

The Alarming Rise of Lawfare to Suppress Civil Society: The Case of Palestine and Israel



September 2021





The Alarming Rise of Lawfare to Suppress Civil Society: The Case of Palestine and Israel

By Kay Guinane

September 28, 2021

The Charity & Security Network
700 12th St NW 7th floor
Washington D.C. 20005
Tel. (202) 481 6926
Email: Info@charityandsecurity.org
Website: www.charityandsecurity.org
Twitter: [@CharitySecurity](https://twitter.com/CharitySecurity)

License

This work is licensed by the Charity & Security Network project of NEO Philanthropy, Inc. under the Creative Commons Attribution Non-Commercial 4.0 International license. To view the license visit <https://creativecommons.org/licenses/by-nc/4.0/>.

About the Charity & Security Network

The Charity & Security Network is a resource and advocacy center working to promote and protect the ability of nonprofit organizations to carry out peacebuilding, humanitarian, and human rights missions and to advance national security frameworks that support rather than impede this work.

Learn more about the Charity & Security Network's work at www.CharityAndSecurity.org.

About the Author

Kay Guinane is a Senior Advisor at the Charity & Security Network, providing technical expertise and institutional knowledge and supporting ongoing programmatic work. Ms. Guinane is a retired attorney who specializes in the rights of nonprofit organizations, particularly in the areas of freedom of speech and association and national security. She founded the Charity & Security Network and served as Director from 2009 - September 2020. She led C&SN's efforts to make national security rules impacting the work of civil society consistent with constitutional and human rights principles and eliminate unnecessary barriers to legitimate work of nonprofits. She has published research, testified before Congress, and engaged extensively in advocacy and consulting on these issues in the U.S. and abroad.

Ms. Guinane has represented a wide variety of nonprofit organizations, both as an advocate on issues and an advisor on tax and nonprofit law. She was Director of Nonprofit Speech Rights at OMB Watch, a Washington, D.C. based government watchdog organization and also worked for the Alliance for Justice, the National Consumer Law Center, Environmental Action (Washington, D.C.), the Legal Aid Society of Louisville, and Citizens for Social and Economic Justice and the public defender service (Hazard, Kentucky). She holds Bachelors and Juris Doctor degrees from the State University of New York at Buffalo.

Table of Contents

Acknowledgements	iii
Executive Summary	iv
Introduction	1
Chapter 1 – Shrinking Civil Society Space in the Post-9/11 Era	3
Chapter 2 – Lawfare: Politicized Attacks on Civil Society Space	7
Chapter 3 – Who are Lawfare Attackers?	12
Chapter 4 – Facilitators of Lawfare	27
Chapter 5 – Litigation Targeting Civil Society	39
Chapter 6 – Regulatory Attacks on Charitable Status and Requests for Investigation .	53
Chapter 7 – Targeting Nonprofits’ Funding	64
Chapter 8 – A Comprehensive Look at Lawfare Attack Groups	82
Chapter 9 – Politically Motivated False Claims Act Cases Targeting Programs in Palestine	99
Chapter 10 – Conclusions, Observations and Recommendations	120

Acknowledgements

The author would like to thank all those whose work and support made this report possible. Charity & Security Network staff Paul Carroll, Andrea Hall and Gabe Murphy provided essential support and advice. Many other members of the Charity & Security Network provided information and insight.

While this report describes systematic attacks on specific organizations, it also describes their commitment to continue their important work and the collective efforts of civil society to support them. They all deserve our thanks and ongoing support.

Executive Summary

This report focuses on the use of legal forums for political purposes – a practice known as “lawfare” – that is more concerned with inflicting damage on an opponent than prevailing with a particular legal argument or proving facts based on evidence. Specifically, it focuses on lawfare attacks that seek to silence and shut down the work of civil society organizations that support Palestinian rights and operate humanitarian, peacebuilding and other programs.

Lawfare campaigns have evolved in the context of a larger global problem of shrinking civil society space – driven by authoritarian leaders seeking to restrict civic space in order to repress political dissent, and by counterterrorism measures passed in the wake of the 9/11 attacks that have impeded the work of civil society organizations around the world.

