

In the Name of Justice

By Jamil Dakwar¹

No one in Israel should be surprised about retired Major General Doron Almog's evasion of an arrest warrant issued by a British magistrate on the basis of *prima facie* evidence for his having committed war crimes. Israeli citizens, who have committed, aided or abetted the commission of war crimes and other gross violations of human rights in the Occupied Palestinian Territories (OPTs) have been repeatedly warned by local and international human rights organizations that they will not be immune from criminal responsibility under international law. If Doron Almog is to blame anyone for being welcomed by the British police at London's Heathrow Airport on 11 September, 2005 he should direct the blame at his own government rather than the British legal system or the victims of human rights abuses which occurred under his watch as Head of the Israeli Army's Southern Command. Not only did the Israeli government continue to perpetrate war crimes and other violations of human rights, therefore exposing Almog and other Israeli citizens to greater risks of prosecution abroad, but it has also created a culture of impunity by shielding military personnel at all levels in the chain of command from any kind of accountability and by denying Palestinian victims of human rights abuses access to justice and legal remedies.

Instead of demanding the extradition of Almog and the enforcement of the arrest warrant issued against him by none other than a British court of law, the British government rushed to offer its apologies to the government of Israel for the discomfort caused to Almog and even promised to ensure that such an incident would not recur. Indeed, one may not expect much respect for international law and human rights norms at a time when the same government is implicated in violations of international law in the context of the invasion and occupation of Iraq. Yet, it is still worth reminding the British government not only of its obligation to respect its own laws (i.e. the Geneva Conventions Act of 1957) and duties as a High Contracting Party to the Geneva Conventions, but also of its obligation under international law to prosecute or extradite perpetrators, including accomplices, of international crimes such as genocide, crimes against humanity, war crimes and torture.

Under international law, the obligation to respect, ensure respect for and implement international human rights law and international humanitarian law includes, *inter alia*, the duty to adopt appropriate measures to prevent violations; to investigate violations effectively, promptly, thoroughly and impartially and, where appropriate, take action against those allegedly responsible; to provide those who claim to be victims of a violation of international human rights or humanitarian law with equal and effective access to justice; and to provide effective remedies to victims, including reparation.

For over three decades, the Israeli government has systematically failed to fulfill its most basic obligations to prevent human rights violations, to hold perpetrators accountable, and to provide adequate and effective legal remedies to victims.

For over three decades, the Israeli security forces have enjoyed almost complete legal protection and immunity from prosecution for war crimes and other gross violations of

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international humanitarian law in the OPTs. Credible and prevalent evidence implicates individuals at all levels in the chain of command of the Israeli military in war crimes and gross violations of human rights. From low-ranking officers who systematically implement illegal policies of indiscriminate attacks against civilians, to Israel's current Chief of Staff Dan Halutz, who told his subordinate pilots after ordering the use of a one-ton bomb on a residential building in Gaza, which killed a Hamas commander and 14 civilians, that their "execution was perfect" and that he sleeps well at night.

In a report published in June 2005, Human Rights Watch documented how Israel has failed in its legal obligation to investigate civilian deaths and injuries resulting from the use of lethal force in the contexts of policing and law-enforcement, for instance controlling demonstrations and enforcing curfews, and in combat situations when there is *prima facie* evidence or credible allegations that soldiers deliberately harmed civilians or failed to take all feasible precautions to protect them from harm. According to the report, between 29 September 2000 and 30 November 2004, over 1,600 Palestinian civilians not involved in hostilities, including at least 500 children, were killed by the Israeli security forces, and thousands more were seriously injured. However, as of 10 May 2004, the Israeli military had criminally investigated a mere 74 alleged cases of unlawful use of lethal force, or less than 5 percent of the civilian deaths caused over the preceding four years.

Moreover, a new and atrocious piece of legislation was adopted by the Knesset on 27 July 2005, which prohibits residents in the OPTs from seeking compensation for death or injury at the hands of Israeli soldiers, even when the soldiers are found to have acted unlawfully and when the damages were caused outside of the context of a military operation (with some minor exceptions). The amendment to the Civil Wrongs (Liability of the State) Law, 1952, adopted by a 54-15 majority of the Knesset, was overshadowed by the recent Israeli relocation of illegal settlements and redeployment of military forces in the occupied Gaza Strip.

While the Israeli courts have generally agreed to adjudicate cases brought by Palestinian victims seeking legal remedies for human rights abuses committed by Israeli security forces in the OPTs, the afforded legal remedies and protections have been ineffective, inadequate, and often futile. Moreover, the Israeli Supreme Court has, by and large, sanctioned policies of the Israeli army which violate international law and awarded them the stamp of legitimacy. It remains to be seen how the Supreme Court will decide in this case brought on 1 September 2005 by nine Israeli and Palestinian human rights groups challenging the legality of denying Palestinians access to Israeli justice.

It was not difficult to predict the Israeli government's response to the case of Almog. Well experienced in dodging international obligations and a master in defying the international rule of law, the government revived its international campaign against universal jurisdiction for the prosecution of war crimes, and proposed a bill which would allocate \$US 1,000,000 for the defense of senior army officers charged abroad with war crimes. Israeli efforts backed by American diplomacy and political pressure have been successful in the past in forcing sovereign nations such as Belgium to change and soften their own domestic laws, which had mandated universal jurisdiction for serious crimes under international law. Since the Second World War, more than a dozen states have conducted investigations, commenced prosecutions and completed trials based on universal jurisdiction against persons who had entered their territory and who had been

suspected of certain crimes, regardless of where the crime was committed and the nationality of the accused and the victim.

It seems that Israeli impunity regrettably enjoys now even greater support from countries like the United States and Britain, in light of the recent revelations of torture and abuse of prisoners in Iraq, Afghanistan and Guantanamo Bay. However, despite all of the assurances they have received, it is quite clear that Israeli military personnel and even civilian leaders with command responsibility for the possible commission of war crimes or other serious crimes under international law have good reason to be concerned, because one day, somewhere, they will have their day in a court of justice, the same justice that was denied to thousands of victims of the Israeli occupation.