countries have yet to exercise universal jurisdiction, the fact that the laws are in place renders it more likely that they will do so in the future. Moreover, a study carried out by Redress and FIDH (2010) about

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<sup>2</sup> National courts employ universal jurisdiction, as an exception to the general rule that states traditionally apply their penal laws territorially (Sadat 2000).

the exercise of extraterritorial jurisdiction among the European Union's 27 member states reveals that the phenomenon is becoming more and more prevalent.

A paradigmatic and early example of the use of universal jurisdiction in domestic courts occurred in 1998 when Spain requested that the United Kingdom extradite General Augusto Pinochet on grounds of widespread torture carried out during U.S.-led Operation Condor in which Pinochet was implicated (Byers 1999; Roht-Arriaza 2000). Since then 18 cases have been brought before the ICC and hundreds of other suits have been filed in countries, such as Belgium, France, Italy, The Netherlands, Spain, Switzerland, Turkey, New Zealand, Norway, and the United Kingdom, primarily against military personnel and government officials from Africa, Latin America, and the former Yugoslavia, but also against officials from the United States and Israel (Human Rights Watch 2006; Redress & FIDH 2010).

It is important to note, even if in passing, that the actual practice of universal jurisdiction is not without faults, and that scholars of different stripes have discussed its limitations and biases (Bassiouni 2001; Fletcher 2003; Mutua 2001). The objective of this article, however, is not to deconstruct universal jurisdiction or discuss its practical and theoretical drawbacks, but rather to show how its (mostly impending) use against government and military officials specifically from the United States and Israel has engendered a strong reaction from neoconservatives directed, *inter alia*, against liberal human rights NGOs.

## **Human Rights as a Security Threat**

The increasing exercise of universal jurisdiction is the main reason for a noticeable if gradual shift in the past decade in which liberal human rights NGOs in Israel and abroad are being branded as a security hazard by neoconservative actors. The movement toward the securitization of these NGOs is part of a process that began to take shape after the 9/11 terrorist attacks and even more intensely after the publication of the UN Fact-Finding Mission on the 2008–2009 Gaza Conflict also known as the Goldstone Report (Goldstone et al. 2009). Building on ideas advanced by the Copenhagen School (Buzan & Hansen 2009; Buzan, Wæver, & de Wilde 1998; Wæver 1998), I understand security to mean a specific field of practice constituted around issues relating to threats and challenges to state sovereignty by other state and nonstate actors. The crucial point is that security is not an objective condition but rather is socially constituted through speech acts (Wæver 1998).

While speech act theory is multifaceted (Austin 1975; Butler 1997; Searle 1969), for the purpose of this article, I refer to John Austin's argument that language not only describes phenomena, but often "does something" in the world. Austin distinguished between two kinds of speech acts, both of which are relevant to the securitization process: illocutionary speech acts are performed *by virtue of the words uttered*, like promising to pay back someone a loan, while perlocutionary acts of speech are performed *as a consequence of words*, as when someone convinces a friend to vote for a political party. The idea informing perlocutionary speech acts is that saying something can "produce certain consequential effects upon the feelings, thoughts, or actions of the audience, or of the speaker, or of other persons: and it may be done with the design, intention, or purpose of producing them . . ." (Austin 1975: 101). The Copenhagen School maintains that "security" is not simply a sign that refers to a socially constituted phenomenon, but rather that by saying security (or other words such as threat, and in our case lawfare) "something is done (as in betting, giving a promise, naming a ship)" (Wæver 1998: 55).

For an issue to be securitized, not just any kind of speech act is sufficient, as it must be based on a specific rhetorical structure that elevates an issue, an actor, or a field above the normal political logic, which is exemplified in the following phrase: "if we do not tackle this problem, everything else will be irrelevant because we will not be here or will not be free to handle it in our own way" (Buzan, Wæver, & de Wilde 1998). Hence, security uses speech acts to frame an "issue either as a special kind of politics or as above politics," which paves the way for exceptional intervention that may violate normal legal and social rules (Buzan & Hansen 2009). Once this approach is adopted then it becomes possible "that any sector, at any particular time, might be the most important focus for concerns about threats, vulnerabilities, and defense" (Wæver 1998).

Although the securitization process is in principle, as Michael Williams points out, "completely open (any 'securitizing actor' can attempt to securitize any issue and referent object), in practice it is structured by the differential capacity of actors to make socially effective claims about threats, by the forms in which these claims can be made in order to be recognized and accepted as convincing by the relevant audience, and by the empirical factors or situations to which these actors can make reference" (Williams 2003: 513). Successful securitization thus has three components (or steps): (1) the securitizing actors use speech acts to designate (and indeed constitute) an existential threat; (2) the threat is framed in such a way so that it requires emergency intervention or special measures; and (3) this creates the legitimacy for demanding the right to govern actions by breaking free of rules and determining new

priorities (Buzan, Wæver, & de Wilde 1998: 36). In addition, the success of this process is contingent upon its ability to inform public discourse and become part of society's common sense, as a significant audience must accept the designation of an issue as a security threat for it to become a security threat. Moreover, as a process, securitization materializes over time and can be obstructed or accelerated along the way; it can be stopped in mid-course and fail, it can be successful or it may produce only partial results.

It is also important to note that the Copenhagen School distinguishes among three types of units of analysis (Buzan, Wæver, & de Wilde 1998). First, there are *referent objects*, which are the things conceived to be or constructed as existentially threatened. In the case under consideration, the prime object is the Jewish character of the state and its ethnocentric logic (Yiftachel 2006; see also Gordon 2010), while auxiliary referent objects are certain warfare practices at least ostensibly carried out to protect the state. Second, there are the *securitizing actors*, namely, the actors who securitize issues by declaring something—the referent object—existentially threatened and by designating the source of the threat. In this study, the securitizing actors are academics, NGOs, think tanks, civil society groups, policy makers, and legislators. Finally, there are *functional actors*, who significantly influence decisions in the field, and in this case are considered the source of the threat; namely, liberal human rights NGOs. What is unique about this case study is not the referent object, as states and their particular sociopolitical relations are often constructed as facing an existential threat, but rather the network of securitizing actors and the decision to assign the source of the threat to human rights NGOs.

This is where lawfare enters the picture. As I show later, lawfare has been used to encode the field of human rights and in this way has helped frame human rights work in Israel as a security threat. The constant iteration of the accusation “human rights work is lawfare” by a set of securitizing actors propels a specific set of actions aimed at obstructing human rights work. But before turning to an analysis of how lawfare has been deployed to securitize human rights in Israel and how these securitization processes have helped curb the work of rights groups, I briefly outline the methods and data used for the research.

