

# The UK's duty to 'universal jurisdiction'

**Daniel Machover and Kate Maynard defend Bow Street's decision to issue a warrant for the arrest of an Israeli accused of war crimes**

THE warrant recently granted by Bow Street Magistrates' Court to a Palestinian for the arrest of an Israeli officer, Major-General (reserve) Doron Almog, has demonstrated the potency of "universal jurisdiction" over alleged war criminals — but some critics have said that UK courts should not be able to exercise universal jurisdiction at all.

For many years, most cases of killings, punitive house demolitions and torture in the occupied Palestinian territories have not been the subject of criminal investigations, let alone prosecutions, in Israel. Therefore, lawyers from the Palestinian Centre for Human Rights looked abroad for remedies to these alleged "international crimes".

Taking cases such as these prompts strong reactions. Our law firm received dozens of angry responses from diehard supporters of Israeli policies, from British and American Jews as well as non-Jews — telephone calls, e-mails, faxes and letters — in response to publicity that we were acting for the Palestinian Centre for Human Rights. We also received abusive, threatening and informed personal attacks — all of which miss the point. By contrast, there has also been genuine debate in the Hebrew press. The case effectively began

when, in August, we presented evidence to the British police of alleged crimes committed by Almog (four cases while he was commander of the Gaza Strip from 2000 to 2003) and others. Under the Geneva Conventions Act 1957, the UK has universal jurisdiction to arrest and try suspected perpetrators of "grave breaches" of the Fourth Geneva Convention 1949 (IVGC). In the time available before Almog's visit to the UK, the police were unable to decide whether to arrest him using their normal powers. Therefore, an application was made to the magistrates' court for an arrest warrant. This was granted on September 10.

On September 11, Almog arrived at Heathrow airport, where police were waiting for him. He was tipped off about the planned arrest and remained on the aircraft. As the police failed to board the aircraft to arrest him, he returned to Israel on the same plane. The attempt to bring Almog to justice in the UK has therefore been frustrated. The Israeli Government is now seeking urgent changes in UK law to prevent any chances of future arrests or prosecutions in the UK. It is troubling that any country should seek immunity from "universal jurisdiction". When IVGC was negotiated,

the actions of Germany and Japan as military occupiers were fresh in the minds of the diplomats (as well as in the minds of their political masters). Third parties (that is, including those not involved in a particular conflict) were given legal obligations so that they might effectively "hold the ring" between the military occupier and the (otherwise unrepresented) civilians under occupation.

It is always to be hoped that a country engaged in a military occupation will uphold civilised standards and avoid the temptation to take advantage of the overpowering strength it wields over the civilians under its control. Occupying armies and the military and civilian legal systems of the occupying power should be able to bring to account its own "war criminals". This does happen in Israel in a few cases, but most alleged crimes are not even investigated as such. They are either ignored or officially sanctioned as legal in the teeth of international legal opinion to the contrary.

In these circumstances, a climate of impunity can take hold in an occupying army. One of the few ways to combat impunity is the practical application of universal jurisdiction. Criminal trials in the domestic courts of third-party states

(those remote from the conflicts in question) since 1949 might have deterred many war crimes. However, many alleged crimes in, for example, the occupied territories, Kuwait and East Timor have gone unchallenged across the world. Israelis, Iraqis and Indonesians should have been arrested and tried in other countries, to ensure legal accountability but also to deter criminality.

Sadly, individual states have lacked the political will to prosecute foreign war criminals. Countries have resisted getting "involved", even though they have a legal duty to "seek out and prosecute" alleged war criminals (Article 146 IVGC). Instead of individual countries doing their duty, in the few cases where international consensus has been possible, a "pooling of resources" has been achieved through the creation of "ad hoc international criminal tribunals" set up under resolutions of the UN Security Council.

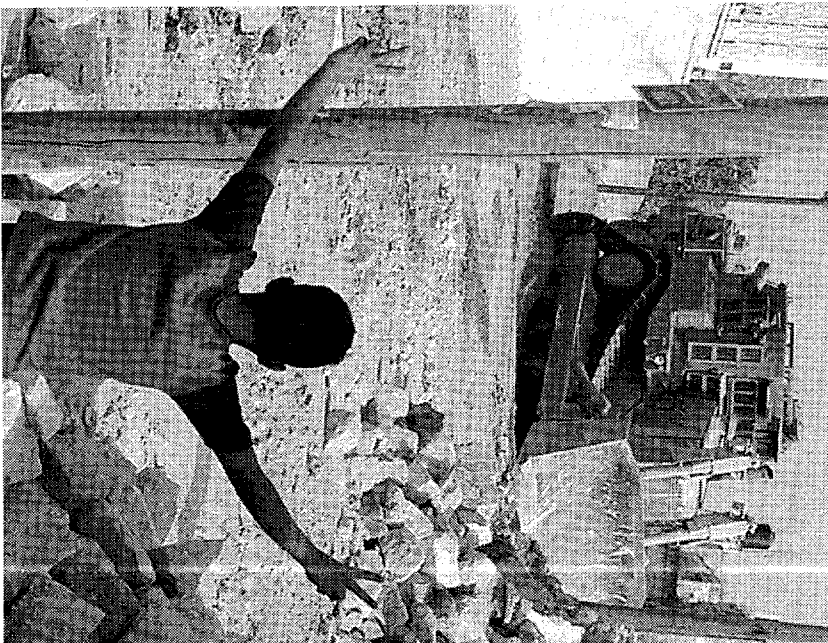
There is no chance of such an ad hoc tribunal being established in the foreseeable future in the case of Israel, as the US would veto such a proposal at the UN Security Council. Furthermore, the International Criminal Court cannot deal with alleged Israeli war crimes as Israel has refused to sign up to it.

Where can alleged victims of Israeli war crimes receive justice if their route to justice is blocked off in Israel and at the International Criminal Court?

Only the under-used principle of universal jurisdiction can deliver justice to such alleged victims and potentially save future victims. If countries such as the United Kingdom fail to do their duty, as seems to have been the case here, impunity will continue to prevail.

**A child reacts to Israelis bulldozing Palestinian homes**

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