Civil society was a particular target of post-9/11 legal restrictions, driven by faulty assumptions pushed by the George W. Bush administration that nonprofit organizations (NPOs) were a significant source of terrorist financing, and were, in the words of the since-revised Financial Action Task Force (FATF) recommendation, “particularly vulnerable” to terrorist abuse. As a result, overly restrictive regulation has spread globally.

Lawfare groups have capitalized on this shrinking civic space to go after organizations that have supported Palestinian rights, using the tactics described in this report. They attempt to force the hand of governments by using whistleblower laws and lobbying for investigations that, if successful, could institutionalize their extreme and harsh interpretations of the law.

Lawfare can take many forms, including litigation, regulatory complaints and pressure campaigns aimed at cutting off funding. Their claims are generally based on disinformation or misrepresentation of the facts. While they rarely prevail on the merits or succeed in forcing settlements on NPOs, the costs and chilling impacts of lawfare attacks further exacerbate the shrinking civic space problem.

In the context of the ongoing Israel/Palestine conflict, over the last six years lawfare has emerged as a tactic against human rights, humanitarian, and peacebuilding organizations

(and those that support them), as self-described “pro-Israel” groups reacted to human rights litigation against Israeli officials by going on the legal offensive against human rights defenders.

This report profiles the most active lawfare and disinformation groups attacking civil society organizations that work in Palestine or that support Palestinian rights. Collectively, these groups represent a major threat, not only to civil society organizations operating in Palestine, but more broadly, through the propagation of its lawfare tactics, to civil society organizations and actors the world over.

The lawfare and disinformation groups profiled in this report include the Zionist Advocacy Center (TZAC), the International Legal Forum (ILF), the Investigative Project on Terrorism (IPT), Keren Kaymeth Leisreal/Jewish National Fund (KKL-JNF), the Lawfare Project, the Middle East Forum (MEF), NGO Monitor (NGOM), UK Lawyers for Israel (UKLFI), and the Zachor Legal Institute. It also examines the government agencies that facilitate lawfare attacks against civil society organizations working in Palestine.

These attacks also take advantage of vague legal standards, including the U.S. definition of prohibited material support of terrorism. Countering lawfare thus requires a recalibration of the legal frameworks that enable it, as well as closer scrutiny of and accountability for the actors supporting it.

Litigation is a major tactic lawfare groups use to bring attention to their political issues, harass those they disagree with and impose costs on operations they do not like. The majority of these cases have been dismissed or settled without the targeted NPOs paying damages.

These suits have several factors in common. The allegations generally do not claim that money or tangible goods have been provided to a group on a terrorist list. Instead, they focus on speech and association, including democracy building, conflict resolution and human rights advocacy programs. Programs to assist Palestinian farmers and protect land rights are also targeted. Many of the allegations are conclusory, lacking supporting factual detail. The complaints often include politicized descriptions of the target groups’ activities and human rights positions, making broad and unsupported accusations that are not relevant to the case or the legal standards required to establish liability.

These cases are attempts to twist U.S. law away from its intended purposes in order to disrupt operations and impose costs on the nonprofit organizations targeted. Although these suits have not succeeded in winning trials, they do not need to do so to achieve their goals. Nonprofits that are sued must divert substantial resources to legal defense, including attorneys' fees, even when cases are dismissed early in the process. This in turn has a chilling effect on all organizations that work in Palestine, or that wish to do so. Thankfully, this chilling impact has been partially offset by the fact that these lawfare attacks rarely succeed in court—but the potential for lawfare attacks to deal devastating blows to civic space will persist until flaws in the legal frameworks they rely on are addressed.

Lawfare groups have also challenged the charitable status of several U.S. and UK organizations active in supporting Palestinian rights or providing aid in Palestine. These attacks are existential threats to the targeted organizations, as recognized charitable status is essential for fundraising. To date none of these efforts have succeeded, but they have given lawfare groups an opportunity to impose costs as opportunities to issue public statements that repeat politically charged claims about link to terrorism. In addition, these complaints are also used to pressure the charities' online donation payment processors, resulting in interrupted online fundraising capacity in two of the cases reviewed.

