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Israel and the Middle East News Update

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May 15, 2019

Ha'aretz

Iran's Supreme Leader Says 'There Won't Be Any War' With U.S.

Iran's Supreme Leader Ayatollah Ali Khamenei said Tuesday that there would no war with the United States despite mounting tensions. In comments to senior officials carried by state television, Khamenei also reiterated that Iran would not negotiate with the United States on a nuclear deal. "There won't be any war. The Iranian nation has chosen the path of resistance," he said. U.S. national security agencies now believe proxies sympathetic to or working for Iran may have attacked four tankers off the United Arab Emirates rather than Iranian forces themselves, a U.S. official familiar with the latest U.S. assessments said on Tuesday. See also, ["Sen. Rubio :war with Iran is in the hands of Ayatollah Khamenei" \(CNBC\)](#)

Ynet News

Iran Blames 'Israeli Mischief' for Tanker Attacks off UAE Coast

The tanker attacks off the coast of the United Arab Emirates were "Israeli mischief," an Iranian parliamentary spokesman said on Tuesday, according to the Islamic Republic News Agency (IRNA). Saudi Arabia, meanwhile, says a different attack on its oil interests was conducted using drones launched by Iranian-backed group. "The events that took place in the Emirates were Israeli mischief," Behrouz Nemati said, without providing any details on what role Israel may have played in the attacks. Details of the alleged sabotage to two Saudi, one Norwegian and one Emirati oil tanker on Sunday remained unclear, and Gulf officials have declined to say who they suspected was responsible. See also, ["Iran calls recent tanker attacks in UAE nothing but 'Israeli mischief'" \(RT\)](#)

Jerusalem Post

Palestinians to Mark "Nakba Day" with Protests, Strikes

Palestinians are planning to mark Nakba Day – "Catastrophe Day," the Gregorian calendar day for Israeli Independence Day – with strikes and rallies in the West Bank and Gaza Strip on Wednesday. On the eve of the occasion, Palestinians reiterated their opposition to US President Donald Trump's upcoming plan for peace in the Middle East, also known as the "deal of the century." Palestinian factions in the Gaza Strip called for a general strike on Wednesday in the Hamas-ruled coastal enclave. The strike will include all schools, universities and colleges there, they said. The factions also called on Gazans to protest near the border with Israel. Gaza's Hamas-controlled Health Ministry said that it has placed all medical teams on high alert ahead of the protests. See also, ["Israeli military readies for potential violence during Nakba Day and Eurovision" \(TOI\)](#)

I24 News

One Year on, Few Countries Following US Embassy JLM' Move

One year after the United States unilaterally broke international consensus and moved their embassy to Jerusalem -- effectively recognizing the disputed city as Israel's capital -- few countries have followed suit. Only one other country, Guatemala, has moved its official diplomatic mission to the holy city and stayed there. Paraguay backtracked on the move in September, while other countries have more cautiously committed to opening partial diplomatic representation in the city, such as cultural centers or trade offices. See also, ["Friedman: US embassy in Jerusalem is ancient city's 'newest shrine'" \(Jpost\)](#)

Times of Israel

Supreme Court President Invokes Nazi Era in Swipe at PM

The chief justice of Israel's Supreme Court on Tuesday made a speech in Nuremberg, Germany, that expressed implied criticism of Prime Minister Benjamin Netanyahu's planned judicial reforms and invoked the Nazi takeover of Germany in the 1930s. "History is not repeating itself," Esther Hayut clarified at an event hosted by the Israeli German Lawyers Association, "but it gives us the opportunity to learn from it and enables us to see patterns and judge for ourselves." A report by the Haaretz daily on Monday said the prime minister was planning to promote a bill that would allow the Knesset to ignore the Supreme Court's administrative rulings, and would also permit parliament to resubmit laws that have been struck down by the court in the past. See also, ["Netanyahu's son lashes chief justice for 'comparing father to Hitler'"](#) (TOI)

Ha'aretz

New Evidence: Netanyahu Asked Tycoon for Cigars on Memorial Day

New investigative materials suggest that Prime Minister Benjamin Netanyahu called businessman Arnon Milchan's personal aide on the eve of Memorial Day 2016 to ask her for a supply of cigars, Israel's Channel 13 reported Tuesday. According to the materials, Netanyahu was at billionaire James Packer's home in Caesarea and tried to find a job for a friend of his son's that summer, at a time when Israeli aircraft were striking Gaza. Netanyahu's attorney, Amit Haddad, collected the materials for cases 1000, 2000 and 4000 on Tuesday. Netanyahu's spokesman Ofer Golan said the materials were picked up after Netanyahu reached a temporary arrangement with Haddad for an advance on his legal fees.