## Methods and Data

In this research project, I use discourse analysis (Chilton 2003; Wetherell, Yates, & Taylor 2001) to examine how human rights work in Israel is being framed by NGOs, think tanks, legislators, government officials, and the media. I understand discourse as an



**Table 1.** Newspaper Where “Lawfare” Appeared Most Often

89	17	11	11	9	7
The Jerusalem Post*	The Washington Times*	The Christian Science Monitor	National Post*	The Washington Post	The Australian*

Source: LexisNexis Major World Publications (September 15, 2013) media outlets where the term lawfare appeared seven times or more (conservative outlets are marked with \*).

“ensemble of ideas, concepts and categories through which meaning is given to social and physical phenomenon and which is produced and reproduced through identifiable set of practices” (Hajer & Versteeg 2005: 175; see also Foucault 1970). As discourses are social systems, one cannot, as Jennifer Milliken (1999) points out, base a discursive analysis on one text, even if it is a key document. As a form of analysis about social signification, discourse analysis must be based on a series of texts by different people. The underlying assumption of this mode of analysis is that the signification of events, actors, and situations—in this case the meaning of human rights work—is produced through the deployment of certain phrases within a specific context and the power relations among the different relevant actors. In this article, I focus on predicate analysis, examining scores of texts that use the term lawfare primarily as a verb attached to liberal human rights NGOs. I draw general claims about how human rights are framed by categorizing and drawing abstractions from the empirical data (Milliken 1999). My objective is to uncover the logic and argumentative rationality informing the framing of liberal human rights NGOs and in this way to illuminate connections among discursive practices, social structures, political actors, and cultural processes.

First, in order to overcome selection bias, I examined the term lawfare using LexisNexis “Major World Publications” (all available dates) which includes 207 news outlets from around the world. The term lawfare appeared in 43 of these outlets, but disproportionately in what are considered conservative newspapers (see Table 1). While the term lawfare has appeared in the press from 2003 onwards, 217 of the 249 articles are from the years 2009 to 2013.<sup>3</sup> In these 249 articles, the term lawfare appears a total of 445 times, 280 of these appearances in relation to Israel, 72 in relation to the United States, 35 as an adjective as in “lawfare project,” “lawfare blog,” and “lawfare conference,” and the remainder in relation to other countries of which Australia has the highest number of occur-

<sup>3</sup> The search was carried out on September 15, 2013 for the term “lawfare” using the “all available dates” category. Except for one article from *The Globe and Mail* (Canada), which appeared in 1984, all other appearances occurred after 2003.

rences (17 times). An examination of the timeline alongside the country it refers to and the actors deploying it suggests that the term lawfare was used first in relation to the United States and then picked up and deployed by neoconservatives to denote legal threats against Israeli military and government officials. Also interesting is that in the 249 articles, the appearance of terms such as “human rights” (308 times), “NGOs” (212 times), “Goldstone” (196 times), and NGO Monitor (91 times) were frequent. The timeline (i.e., most appearances after Operation Cast Lead in winter 2008–2009), the use of lawfare primarily in relation to litigation threats against Israel, the concentration of the articles in conservative newspapers, as well as the frequency of terms like human rights, NGOs, Goldstone, and NGO Monitor in these articles give a good indication of the general context in which the term has been used.

The LexisNexis data help corroborate my claim that in the popular media the lawfare discourse has been used primarily in relation to Israel and (to a lesser extent) the United States. This, in itself, is an important finding. We know that human rights NGOs are attacked in countries like Russia, Egypt, and China, but as these countries often simply use brute force to handle oppositional human rights groups, it is not surprising that they have not used lawfare as an instrument to clamp down on human rights NGOs. Lawfare has been deployed as a discursive device to frame and limit the work of human rights NGOs only in countries considered to be liberal democracies. Second, the fact that the lawfare critique focuses overwhelmingly on the deployment of universal jurisdiction against two particular countries underscores that the criticism is not against the exercise of universal jurisdiction per se. Universal jurisdiction has, in actuality, been exercised primarily against non-Israeli and U.S. citizens (Amnesty International 2010; Human Rights Watch 2006; Redress & FIDH 2010), revealing the bias of the lawfare critique: namely, universal jurisdiction is bad when it is used against Israel and the United States. Third, the lawfare critique is used primarily against human rights NGOs operating in liberal democracies that aim to subject warfare practices of these democracies to legal oversight, because, as I argue, in these countries curbing the work of human rights NGOs is predicated upon their prior securitization.

In order to analyze the precise way lawfare has been used in relation to human rights work in Israel, I read the 249 articles in the LexisNexis dataset with special emphasis on 155 articles (within this dataset) that dealt with Israel. In addition, I examined the publications of two major neoconservative groups—NGO Monitor (from its foundation in 2002) and *Im Tirtzu* (from its foundation in 2006)—and the relevant material published by two prominent think tanks: the Begin-Sadat (BESA) Center for Strategic Studies at

Bar Ilan University and Reut Institute. To assess whether the notion that human rights constitutes a national threat has been diffused among government officials, legislatures, and the Israeli public, I perused publications and statements issued by the Israeli Ministry of Foreign Affairs, carrying out an online word search for the terms lawfare and NGOs on the Ministry's website.<sup>4</sup> In addition, both NGO Monitor and Im Tirtzu have a category on their websites called "in the media," where they post newspaper articles that cite their reports, press releases or statements made by staff members. NGO Monitor has posted over 400 articles from numerous outlets that appeared between 2006 and 2013, while Im Tirtzu has only posted articles that the organization considers "important" and therefore included only about 40 articles from 2007 to 2013. I used discourse analysis to examine how human rights are framed by these organizations and whether legislators, other public officials, and the media have adopted this framing. The quotes later are representative of the way "lawfare" has been used in relation to "human rights."

In addition, I examined the reports published by the Association for Civil Rights in Israel and Adalah, The Legal Center for the Arab Minority in Israel, about new Israeli laws that aim to limit in some way the work of liberal human rights NGOs in order to assess whether the public campaign against these NGOs has in any way been institutionalized through legislation.<sup>5</sup> I was also given access to public opinion polls commissioned by Israeli human rights organizations and the New Israel Fund as well as to a report on how to improve the reputation of Israeli rights groups among the general Israeli public. The report is based on 30 interviews with shapers of Israeli public opinion and on two focus groups with participants from nine Israeli human rights organizations (Modus Research and Strategy 2012).<sup>6</sup> The polls allowed me to assess whether there has been a change of attitude toward human rights NGOs among the Israeli public and the focus group report enabled me to gauge whether the critique has been internalized by the rights practitioners themselves. Finally, I carried out five interviews with directors of Israeli human rights NGOs and a representative of the New Israel Fund, and had several informal conversations with human rights practitioners.

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<sup>4</sup> I examined all pertinent publications and statements during the 7-year period 2005–2012. A total of 119 articles were surveyed of which 32 were found relevant for this research project. See <http://mfa.gov.il/mfa/Pages/default.aspx>.

