

“Lawfare”, Israel’s Continuation of War by Other Means

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Right-wing Israeli organisations have been quietly escalating “legal warfare” against the Palestinian leadership in an attempt to dissuade it from bringing war crimes charges against Israel at the International Criminal Court.

The latest case against the Palestinians, filed in the US, [threatens lengthy jail sentences](#) and heavy fines against Hamas leaders, including Khaled Mashal, for briefly closing Israel’s only international airport during Israel’s attack on Gaza last summer.

It follows a decision by a New York jury in February to [impose \\$218m damages](#) on the Palestinian Authority, the Palestinian government-in-waiting in the occupied territories. The compensation relates to six attacks more than a decade ago, at the start of the second intifada, in which US citizens were killed or injured.

The legal campaign, which exploits loosely defined anti-terrorism laws in the US, appears designed to exhaust the Palestinian authority’s existing financial reserves and isolate it from funding sources in the region.

Comments from Shurat HaDin, a legal group that initiated the action against the PA, indicate that the intention is to push Palestinian institutions toward collapse, both as a way to weaken efforts to resist Israel’s occupation and to destroy any possibility of Palestinian statehood.

Punishing Palestinians

Last December, as the PA case opened, Shurat HaDin’s director, Nitsana Darshan-Leitner, [warned](#) that the goal was to create “financial instability” for the Palestinians. She added that harsh financial penalties would be a test of the PA’s readiness for statehood: “If they want to become a state, they have to show that they can meet their obligations.”

The \$218m award and similar ones that may be approved by US juries in the future could potentially bankrupt the PA.

Palestinian officials have already warned that the PA is in dire financial trouble after Israel recently withheld millions in tax revenues it collects on the Authority’s behalf.

Palestinian institutions also risk finding themselves financially marooned after Israeli legal groups scored a success in the US last week against a leading Middle East bank.

In a precedent-setting case last September, a US jury found the Jordan-based Arab Bank liable for 24 attacks, blamed on Hamas, in which US citizens were hurt or killed. The bank was shown to have made transactions to accounts belonging to Hamas members.

A federal judge in Brooklyn [upheld that verdict](#) last week, even though the bank had demonstrated it followed standard industry practices. The door is now open to some 300 victims and their relatives to claim damages, likely to run into the hundreds of millions of dollars.

The ruling's wider significance is that it is likely to make most banks wary of operating in the occupied Palestinian territories for fear of handling accounts that may later be shown to belong to Palestinians involved in attacks against Israel.

Similar cases are pending against other banks, including the Bank of China, Credit Lyonnais and a unit of the Royal Bank of Scotland.

Move to Hague court

The raft of recent cases in the US launched by Israeli organisations has been largely overlooked as world attention has focused instead on Palestinian efforts to use legal action against Israel.

This month the Palestinian Authority became an official member of the International Criminal Court (ICC).

The Palestinians are expected to request that the Hague court investigate Israeli officials for war crimes, both those committed last summer during Israel's attack on Gaza and those associated with decades of settlement-building in the occupied territories.

Israeli leaders, led by Binyamin Netanyahu, the prime minister, have accused the PA of pursuing what they call "lawfare" instead of peace negotiations.

In January Netanyahu convened legal advisers to help [devise a strategy to discredit the ICC](#), saying war crimes investigations against Israel were "absurd" and a "perversion of justice".

He is fearful that such investigations will "delegitimise" Israel and make it increasingly difficult for Israeli officials to travel overseas, where they might be arrested.

Gilead Sher, a lawyer and former government adviser, recently observed that "the emerging legal front [by the Palestinians] is nothing less than an extension of the battlefield... The Palestinian approach is based on a theory of total warfare that includes legal efforts combined with mass media manipulation, active diplomacy, incitement, boycotts and sanctions."

Israeli 'lawfare'

But in truth, Israeli organisations have so far proved much more effective at lawfare than the Palestinians.

The message of Sher and others that Israel cannot afford to be passive has been taken especially to heart by Shurat HaDin, which has close ties to the Israeli right.

In 2012 its director, Darshan-Leitner, [won the Moskowitz Prize](#) for Zionism, an award funded by US casino magnate Irving Moskowitz, who has invested millions of dollars in helping illegal Jewish settlements in the occupied territories.

As well as its recent civil actions against the PA and Hamas in the US, Shurat HaDin has also turned directly to the ICC.

Last September its lawyers filed a [war crimes suit against Mashal](#), implicating him in Hamas executions of suspected collaborators with Israel during its attack last year.

Two months later the Israeli group [brought a second suit](#), this time against Mahmoud Abbas, the Palestinian president, for attacks allegedly carried out by Fatah loyalists from Gaza.

In January it [filed further suits](#): against the Palestinian prime minister, Rami Hamdallah; Jibril Rajoub, former head of the Palestinian security services; and the PA's intelligence chief, Majed Faraj.

In an interview in December Darshan-Leitner [said](#) Shurat HaDin's actions at the ICC were intended as a warning to the Palestinian leadership to "tell them they're playing with fire... The moment they join [the ICC], it's game over. It will be like sniper fire."

Civil suits in US

However, the wheels of the ICC are expected to move slowly. Most observers believe that both the Israeli and Palestinian leaderships are years away from facing a serious investigation.

Shurat HaDin has therefore forged ahead with simpler and faster civil actions in the US, exploiting the fact that a proportion of Israeli Jews also hold US citizenship and can claim redress in US courts.

There, it has taken advantage of the growing body of US anti-terror laws, especially since 9/11, to target Palestinian officials.

In the case over Ben Gurion airport's closure for a little more than 24 hours last July, Shurat HaDin has made use of a law that provides for 20-year jail terms and heavy fines for anyone endangering American citizens at an international airport.

The complaint, filed with the Justice Department, claims that 26 US citizens were forced to flee to bomb shelters after a rocket from Gaza landed near the airport. As a result, US federal aviation authorities barred US carriers from taking off at Ben Gurion and several US flights heading to Israel had to be diverted to other countries.

The advantage for Israeli legal groups in turning to US courts is that they can make their case according to the relatively low standards of proof required in civil cases, avoiding the stringent standards at the Hague in international law.

Their lawyers can also rely on the easy sympathies of US juries and judges that have come to equate Arabs and Islam with terror, backed by a media and political culture that highlights suffering by Israeli Jews while downplaying the experiences of Palestinians at the hands of Israeli soldiers and settlers.

Targeting finances

In the case against the Arab Bank, Judge Brian Cogan of Brooklyn district court ignored the bank's defence that it had screened customer accounts according to the relevant watch lists, including that of the US Treasury Department.

Only one customer, Ahmed Yassin, had been designated a terrorist, and the bank's lawyers argued that his account had slipped through because of a spelling error.

Cogan [has warned](#) that other banks are in the crosshairs: "We have not finished our work by a long shot."

In May 2011 Shurat HaDin, working with the Israeli government, [foiled an international aid flotilla](#) to Gaza by sending letters to insurance and satellite companies threatening them with lawsuits under US law for offering services to the ships.

Shurat HaDin has also pursued cases in the US against Middle East states that are seen as close allies of Palestinian organisations.

In 2012, a US court awarded a Florida family [\\$332 million in damages](#) after it was alleged Syria and Iran assisted the Palestinian movement Islamic Jihad in organising a suicide attack in Tel Aviv.

Darshan-Leitner has observed that her organisation's work is related to Netanyahu's concerns about the battering Israel's image is taking in the international community. "Really, we're fighting back against the delegitimization of Israel," she [said](#).

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