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**Conflicting Views of Sovereignty in European-Israel Relations: The NGO**

**Funding Debate**

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**Abstract:**Externally-based efforts to encourage or enforce normative principles such as human rights and international law clash directly with the framework of national sovereignty and non-interference in the internal affairs of other states. This issue is characteristic of cases in which the EU and individual states promote such agendas outside of their borders. Israel presents a particularly notable case, characterized by intense disputes over large-scale European state support for Israeli civil society organizations in the realms of human rights, peace, democracy, and similar issues. In these disputes, conflicts over perspectives regarding sovereignty, national identity, and the right to intervene in support of particular policies are of central importance. This paper will thus examine the tension between sovereignty and the practice of external state funding for political NGOs by considering the case of Israel

**Key Words:** sovereignty, soft power, non-governmental organizations, human rights, civil society

1. **Introduction: The Tension between State Sovereignty and Enforcing Universal Norms**

For many years, the principles of national sovereignty and non-interference in internal affairs that arose in Western Europe were central to international relations. Recently, however, this framework has been weakened considerably through a number of mechanisms and practices. Among these mechanisms are significant amounts of government funding to non-governmental organizations (NGOs) in order to influence the policies and politics of other states. Thus, while NGOs are formally independent actors, as reflected in their description, they have become a major means for breaching the boundaries of sovereignty.

These issues are highlighted in the ongoing debate regarding the activities of Israeli political NGOs which are heavily funded by European governments, on a unique and unprecedented scale. From some Israeli perspectives, large-scale European state funding (including the European Union (EU)) for organizations that claim mandates related to human rights, peace, and similar issues, and seek to change Israeli policies and internal discourse, constitute major violations of sovereignty. Israeli politicians from different parties have proposed legislation seeking to impede the funding for and activities of these organizations. In response, officials from European governments and the EU have argued that Israeli legislation affecting NGOs that they fund is anti-democratic.

The tension between the norms of sovereignty and the practice of external state funding for political NGOs will be examined in this paper through the Israeli –European case study. The paper begins with reviews of academic discussions of national sovereignty and of the role of trans-national NGOs. It then moves to a detailed study of European funding to NGOs active in the Israeli-Palestinian conflict, and a description of the reactions of Israeli officials and stake-holders, including legislative proposals to constrain these policies, as well as official European responses.

1. **Theoretical Framework: Sovereignty and Soft Power in Global Politics**

The principle of national sovereignty is deeply engrained in the international system, based on the evolution of nation states in Western Europe. Hobbes articulated the principle, based on the dangers resulting from the inherent anarchy, by endowing the sovereign “with the heavy responsibility of providing security for its people.” To that end, the state must “exclusively possess and wield two swords: the ‘sword of justice’ against domestic threats and the ‘sword of war’ against foreign threats” (Jackson, 2007, p.17). This abstract analysis was translated into practice in Western Europe, as reflected in the Treaty of Westphalia (1648), and for centuries was seen as central to the international system.[[1]](#footnote-0) The growth of democracy gave additional legitimacy to the concept of sovereignty, vested in parliamentary government, and, as emphasized by Thomas Jefferson, “instituted among men, deriving their just powers from the consent of the governed” (Jackson, 2007, p.83-87). On this basis, actions with origins that are external to the state, including foreign governments, and do not derive legitimacy from the consent of the governed, are inconsistent with the principle of democratic sovereignty. Furthermore, in this system, sovereign states inherently have an equal status – no state has greater or lesser legitimacy or capability to govern than any other state, and therefore, interference in the internal affairs of another state cannot be justified.

However, the absolute and inviolable nature of the sovereignty principle has gradually eroded in the past 70 years in the form of important exceptions, such as those expressed in the 1948 Universal Declaration of Human Rights and Genocide Convention (Bull, 1988). Human rights violations, genocide, crimes against humanity, and war crimes are issues in which liberal democracies, in particular, accept and in some cases demand the violation of the sovereignty principle (Denza, 2016, p.465-466). The United Nations Charter (Article 2.7) elucidates both the concept and the justification for such exceptions, stating that, “Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII” (United Nations, 1945).

As the emphasis on human rights increased, including the growth in the power of trans-national institutions and non-governmental organizations that transcend borders, concerns for abuses in order to manipulate societies and encroach on national sovereignty were raised. As Jackson notes, “There is a belief that sovereign states are an enemy of human rights, and that the construction of a world community which rises above the sovereign state system is necessary to emancipate humankind” (Jackson, 2007, p.114). In parallel, the permeability of national borders and the process of globalization resulted in the questioning of “the definition of sovereignty as an absolute concept of unlimited freedom and authority” (Snyman-Ferreira, 2006, p.17-19). According to Snyman-Ferreira (2006), “States have come to realise that there exists a need for co-operation in order to achieve the advancement of community goals and that all members of the international community must take into account the valid interests of other members when exercising their sovereignty.” Beyond the realm of human rights, the 1968 Nuclear Non-Proliferation Treaty and the 1997 Ottawa Land Mine Ban Treaty, are examples in which signatories relinquish some sovereignty to international structures.

The evolution of the principle known as “Responsibility to Protect” (R2P) over the past twenty years further demonstrates the trade-off between sovereignty and the advancement of an international good. The R2P norm, formally adopted in 2005, views sovereignty as contingent on human rights – when a country commits genocide, war crimes, crimes against humanity, and/or ethnic cleansing, the international community has a responsibility to act, and thereby encroach on the offending state’s sovereignty (Thakur and Weiss, 2009, p.22-53).

Western European governments, including the EU, have been instrumental in the erosion of sovereignty, through their emphasis on “normative power” and universal principles, with particular emphasis on universal human rights. European concepts of “global governance” and “transnationalism” are strongly supported by political officials and diplomats, members of parliaments, academics, journalists, and other members of the foreign policy elite.