<sup>5</sup> ACRI has created a database of these laws (ACRI 2012).

<sup>6</sup> It was commissioned by two rights NGOs and the research was carried out by Modus Research and Strategy, a "qualitative research house" that provides a range of qualitative surveys using various methodologies, such as focus groups, in-depth interviews, and content analysis.

## What Does Lawfare do?

The impetus for the construction of human rights as a security threat in Israel relates to the fact that the reports exposing Israeli violations not only harm the country's international reputation but also have served as an important source of evidence for those who file criminal law suits against prominent military and government figures for alleged violations of international law in courts that exercise universal jurisdiction. Spain's request to extradite Pinochet from the United Kingdom because of allegations of torture rapidly became a model for action (Byers 1999; Kaleck 2009; Roht-Arriaza 2000). In 2001, Ariel Sharon, then Israeli Foreign Minister, was indicted by a Belgian court for crimes committed against Palestinian refugees in the Sabra and Chatila camps in Beirut in 1982 (Human Rights Watch 2006). Since then, news reports have suggested that scores of law suits have been submitted in several countries against Israeli politicians, high ranking military officers, and heads of secret services (Sapsted 2009). To be sure, if one compares Israel's human rights abuses with the abuses carried out by the governments of some of its neighboring countries, it is peculiar that criminal suits are not filed against the latter's leaders. This absence could indicate that the focus on Israel is at least partly for unsavory reasons, namely, anti-Semitism. On the other hand, Israel purports to be a liberal democracy and therefore the standards used to judge it are not the same as the ones used to judge authoritarian regimes but rather the ones used to judge Western democracies. And while none of the suits against Israeli officials has ever led to a conviction, the Israeli government has been increasingly alarmed by the trend and has assigned experts in international law to accompany combat military units and has advised former politicians and military officers to refrain from traveling to certain European countries. In addition, government officials alongside staff members from NGOs and think tanks and a number of academics have spent time examining more closely the suits filed against Israelis and have found that the reports published by liberal human rights NGOs are frequently cited as incriminating evidence (Herzberg 2010; Im Tirtzu 2010; NGO Monitor 2009; Samson 2009).<sup>7</sup> This has led a group of actors to launch a campaign against liberal human rights organizations dealing with the Israeli-Palestinian conflict.

Leading the campaign is NGO Monitor, whose aim is to generate and distribute critical analysis and reports on the output of

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<sup>7</sup> According to the Fédération Internationale des Ligues des Droits de l'Homme, 99 percent of referrals to the prosecutor at the ICC between the years 2002 and 2006 came from NGOs and individuals.

the domestic and “international NGO community for the benefit of government policy makers, journalists, philanthropic organizations and the general public” (NGO Monitor 2012).<sup>8</sup> Founded in 2002 by political scientist Gerald Steinberg of Bar Ilan University, NGO Monitor analyzes reports and press releases of local and international NGOs and investigates the international donors funding them (NGO Monitor 2011). Its goals is to expose “distortions of human rights issues in the Arab-Israeli conflict” and “to end the practice used by certain self-declared ‘humanitarian NGOs’ of exploiting the label ‘universal human rights values’ to promote politically and ideologically motivated agendas” (NGO Monitor 2012). Its objective is to expose and to struggle against what it conceives to be the “politicization of human rights,” while reestablishing “the moral foundations of human rights” (Steinberg 2009b).

NGO Monitor in the context of this article is a securitizing actor; it was the first Israeli organization to voice its criticism of liberal human rights organizations in security discourse, claiming that they constitute a national security threat to Israel. This line of reasoning was articulated in an article titled “NGOs Make War on Israel” by Steinberg (2004), who in a different venue also claimed that human rights are being exploited as a “weapon against Israel” (New Vilna Review 2011; see also Steinberg 2005). Steinberg thus tapped into the post-9/11 neoconservative trend in the United States.

Neoconservatives in the United States and Israel began employing the term lawfare over a decade ago to describe the increasing use of universal jurisdiction. While the word lawfare can be traced back to Jeremy Bentham, it began gaining currency only subsequent to 9/11.<sup>9</sup> In a 2001 conference paper presented at Harvard University’s Carr Center for Human Rights Policy, Major General Charles Dunlap (2001) defined lawfare as “a method of warfare where law is used as a means of realizing a military objective.” Several years after Dunlap offered his first definition, he introduced a few changes, claiming that lawfare is “the strategy of using—or misusing—law as a substitute for traditional military means to achieve an operational objective . . . law in this context [is] much the same as a weapon” (Dunlap Jr 2008). Over the years, numerous people have offered other definitions of lawfare, and today there are many different opinions regarding its precise

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<sup>8</sup> It is important to keep in mind that NGO Monitor is by no means unique, but part of a global phenomenon which includes organizations like American Enterprise Institute’s NGO Watch, the UK Institute of Economic Affairs, and Australia’s Institute of Public Affairs (Bob 2012).

<sup>9</sup> Previous usages of the term “lawfare” addressed airfare discounts and colonialism, but most uses from 2006 and onward are military ones (Sadat & Geng 2010).

meaning (Meierhenrich forthcoming; Sadat & Geng 2010), but no one, to the best of my knowledge, has discussed *what the term lawfare does*.

The U.S. administration has always been cautious about the application of universal jurisdiction, but ever since international law began being deployed to check certain practices utilized in the global war on terrorism, it has adopted an oppositional stance. The human rights campaigns launch by different actors to subject practices emanating from the war on terrorism to the principles of distinction and proportionality, for example, led the United States to oppose the 2002 passing of the Rome Statute that established the ICC as a permanent tribunal to prosecute individuals for genocide, crimes against humanity, and war crimes. It also led the United States to pressure Belgium to change its domestic laws to limit the use of universal jurisdiction (Kaleck 2009). Despite this opposition, high ranking government officials and CIA agents were still being held accountable for rendition practices in absentia in German and Italian national courts that exercise universal jurisdiction (Human Rights Watch 2006). Hence, in 2005, a 24-page Pentagon document commissioned by Donald Rumsfeld and titled the *National Defense Strategy of the United States of America*, warned that: “Our strength as a nation state will continue to be challenged by those who employ a strategy of the weak using international fora, judicial processes, and terrorism” (Department of Defense 2005). The Bush administration thus associated legal threats with terrorism.

A few years later, neoconservatives in Israel also began using the term lawfare. They have done so in order to characterize liberal human rights organizations that file suits based on universal jurisdiction or provide evidence for such suits as a national security threat.<sup>10</sup> Writing for Bar Ilan University’s BESA Center for Strategic Studies, Elizabeth Samson contends that those who deploy lawfare “are not fighting an occupier or challenging a military incursion—they are fighting the forces of freedom, they are fighting the voice of reason, and they are attacking those who have the liberty to speak and act openly.” The weapon that the enemy is using, Samson continues, “was created by our own hands—that is the rule of law, a weapon designed to subdue dictators and tyrants is now being misused to empower the very same, and being manipulated to subvert real justice and indisputable truth”

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<sup>10</sup> “The Lawfare Project” underscores the cooperation between the United States and Israeli neoconservatives. It defines lawfare as “the use of the law as a weapon of war, or more specifically the abuse of the law and legal systems for strategic political or military ends,” which is then described as a strategy waged against the United States and even more so against Israel as a way to undermine democracy.