Despite lawfare groups' claims that they only seek accountability and transparency, their tactics point to a concerted effort to deprive NPOs working in Palestine of the resources necessary to do their work. In this they have the support of Israel's Ministry of Strategic Affairs and Public Diplomacy (recently folded into Israel's Ministry of Foreign Affairs), which has joined them in pressuring other governments to cut foreign assistance funds for groups working in Palestine. Lawfare groups also use pressure campaigns to "deplatform" target groups, pushing online donation payment processors to close accounts.

Lobbying efforts by lawfare groups, disinformation groups, and the Israeli government have sought to pressure governments into cutting off foreign assistance funds to groups that work in Palestine or support Palestinian rights.

Summary of Observations and Conclusions

The report concludes with key observations that emerge from the research and concrete recommendations for the relevant stakeholders.

The emergence of lawfare against NPOs is not surprising, given the toxic combination of rising authoritarianism, overly broad post-9/11 emergency measures, and increasing encroachment on the space within which civil society can operate. In fact, these trends enable lawfare attackers, allowing them to take advantage of policy gaps and avoid difficult policy debates. However, lawsuits are not the appropriate place to settle foreign policy debates.

While lawfare campaigns against civil society are primarily focused on groups operating in Palestine or supporting the human rights of Palestinians, use of this tactic is slowly spreading, and can spread further, if there is not a robust response by civil society globally.

Lawfare groups incur little risk in their push to impose their political agenda. Their legal complaints are inexpensive to file and there is a glaring lack of accountability for lawfare and disinformation attacks.

Despite the concerted efforts and significant resources invested in lawfare, civil society's response shows that pushing back works. NPOs that stand up to these legal bullies are more successful in defending themselves than those that do not. (But even successful legal defenses entail a substantial drain on organizational resources.)

Lawfare groups' actions reveal their political goals and motivations. The primary drivers that emerge from the information in this report include:

- fear of a united Palestinian political front,
- the desire to expand areas targeted for Israeli settlements, and
- a notable degree of racial and ethnic animus toward Palestinians.

Finally, the degree of open collaboration and coordination between the Israeli government and the disinformation and lawfare groups it supports is striking. The Israeli government has played a central role in orchestrating the lawfare strategy, in addition to providing groups with resources.

Summary of Recommendations

The report recommends that everyone, including publishers and government officials, should be wary of allegations made by lawfare and disinformation groups. Where lawfare attacks occur, the disinformation used should be exposed as the politically motivated smear tactic that it is. Lawfare groups should be held accountable and given no presumption of truthfulness or credibility.

Key specific recommendations include:

For governments

Where lawfare attacks occur, governments should address the factors that enable them. This means closing the legal gaps that lawfare groups take advantage of by making post-9/11 restrictions more targeted in order to safeguard civil society, and by providing clarity in the law that avoids overly restrictive interpretations.

1. Where lawfare attacks occur, governments should address the factors that enable them. This means closing the legal gaps that lawfare groups take advantage of by making post-9/11 restrictions more targeted in order to safeguard civil society, and by providing clarity in the law that avoids overly restrictive interpretations.
2. Government investigators should avoid becoming tools of outside forces.
3. The Israeli government should stop supporting lawfare and disinformation groups.
4. The U.S. government should take concrete steps to protect civil society space, which would reduce the threat of lawfare attacks. For instance:
 - The *Congress* should update the material support statute to provide essential safeguards for humanitarian and peacebuilding programs and human rights defenders.
 - The *Department of Justice* should provide greater clarity on what will or will not be prosecuted under the material support prohibition.
 - The *Secretary of State* should exercise its authority under 18 USC 2339B(j) to allow civil society organizations to provide training, expert advice and

- assistance, and services to listed groups as part of their engagement in peace processes.
- *Courts* should recognize and act to deter frivolous lawsuits. They should not facilitate them by allowing plaintiffs to amend deficient complaints or otherwise try to bolster meritless claims.