Jerusalem Post

Anti-'Normalization' Palestinian Leader Receives Treatment in Israel

Senior Palestinian leader Jibril Rajoub, a long time opposer of the so-called "normalization" with Israel, is currently undergoing treatment at an Israeli hospital, Palestinian Media Watch reported on Tuesday. According to the organization, Rajoub has repeatedly expressed his support for terror attacks and violence against Israelis, while emphasizing the importance of maintaining the backing of the international community. For this reason, he opposed suicide bombings in Tel Aviv, while encouraging targeting soldiers and settlers. Rajoub has been admitted to Ichilov hospital in Tel Aviv in spite of the fact that two months ago the Palestinian Authority announced that they would end all medical care for Palestinians in Israel. Thousands of Palestinians have been treated in Israeli facilities every year.

Ynet News

Eurovision Kicks into High Gear with First Semi-Final

The Eurovision Song Contest kicks into high gear on Tuesday with the first of the three official legs of the competition. The first semi-final takes place at Expo Tel Aviv center in the northern part of the city, with thousands of people in attendance. Acts from 17 countries will take part in the semi-final, competing for one of 26 spots in the Grand Final. The show begins at 10pm Israel Time. The second semi-final will take place on Thursday, with the Grand Final held on Saturday. The current favourite to claim the winning trophy is Duncan Lawrence of the Netherlands, who will be performing a song called Arcade in the second semi-final on Thursday. Other entrants tipped to do well are France (which automatically qualifies for the final along with the UK, Spain, Italy and Germany), and Sweden, which will also have to get through the semis on Thursday.

Iran Threatens the Saudi-U.S. Axis Without Taking Direct Responsibility

By Amos Harel, military commentator at Ha'aretz

- **The flow of news continues from the Persian Gulf at a rapid pace. On Tuesday, sites connected to the oil industries of Saudi Arabia and the United Arab Emirates were reportedly hit for the second time this week. And according to a New York Times report, the White House is considering military plans against Iran, one of which includes the dispatch to the region of a huge taskforce of 120,000 soldiers. (U.S. President Donald Trump denied the report on Tuesday.) Iran's choice of targets is already causing unusual volatility in the oil market and is of concern to the Trump administration.**
- **In the first attack, on Sunday night, there were explosions at two Saudi container ships, as well as at an Emirati and a Norwegian container ship, in the vicinity of the United Arab Emirates' port. All of the huge ships sustained damage, but the explosions caused no casualties. The attack, which came a few days after the Americans received intelligence warnings regarding plans for terrorist attacks on the oil industry, was clearly seen as an Iranian action, despite Iran's counterclaim that it was a provocation on the part of a third country seeking to increase tensions.**
- **The prospect that this was an isolated incident of happenstance was dispelled on Tuesday morning with the report of an attack by unmanned Houthi Yemeni rebel aircraft against two oil-pumping facilities in Saudi Arabia. In this case, the rebels claimed responsibility.**
- **The Houthis have a long account to settle with the Saudis over Saudi involvement in Yemen's bloody civil war. But Iran, which provides financial support and weaponry to the rebels (and has also sent the rebels instructors from Hezbollah) has long been using the rebels to attack Saudi interests. Among other incidents in recent years, long-range Scud missiles have been fired from Yemen at Saudi Arabia and a container ship carrying Saudi oil from north of the Bab el-Mandeb Straits was attacked last year.**
- **The proximity in time of the two attacks allows the Iranians to convey a clear, threatening message to the Americans and Saudis, without taking direct responsibility for the acts. It's enough for everyone to know who is behind them.**
- **Israeli analysts view the recent developments in the Gulf as reflecting a fundamental change resulting from a change in direction in Iranian policy. Until recently, the Tehran regime believed it could withstand the pressure of the sanctions imposed by the Trump administration and that it would be best to wait for the U.S. presidential election in November 2020, counting on Trump to lose his reelection bid – without getting in a direct confrontation with the United States and without Iran withdrawing from its international nuclear agreement.**
- **The Iranian regime changed its approach against the backdrop of the severity of Iran's economic crisis and the not unreasonable prospect that Trump would indeed be reelected for another four years. At first, the Iranians had hoped to make their links with Europe a path to bypass Trump, both economically (blunting the effect of the sanctions) and diplomatically (maintaining the nuclear accord, which the United States withdrew from a year ago).**