Indeed, the European Union was formed in large part as a reaction to the history of violent nationalism, particularly in the first half of the 20th Century, which led European leaders to replace the emphasis on sovereignty based on nation-states with an overarching collective identity, mission, and governmental structure. Anthony King acknowledged this, stating (long before the 2016 Brexit vote) that, “Not only did the Parliament cease to be sovereign, Britain itself ceased to be an old-fashioned sovereign state. The fact of being a member of the EU permeates almost the whole of the British government – to a far greater extent than most Britons seem to realise” (King, 2007) Jackson elaborates explaining that, “If the EU continues to deepen constitutionally, there may come a time when these countries…will no longer be sovereign in the classical meaning” (Jackson, 2007, p.14).

As the EU has expanded eastward, these concepts generated both support and opposition among those for whom the newly gained or restored national identity and sovereignty remains salient (Arnold, 2016). Rejection of this elite-led effort has increased, as reflected in the UK “Brexit vote” of June 2016, as well as other efforts to reassert national identity and sovereignty in Hungary, France, and elsewhere. The Brexit vote in particular highlighted the salience of national sovereignty in the 21st Century. Former Prime Minister David Cameron argued that, “Sovereignty really means: are you able to get things done? Are you able to change things, to fix things?” In contrast, MP Michael Gove made the case for sovereignty, arguing that as part of the EU, the UK government “cannot remove or reduce VAT, cannot support a steel plant through troubled times, cannot build houses we need where they’re needed and cannot deport all the individuals who shouldn’t be in this country” (Rozenberg, 2016)

Beyond Europe, the responses to the shifting concepts of sovereignty range from agreement (such as Liberal governments in Canada, and Labour governments in Australia) to intense opposition. Under a Liberal government, Canada played a leadership role in drafting the 2001 International Commission on Intervention and State Sovereignty (ICISS) report on R2P, but the Conservative government that was elected shortly afterwards (in 2006) prohibited Canadian diplomats from even using the phrase “Responsibility to Protect” (Wertman, 2013).

In the US, the principle of “American exceptionality” remains strong, as reflected in an emphasis on maintaining sovereignty, with limited enthusiasm (to understate the case) for international frameworks that encroach on this principle.[[2]](#footnote-1) Kenneth Anderson has referred to “unaccountable transnational elites” imposing “evolving” norms that depend “not on consent [of the governed] but on the presumed rightness” of universal principles (Anderson, 2005, p.1255-1312).

The encroachment on sovereignty was also reflected through the major growth in the influence of politicized non-governmental organizations (NGOs), both global, such as Amnesty International, Human Rights Watch, and FIDH (Fédération internationale des ligues des droits de l'homme), as well as thousands of regional and local groups claiming universal normative agendas. As Keck and Sikkink (1998) argue in *Activists Beyond Borders,* NGOs, both individually and in the form of transnational networks (TANs), have played major roles in empowering international organizations through their ability to use “soft powers” such as information, symbolic, leverage, and accountability politics (Keck and Sikkink, 1998, p.8-10). This NGO influence in international frameworks is especially visible at the United Nations Human Rights Council (HRC), where NGOs have the ability to participate in debates. Over 5,000 NGOs have this UN ECOSOC status, meaning that they are allowed to speak in HRC sessions, submit reports and in other ways, participate in these activities.

1. **NGO Power in a State Based System**

The source of NGO political influence, particularly regarding moral and legal issues, is what Nye terms “soft power,” which he describes as “the ability to get what you want through attraction rather than coercion or payments” (Nye, 2004, p.x.). In the soft power realm, NGOs claiming normative agendas related to human rights, peace, environmental, and other issues are viewed as sources of expertise untainted by partisan politics or economic objectives (Steinberg, 2011, p.27). Keck and Sikkink elaborate on where NGOs are able to gain power in an international system traditionally controlled and governed by states. According to their “Boomerang Model,” local actors might face challenges influencing the policy of their own government. These local actors can thus partner with international NGOs (INGOs) to create external pressure and force the local government to respond (Keck and Sikkink, 1998, p. 8-10).

However, NGOs cannot act in the international arena without the support of individual states, either individually or collectively. In the UN, the process of granting ECOSOC status is led by a committee composed of state representatives. As Jackson (2007) pointedly notes, “They [NGOs] have an important humanitarian role, of course, but it is a secondary and auxiliary role to that of sovereign states” (Jackson, 2007, p.127).

It is at this interface between individual states, international organizations, and NGOs that the decline of sovereignty in Western Europe has played a central role. These governments have provided large-scale support to NGOs in order to promote their normative policies and objectives, including funding and access to international organizations such as the ICC. Europe, both individually and collectively through the EU, provides hundreds of millions of euros annually to political NGOs operating outside the region, and as argued by Bendell and Cox (2006), “Donors have the power to influence whether NGOs have the resources to do their work and how they do it” (Bendell and Cox, 2006, p.109-126). The NGO funding frameworks include foreign ministries and aid agencies of the individual countries, government funded church groups such as Christian Aid (UK) and Brot fuer die Welt (Germany), and specialized bodies such as the European Instrument for Democracy and Human Rights (EU). These NGOs act essentially as subcontractors for the governments, seeking to advance their policies as well as providing input for the development of those policies, and as Sternberg (2010) argues, “bel[ying] the term ‘non-governmental’ in their title” (p.22-28).

These NGO activities take place in countries outside of the European region, and provide the EU as well as individual state funders with a means of circumventing sovereignty norms. With the European budgets, local organizations that claim to promote normative agendas in the realm of human rights, democracy, equality, and similar values, operate directly in the target countries.

In examining this process, it is important to distinguish between open democracies and closed societies, where intrusion on sovereignty is considered more acceptable. Indeed, Jackson argues that “the idea of sovereignty and the institutions associated with it will continue to evolve in ways that are not predictable,” (Jackson, 2007, p.112) and perhaps it will be the NGOs and human rights norms that lead this change. For the most part, European funded NGO political campaigns are focused on non-democratic countries, including Russia, China, Africa, and the Arab Middle East. The intervention and accompanying violation of sovereignty, whether by governments directly or via NGOs, are consistent with the Universal Declaration of Human Rights, R2P, and other normative instruments.