For civil society

Civil society stakeholders, from funders to operational groups on the ground, should recognize the political nature of lawfare attacks and push back accordingly. The philanthropic sector can increase its support for civil society organizations that work in Palestine and human rights defenders that advocate for Palestinian rights. Civil society organizations should not be intimidated or deterred from speaking up or from doing their essential work.

For donors

All donors, particularly government foreign assistance programs, must have more confidence in their own due diligence and screening protocols, which are very robust. When donor investigations are launched, they should be limited to the allegations in the complaint, and not become fishing expeditions that ultimately serve the political agenda of lawfare actors.

For publishers

Material submitted for publication in magazines, blogs, news outlets and professional journals should be screened to ensure they are not providing a platform for further dissemination of disinformation submitted by bogus authors. If the factual allegations are not backed up or rely on the disinformation groups described in this report, the articles or posting should be rejected.

Introduction

This report focuses on use of legal forums – the courts, regulators and legislatures – by politically motivated groups that seek to silence and shut down the work of civil society organizations that support Palestinian rights and operate humanitarian, peacebuilding and other programs in Palestine. While efforts to silence these organizations and activists are many and longstanding, the aggressive and frequent use of legal forums by private actors in this realm is relatively new. Perhaps the most troubling aspect of these lawfare attacks is that they attempt to dismantle programs that can contribute to sustainable peace.

These tactics have emerged in the context of a larger global problem of shrinking civil society space – as strong man rulers increasingly pursue restrictions on civil society that are intended to repress political dissent. In addition, whether intended or not, counterterrorism measures passed by many countries in the wake of the 9/11 attacks have driven closure of civil society space. This legal framework has not been recalibrated or updated to ensure that it does not disrupt humanitarian aid, peacebuilding, and human rights programs. This is particularly true in the United States, but also applies in Europe and the United Kingdom. As a result, this same framework is now being exploited in the misuse of legal processes to further political agendas and restrict the essential work of civil society.

Perhaps the most troubling aspect of these lawfare attacks is that they attempt to dismantle programs that can contribute to sustainable peace.

The legal attacks described in this report take advantage of vague legal standards and use disinformation churned out by a cottage industry of faux think tanks that draw on a troubling history of Islamophobia, mischaracterizing their targets as supporters of terrorism. Specifically, these disinformation groups have teamed up with pro-Israel extremist groups to attack programs that aid Palestinians, support human rights in Palestine, seek peace between Palestine and Israel or call for an end to Israel's occupation and annexation program. They have targeted a diverse set of civil society actors, including foundations, large aid groups, and small human rights organizations.

Discredited by scholars, policy and human rights experts, these disinformation groups have largely failed to get traction in the mainstream press. While most of the legal attacks against targeted groups have failed in court, they can still impose serious reputational costs on organizations and individuals associated with them. By incorporating disinformation into legal proceedings and legislative campaigns, lawfare groups have found a way to inflict more damage. Lawfare and smear campaigns force civil society groups to spend resources on defending themselves, diverting resources away from communities in need and in some cases, forcing them to find new ways to maintain online donation processing services.

This report describes the recent wave of attacks against groups working in Palestine, the tactics used, and how their use is expanding to target human rights and anti-racism advocates. This expansion is troubling, as it could portend a much broader use of lawfare tactics to target vulnerable populations and human rights defenders across a range of activities and locations. This report identifies the forces that have contributed to this trend and makes recommendations for how to protect civil society so that its work is allowed to flourish and contribute to human security around the globe.

By providing this overview, we hope to inform and forewarn policymakers, financial institutions, journalists, and the interested public about attempts to weaponize legal processes for political purposes so they can make informed decisions that protect civil society and the people it serves.

1

Shrinking Civil Society Space in the Post-9/11 Era

Because the U.S. post-9/11 legal regime has not been significantly updated,¹ it has contributed to two relatively new pressure points on civil society space. The first is declining access to financial services necessary to operate international programs (often referred to as bank derisking), as described in the Charity & Security Network's 2017 report *Financial Access for U.S. Nonprofits*.²

The second is the subject of this report: the use of legal institutions and processes by politically motivated actors in attempts to discredit, delegitimize and defund organizations that have a different viewpoint, criticize their allies and/or serve populations they view as adversaries. A working term for these efforts is "lawfare." This is primarily occurring in the Israel/Palestine context, but reflects a larger problem with broader implications rooted in historical shifts in the post-9/11 era.