- Instead, a substantial portion of major European corporations have been afraid to continue trading with Iran. And the damage to the Iranian economy is still expected to worsen considerably, due to the revocation at the beginning of the month of American waivers issued to countries that had continued to engage in the oil trade with the Iranians as well as the new wave of sanctions that Washington has announced against Iran's metal industries.
- After Iran signed its international nuclear accord in 2015, its oil production reached record highs of about 2.5 million barrels a day. That pace is now due to decline to about a million barrels per day, a figure that might make continued Iranian export of oil economically unfeasible. The Iranian leadership is also concerned about the U.S. designation of Iran's Revolutionary Guards as a terrorist organization and the targeted sanctions imposed on the Revolutionary Guards.
- The Iranian dilemma is depicted in Israel as deliberating between sticking to the nuclear accord, despite American pressure, amid the reasonable prospect of continued economic collapse, or escalating the confrontation with the United States and the Gulf states along with a possible withdrawal from the nuclear agreement.
- In a statement last week, Tehran threatened that it would narrow its commitment to the nuclear accord in two months (without withdrawing from it for now). The two attacks on the oil sites took place a short time later, against the backdrop of continued warnings of additional Iranian terrorist acts against American targets, particularly forces stationed in Iraq.
- On Monday, after the Emirati container ships were hit, Gen. Qassem Soleimani, the commander the Quds Force of the Revolutionary Guards, saw to it to post pictures of himself on his Instagram account with two Shi'ite militia leaders in Iraq. The move appeared to be an act of double defiance of the Americans. Soleimani is signaling that he has a purported alibi, that he wasn't in the vicinity of the attacks at the time. But the public Iranian patronage of the militias also conveys the message that the Iranians can receive assistance in return from the militias, against the Americans.
- This still isn't war and the amassing of American forces in the Middle East is still very limited, but the intelligence assessment is that a dangerous situation has been created here. The Iranians aren't left with substantial space to maneuver economically and they are not accepting President Trump's offer of direct dialog, as Trump has engaged in with North Korea, for the moment.
- By the way, the two sides went head-to-head in the past in the Gulf. In 1988, near the end of the Iran-Iraq War, the United States attacked a major Iranian oil installation and hit a large number of Iranian naval vessels after it became clear to the Americans that the Iranian regime was using mines to damage shipping traffic in the Gulf.
- Israel is not directly involved at this point in the tension in the Gulf. Trump's moves in the region are in large measure coordinated with Prime Minister Benjamin Netanyahu, who receives regular briefings on the steps the United States is taking. The impression in Jerusalem is that Saudi Arabia and the UAE, but not Israel, are in the Iranians' immediate crosshairs if the exchange of blows continues to escalate.
- But in the background, there is the possibility that Tehran will also choose to deploy people closer to Israel's borders. A prime candidate for the task is Islamic Jihad in the Gaza Strip, which

is funded by Tehran and sometimes receives orders from Iran. The near future in Gaza will be relatively sensitive, despite the transfer of Qatari funds to the Strip on Monday. That's due to the calendar, with Nakba Day on Wednesday and the Eurovision Song Contest in Tel Aviv over the weekend.