(Samson 2009). International law is the “weapon” and liberal human rights NGOs are the *functional actors* that wield it.

This is more or less the view adopted by NGO Monitor, which defines lawfare as a “strategy of using or misusing law as a substitute for traditional military means to achieve military objectives.” Although NGO Monitor’s Anne Herzberg acknowledges that Israel is not the only country that has been subject to NGO lawfare, it has been, she writes, “a primary target of these efforts.”<sup>11</sup> Leading the lawfare campaign against Israel are what Herzberg calls “NGO superpowers” (e.g., Amnesty International and Human Rights Watch), who in cooperation with Palestinian and Israeli human rights groups exploit universal jurisdiction to pursue litigation in European, North American, or Israel’s national court. While these liberal NGOs claim to be part of the fight for human rights the evidence shows, in Herzberg’s opinion, “that the core motivation for this activity is to promote lawfare” in order to “punish Israel for carrying out anti-terror operations” (see also Herzberg 2009; Herzberg 2010). In other words, “anti-terror operations” are one of the referent objects of this securitization process. Herzberg goes on to claim that,

NGO involvement begins well before the filing of any lawsuit. These organizations issue numerous press releases and lengthy “research reports” condemning Israeli anti-terror operations. Political NGOs also regularly submit written statements to UN committees and other international bodies. Their reports are then adopted by the decision-making bodies of the UN, such as the General Assembly, and underpin further condemnations and actions taken against Israel. Through this process, NGO statements become part of the official dossiers of cases at international legal institutions, such as the International Court of Justice or the International Criminal Court, or part of the court record in domestic suits. (Herzberg 2010)

NGO Monitor, the BESA Center and other organizations and academics are using the term lawfare to condemn the work of liberal human rights NGOs. The term, however, is not only used to describe legal proceedings based on universal jurisdiction. In 129 newspaper articles out of the 249 examined for this study, lawfare is used as a speech act whereby uttering the term “lawfare” also serves to declare an emergency condition. In these articles, lawfare denotes alleged foreign efforts to hamper U.S. and Israeli attempts to defend their security and national interests. We are told, for

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<sup>11</sup> In reality, African leaders and paramilitaries have been the main target of lawfare followed by officials from Latin America and the former Yugoslavia (Redress & FIDH 2010).

example, that the U.S. armed forces “are increasingly subjected to ‘lawfare’—the use of legal proceedings to interfere with and, where possible, defeat their missions” (Gaffney 2009; see also Gertz 2009), and that lawfare is used “to criminalize anything Israel does, especially when it uses force to defend itself” (Susser 2009). Lawfare is generally defined as “assaults against Israeli military and civilian officials—a form of soft-war aggression through the courts which accompanies the ‘hard war’ of terrorism” (Steinberg 2009a), and is understood by Israelis as a strategy “designed to undermine the legitimacy of their right to exist” (Blomfield 2011), “intended to bring about the demise of the Jewish state in the international community” (Benlolo 2011). In other words, lawfare in these articles follows the “grammar of security,” which constructs a plot that includes, among other things, an existential threat.

The crucial point in the context of this article is that in the majority of these articles, lawfare is associated with litigation promoted by liberal human rights NGOs. The association between lawfare and human rights NGOs constitutes the latter as *functional actors* that comprise a national security threat. Once the rationale informing the lawfare discourse is widely accepted, it then becomes logical for Israel to adopt exceptional methods to obstruct the work of rights NGOs. Consequently, in the next sections, I detail how a group of securitizing actors have used the notion of lawfare to construct a shared understanding of what is to be considered and collectively responded to as a national threat. But since it was not until the Goldstone Report was published that this process actually made real headway (note that 217 of the 249 articles appeared after Operation Cast Lead), I begin with a brief description of the rights-related effects of the Gaza War and the UN Fact-Finding Mission Report.

## The Goldstone Report

The military campaign, called by Israel “Operation Cast Lead,” began with Israeli aerial attacks on December 27, 2008, followed by a ground invasion on January 3, which lasted until January 18, 2009. As the Israeli human rights group B’Tselem documented, the magnitude of the harm to the local population was extensive:

1389 Palestinians were killed, 759 of whom did not take part in the hostilities. Of these, 318 were minors under age 18. More than 5,300 Palestinians were wounded, 350 of them were seriously wounded. Israel also caused enormous damage to residential dwellings, industrial buildings, agriculture and infrastructure for electricity, sanitation, water, and health, which was already on the



verge of collapse prior to the operation. According to UN figures, Israel destroyed more than 3,500 residential dwellings and 20,000 people were left homeless. During the operation, Palestinians fired rockets and mortar shells at Israel, with the declared purpose of striking Israeli civilians. These attacks killed three Israeli civilians and one member of the Israeli security forces, and wounded dozens. Nine soldiers were killed within the Gaza Strip, four by friendly fire. More than 100 soldiers were wounded, one critically and 20 moderately to seriously. (B'Tselem 2011)

Following the war, the UN Human Rights Council appointed Judge Richard Goldstone to head a fact-finding mission regarding the hostilities in Gaza.<sup>12</sup> Originally, the commission's mandate was to examine only possible Israeli violations of international law, but before accepting the appointment Judge Goldstone demanded that the mandate include the investigation of "all violations of international human rights law and international humanitarian law that might have been committed at any time in the context of the military operations that were conducted in Gaza during the period from December 27, 2008 to January 18, 2009, whether before, during or after" (Gur 2009). Irrespective of the broadened mandate, the Israeli government refused to cooperate with the UN fact-finding mission and did not provide any testimony or evidence nor did it allow the commission to enter Israel in order to interview Israelis who had been subjected to rocket fire launched from the Gaza Strip. After carrying out numerous interviews and on-site visits as well as reading dozens of human rights reports, the international commission concluded that both Israel and Hamas had breached international humanitarian law and had committed potential war crimes and crimes against humanity.<sup>13</sup> The brunt of the criticism, however, was directed toward Israel, claiming, *inter alia*, that it had *intentionally* targeted civilians. Legally, however, the findings do not amount to judicial proof beyond reasonable doubt, and therefore are considered conditional, serving as suggestion for independent investigations that should be conducted by Israel and the Palestinians. The UN team demanded that each side open criminal investigations and prosecute the persons responsible for the alleged war crimes (Goldstone et al. 2009).

