

Travel Advisory:

Military Personnel and British Courts

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Sep 20, 2005

ABOUT THE AUTHORS



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Brief Analysis

On September 11, retired Israeli maj. gen. Doron Almog declined to disembark from an arriving Israel El Al airliner at London's Heathrow airport and flew back to Israel, thereby avoiding British police waiting with a warrant for his arrest. The warrant, instigated in part by pro-Palestinian groups, alleged that Almog had committed war crimes while head of the Israel Defense Forces (IDF) Southern Command operating in the Gaza Strip in 2002. The airport incident has serious implications, the full extent of which will only become clear in time, for visitors to Britain from Israel and possibly America (due to U.S. involvement in Afghanistan and Iraq). Israelis, Americans, and, indeed, British citizens could be vulnerable when visiting other countries as well. London's role in the Middle East peace process could also be constrained.

New Enforcement, Old Laws

Despite predictions that the new International Criminal Court would prompt such indictments, in fact the Geneva Conventions of 1949 caused Almog's problems. Intended to protect victims of war, both civilians and wounded and captured soldiers, the conventions were absorbed into British law in 1957 as part of the ratification process, making it an offence for anyone to commit a "grave breach" of any of them. No proceedings can be brought without the consent of the British attorney general, but this did not inhibit a magistrate (a low-level judge) from issuing the warrant for Almog's the day before Almog's flight. A lawyer, acting for a Palestinian whose home had been destroyed by the IDF, had made an "urgent request" for legal action. Almog intended to speak at a synagogue fundraiser for a project he backs that helps Israeli Jews and Arabs with severe mental and physical disabilities. If arrested, Almog would have been released on bail but prohibited from leaving the United Kingdom until a decision had been made about whether to bring charges against him.

The Almog affair has both legal and political aspects. Israel argues that the Geneva Conventions do not apply to the Gaza Strip and the West Bank, because there was no sovereign power in Gaza before its capture in the 1967 war and Jordanian sovereignty of the West Bank was not recognized widely. However, the Israeli government says it abides by the humanitarian provisions of the conventions. Although British officials say that it is a judicial matter on which they cannot comment, London is clearly anxious that the British courts do not become an arena for cases more

suitable for Israeli courts. Also, British prime minister Tony Blair believes he has an important contribution to make in the Middle East peace process and would not want to be sidelined as a consequence of travel difficulties for officials. As if to emphasize this point, the Times of London reported on September 17 that Israeli prime minister Ariel Sharon had told Blair, "I would really like to visit Britain. The trouble is that I, like Major General Almog, served in the IDF for many years. I too am a general. I have heard that the prisons in Britain are very tough. I would not like to find myself in one."

Almog is not the first Israeli general to nearly fall foul of the British legal system. In 2002 Shaul Mofaz, now the Israeli defense minister but then recently retired as the IDF's chief of staff, reportedly left Britain hurriedly after an attempt to have him arrested on similar charges. (Mofaz has since visited Britain in his capacity as defense minister, for which he was given special diplomatic immunity.) Media reports suggest another former chief of staff, Moshe Yaalon, has put off a visit to London because of the potential risk. And the legal threat may also extend to officials of the Jerusalem municipality who have signed demolition orders for Arab houses, if Israeli planning law in East Jerusalem is ruled invalid.

From the point of view of Palestinians, both as individuals whose property has been damaged or destroyed as well as campaigning groups like the Palestine Solidarity Campaign (www.palestinecampaign.org) and the Palestinian Center for Human Rights (www.pchrgaza.org) that have been supporting the moves, the legal imbroglio serves to put pressure on Israel, arguably avoiding the need for the Palestinian side to involve itself in the political negotiation of the peace process. An Israel dissident group, Yesh Gvul (There is a border or limit) (www.yeshgvul.org), which encourages Israeli draftees to go to prison rather than serve in the territories, also appears to be involved. It is seeking the prosecution of current Israeli chief of staff Dan Halutz, who has reportedly cancelled a proposed visit to London as a result. In Britain, some of the usual leftwing critics of Israel and the United States are lending support. The 2002 attempt to arrest Mofaz was led by the human rights lawyer Imran Khan. The bid to prosecute Almog was led by Daniel Machover, who has British and Israeli citizenship, of Lawyers for Palestinian Human Rights.

Widening Implications for Israelis, Americans, and even Britons

The limited history of British legal action on this and similar issues is not confined to Israelis. Earlier this year an Afghan warlord was sentenced to twenty years in prison for torture and hostage-taking in Afghanistan. A former Belarussian citizen was convicted of war crimes committed during the Nazi occupation of his homeland in 1942. But both men were living in Britain rather than just visiting.

Theoretically, the moment Almog's El Al flight landed, he was liable to arrest but, probably to Blair's considerable relief, British police made no effort to board the aircraft. Someone had tipped off the Israeli military attaché, who rushed to Heathrow. Almog, who denies the allegations against him, decided to return to Tel Aviv. (In Almog's absence, the warrant has now lapsed.) The lawyer Machover reportedly is furious, alleging that the crime of "perverting the course of justice" has been committed. The London Jewish Chronicle reported that Israel was angry that the British Foreign Office appeared to be colluding with the arrest attempt by not informing Israel's London embassy. An unnamed Israeli official was quoted saying, "This act encourages the terrorist organizations to continue their vicious attacks."

The British situation bears some resemblance to the earlier use of Belgian law claiming universal jurisdiction for war crimes. Sharon, Blair, and President George H.W. Bush were separately accused. But after diplomatic pressure—the United States threatened to withhold funding for the NATO headquarters in Brussels—the law was amended in 2003 to limit it to cases directly linked to Belgium. Lawyers in London suggest that no easy amendment of British law is immediately obvious. For the foreseeable future, Israelis who may be vulnerable to prosecution should make alternative travel arrangements. American, as well as British personnel, could also be targeted if their behavior in Iraq or Afghanistan could be construed as contravening the Geneva Conventions.

Will British Courts also Target Terrorists?

Meanwhile, the chances of successful action against those in Britain supporting anti-Israeli terror in the name of “resistance” currently are bleak. But prospects might be improving. After the second series of attacks in July against the London public transport network, Blair said, “It is time we stopped saying ‘Okay, we abhor their methods but we kind of see something in their ideas or maybe they have got a sliver of excuse or justification.’ They have got no justification for it. . . . Neither have they any justification for killing people in Israel either. Let us just get that out of the way as well. There is no justification for suicide bombing, whether in Palestine, Iraq, in London, in Egypt, in Turkey, anywhere, in the United States of America. There is no justification for it. Period.”

Parliament will soon debate new antiterrorism legislation that would ban the encouragement and glorification of terrorism.

Simon Henderson is a London-based senior fellow of the Washington Institute.

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