However, when the targets of these externally-led agendas are democracies, as in the cases of India and Israel, this process is rejected by some as a fundamental violation of sovereignty and non-interference. In both countries, critics have introduced legislation in order to increase the transparency and supervision of foreign-funded political NGOs, while also reducing their influence in the internal discourse. As Jalali (2008) notes, “even democratic states in an era of universalization set limits on activists’ external ties” (Jalali, 2008, p.164).

In India, restrictions on NGOs are explained as necessary to deter “political meddling” (Mohan, 2017) in “high politics” issue areas (Jalili, 2008, p.165). For many years, India political leaders railed against the Ford Foundation’s intrusion on national sovereignty through funding that promoted social policies that were not approved by the government. Legislation, adopted in 2010, (Give2Asia) requires “nongovernmental groups that seek foreign donations…to register under the Foreign Contributions Regulation Act (FCRA), which prohibits the use of overseas funds for ‘activities detrimental to the national interest’” (Mohan, 2017). The law, based on fears of external manipulation, requires NGOs that receive foreign contributions to register under the Act or to receive government permission to operate (Mohan, 2017).Among the specific issues, former Prime Minister Monmohan Singh blamed US-based philanthropies for “fomenting anti-nuclear protests that have stalled the commissioning of India’s biggest nuclear reactor.” Similarly, an unnamed Indian government official told a journalist that “when an NGO used foreign donations to criticize Indian policies ‘things get complicated, and you never know what the plot is’” (Lakshmi, 2013). NGO violations of this law have resulted in freezing of licenses and registration – examples of “non-compliant” NGOs include Greenpeace (Mathur, 2015) and the Ford Foundation (*Times of India*, 2015).

India’s FCRA law affects both government and private funding for NGOs engaged in advocacy. In a recent example, US-based Compassion International, which receives over $50 million in US private donations, and funds 500 child development projects in India, has been accused of missionary-like activities (Compassion International). In response, the Indian government blocked its ability to fund projects, and placed the NGO on the list of organizations requiring “prior permission to bring in funds from overseas” (Mohan, 2017). The Indian Ministry of Home Affairs explained that two of Compassion International’s affiliate organizations (Caruna Bal Vikas and Compassion East India) were “funding religious activity without permission” (Mohan, 2017). The NGO and its supporters, in turn, criticized Indian policies targeting “human rights, environmental and other groups whose advocacy clashes with its [Modi led Indian government] agenda” (Safi, 2017).

The Indian Social Action Forum (Insaf), which receives 90% of its funding from overseas, is another case. In 2016, Insaf received approximately $110,000 (Rs. 7.4 million) in indirect German government funding via “Brot fuer die Welt” (a major Protestant aid group) as well as approximately $8,000 (Rs. 516,190) in indirect French government funding via CCFD Terre Solidaire (Insaf India). In October 2016, Insaf was served an interim order from the High Court of Delhi stating that its renewal request had been refused under the FCRA (Insaf Inida).

The Indian NGO registration law has been criticized for “restricting NGOs’ access to crucial foreign funding, claiming that provisions are increasingly being used to ‘silence’ groups that are critical of government’s policies” (*The Indian Express*, 2016). In 2015, the United Nations Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, appointed by the Office of the High Commissioner for Human Rights, stated that the FCRA norms “are not in conformity with international law, principles and standards” (Bhattacharya, 2017). Indian opposition MP’s criticized the law, stating that it could give the government “too much discretionary power to crack down on dissenting NGOs” (Reddy, 2013).

In contrast to the Indian case, Israel’s intense debate on NGO funding is more recent and focuses on large-scale funds from foreign governments that are channeled to a narrow group of political NGOs, which, in turn, support the policies of the donor governments. The majority of this money comes from Europe, and the large-scale funding for Israeli NGOs claiming human rights and related agendas, is unique. As will be detailed below, Israel has struggled with the tension between protecting its society from foreign government intervention, while at the same time ensuring democratic processes, including the legitimacy of civil society advocacy.

1. **Sovereignty and Government Funded Political NGOs: The Case of Europe and Israel**

Israel has had a rich and dynamic NGO community for many years, operating in numerousareas of the social and political spectrum, and largely supported by Jewish donors and related philanthropies. However, beginning slowly in the mid-1990s, the EU and individual European countries began to provide relatively larger amounts to a small number of Israeli NGOs identified with opposition politics and agendas.

For Europe, the relationship with Israel is unique, in part due to the history, and more recently, reflecting sharp differences over the post-1967 “occupied territories” and the relationship with the Palestinians. Since the 1980 Venice Declaration promoting a Palestinian state, (adopted by the then nine member states of the EEC) the EU has sought to influence internal Israeli decision-making and political developments. Officials in the EU and elsewhere have pressed Israel to accept their positions, including withdrawal to the pre-1967 armistice lines, citing interpretations of international law and norms.

The EU and Member States (as well as Norway and Switzerland) sought to promote this agenda via funding and close cooperation with a number of Israeli and Palestinian NGOs that promote similar objectives. As this support and the impacts of the NGOs increased, a number of Israelis criticized the European alliance with local political NGOs as a major encroachment on sovereign equality. Sovereignty and national self-determination are central to Israel’s ethos. After 2,000 years of stateless exile and vulnerability, the political Zionism that began in Europe at the end of the 19th Century galvanized Jewish populations throughout the world. Israel's raison d'etre is thus based on the restoration of statehood, national independence, self-determination, and sovereign equality for the Jewish people.

Furthermore, the State’s concepts of nationalism and self-determination are deeply ingrained in the Biblical narrative as well as Jewish historiography and religious practice. The story of the Israelites that unfolds in the Hebrew Bible is based on a unique and exclusive identity, distinct from all other peoples, in a world which is based on nation states, endangered by multinational empires (Egypt, Babylonia, Assyria, etc.). Jewish national identity comes with an attachment to a particular territory – the Land of Israel, from which the nation has been expelled and then returned numerous times (Hazony, 2016). Although dispersed and without sovereignty since the Roman destruction in 70 CE, Jewish prayers and practice have continued to emphasize the central goal of returning to the land and to Jerusalem (Zion).