SUMMARY: Israeli analysts view the recent developments in the Gulf as reflecting a fundamental change resulting from a change in direction in Iranian policy. Until recently, the Tehran regime believed it could withstand the pressure of the sanctions imposed by the Trump administration and that it would be best to wait for the U.S. presidential election in November 2020, counting on Trump to lose his reelection bid – without getting in a direct confrontation with the United States and without Iran withdrawing from its international nuclear agreement. The Iranian regime changed its approach against the backdrop of the severity of Iran's economic crisis and the not unreasonable prospect that Trump would indeed be reelected for another four years. At first, the Iranians had hoped to make their links with Europe a path to bypass Trump, both economically (blunting the effect of the sanctions) and diplomatically (maintaining the nuclear accord, which the United States withdrew from a year ago). Instead, a substantial portion of major European corporations have been afraid to continue trading with Iran. And the damage to the Iranian economy is still expected to worsen considerably, due to the revocation at the beginning of the month of American waivers issued to countries that had continued to engage in the oil trade with the Iranians as well as the new wave of sanctions that Washington has announced against Iran's metal industries.

Unbridled Government: How Netanyahu's Purported Plan will Cripple the High Court

By Raoul Wootliff, the Times of Israel's political correspondent

- **Not so long ago, Prime Minister Benjamin Netanyahu supported an independent Supreme Court with an interventionist approach, one that had the right to overturn both Knesset and cabinet decisions and, crucially, one that provided a robust check on his and his government's power**
- **We know this both because he himself has said so, and, in what he once called “the real test” of Israeli democracy, because he has actively prevented attempts to weaken the court and remove any of the powers held and employed by Israel's highest legal authority.**
- **Notably, when asked in a 2012 interview with the Knesset Channel if, given a wave of proposals at the time seeking to curb the court's authority, he was worried about potential damage to Israeli democracy, Netanyahu provided an answer, worth citing in full, which explained his beliefs and actions in no uncertain terms.**
- **“There is absolutely no danger to our sturdy democracy,” he told reporter Orit Lavi-Nesiel. “Now, what is the real test of a democracy? It's not over this or that radical proposal or this or that extreme bill, but on how the leadership responds to these proposals. Listen, there have been proposals to limit or cut the power of the Supreme Court, which is one of the pillars of our democracy, and I prevented all of them. All of them!**
- **“I have repeatedly protected the independence of the Supreme Court: The law to limit its authority — I buried it; the law for public hearings of judges in the Knesset committees — I buried it; the law to change the makeup of the Judicial Appointments Committee — I buried it,” he specified. “The fact that people put forward proposals is part of democracy, but the real test is what passes and what doesn't pass. So no, there is no danger to Israeli democracy. It is strong. And I am certainly, certainly, committed to it.”**
- **Seven years later, responding on Monday night to a report that he himself is now pushing for what he once would presumably have rejected as a radical and extreme proposal to drastically overhaul the powers of the Supreme Court, which can also act as the High Court, Netanyahu confirmed that his position has changed somewhat. The prime minister said in a Facebook post that he has always supported “a strong and independent court — but that does not mean an all-powerful court.”**
- **While railing against “misleading” and “distorted” media reports of the details of his proposal, Netanyahu said that there was indeed a need for a “restoration of the balance between the branches [of government].” A Haaretz report earlier in the day claimed that as part of ongoing coalition negotiations, the prime minister is pushing to advance an extensive reform package that would allow the Knesset and the government to ignore the court's administrative rulings and permit MKs to resubmit laws that have been struck down by the court in the past. It would thus prevent the court from overruling both Knesset legislation and government decisions, completely dismantling the court's judicial oversight over both parliament and the cabinet.**