Immediately following its publication, a campaign was launched against Richard Goldstone, portraying the report as a "blood libel" against the Jewish state (JTA News Service 2011).

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<sup>12</sup> The mission had been established on April 3, 2009. In addition to Richard Goldstone, Christine Chinkin, Hina Jilani, and Desmond Travers were asked to serve on the commission.

<sup>13</sup> Some of the interviews can be viewed and/or heard online <http://www.un.org/webcast/unhrc/archive.asp?go=090628> (accessed February 22, 2013).

Alongside criticism of the people involved in writing the report (Cottin 2011), the Israeli Intelligence and Terrorism Information Center within the Israeli Defense Forces (IDF) prepared a 349-page monograph aimed at undermining the accuracy of the UN mission's findings (Intelligence and Terrorism Information Center 2010). After 2 years of being subjected to ongoing accusations (Bryson 2010), the South African judge renounced (without notifying his co-authors and without their approval) the Report's claim that Israel had intentionally targeted civilians in an opinion article for the *Washington Post* (Goldstone 2011). In a follow-up piece for the *Post*, Jessica Montell (2011) from the Israeli rights organization, B'Tselem, maintained that even though the extent of civilians casualties does not prove that Israel violated the law, Israel has yet to adequately address many allegations regarding its conduct, including the levels of force authorized, the use of white phosphorous or the inherently inaccurate mortar shells in densely populated areas, the determination that government office buildings were legitimate military targets, and the obstruction of and harm to ambulances.

### Civil Society Shaping Public Opinion

The crucial issue from the vantage point of this article is not so much the debate surrounding the accuracy of the Goldstone Report or even the personal criticism against Judge Goldstone, but rather that the report itself was reconstituted in the Israeli public domain as a national threat. At least theoretically, the report written by the international commission could have concrete implications for Israeli politicians and military personnel traveling abroad as it can be used as evidence in criminal suits filed against top-ranking Israelis in regional and national courts that exercise universal jurisdiction. Therefore, numerous actors understood the report as a form of lawfare.

Immediately after the international commission released the unofficial 574-page report (the final version was 452 pages), NGO Monitor issued a press release characterizing it as an NGO "cut and paste" document (NGO Monitor 2009). The claim was that a considerable amount of the findings were based on reports and testimonies provided by human rights organizations, several of them Israeli. Joining NGO Monitor in this campaign was *Im Tirtzu* (if you will it),<sup>14</sup> a grassroots organization that was established in 2006 in order to renew, in its words, "Zionist discourse, Zionist thinking

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<sup>14</sup> The name comes from a famous quote about the creation of a Jewish State made by the Zionist visionary Theodore Herzl: "If you will it, it is no dream; and if you do not will it, a dream it is and a dream it will stay."

and Zionist ideology, to ensure the future of the Jewish nation and of the State of Israel.” According to the organization’s website, a “major portion of *Im Tirtzu*’s efforts is devoted to combating the campaign of de-legitimization against the State of Israel . . .” (Im Tirtzu 2011). Both NGO Monitor and *Im Tirtzu* used their considerable resources to launch a campaign against liberal Israeli human rights organizations and the New Israel Fund (NIF), the single largest donor to Israel’s human rights community; hence, the strategy was not only to delegitimize these organizations in the public’s eyes by portraying them as a security threat to Israel, but also to create a wedge between the rights groups and their funding sources.

This initial criticism was followed by the publication of long briefs claiming that Israeli human rights organizations funded by the NIF served as the “building blocks” for the Goldstone Report (NGO Monitor 2010). NGO Monitor and *Im Tirtzu* counted the references in the UN Report, while *Im Tirtzu* calculated that 14 percent of the references came from publications or testimonies of Israeli rights groups funded by the NIF (Im Tirtzu 2010). The monitoring groups also blamed Israeli rights organizations for lobbying the governments of the United States, the European Union, and other countries to legitimize the UN Report and endorse its recommendations (NGO Monitor 2010; see also Steinberg 2013).

Following the publication of these briefs, *Im Tirtzu* began focusing on persuading the Israeli public, launching a campaign against the NIF and Israeli human rights organizations. The campaign began with a magazine expose in the widely circulated *Ma’ariv* whose title on the front page read: “The Material from which Goldstone is Made,” followed by the subtitle, “New research discloses how a group of Israeli leftist organizations were active partners in drafting the Goldstone Report, which defamed the IDF and the State . . .” In the article, the prominent Israeli commentator Ben Kaspi wrote that “[Israel’s] reputation is at an all-time low. Mounting international pressure, calls for boycotts and excommunication are increasing. All these were fueled by the Goldstone Report, which was, in turn, fueled by Israeli sources. According to *Im Tirtzu*, the New Israel Fund provided money and financing for these sources” (Kaspi 2010).

Concomitantly, *Im Tirtzu* posted large, provocative—if not defamatory—billboard ads portraying the president of the NIF, former Knesset Member Naomi Chazan, with a horn on her head.<sup>15</sup> The byline reads: “Naomi Goldstone-Chazan; Naomi Chazan’s ‘New Fund’ Stands Behind the Goldstone Report.” The campaign proved to be extremely successful. For several days, television and

<sup>15</sup> In Hebrew, the word for horn is *keren*, which also means fund.

radio talk shows spent hours discussing whether or not the NIF and human rights organizations had betrayed their country.

Simultaneously, NGO Monitor targeted policy makers, embassies, international newspapers, donors, and other groups. Between October 2009 and May 2011, the neoconservative watch group published 16 briefs, 11 opinion articles in newspapers like *The Wall Street Journal*, *Ha'aretz*, and *The Jerusalem Post*, sent representatives to appear in several television and radio talk shows, and issued 12 press releases about the Goldstone Report's reliance on evidence provided by liberal human rights NGOs. The campaign culminated in the publication of a 325-page edited volume called *The Goldstone Report Reconsidered*, which featured chapters by former Israeli ambassador to the UN, Dore Gold, and Alan Dershowitz (Steinberg & Herzberg 2011). In this volume, Gerald Steinberg frames the UN report as an existential threat to Israel, arguing that the "exploitation of moral and legal frameworks was seen . . . as a major threat to the existence of Israel as the nation state of the Jewish people, and its sovereign equality among the nations" (Steinberg & Herzberg 2011; The Reut Institute 2010).<sup>16</sup> Hence, we notice that the referent object—namely, what is threatened—has now become *Israel as the nation state of the Jewish people*. They have done so in order to characterize liberal human rights organizations that file suits based on universal jurisdiction or provide evidence for such suits as a national security threat. But if the public is convinced that there is a major threat to the existence of Israel as the nation state of the Jewish people, then curbing the work of human rights organizations becomes common sense.