As a result, while political Zionism was highly controversial among Jewish elites for religious, ideological, and practical reasons when it emerged in Europe at the end of the 19th Century, the centrality of return dominated. Despite many setbacks, the Zionist movement eventually resulted in the establishment of the State of Israel (Holzer, 2001, p.129-145).

Thus, what are perceived as foreign (including European) violations of hard- won sovereign equality create strong reactions among Israelis. The conflict between Israel and European governments over the latter's use of “soft power,” and specifically the funding and alliances with a select group of politically active and oppositional civil society organizations, is rooted in this question of sovereignty.

Early evidence of this conflict is reflected in criticism of the EU for supporting the NGO Forum of the 2001 UN Durban Conference. More than 1,500 organizations participated in this event, including Human Rights Watch and Amnesty International, the two largest and most powerful human rights NGOs. Despite the event’s title as the “World Conference against Racism,” the event was described by participants as virulently antisemitic. US Congressman Tom Lantos wrote, “For me, having experienced the horrors of the Holocaust firsthand, this was the most sickening and unabashed display of hate for Jews I had seen since the Nazi period” (Lantos, 2002).

The Final Declaration of the NGO Forum included an attack on Israel’s legitimacy, asserting that “[t]argeted victims of Israel’s brand of apartheid and ethnic cleansing methods have been in particular children, women, and refugees,” and launching strategies of boycotts (today known as the BDS Movement) and lawfare campaigns in order to effect the “complete and total isolation of Israel as an apartheid state...the imposition of mandatory and comprehensive sanctions and embargoes, the full cessation of all links (diplomatic, economic, social, aid, military cooperation, and training) between all states and Israel” (Asia-Pacific NGO Movement for WCAR, 2001). The role of the EU in supporting this NGO event that sought to delegitimize Israeli sovereignty was highly problematic.

In this period, the visibility of the NGO efforts to implement the delegitimization strategy increased, as did the budgets for this provided by outside governments and private foundations (Steinberg, 2011, p.73-88). The series of deadly Palestinian terror attacks and Israeli military responses were accompanied by NGO campaigns that condemned Israel using the Durban vocabulary of “war crimes,” “apartheid,” and “human rights violations.” The NGO claims were highlighted in publications by the United Nations, in calls for BDS campaigns, and submissions to the International Criminal Court calling for investigations and indictments of Israelis.

A group of 20 to 25 Israeli NGOs – all funded by the EU and individual European governments – played a central role in these processes. By 2005, this funding had grown to tens of millions of euros annually. (Steinberg, 2011, p.24-54). These Israeli NGOs are seen by critics as providing legitimacy to global anti-Israel campaigns, as well as pressing their politicized agendas into domestic political and legal frameworks (Yemini, 2014 and B’Tselem, 2011). The Israeli NGOs in this group include Coalition of Women for Peace, Who Profits, Zochrot, Breaking the Silence, B’Tselem, Gisha, Yesh Din, Mossawa, Adalah, and others. They are often cited and quoted, as demonstrated in the UN Goldstone report (2009) on Gaza (United Nations, 2009). This document had approximately 500 citations to NGOs, of which approximately a third were referenced to 10 of the Israeli NGOs funded by European government frameworks (NGO Monitor, 2009).

The budgets for these Israeli NGOs, all on the Left of the political spectrum,[[3]](#footnote-2) are provided by frameworks such as the EU’s European Instrument for Democracy and Human Rights (EIDHR) and Partnership for Peace (PfP), and direct allocations from European embassies in Tel Aviv and Jerusalem. In the period between 2007 and 2010, EIDHR’s country-based support scheme (CBSS), channeled more funds to Israeli and Palestinian NGOs than to any other country or conflict area in the world (EIDHR, 2011). These amounts contrasted to the low levels of support for NGOs focused on Syria, Iran, Libya, and other countries in the Middle East with serious human rights issues.

Large-scale European government funding of Israeli NGOs was facilitated by the Euro-Mediterranean (Euro-Med) framework inaugurated in 1995 at the EU Barcelona conference. The People to People program, which later became the Partnership for Peace (PfP) and has since changed its name once more to Peacebuilding Initiative (PbI), had annual budgets of between €5 and €10 million, (İşleyen, 2015) distributed to Israeli and Palestinian NGOs.

Although the EU decision making process for PfP grants is a closely held secret, a leaked summary of a 1999 meeting has been cited by Israelis as demonstrating the politically manipulative aspects and the infringement on sovereignty and democratic self-determination (European Commission, 1999). The summary indicates that the EU committee allocated €400,000 to Peace Now with the objective of convincing Israeli Jews from Russia to change their political views[[4]](#footnote-3); €250,000 to The Four Mothers Movement to Leave Lebanon in Peace; and €250,000 to a fringe NGO calling itself the Israeli Committee Against House Demolitions (ICAHD) for a “joint Israeli-Palestinian public awareness campaign and concrete action against the practice of land expropriation and house demolitions by the Israeli army in the West Bank.”[[5]](#footnote-4) An academic journal article analyzing the PfP from a European perspective was given the indicative title of “Governing the Israeli–Palestinian peace process: The European Union Partnership for Peace” (İşleyen, 2015).

These NGOs also influenced important European Union and national policy statements on the most sensitive and complex dimensions of the conflict, such as borders, Jerusalem, and the status of Arab citizens.In response, Israeli government officials and public figures clashed repeatedly with European leaders on these issues, and became aware of the role of Israeli NGOs in formulating and influencing the European policies (Steinberg, 2015, p.251-268). The topic was discussed by journalists in media platforms and in academic venues.