- While claiming that the report “sensationalized” his proposal, Netanyahu appeared to confirm that the plan would at least target the court’s power over the Knesset. New legislation was needed due to the behavior of the Supreme Court in recent years, he said. Due to what he called the court’s increasing activism, both the government and parliament now needed, he argued, to be able to “pass laws that have been struck down in the past, laws the public expects us to pass: the expulsion of terrorists’ families, the death penalty for terrorists and a deportation law for [African migrants].”
- In fact, of those three examples, only the deportation of illegal immigrants has been blocked by the courts in the past. The other two bills have not yet cleared the legislative process, having been bogged down by various disagreements and difficulties. The apparently inadvertent mischaracterization of the bills may seem minor but it points to something deeply significant: that Netanyahu used examples of yet-to-be-passed laws suggests that he intends to new power over the court not just to revisit its past rulings against laws approved by the Knesset, but also to neutralize future rulings.
- And all of this, it would appear, is not due to a change in the court’s behavior and circumstances in recent years, as Netanyahu claims, but rather a change in his own. According to the Haaretz report, by giving the Knesset supremacy over the court, the legislation Netanyahu plans would specifically prevent justices from overturning efforts to shield the prime minister from pending indictments for corruption in three cases.
- Speculation has already been swirling that Netanyahu may use his newfound political strength in the wake of the April 9 elections to advance legislation that would grant him immunity from prosecution as long as he remains prime minister, or seek to utilize existing immunity provisions for the same purpose. Several Likud MKs and potential coalition MKs have made clear they will champion such legislation. Preventing the Supreme Court from then overruling such moves could be the final piece needed to ensure his protection from prosecution.
- Speaking with the Times of Israel on Tuesday, several legal experts said that while the final details are not yet clear, the purported plan, at almost any level, would dramatically alter the nature of Israeli democracy.
- According to Israeli criminal and constitutional law expert Prof. Mordechai Kremnitzer, the most significant consequence of the reported legislative proposal is its “complete destruction of the court’s judicial review over lawmakers,” which Kremnitzer said would “fundamentally change the way the court has worked for the last 25 years.”
- The Supreme Court’s interventionist approach — with its strong emphasis on protecting minority rights — may have preceded Aharon Barak, who served as the court’s president (the Israeli equivalent to chief justice) between 1995 and 2006, but has become closely linked to him. Since his so-called “constitutional revolution,” the court has upheld the tradition of judicial activism, keeping the bench at the center of Israeli public debate and making it a lightning rod for Orthodox and right-wing critics.
- The High Court of Justice’s power to overrule legislation, Barak established, is rooted in the authority given to it by none other than the Knesset, in Israel’s Basic Laws — the closest things Israel has to a constitution. The “limitations clause” of Basic Law: Human Dignity and Liberty in 1992 (section 8) limits the ability of Knesset legislators to pass laws that violate the rights protected by the Basic Law, he determined.

- Under Barak's stewardship, the court has not only struck down 18 laws, but also enacted what he called the "blue pencil" principle, according to which judges possess a line-item veto over laws, and can strike down individual articles or words contained in legislation.
- Israel is not exceptional in this regard. Mechanisms for striking down laws exist in many other places as well and the courts can overrule laws that contradict the constitution in the overwhelming majority of countries, Kremnitzer said.
- Before Barak, the protection of civil liberties in Israel was fragile and vulnerable to the whims of parliament. Indeed, many aspects of Israeli law prior to 1992 — such as regarding the military administration that ruled over Israel's Arab citizens in the 1950s and 1960s, the sweeping exemption from military service awarded ultra-Orthodox Jews, criminal legislation forbidding homosexual relations, the lack of legal recognition for civil partnerships, and discrimination against municipalities in Israel's periphery — violated basic principles of equality and freedom.
- Israel's adoption of its Basic Laws in 1992, Kremnitzer explained, created the basis for a significant improvement, bringing the country in line with the world's robust democracies that afford constitutional protection of fundamental rights. In Israel's fractious society, where the Knesset frequently shirks its responsibility to protect religious pluralism, civil liberties and the rights of Palestinians, the court has no choice but to fill the moral and legal vacuum. Maintaining an independent judiciary, he said, serves as a counterweight against the danger that a "tyranny of the majority" tramples the rights of those who are not properly represented by the political system.
- Removing the court's judicial review, as Netanyahu reportedly aims to do, would end that, Kremnitzer said, putting Israel on a path in the opposite direction to that of other Western democracies. "It would be an anomaly if, after the great majority of the world's democracies have chosen to adopt arrangements that provide stronger constitutional protection for fundamental rights, Israel were to move in the opposite direction and weaken protection for individual rights," Kremnitzer said. Yuval Yoaz, the chief legal adviser for the Movement for Clean Government, said the proposal put minority rights in real danger. "These are measures to sterilize large parts of the Supreme Court's ability to maintain the rule of law, human rights and create the required balance between the citizens and the power of the government. That's what's on the agenda and that is the danger," he said.
- Right-wing politicians in Israel, by contrast, have long sought to clip the wings of what they regard as an overly liberal court. The court's powers, they claim, have grown over the years, have no clear constitutional basis, and have enabled it to favor liberal policies and minority rights over the desires of the voting majority.
- Critics of the court have long-argued for some form of an "override clause," to put an end to what they describe as the overly aggressive activism of the judiciary over the past 27 years. Previous versions of proposed legislation have sought to give the Knesset, by vote of 61 MKs (of the 120 MKs), the ability to overturn a Supreme Court decision to strike down Knesset legislation as unconstitutional, removing the court's effective veto power.
- Right-wing attorney Yossi Fuchs, who has filed numerous petitions against the court, says that the latest proposed law being discussed as part of the coalition negotiations is a continuation of those efforts. "This is not a upheaval but rather a restoration of the sanity and balance