## The Government and Knesset

Campaigns launched by civil society organizations aim to shape public opinion and to put pressure on policy makers and legislators. But in this case, the Israeli Ministry of Foreign Affairs responded within 2 days of the Goldstone Report's publication, claiming that it "ties the hands of democratic countries fighting terror worldwide; calls into question the legitimacy of national legal systems and investigations; [and] promotes criminal proceedings against forces confronting terrorism in foreign states and tries to expand the jurisdiction of the ICC beyond its Statute" (Israeli Ministry of Foreign Affairs 2009). Three months later, Israel's

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<sup>16</sup> Along similar lines, The Reut Institute, a neoconservative Israeli think tank, published a monograph that aims to analyze and provide a "response to the erosion in Israel's diplomatic status over the past few years, which reached its peak with the Goldstone report." This attack, Reut asserts, "possesses strategic significance, and may develop into a comprehensive existential threat within a few years."

Deputy Foreign Minister Danny Ayalon used a lawfare metaphor to describe the situation, claiming that “today the trenches are in Geneva in the Council of Human Rights, or in New York in the General Assembly, or in the Security Council, or in the Hague, the ICJ” (Israeli Ministry of Foreign Affairs 2010c). To mark human rights day in 2010, Ayalon held a joint press conference with representatives from NGO Monitor, where he claimed that the “international human rights day has been transformed into terror rights day” (Israeli Ministry of Foreign Affairs 2010a; see also Israeli Ministry of Foreign Affairs 2010d).

Foreign Minister Avigdor Lieberman’s party, *Yisrael Beiteinu*, went on to propose creating committees of inquiry to investigate human rights groups that delegitimize Israel and abet terror, “especially those that helped the Goldstone Committee investigating the 2008 incursion into Gaza.” Prime Minister Benjamin Netanyahu ended up not supporting the initiative, telling the cabinet that while the law establishing such committees was important, “we have to act cautiously and wisely . . . and prevent further delegitimization of Israel” (Ravid & Lis 2011). The notion that Israeli rights groups support terrorism was, however, taken up by the Israeli colonel in charge of the military’s international law department, who averred that war crimes charges brought abroad against Israeli soldiers and officers involved in Operation Cast Lead are nothing but “legal terrorism” (Zarchin 2009).

The reports, policy briefs, press releases, and governmental statements that were put out by the Ministry of Foreign Affairs, the military, NGO Monitor, the BESA Center for Strategic Studies as well as a few other organizations rapidly coalesced into a doctrine about lawfare and how it constitutes a national threat. By November 2010, the Ministry of Foreign Affairs published a long report titled “The Campaign to Defame Israel,” where it asserted that: “The strategy to delegitimize Israel using legal frameworks, and exploiting both international and national legal forums, was adopted following numerous failed military attempts to destroy the Jewish state” (Israeli Ministry of Foreign Affairs 2010b). Again, we see how the referent object is the Jewish state. The Ministry proceeds to explain that lawfare is used by individuals and groups who file criminal and civil law suits in national and international legal forums against prominent military and government figures for alleged violations of international law. “The number of law suits that have been filed against Israeli officials has grown exponentially in recent years . . . This form of lawfare does not simply impede Israeli travel plans” but aims “to intimidate officials from acting out of fear of prosecution, and in fact impacts foreign relations, strains international ties, and serves to delegitimize the Jewish state . . . It must be recognized that just as German military theorist Carl von

Clausewitz states that ‘war is . . . a continuation of political activity by other means,’ so too, lawfare is a continuation of terrorist activity by other means” (Israeli Ministry of Foreign Affairs 2010b).

The Ministry’s logic is straightforward: (1) lawfare is a form of terrorism; (2) liberal human rights NGOs are lawfare enablers; (3) hence, liberal human rights NGOs are part of the terrorism network. The legislature also drew this connection. In January 2011, the Knesset voted overwhelmingly (41 versus 16) in favor of establishing a panel of inquiry to probe sources of funding for rights groups accused of “delegitimizing” the Israeli military (Lis 2011). MK Fania Kirshenbaum (*Yisrael Beiteinu*), who submitted the proposal, accused human rights organizations of being “behind the indictments lodged against Israeli officers and officials around the world,” while coalition whip MK Zeev Elkin (Likud) said that “NGOs sometimes cooperate with foreign bodies that use them to infiltrate messages or acts opposed to Israeli interests” (Lis 2011).<sup>17</sup> It is important to note that the funding of all human rights organizations in Israel is scrutinized and made public each year by the State Auditor. Hence, the idea of creating a parliamentary commission to inspect their income could not have been to audit the donations given to rights NGOs and should therefore be understood as an extraordinary measure. The objective, so it seems, was to intimidate Israeli rights groups and their donors in the hope that this would help stifle the production and flow of human rights knowledge. Therefore, after neoconservative Knesset members exposed their power in the plenum they decided not to pursue the issue any further.<sup>18</sup>

The proposal to create a panel of inquiry was, however, just part of the legislative effort to regulate the production and dissemination of NGO knowledge. Over the past 4 years, Israeli legislators have introduced a spate of 30 “anti-democratic” bills—that have either been approved or are still being discussed in subcommittees—and while only two touch directly on human rights organizations many of them aim to limit freedom of expression (ACRI 2012; Adalah 2012). The most pertinent bill is a proposed amendment to the Israeli Associations Law and the Israeli Income Tax Ordinance which would prohibit foreign public funding of Israeli organizations that, inter alia, “support indictment of elected officials and IDF soldiers in international courts; call for refusal to serve in the IDF and support a boycott of the State of Israel or its

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<sup>17</sup> According to preliminary data collected by James Ron, 38 countries have introduced restrictions of foreign funding to local NGOs. Email correspondence with the author January 29, 2013.

<sup>18</sup> The Knesset plenum’s approval means that the initiative has to be taken to the Knesset House Committee for debate, where it has been “buried” since it passed.

citizens” (Adalah 2012). While this bill has received widespread support in the Knesset, it was, nonetheless, shelved in November 2011 because of domestic and international pressure, and only at the time of writing, December 2013, was in the process of being revived (Lis 2013).<sup>19</sup> The fact, however, that a majority of Knesset Members support such a move renders the proposed bill a threat.

## Public Opinion

The campaigns launched against liberal human rights NGOs have, it appears, engendered growing public animosity toward human rights NGOs. Although it is difficult to determine the precise effect of such campaigns, 3 months after NGO Monitor and *Im Tirtzu* published the reports about how the UN Fact-Finding Mission used evidence supplied by Israeli human rights organizations, a public opinion poll commissioned by the Tami Steinmetz Center for Peace Research at Tel Aviv University found that when asked whether “Israeli human rights organizations that uncover and publish immoral acts perpetrated by Israel should be allowed to operate freely,” 58 percent of Jewish Israelis responded that they should not be allowed or that they should be allowed only to a very limited degree (Eylon & Bar Tal 2010).