In the 2008 Israeli elections, the issue of foreign funding for these Israeli NGOs became visible, and candidates from a number of parties on the right of the political spectrum called for legislative measures in response. In the coalition that was formed after the elections, led by Netanyahu, Knesset members and ministers continued to oppose large-scale foreign state funding of a narrow spectrum of Israeli organizations, arguing that this was a form of manipulation and a direct violation of sovereignty. These concerns created a perception of these groups as “foreign agents,” promoting the interests of foreign governments within the domestic political framework. In addition, the extreme secrecy with which these European NGO funding processes are protected from independent assessment added to Israeli concerns.

The “sovereignty equality” dimension which, as noted, is central to the Israeli ethos, was also cited in criticizing these policies. Critics noted the scale of the funding for the selected Israeli NGO is *sui generis* – there is no comparable European government funding for politically active NGOs in other democratic countries. (Two NGOs in the US received brief EU grants for opposing the death penalty, and the EU funded a Canadian NGO that opposed Ottawa's environmental policies at the time.) Israeli political figures and journalists proposed government funding for NGOs that support Basque and other separate groups active in Europe (Eldad, 2012).

A number of prominent journalists also took up this issue, arguing that “there is no country that allows foreign donations for radical political NGOs that undermine the country’s founding ethos,” (Yemini, 2013) and further condemning this practice as an attempt at “undermining Israeli elected governments” (Eidar, 2014). In August 2009, Prime Minister Netanyahu raised the issue with British Prime Minister Gordon Brown, asking the UK to cease funding for the NGO Breaking the Silence – a highly controversial NGO founded by ex-soldiers who oppose government policy. In a public statement, Netanyahu noted that, “They are breaking their silence about the only democracy in the Middle East that has an independent legal system and an investigative press that does not cease dealing with these issues.” He added that “Israel, like Britain, is fighting terrorism and is exercising its right to self-defense. There is no place for accusing IDF officers just as no one can accuse British officers…” (Ravid, 2009).

In parallel, Members of Knesset (MKs) from a relatively wide spectrum of political positions, including the Labor (center-left), Kadima (a short lived centrist party), and Likud (right) parties, introduced legislation requiring all Israeli NGOs receiving funding from foreign governments to submit quarterly reports to the Israeli registrar of non-profits (Elkin, 2011). After numerous committee sessions and intense debate, this legislation was adopted in February 2011, although by then, the government coalition had changed, and Labor MKs voted against.

The more intense efforts to go beyond transparency, and to move towards restrictions were reflected in the adoption of an “anti-boycott law,” allowing “citizens to bring civil suits against persons and organizations that call for economic, cultural or academic boycotts against Israel, Israeli institutions or regions under Israeli control.” (Elkin, 2011). The original draft enjoyed the support of MKs from the right (Likud, Israel Beiteinu, National Union, Jewish Home), the centrist Kadima party, and the Ultra-orthodox parties. However, in the context of an intense and highly polarized debate (see below), Kadima MKs voted against the law in its final reading (July 2011).

In addition to these laws, Members of the Knesset from right wing parties proposed measures to limit, tax, or completely block foreign government funding. In February 2011, MK Faina Kirshenbaum (Israel Beiteinu), proposed a 45% taxation rate on foreign government grants over 20,000 NIS (approximately $5,000) (Kirshenbaum, 2011). In March 2011, MK Ofir Akunis (Likud), together with MK Robert Ilatov (Israel Beiteinu) and MK Tzipi Hotovely (Likud), proposed an additional bill expressly forbidding foreign donations of more than 20,000 NIS to non-profit associations (Akunis, Ilatov, and Hotovely, 2011).

In November 2011, the two proposals were combined into a single draft, which designated three categories of NGOs: the first included NGOs active against Israel in various ways (denying Israel's right to exist, incitement to racism, supporting armed struggle against Israel, calling for discriminatory boycotts, lawfare, and more). These would not be allowed to receive any foreign funding. The second category referred to political NGOs (vaguely defined), which would be assessed 45 percent on donations from foreign governments, subject to a hearing in the Knesset Internal Affairs Committee. The third category included NGOs supported by the Israeli government, which would be exempt from limitations (Goraly, 2011).

In July 2013, following another election in which the NGO funding issue played a role, Ayelet Shaked (the Jewish Home) and Robert Ilatov (Likud-Israel Beiteinu) reintroduced the bill seeking to tax foreign government funds, avoiding vaguely defined terms such as “political NGOs” (Ilatov and Shaked, 2013).

An alternative approach (and a form of domestic political competition) was introduced by MK Aryeh Eldad of the National Union party, to the right of the Coalition. He proposed that the Israeli government fund oppositional NGOs active in European states that support Israeli NGOs. According to Eldad “states such as Spain, would undoubtedly appreciate funding for groups promoting Basque or Catalan independence; in the same spirit, the government of the UK would appreciate Israeli support for organizations monitoring the British army's day to day contact with civilians in areas it controls in Iraq and Afghanistan” (Eldad, 2012). In this way, Eldad emphasized the claim that European funding for political NGOs constituted an attack on the principle of sovereign equality.