required between the legal system and the Knesset,” he said in a phone interview on Tuesday, describing it as “the cancellation of the Barak’s judicial coup 30 years ago.”

- The High Court of Justice, Fuchs said, “has repeatedly repealed Knesset laws despite the fact that there is no provision of law in the State of Israel authorizing it to do so. Therefore this legislation is required to ensure that the legislative branch is [responsible for] the legislature of the laws, and not the Supreme Court.”
- Netanyahu’s policy package, however, reportedly goes even further than previously unsuccessful override proposals, in apparently seeking to prevent the court from canceling any government decision, and not just Knesset legislation.
- Since the passage of Israel’s Basic Laws in 1992, the Supreme Court, in its role as the High Court of Justice, has struck down 18 laws — something some experts regard as a relatively low number. But in the same period, it has also overruled “maybe hundreds” of administrative decisions made by the government, said Barak Medina, a constitutional law professor at the Hebrew University.
- The court, for example, has repeatedly changed the path of the West Bank security barrier after Palestinian farmers and advocacy groups sued the army. It has struck down government regulations on a multitude of issues from African asylum seekers to the ultra-Orthodox draft. In the resonant case of the 2002 battle of Jenin, when the IDF was seeking to dismantle terrorist infrastructure during the Second Intifada, it ordered the army to cease its advance into the city until it could hear complaints alleging that the IDF was violating the laws of war. The army indeed froze in place while the court heard the arguments and determined that the troops could proceed.
- Kremnitzer charged that removing the court’s ability to oversee the work of the government would “go well beyond even making it the most unbridled democracy in the world. There would be no compassion in any democratic country [in such a situation]. In fact, I think it would be wrong to describe a country as democratic with a law like this.” According to Medina, the new law could do precisely this by focusing not on stripping the court of its powers, but on granting the Knesset new ones.
- The Basic Law: Freedom of Vocation is the basic guarantor of individual economic rights, granting Israelis “the right to engage in any vocation, profession or trade,” and delineates specific conditions under which this right may be abridged. But Article 8(a) of the Basic Law allows for the temporary suspension of this right under three conditions — that any law violating this right pass in the Knesset with a majority of 61 MKs; that it explicitly state in the law that it is in violation of the Basic Law: Freedom of Vocation; and that the law expire after four years. In other words, the Basic Law ensuring economic freedom can be suspended by a parliamentary majority — but the suspension must be renewed by successive Knessets.
- Netanyahu’s reported bill, Medina said, could place a more or less identical article into the Basic Law: Human Dignity and Liberty. It is this law which contains the language on which the High Court of Justice relies in its rulings. Thus, allowing the Knesset to violate this law with a majority vote would effectively grant it the right to overturn High Court rulings against government actions. It would constitute, in effect, a strategy of limiting the court’s power by granting the Knesset the authority to suspend rights guaranteed in the Basic Law. Were such legislation to

pass, “we would have an unlimited government,” Kremnitzer warned. “There would be no checks and balances on the government.”