More importantly, over the past decade there has been an identifiable and pronounced shift in the attitude of Israelis toward human rights organizations. In a September 2003 poll, taken in the midst of the second Intifada when Israeli human rights NGOs were criticizing government policies and practices in the West Bank, Gaza Strip and East Jerusalem, 57 percent of Israeli Jews still considered Israeli human rights organizations in a favorable way (very favorable and somewhat favorable), while only 13 percent considered the local rights groups unfavorably (somewhat unfavorable and very unfavorable) (Mellman 2003). By May 2011, the percentage of those who considered Israeli human rights organizations in a favorable way had decreased by 16 percent to less than half the population (41 percent), while the percentage of people who considered rights NGOs unfavorably had more than doubled, reaching 31 percent (Figure 1) (Scheidlin 2011).

The 2003 and 2011 polls examine the attitudes of Israeli Jews toward Israeli human rights organizations in general, but the 2011 poll also isolated the attitudes toward Israeli rights organizations that focus on Palestinian rights. The findings reveal that only 21 percent of Israeli Jews have a favorable attitude toward Israeli

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<sup>19</sup> According to Hasan Jabareen from Adalah, the bill was shelved due to pressure from the EU and the US State Department. Interview February 3, 2013.

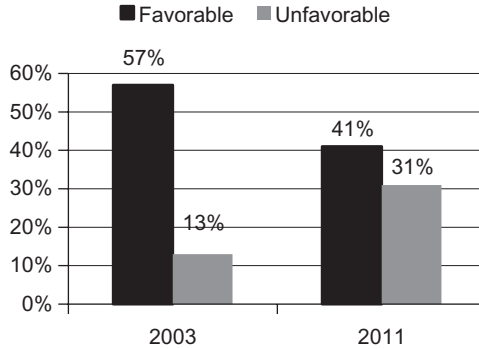


Figure 1. Israeli HR NGOs, 2003/2011.

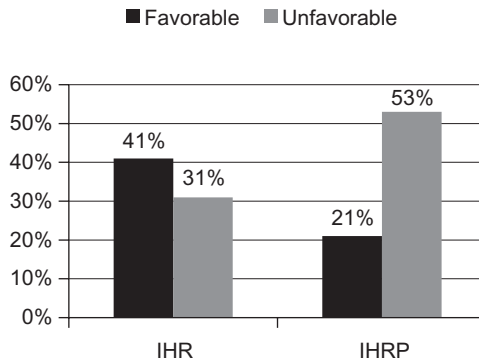


Figure 2. Israeli HR NGOs focusing on Palestinian Rights, 2011.

human rights organizations focusing on Palestinian rights (about half the number of people with favorable attitude toward the overall population of Israeli rights NGOs), and the unfavorable attitude toward these organizations is 53 percent (Figure 2).

While it is impossible to demonstrate a causal relationship between the change in public opinion and the campaign against human rights NGOs, elsewhere (Gordon 2012) I discuss data from eight annual polls (2003–2010) which show that the attitudes of Israeli Jews toward the provision of equal rights to Jew and Arabs, the inclusion of Arab political parties in a government coalition, and government encouragement of Arab emigration remained constant during the same period examined in the polls discussed here (see Table 2). The fact that the views toward these issues did not change while the attitude towards human rights NGOs changed dramatically suggests that the campaign did have an effect.



**Table 2.** Opinions Regarding Equality for Minorities (Percent)

To what extent do you support or oppose each of the following:	2003	2004	2005	2006	2007	2008	2009	2010
Arab parties (including Arab ministers) joining the government (support)	38	45	44	41	30	36	37	30
Full equality of rights between Jewish and Arab citizens (support)	53	64	59	60	50	56	54	54
Agreement of a Jewish majority should be required on decisions fateful to the country, such as returning territories (oppose)	26	23	34	29	33	38	27	24
The government should encourage Arab emigration from the country (oppose) [Jews only]	43	41	50	38	45	44	48	47

*Source: Auditing Israeli Democracy—2010 Democratic Values in Practice.*  
The Israel Democracy Institute, Jerusalem, 2010.

## The New Israel Fund

A few months after the campaigns were launched, the NIF, which had been constituted by the securitizing actors as threatening Israel, changed its funding guidelines and stopped channeling donations to two organizations it had worked with in the past.<sup>20</sup> With headquarters in the United States, and offices in Canada, Europe, Australia and Israel, the NIF is the single largest donor to Israeli human rights organizations, and has raised more than \$200 million over the years primarily from Jewish donors outside Israel. It provides assistance to numerous NGOs in an attempt to enhance “equality of social and political rights to all its inhabitants, without regard to religion, race, gender or national identity.” According to the organization, it has been “widely credited with building Israel’s progressive civil society from scratch,” and is “a leading advocate for democratic values, builds coalitions, empowers activists and often takes the initiative in setting the public agenda” (New Israel Fund 2012). Considering that the NIF is a leading actor that has helped shape the progressive Israeli NGO scene, it is particularly significant that it introduced a series of new policies and guidelines for its grantees in the wake of Im Tirtzu’s and NGO Monitor’s campaign.

One of these involves universal jurisdiction, and more specifically, NIF’s policy decision not to support NGOs that favor the use of universal jurisdiction outside Israeli territory.

<sup>20</sup> According to Naomi Paiss, Development Director at NIF, the changes in guidelines were introduced due to a change of guard in the NIF’s leadership. The campaigns, according to Paiss, only accelerated a process that was already underway. Interview with Naomi Paiss, February 12, 2013.

As the leading organization advancing democracy in Israel, the New Israel Fund strongly believes that our job is to work within Israel to ensure democratic accountability. With a free press, involved citizenry, a strong and independent judiciary, and a track record of officially constituted commissions and committees of inquiry, there are internal means to hold Israeli leaders accountable to the law, and we work to strengthen all those institutions. We therefore firmly oppose attempts to prosecute Israeli officials in foreign courts as an inherent principle of our dedication to Israeli democracy. (New Israel Fund 2010)

NIF, in other words, does not oppose the application of international law, but believes that international law should only be applied against Israeli government and military officials tried in Israeli courts. This view is based on the widely accepted notion that universal jurisdiction is a “reserve tool” in the fight against impunity, “to be applied where the justice system of the country that was home to the violations is unable or unwilling to do so. This principle, known as ‘subsidiarity,’ implies that courts in the territorial state that are able and willing to prosecute individuals for crimes should have the priority in exercising jurisdiction over the crimes” (Human Rights Watch 2006). The problem with this principle, according to Human Rights Watch, is that an over restrictive approach to subsidiarity runs the risk of ignoring or widening the impunity gap that may exist in the state where the crimes occurred.