**Table I**

**Figure 1: Proposed NGO Related Knesset Bills**

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| **Member of Knesset (party)** | **Bill** | **Date Proposed** | **Status** |
| Zeev Elkin (Likud) et al | Bill on Disclosure Requirements for [Groups] Supported by a Foreign Government Body-2011 | October 2010 | Voted into law February 2011 |
| Faina Kirshenbaum (Israel Beiteinu) | Proposed bill amending income tax ordnance (taxation of income of public institutions receiving foreign government funding | February 2011 | Withdrawn; reintroduced combined with Akunis proposed bill (November 2011); Approved by Ministerial legislation committee. Frozen due to appeal my minister Begin and others. Reintroduced (March 2013). |
| Zeev Elkin (Likud) et al.  | Law for the Prevention of Harm to the State of Israel through Boycotts – 2011 | March 2011 | Voted into law, July 2011 |
| Ofir Akunis (Likud), Robert Ilatov (Israel Beiteinu) & Tzipi Hotoveli (Likud) | Proposed Bill: Non-profit Association Law (amendment – forbidding donations from foreign governmental bodies) | June 2011 | Withdrawn; reintroduced combined with Kirshenbaum’s proposed bill (November 2011); Approved by Ministerial legislation committee. Frozen due to appeal my minister Begin and others |
| Aryeh Eldad (National Union) | Proposed law for supporting third sector organizations in donor countries | January 2012 | Passed initial reading (July 2012); frozen due to general elections |
| Robert Ilatov & Ayelet Shaked | Proposed law amending the income tax ordinance (foreign state entity support for non-profit associations in Israel)-2013 | July 2013  | Approved by Ministerial legislation committee (December 2013); frozen after appeal by Ministers Livni, Perry and Lapid |

These draft bills did not pass the initial legislative stages, and were frozen in the ministerial legislation committee, but the polarizing debate between their supporters and detractors continued. The NGOs and their supporters on the left claimed that the campaign was part of a “wave of anti-democratic laws” placing Israel on a “slippery slope,” reflecting “McCarthyism” and “fascism.” The politicians supporting these bills responded by branding the NGOS as foreign agents, “terrorist supporters” and “traitors” (Stoil, 2011).

Following the 2014 Gaza war, and another cycle of NGO attacks and UN condemnations, the NGO funding debate continued. At the end of 2015, Ayelet Shaked, who was appointed Justice Minister after the March elections, announced a new and largely symbolic effort, focused primarily on foreign funding of NGO political campaigns. The legislation, which was approved in July 2016, requires NGOs receiving more than 50 percent of their budgets from foreign governments to disclose the details in their publications, letters to government officials, and protocols of Knesset statements (NGO Transparency Law, 2016). No taxes or limitations were approved.

This process and the symbolism again reflected the importance attached to national sovereignty and self-determination, and criticism by many Israelis of efforts by European governments to use NGOs as a means to violate sovereignty.

In response, the activists in these NGOs argued that under the guise of transparency, the “foreign agent” label would inherently limit the power and legitimacy of their organizations.[[6]](#footnote-5) In a flood of articles in the Israeli media and numerous urgent Knesset sessions, some in support and many in fierce opposition, NGO officials and their allies attacked Shaked and supporters of the legislation as “McCarthyites” and “fascists” intent on destroying democracy. NGOs and their supporters compared the proposed law to measures taken in Turkey and Russia (Sales, 2015).

 In response, Shaked argued that the proposed legislation was entirely compatible with democratic principles. In particular, she compared her proposal to the US Foreign Agents Registration Act (FARA), adopted by Congress in 1938 (Shaked, 2016). FARA’s purpose was to prevent foreign governments from secretly paying for efforts to influence the US Congress. Shaked argued that her law is “less stringent than those imposed by the United States upon similar types of activity under the Foreign Agents Registration Act.” When US Ambassador Shapiro rejected the analogy, Shaked cited the close links between the agendas of the NGOs opposing Israeli government policies and their European funders. [[7]](#footnote-6) For Shaked and many others in the Israeli political debate, European government funding for political NGOs was primarily an attack on Israeli sovereign equality.

The salience of sovereignty has also been acknowledged by harsh Israeli critics of the NGO transparency legislation. For example, Neve Gordon (an academic at Ben Gurion University and an NGO activist) acknowledged what he referred to as “the long-established opposition to human rights voiced by sovereign states that reject any form of external intervention” (Gordon, 2014, p.314). Expanding on this point, Gordon claims that the process by which “liberal human rights NGOs in Israel and abroad are being branded as a security hazard by neoconservative actors…” is a consequence of “issues relating to threats and challenges to state sovereignty by other state and nonstate actors” (Gordon, 2014, p.316).

These concerns were highlighted by the intense lobbying against the NGO legislation by officials of the European Union and individual states that themselves fund and maintain close cooperation with their NGO grantees. Indeed, a letter to High Representative of the European Union for Foreign Affairs and Security Policy and Vice-President of the European Commission Federica Mogherini authored by a number of European NGOs that are active on issues related to the Arab-Israeli conflict raised concerns regarding the “legislation of the so-called NGO Bill and the shrinking space for civil society” (FIDH, 2016). (The term "shrinking space for civil society” includes allegations that “human rights defenders, journalists, trade unionists, lawyers, intellectuals and any dissenting voice face arbitrary restrictions, physical threats, judicial harassment arrest and sometimes death.”) (EUROMED Rights). European briefings and memos further make claims of NGO “freedom of action” being curtailed” (Hombrecher and Atamneh). This language closely echoed the statements of the Israeli NGOs, and the pressure voiced by European officials added to the concerns regarding infringement on Israeli national sovereignty, self-determination and democratic processes.

1. **European Involvement in the Campaign Against the 2015/6 NGO Transparency Law**

In August 2015, as the public discussions regarding the new legislation were beginning, the EU made a grant of €250,000 to the NGO Breaking the Silence. In addition, the European Endowment for Democracy, which is funded by the EU and Member States, provided B’Tselem (which accuses the government and IDF of human rights violations) with €30,000 for “combating anti-democratic laws aiming to silence opposition.”

On January 7, 2016, as the legislation was being discussed in the Knesset, Ambassador Lars Faaborg Anderson, from the EU delegation in Tel Aviv, declared, “We are deeply concerned about the draft bill published by the government…[it] is discriminatory and explicitly intended to target certain NGOs critical of government policies. It will negatively impact on Israel’s image and credentials in Europe as an open and democratic society.” He then called on the Knesset “to refrain from actions which may complicate the space in which civil society organizations operate and which may curtail freedom of association and freedom of speech…” (Ahren, 2016).