- Unlike many other democracies, Israel has few checks on executive and legislative power: the Knesset has only one chamber as opposed to two, Israel has no federalized state system to balance central authority, and there is no constitution or bill of rights to protect individual Israelis. Even democratic regimes can pass laws and regulations that contravene democratic principles and infringe on basic human rights. In such cases, it is the role of the Supreme Court to protect the weak and the minority from the majority, Kremnitzer noted. “There is nearly no comparison to Israel’s situation in the democratic world because in most democracies it is understood that the Supreme Court has the final word,” Medina said, agreeing with Kremnitzer. “We will become the only democracy in the world with no oversight on our legislature.”
- Significantly, among the Knesset decisions in which the Supreme Court could be prevented from intervening would be those regarding Netanyahu’s own future as prime minister, given the looming likely indictment in three corruption cases against him.
- Netanyahu has been reported to be considering conditioning entry to his new government on potential support for an immunity move or for a so-called French Law that would shelter a sitting prime minister from prosecution. Current law already provides for any MK to obtain immunity by a majority vote in the Knesset House Committee and then in the Knesset plenum. Until 2005, however, MKs were automatically granted immunity from prosecution, and that immunity could be lifted by majority votes in the House Committee and plenum. One of the possible legislative avenues reportedly being pursued by Netanyahu would be to return the law to that 2005 formulation — automatically giving him and any other MK immunity from prosecution.
- If legislation aimed at preventing Netanyahu being prosecuted does pass, it would almost certainly face a challenge in the Supreme Court... but only if the justices still have the power to overrule Knesset legislation. Without that power, Netanyahu’s immunity could be protected indefinitely. Under the reported new proposed legislation, the court could also be prevented from ruling that Netanyahu must step down if an indictment is filed — or rather, a ruling to that effect would have no validity.
- The current law does not clearly state that a prime minister who has been indicted must resign. Rather, the law states that only after a prime minister been convicted of an offense that carries moral turpitude, and the verdict is final — in other words, the appeal process has been exhausted, which can take many years — only then will he be required to resign.
- The Knesset has the right to not wait for the completion of that process, but to ask a prime minister to step down immediately after a conviction. But if the Knesset doesn’t do so, from the point of view of the law, he can stay in office until the appeal process has been exhausted.
- In the past cases of Shas’s minister Aryeh Deri and deputy minister Rafael Pinhassi, it was determined that a minister suspected of a serious crime — one which carries “moral turpitude” — must resign once indicted. And if he were not to resign, the prime minister would have to fire him. That was determined as regards a minister and a deputy minister. But there is no similar determination with regard to the prime minister, and in such a situation there would be bound to be a battle in the Supreme Court — again, if it still had the teeth.

- Were Netanyahu to successfully advance the reported wide-ranging, indeed revolutionary, legislation that is said to be being discussed in the closed-door coalition talks, preventing the Supreme Court from overriding Knesset decisions, he could ensure both his immunity from prosecution, and the inability of the highest court in the land to do anything about that immunity.
- The consequences of such legislation would amount to “the most significant change to Israeli constitutional law that we have ever seen,” Medina warned. But again, as Netanyahu said in 2012, “the fact that people put forward proposals is part of democracy, but the real test is what passes and what doesn’t pass.”

SUMMARY: Unlike many other democracies, Israel has few checks on executive and legislative power: the Knesset has only one chamber as opposed to two, Israel has no federalized state system to balance central authority, and there is no constitution or bill of rights to protect individual Israelis. Even democratic regimes can pass laws and regulations that contravene democratic principles and infringe on basic human rights. In such cases, it is the role of the Supreme Court to protect the weak and the minority from the majority, Kremnitzer noted. “There is nearly no comparison to Israel’s situation in the democratic world because in most democracies it is understood that the Supreme Court has the final word,” Medina said, agreeing with Kremnitzer. “We will become the only democracy in the world with no oversight on our legislature.” Significantly, among the Knesset decisions in which the Supreme Court could be prevented from intervening would be those regarding Netanyahu’s own future as prime minister, given the looming likely indictment in three corruption cases against him.