Throughout the 1980s and 1990s nonprofit organizations (NPOs) operating programs across borders experienced what some have called a "golden age," marked by strong support for their role in eradicating poverty and injustice.³ However, that era, already under strain, effectively ended after the attacks on Sept. 11, 2001.

In the United States, the hastily enacted PATRIOT Act created emergency powers and a legal framework that have been left largely unchanged for 20 years.

In the United States, the hastily enacted PATRIOT Act created emergency powers and a legal framework that has been left largely unchanged for 20 years. Others followed the

1 There have been some amendments to the PATRIOT Act, increasing criminal penalties (18 U.S.C. §§2339B(a)(1)), and adopting a more expansive definition of material support of terrorism. – "The Intelligence Reform and Terrorism Prevention Act of 2004 Pub. L. 108-458." *GovInfo*. December 17, 2004. <https://www.govinfo.gov/content/pkg/PLAW-108publ458/pdf/PLAW-108publ458.pdf>

2 Eckert, Sue, Kay Guinane, and Andrea Hall. "Financial Access for U.S. Nonprofits." *Charity & Security Network*. February, 2017. [https://charityandsecurity.org/system/files/FinancialAccessFullReport_2.21%20\(2\).pdf](https://charityandsecurity.org/system/files/FinancialAccessFullReport_2.21%20(2).pdf)

3 Roche, Chris, and Andrew Hewett. "The End of the Golden Age of NGOs?" *Development Policy Center*. November 22, 2013. <https://devpolicy.org/the-end-of-the-golden-age-of-ngos-20131122/>

U.S. lead – the UN Security Council approved Resolution 1373,⁴ which “required every UN member state, among other things, to freeze the financial assets of terrorists and their supporters, deny terrorists travel or safe haven, prevent terrorist recruitment and weapons supply, and enhance information sharing and criminal prosecution against terrorists.”⁵ This resolution “represents a new factor in the attitude of the Security Council, which amounts to the imposition of general obligations on member states.”⁶ The Financial Action Task Force (FATF), an intergovernmental organization that sets international anti-money laundering standards, added counter-terrorist financing to its agenda, approving a measure that incorporated many of the problematic elements of U.S. policy.⁷

Civil society was a particular target of these new legal restrictions, driven by faulty



President George W. Bush signs the USA PATRIOT Act, October 26, 2001.

assumptions pushed by the George W. Bush administration that NPOs were a significant source of terrorist financing, and were, in the words of the since-revised FATF recommendation, “particularly vulnerable” to terrorist abuse.⁸ The myth of nonprofit vulnerability to terrorist abuse took hold despite a lack of evidence of significant abuse, robust regulation of the nonprofit sector and good governance practiced by nonprofits.

The effects of this restrictive legal environment have been far-reaching. Overly restrictive regulation has spread globally, as demonstrated in a 2012 report by Statewatch and

4 United Nations Security Council Resolution 1373. September 28, 2001. https://www.unodc.org/pdf/crime/terrorism/res_1373_english.pdf

5 Millar, Alistair, et. al. “Report on Standards and Best Practices for Improving States’ Implementation of UN Security Council Counter-Terrorism Mandates.” *Center on Global Counter-Terrorism Cooperation*. September 2006. https://www.globalcenter.org/wp-content/uploads/2006/09/best_practices.pdf

6 Rupérez, Javier. “The UN’s Fight Against Terrorism.” *Real Instituto Elcano*. September 6, 2006. http://www.realinstitutoelcano.org/wps/wcm/connect/10d77a804f01872cbc56fc3170baead1/1036_Ruperez_UN_September11.pdf?MOD=AJPERES&CACHEID=10d77a804f01872cbc56fc3170baead1

7 “FATF and NPOs: Recommendation 8.” *Global NPO Coalition on FATF*. <https://fatfplatform.org/context/fatf-and-npos/>