Later, the spokesperson of the European Union claimed that, “The reporting requirements imposed by the new law go beyond the legitimate need for transparency and seem aimed at constraining the activities of these civil society organisations working in Israel. Israel enjoys a vibrant democracy, freedom of speech and a diverse civil society...This new legislation risks undermining these values. We call upon Israel to continue to promote its active NGO sector and to refrain from actions which may complicate the space in which civil society organisations operate and which may curtail freedom of expression and association” (European Union, 2016).

The Israeli NGOs that receive funding from the EU and Member States are also very active in lobbying MEPs (Members of the European Parliament), and a number of the NGOs also maintain offices and have staff members in Brussels. In February 2016, 52 MEPs (out of 751) published a letter to Israeli MKs attacking the legislation. This intervention highlighted the Israeli concerns regarding European interference and infringement on sovereignty.

The substance and patronizing tone of the MEPs’ letter served to deepen the Israeli concerns regarding sovereignty and interference in the internal debate, stating:

*“…we are concerned that this law is inherently discriminatory. …We see this as part of a worrying trend, promoted and condoned by the current Israeli government, to restrict, delegitimize, and stifle the work of NGOs, organisations, artists, writers, and thinkers who may be critical of current Israeli government policy…We strongly urge you, Israeli Members of Knesset, to be brave and strong in upholding Israel’s pluralist democratic values, and share our view that a vibrant civil society and open public debate, with organisations able to criticise government policy and hold it to account, or provoke critical thinking and active citizenship, are not a threat to democracy, but a great strength”* (Communist Party in Israel, 2016).

Later, on June 8, 2016, prior to the final vote, five MEPs published another letter, this one addressed to President Rivlin, reflecting the attempt by European political figures to enlist Israeli President on behalf of one side in an important internal debate.

The MEPs were:

*“expressing our concerns about the mounting pressure and recent attacks against civil society organizations in Israel… A number of Israeli civil society representatives have recently reported about an unprecedented phenomenon of shrinking space for their activities, attempts to delegitimise their operations and direct and indirect harassment, including physical threats… particularly concerned about the so-called NGO bill currently discussed in the Knesset…raising your voice against the NGO bill as well as against incitement campaigns* *targeting these groups. We are convinced that your action may prove to be decisive in protecting vibrant Israeli civil society.”* (Ravid, 2016).

In a third such event, a group of German MPs published a public letter from the German-Israeli Parliamentary Friendship Group, headed by Volker Beck (Green Party). In almost the same language of the MEP letters and the NGO campaign, this text declared that:

*“This legislative initiative would fundamentally change the work of Israeli NGOs and thus the activities of civil society as a whole. A law of this sort is out of line with the function of role model performed by Israel’s democracy. We understand your desire to make the work of NGOs more transparent through this law. However, those NGOs mainly funded from private sources – which also influence politics and public opinion in Israel – are not covered by the law. We are in favour of measures to enhance transparency, yet double standards and excessive hampering of activities through red tape should be avoided”* (German-Israeli Parliamentary Friendship Group, 2015).

Subsequently, a fourth letter, also from four German MEPs (February 5, 2016) expressed:

*“our deep concern …We fear that this new law- if it was adopted by the Knesset – would fundamentally restrict the work of Israeli NGOs and the activities of Israel’s civil society overall. In particular, we are concerned that the law in its current form would restrict Israel’s pluralistic civil society in its ability to unfold freely and complicate, if not obstruct, the work of various NGOs within Israel”* (Parliament European, 2016).

In July 2016, prior to the final vote in the Knesset, a fifth letter addressed to MK Nachman Shai, made the same claims: “We fear that the legislation will inflict serious damage to the democracy and reputation of the Jewish and democratic State of Israel… The new NGO legislation…would constitute a massive assault on freedom of association and freedom of opinion” (Harkov, 2016).

French (France Diplomatie, 2016), British (UK Foreign & Commonwealth Office, 2016) and German officials, in separate statements, also expressed opposition to the legislation.[[8]](#footnote-7) The Germans focused on private versus government donors to NGOs, citing:

*“The legislation’s one-sided focus on financial support from governmental donations. For private donors, which are very significant in Israel, there are no transparency regulations. The Federal Government is also concerned about the domestic political climate in Israel in which this law came to being, and about the increasingly polarized debate about the work of nongovernmental organizations in Israel”* (Aren, 2016).

There is no indication that this campaign by European letters and statements, echoing the position and language of the NGOs that are funded by Europe, changed the views or votes of any Israeli MKs, and the legislation was adopted based on the Government's majority. Whatever the intention, the image of external European intervention in support of this group of Israeli oppositional NGOs was reinforced by this process.

1. **Analysis**

The votes on the Israeli NGO legislation largely follow the division between Government and Opposition, and the official European lobbying against the legislation had no visible impact on the voting in the Israeli Knesset. To the degree that they influenced the wider Israeli debate at all, the European statements can be seen to have strengthened the arguments of both sides, and the divisions between them. Some opponents, including MKs and opinion leaders, particularly in Israeli *Haaretz* daily newspaper, cited the language of the Europeans to bolster their claims regarding the dangers to democracy, freedom of speech, and human rights. On the other side, the proponents of the legislation pointed to the involvement of European officials in the debate as further evidence of political manipulation and violation of sovereignty.

From a wider perspective and beyond the specifics of both the Israeli and Indian cases, the debates over external NGO funding highlight the important differences in the perceptions of sovereignty, particularly in the realm of soft power. The political cultures in both countries place major emphasis on their independence, reflecting the impacts of colonialism and recovering of self-determination and equality as a nation state. The one-way support for “meddling NGOs” is seen as a violation of sovereignty and the principle of equality among states, as indicated by the frequent Israeli statements asking how Europeans would respond if outsiders funded separatist groups in their countries.

In the Israeli case, the different European statements claimed government funding for political NGOs was no different from private funding, arguing that the legislation was designed to “increase the transparency requirements” only “for NGOs which receive the majority of their funding from foreign governments” (UK Foreign & Commonwealth Office, 2016). In contrast, they claimed that “NGOs mainly funded from private sources – which also influence politics and public opinion in Israel – are not covered by the law” (Harkov, 2016). These talking points entirely missed the centrality of the sovereignty issue for Israelis.

