

# “Lawfare”

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There is a very important political, diplomatic, and media aspect to all of these issues, which in many ways are combined together under the term “lawfare.” The claims that are made, the cases that are being brought, are often distant from the kinds of legal principles that we hear discussed now and that are in fact very important to the discussions that take place in the courts of the United States, Israel, and sometimes in the UK. There are literally hundreds of non-governmental organizations funded by the European Union, Norway, and Switzerland, with very significant amounts of money – on the order of at least a hundred million euros per year – that are in some way related to all of this activity. The New Israel Fund also kicks in another few million dollars a year, and these cases are multiplying. The volume of activity would probably be less than one-tenth of what it is if we didn’t have this huge non-governmental organization engine that pushes these cases.

There is much documentation on the role of NGOs in the “lawfare” process. The NGO Monitor website ([ngo-monitor.org](http://ngo-monitor.org)) goes into some of this, and we are updating it every day. The following is a short list of the cases that have actually gone to court and there is a wide range of venues and targets. What is common is that these are all forms of a very clearly articulated lawfare strategy, whether it is the case against Ariel Sharon in Belgium in 2001 that was brought by a number of NGOs with the active involvement of Human Rights Watch and Amnesty International, or the *Quarry v. Caterpillar* case. If you look at the cases you often see these are marginal in terms of their legal concept, but that is not the purpose. The purpose of all of these cases is primarily to create publicity – to link the word “Israel” with war crimes, apartheid, and with violations of international humanitarian law in various other forms.

The foundation for this strategy can be traced back to the NGO Forum of the 2001 Durban conference. Fifteen hundred NGOs, largely funded by Canadian, European, and other governments as well as the Ford Foundation, adopted a final declaration that clearly articulated the use of the international legal system to promote their political agenda – the isolation of Israel – through the cases, and the branding of Israel as the world’s greatest war criminal. This was done through universal jurisdiction in a number of countries, including libel laws, and property claims.

If we analyze the different venues where this takes place, you see three or four different levels. The most visible are the international bodies. Without the NGO role, the case against Israel and the separation barrier (alias, the “apartheid wall” in the International Court of Justice) would never have been brought. If you track the history of that case, you see international NGO super powers. In almost all of these cases, Human Rights Watch, Amnesty International, and the FIDH in France, plus a lot of Israeli and Palestinian organizations, start to use the same language, and in their “reports,” e-mails, and campaigns they will always include a demand that these issues be brought before some sort of international legal body. From the beginning they pressed the UN General Assembly which, for political reasons, the Europeans agreed to. Then later on they decided they had made a mistake and didn’t vote to endorse the advisory decision of the ICJ. The NGOs pressed the European governments, along with the members of the Organization of the Islamic Conference and their African and other allies. Legally it was the General Assembly and the ICJ, but the history clearly rests on a foundation of the role of these international NGOs and the huge budgets that they have for this purpose.

The calls for International Criminal Court prosecutions in the case of Gaza are led by NGOs such as the Palestinian Center for Human Rights, funded by Norway, the European Union and other governments, and al-Haq. This is the second United Nations investigatory enquiry or commission, and in this case, it is led by Professor Richard Goldstone. If you look at the language that was used throughout the Gaza conflict you will see dozens of demands for an independent international enquiry that would be led by these types of figures, and that was very much part of the NGO agenda at the time.

The second layer in this analysis is the role of universal jurisdiction statutes at the national level. There was an article in *Ha’aretz*, originally in *Der Spiegel*, wherein al-Haq is planning 939 cases against Israel in different European countries. The role of venue shopping is very important. Spain was chosen because the Palestinian Center for Human Rights found a judge that was sympathetic to their issues. There are many judges and courts throughout Europe, Canada, and the United States that have universal jurisdiction statutes, and so it is not hard to find one or two who are going to take the case, regardless of its merits. There is nothing connecting Spain to the case against the Israeli officials that are accused of having violated international law in Gaza. It is simply a matter of having found a convenient judge.

Another approach is to use civil suits against Israeli officials. By the way, it is not exclusively against Israelis. You also see these kinds of cases being brought against American and British officials, often by the same organization, particularly in the United States.

Another aspect of the national approach is civil lawsuits against corporations doing business with Israel. There is a case in Canada which has to do with the question of building in Modi’in Illit and the case is very obscure. The plaintiffs do not claim they have title to the land. It is clearly part of a campaign which began with an op-ed article in the *Toronto Star*, which was the main goal. It is a vehicle to link Israel to all these violations. It is basically an attempt to sue three Canadian corporations for having done business that is connected to Modi’in Illit.

Now al-Haq and Amnesty International are trying to sue the British Government for having sold military equipment to Israel for use in Gaza in violation of British law. The main goal here is public relations. In fact, even if the suit were to succeed and Britain were to say that they won't sell these things any more, it is not going to affect Israeli military capabilities, but that is not the goal. The goal is the political and propaganda impact.

The main aspect of this is the abuse of universal jurisdiction, which actually goes back to the piracy laws of the United States in 1789. The purpose was to remedy gross abuses of human rights, like genocide, for example. Rwanda is another case of crimes against humanity where there is no rule of law in the particular national jurisdiction. That clearly does not apply to Israel, but that is irrelevant because most of these cases are thrown out within the first couple of hearings. Even if you find a friendly judge and they go to appeal and they get thrown out, the judgment is not the purpose of this process.