Legal scholars have shown that in the past four decades, in almost all of its judgments relating to the Occupied Territories, “especially those dealing with questions of principle . . . [the Israeli High Court of Justice] has decided in favor of the authorities, often on the basis of dubious legal arguments” (Kretzmer 2002), and has never held government or military officials accountable for contravening international law. The upshot is that Israeli human rights organizations that wish to receive support from the NIF cannot directly submit evidence to courts abroad and have to be extremely careful when displaying any other kind of active or even vocal support for universal jurisdiction. Whether the NIFs policy change is worthy can be certainly be debated, and those critical of the way universal jurisdiction is being deployed in national and regional courts may very well agree with the donor’s decision, but the fact that the donor made the decision in the weeks following the campaign against it underscores the campaign’s impact.

## **Conclusion**

In a meeting with former Danish Justice Minister Brian Mikkelsen, Israeli Foreign Minister Avigdor Lieberman declared

that the rules of war need to be changed to allow democracies to combat terrorist threats (Lazaros 2009). The idea behind Lieberman's declaration, as Michael Kearney points out, was to change international humanitarian law so as to exclude its full application in certain kinds of conflicts, such as those involving Hezbollah in 2006 and Hamas in 2008–2009 (Kearney 2010), as well as those fought by the United States in Afghanistan, Yemen, and Pakistan. Colonel Daniel Reisner, the former head of the Israeli military's International Law Department, exposes how Israel thought it could change international law.

If you do something for long enough, the world will accept it. The whole of international law is now based on the notion that an act that is forbidden today becomes permissible if executed by enough countries. After we bombed the reactor in Iraq, the Security Council condemned Israel and claimed the attack was a violation of international law. The atmosphere was that Israel had committed a crime. Today, everyone says it was preventive self-defense. International law progresses through violations. We invented the targeted assassination thesis and we had to push it. At first, there were protrusions that made it hard to insert easily into the legal molds. Eight years later, it is in the center of the bounds of legitimacy. (Feldman & Blau 2009)

While Lieberman and Reisner would have liked to change international law, it seems highly unlikely that altering the law's black letter will be possible in the foreseeable future. What is happening on the ground, however, is that the courts in Israel and the United States (and elsewhere) often interpret international law in a way that is favorable to the security establishment in their country (Hajjar 2003; Kretzmer 2005). In addition, the inability to actually alter black-letter law has led to the adoption of two other strategies. In order to dilute the potency of universal jurisdiction, domestic laws that enable local courts to use international humanitarian and human rights laws to prosecute foreign nationals have to be changed. One of the strategies introduced by the United States, then, is to limit the exercise of universal jurisdiction in national courts, and this has been happening in countries like Belgium, Spain, and the United Kingdom (Human Rights Watch 2006). Second, it is crucial to limit the flow of information reaching these courts. Accordingly, in order to circumscribe the efficacy of universal jurisdiction suits, it becomes necessary to hinder the work of liberal human rights organizations that produce and disseminate evidence about social wrongs perpetrated by military personnel and government officials, particularly acts that constitute war crimes, crimes against humanity, genocide, and torture.

In this article, I have concentrated on the campaign against liberal human rights organizations, arguing that neoconservatives use lawfare as a speech act that constitutes rights work within a security frame. I have shown how a group of securitizing actors use speech acts to designate (and indeed constitute) the liberal human rights NGOs as an existential threat; that the threat has been framed in such a way so that it requires emergency intervention or special measures; and that this creates the legitimacy for demanding special actions and determining new priorities. The paradox is that the campaign against liberal human rights NGOs has been carried out through practices and processes that are applauded in every democracy textbook. In the case of Israel, members of civil society have raised an issue and put it on the public agenda; they have then lobbied legislators and policy makers to introduce new laws and appear to have succeeded in swaying public opinion and changing the policy of a major donor organization to human rights work.

It is important to recognize, however, that the campaign against human rights organizations is informed by Edmund Burke's famous claim (when writing about the French revolution) that there is no such thing as the abstract rights of men, only the rights of the Englishmen (Burke 2002). For those leading the campaign in Israel, the nation precedes and trumps the human, and therefore the rights of the nation's subject must be protected even at the expense of human rights. The struggle, in other words, is also about the vernacularization of human rights. In a meeting at the United States embassy in Tel Aviv, Gerald Steinberg "argued that he did not want the NGO legislation [limiting funding for human rights organizations] to feed into the delegitimizing rhetoric, but that such an unintended consequence might be an acceptable cost to reduce the power of the NGOs' current monopolization of human rights rhetoric for politicized purposes" (United States Embassy 2010). "Politicized purposes" means, in this case, that the subject of human rights (Rancière 2004) referred to by the human rights NGOs extends beyond the Israeli Jew. This is why the referent object is the Jewish state of Israel, and not simply the state of Israel. While all forms of securitization are dependent on a rivalry between friend and enemy (Buzan, Wæver, & de Wilde 1998), here we witness a "societal securitization," whereby the abstract or universal human is increasingly becoming the enemy, which is used by the neoconservative NGOs and the government as a "constitutive outside" that helps shape, demarcate and indeed constitute the ethnonational "we." Insofar, as liberal human rights organizations support a universal notion of human rights, they are aiding the enemy because they are undermining the ethnonational group.

The danger of the securitization process is that it aims to limit the work of human rights organizations through restricting the

discourse (imposing a state-centered vernacular) and activities that they deploy. According to a report summing up the meetings of a focus group seminar where members from nine Israeli human rights organizations discussed the declining reputation of local human rights organizations among the Israeli public, one of the suggestions was to change the wording of the press releases published by rights groups. The report suggests that in the past a press release could have stated that “[Israel’s] prohibition on transferring goods from Gaza to the West Bank is an illegal practice designed to punish the Palestinian residents of Gaza and to cut them off from their brethren in the West Bank, under the guise of false security claims and the misleading notion that Gaza is no longer occupied.” Following discussions in the focus groups, practitioners concluded that rights NGO’s should consider framing the press release in the following manner: “The policy that permits the transfer of goods from Gaza via Israel to Europe but not the West Bank prevents the fulfillment of the Strip’s productive potential, and is contrary to both government decisions and the declarations of the security establishment on the need to enable economic development for [Gaza’s] residents. The government must refrain from imposing restrictions on movement that are not necessary for maintaining security, which disproportionately harm the civil population, or prevent Gaza residents from living a normal life” (Avital & Ashfer 2012).<sup>21</sup>

Much can be said about the difference between these two statements, but I want to underscore the way Israel’s security concerns are presented in the first press release as false and therefore should not obstruct human rights while in the second one, human rights are presented as legitimate and something that should be actualized only so long as they are not in conflict with Israel’s necessary security concerns. In other words, the way for Israeli rights organizations to be legitimized in the eyes of the Israeli public is to agree with the subordination of human rights to Israel’s (currently conceived) security agenda. Whether Israeli rights practitioners actually end up adopting this new discourse is unclear, but if they do then the securitization process will have achieved its goal.

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<sup>21</sup> The text was translated by the author.

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