As noted, the promotion of values related to human rights, democracy and good governance in foreign countries are an inherent part of the post-World War II “normative power Europe” (Manners, 2002). However, for many in the Israeli and Indian debates on large-scale external funding for NGOs, such policies are rejected as “duplicitous, threatening and illegitimate” (Harpax and Shamis, 2010).Critics point to the subjectivity of the justifications for this external intervention, such as the claim that large-scale NGO funding is necessary to correct human rights behavior in selected democracies. As Jackson notes, the “belief that sovereign states are an enemy of human rights” is not supported by the evidence, but rather, “historical and legal evidence suggests, to the contrary, that human rights protection depends heavily upon the capability of sovereign states and the responsibility of their governments” (Jackson, 2007, p.114). Similarly, the allegations by European officials and NGOs that they are better placed to assess the “collision of values” (in the language of Isaiah Berlin) between public security and human rights in other regions is perceived as inconsistent with sovereign equality.

As the Indian and Israeli cases demonstrate, the violation of the principle of sovereign equality among states, whether via hard or soft power, including NGO funding, is seen as a hostile act. While external officials justify this interference in terms of universal norms such as human rights or economic opportunity, these norms are often seen to be applied selectively, or used to influence policies that go beyond these issue areas. This contradiction increases the conflict between the donor nation and the target of those policies.

**Table I: Proposed NGO Related Knesset Bills**

|  |  |  |  |
| --- | --- | --- | --- |
| **Member of Knesset (party)** | **Bill** | **Date Proposed** | **Status** |
| Zeev Elkin (Likud) et al | Bill on Disclosure Requirements for [Groups] Supported by a Foreign Government Body-2011 | October 2010 | Voted into law February 2011 |
| Faina Kirshenbaum (Israel Beiteinu) | Proposed bill amending income tax ordnance (taxation of income of public institutions receiving foreign government funding | February 2011 | Withdrawn; reintroduced combined with Akunis proposed bill (November 2011); Approved by Ministerial legislation committee. Frozen due to appeal my minister Begin and others. Reintroduced (March 2013). |
| Zeev Elkin (Likud) et al.  | Law for the Prevention of Harm to the State of Israel through Boycotts – 2011 | March 2011 | Voted into law, July 2011 |
| Ofir Akunis (Likud), Robert Ilatov (Israel Beiteinu) & Tzipi Hotoveli (Likud) | Proposed Bill: Non-profit Association Law (amendment – forbidding donations from foreign governmental bodies) | June 2011 | Withdrawn; reintroduced combined with Kirshenbaum’s proposed bill (November 2011); Approved by Ministerial legislation committee. Frozen due to appeal my minister Begin and others |
| Aryeh Eldad (National Union) | Proposed law for supporting third sector organizations in donor countries | January 2012 | Passed initial reading (July 2012); frozen due to general elections |
| Robert Ilatov & Ayelet Shaked | Proposed law amending the income tax ordinance (foreign state entity support for non-profit associations in Israel)-2013 | July 2013  | Approved by Ministerial legislation committee (December 2013); frozen after appeal by Ministers Livni, Perry and Lapid |

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1. For a detailed discussion of the evolution of sovereignty, see Robert Jackson (2007), *Sovereignty*, Cambridge, UK: Polity Press. [↑](#footnote-ref-0)
2. For a US-based critique of this approach, see John Fonte (2011), *Sovereignty or Submission: Will Americans Rule Themselves or be Ruled by Others?* Encounter Books, New York; Walter Russell Mead, Nuking Westphalia, *American Interest Online*, July 16, 2010 [↑](#footnote-ref-1)
3. Israeli NGOs on the right, including those that actively promote settlements, are supported primarily by private Jewish funders from the US and elsewhere. Private funding is less controversial than state funding as it does not involve sovereignty issues and is seen as a continuation of a tradition of support from Jewish philanthropists that pre-dates the founding of the state. [↑](#footnote-ref-2)
4. Some officials expressed concern that public revelations of funding for Israeli NGOs would have a negative impact. In a memo dated May 13, 1982, W. K. Predergast, from the UK Embassy in Tel Aviv, warned against direct government funding of Peace Now: “….British funds would probably act like a weed-killer; but sponsored visits (perhaps by members of the Knesset who support the movement) could be a possibility.” (archival document provided by Professor James Vaughan, Aberystwyth University) [↑](#footnote-ref-3)
5. Jeff Halper, the head of ICAHD, frequently refers to Israel as an “apartheid state.” See for instance: Rami Almeghari, “Jeff Halper in Gaza: ‘We are the oppressors,’” *The Electronic Intifada*, September 1, 2008, https://electronicintifada.net/content/jeff-halper-gaza-we-are-oppressors/7693. [↑](#footnote-ref-4)
6. See for instance: Sharon Abraham-Weiss, “A new Transparency Law?” *Association for Civil Rights in Israel*, November 5, 2015, http://www.acri.org.il/en/2015/11/05/a-new-transparency-law/. [↑](#footnote-ref-5)
7. U.S. Ambassador to Israel Daniel Shapiro stated that “U.S. law imposes no limits, restrictions, or transparency requirements on the receipt of foreign funding by NGOs operating in the United States, other than those generally applicable to all Americans. … As a result, it does not create the chilling effect on NGO activities that we are concerned about in reviewing the draft Israeli NGO law.” [↑](#footnote-ref-6)
8. As noted, for historical reasons, in the Israeli context, state funding for NGOs (government-sponsored non-governmental organizations, or GONGOs) is viewed as an encroachment on sovereignty, but this is not the case for private funding. See Moises Naim, “What is a GONGO? : How government-sponsored groups masquerade as civil society,” *Foreign Policy,* October 13, 2009: http://foreignpolicy.com/2009/10/13/what-is-a-gongo/ [↑](#footnote-ref-7)