*NGO lawfare against Israel is not a matter of justice, but rather it is a matter of resources, politics, and propaganda.*

This is a form of soft power, a term which academics and political scientists are very familiar with. Joseph Nye has written about it. The Americans woke up to this around the time of 9/11. Why do they all hate? What are they doing better than we are doing? How are we being labeled? How is the press being manipulated? It is connected to a post-ideological agenda in which the West is bad and democracy is bad. The West is responsible for and guilty of colonialism, neo-colonialism, and neo-imperialism. It is a very strong ideology against nation-states and against national sovereignty, and Israel is now considered to be, in many ways, the worst of the offenders. Being American is bad; being an American ally or being an Israeli Zionist national state is worse. The ideology plays a central role in these soft-power wars.

International law or the rule of law is in many cases secondary, tertiary, or simply disregarded. I talked about forum shopping, and in many cases you have the same litigation being raised over and over again. The Israeli version of that is all the cases being brought by the EU, Norwegian, and NIF-funded NGOs that applaud the Israeli High Court, constantly putting these cases forth with the knowledge that they get publicity every time, and if you are there twenty times, you're going to eventually get some sort of response that is favorable to you. There is no penalty for doing that, so that re-litigation is very much part of the process.

The issue involves the abuse of international law, taking terms and concepts which have long since become outdated and using them as part of this lawfare process. There are no cases against Arafat or Hamas because there is no NGO funding from European governments to promote that case. It is not a matter of justice, but rather it is a matter of resources, politics, and propaganda.

In many cases the lawfare process is clearly an antithesis of the whole international legal process, particularly in the case of state sovereignty. Elected governments are circumvented in this. It is not the governments that are going to determine whether they should or should not sell defensive equipment to Israel, or whether they should or should not accept the justification for the separation barrier. If you use the legal systems in these countries you can circumvent the way in which public and diplomatic policy is made, and you can prevent the exercise of rights under customary law. The main point is to promote the propaganda process.

The Goldstone Gaza enquiry is not going to change anything about the way in which international law is applied. What we are going to see is a further abuse of this system. Professor Goldstone was a member of the board of Human Rights Watch up until a week or two ago, when NGO Monitor pointed out to him that this constituted a conflict of interest. He had acted as a prosecutor in promoting this agenda and made some statements during the Gaza war, including being a signatory to an Amnesty letter which had already determined Israeli policy as war crimes. He claimed to be shocked to the core by events in Gaza, of which he had no first-hand knowledge, because all he saw were reports by NGOs, which were not first-hand. There were no members of the media on the ground either, other than people who were affiliated with Hamas.

Goldstone should have excused himself, but instead he resigned from the Human Rights Watch Board. The terms of reference for the Goldstone enquiry are biased because they reflect the NGO agendas that were promoted during the war. The way they collect evidence will also be based on what they get from the NGOs. They are not going to be able to determine what actually happened in the fighting, but they will get very detailed and footnoted reports from Human Rights Watch, Amnesty International, the Palestinian Center for Human Rights, and al-Haq, none of which can be verified independently.

The main players are the NGOs. They are supported with money from European governments such as Denmark, Norway, Ireland, Holland, the European Commission, as well as Christian Aid which is funded both by the UK and Irish governments. There is also a large sum of money from the MBC, funded by Switzerland, Sweden, Denmark and The Netherlands, some of which was used for a big conference in Cairo expressly directed at preparing the process of lawfare. In addition, the Ford Foundation and George Soros' Open Society Institute contribute to the cause.

The Palestinian Center for Human Rights is very active in many of these organizations. They are the ones who publish the claims of Palestinian civilian casualties which the IDF and the ITC have refuted. There is no evidence to test any of this, and who is defined as a civilian is critical to all of this. We had the same problem in Lebanon.

Another organization, al-Haq, is funded by the Swedish International Development Agency, Canada, Norway, Ireland, Draconia, which is linked to Sweden, the Ford Foundation, the Open Society Institute, and Christian Aid. It is the same people, organizations, and governments repeatedly which are active in parallel law suits.

Al-Haq's general director, Shawan Jabarin, has been denied travel visas. His case has come up before the Israeli Supreme Court a number of times, and the court has ruled that because he is affiliated with the PFLP, and not because he is a human rights activist, he is not allowed to travel. Al-Haq's co-founder, Charles Shamas, is also a member of the Human Rights Watch Mid-East Board, and so it is not surprising that Human Rights Watch will promote al-Haq's claims through their much larger budget and access to the media.

The Center for Constitutional Rights is an American organization based in Europe, supported by the Ford Foundation and the Open Society Institute. They are the ones who brought the cases against Avi Dichter and Moshe Ayalon in the U.S. The cases were dismissed on appeal, but the main point was the publicity with the word "Israel" and pictures of Israeli government officials and generals linked to the term "war crimes."

The civil suit against Caterpillar by the parents of Rachel Corrie was led by the Center for Constitutional Rights, and Amnesty International and Human Rights Watch were very active in the Caterpillar boycott movement. There are many other ways in which this lawfare process takes place.

The latest frivolous libel suit against NGO Monitor is being brought by a group called Mosawa, funded by the New Israel Fund and a number of European countries. It hinges on the question of how we define “undermining.”

NGO Monitor is the only research organization in the world that watches the watchers and asks if Human Rights Watch, with an annual budget of \$40 million, Amnesty International, with an annual budget of \$200 million, and about two hundred more such organizations are saying anything of validity, both in terms of the facts that they claim, or international law.