8 Ibid

the Transnational Institute.⁹ It examined the FATF mutual evaluation reports on 159 countries of their compliance with FATF's Special Recommendation VIII on Nonprofit Organizations, finding that FATF recommendations had been used by governments as an "instrument, to further cut back on the space of civil society... freedom to access and distribute financial resources for development, conflict resolution and human rights work."¹⁰

Counterterrorism measures are not the only driver of what has become known as the trend of "shrinking civil society space." The rise in authoritarianism, the complexity of the international financial system, and aggressive use of economic sanctions by state actors also contribute to the problem.¹¹ But the post-9/11 legal framework is especially significant, given the severe legal penalties for violations and the limited scope of safeguards for civil society.

The harmful impacts of counterterrorism measures on civil society may be intentional (motivated by the desire of repressive regimes to silence dissent and cling to power) or unintentional (failure to adequately consider practical impacts). Either way, they undermine critical and binding human rights and humanitarian obligations. Meaningful reform has been hindered by shortsighted political calculations and an aversion to taking on the complex job of integrating civil society, human rights and humanitarian principles into security measures.

Lawfare groups have capitalized on this shrinking of civic space to go after organizations that have supported Palestinian rights. They have stepped into a space created by the "Don't Ask, Don't Tell" enforcement policy that began during the Obama administration and has continued ever since. Rather than addressing vagueness in the law that constricts civil society operations, officials tell NPOs seeking badly needed clarity on the law not to worry because enforcement agencies do not prioritize incidental or minor violations of the law for enforcement action. Officials point to the lack of criminal prosecutions to justify this position. However, as a 2016 report from Conciliation Resources notes, "The

9 Hayes, Ben. "Counter-Terrorism, 'Policy Laundering' and the FATF: Legalising Surveillance, Regulating Civil Society." *Transnational Institute / Statewatch*. January, 2012. https://www.ohchr.org/Documents/Issues/FAssociation/Responses2012/other_contributions/World-Statewatch_Report_on_CT_and_FOA2012.pdf

10 Ibid

11 Brechenmacher, Saskia, and Thomas Carothers. "Defending Civic Space: Is the International Community Stuck?" *Carnegie Endowment for International Peace*. October 22, 2019. <https://carnegieendowment.org/2019/10/22/defending-civic-space-is-international-community-stuck-pub-80110>

absence of prosecutions of peacebuilding and mediation organisations in the US, UK or EU Member States is neither reassurance of protection under the law, nor proof that terrorist listing and associated legislation is not having a negative impact.”¹²

Since that time, the “Don’t Ask, Don’t Tell” approach continues to have a deleterious effect on NPOs. Now lawfare groups are attempting to force the hand of governments by using whistleblower laws and lobbying for investigations that, if successful, could institutionalize their extreme and harsh interpretations of the law. Their claims are generally based on disinformation or misrepresentation of the facts. While they rarely prevail on the merits or succeed in forcing settlements on NPOs, the costs and chilling impact of lawfare attacks further exacerbates the shrinking of civic space.

While the shrinking space problem has broad recognition, the role of lawfare groups and their supporters in making a bad situation worse has gone largely unnoticed. Civil society has made some progress in pushing for more proportionate and balanced counterterrorism measures, but more must be done to convert these broad policy pronouncements into a legal regime that reflects them.¹³ Until that happens, lawfare will continue to be a problem.

A 2019 report from the Carnegie Endowment for International Peace noted that despite efforts to address the shrinking space problem, “The international response seems stuck: some useful efforts have been undertaken, but they appear too limited, loosely focused, and reactive.”¹⁴

Effective responses to the shrinking of civic space will remain elusive until the deep-seated flaws in the post-9/11 legal framework are addressed and lawfare groups are prevented from exploiting them.

12 Dumasy, Teresa, and Sophie Haspeslagh. “Proscribing Peace: the Impact of Terrorist Listing on Peacebuilding Organisations.” *Conciliation Resources*. January, 2016. https://rc-services-assets.s3.eu-west-1.amazonaws.com/s3fs-public/Conciliation_Resources_Counter-terrorism_brief.pdf

13 “False Claims Act Lawsuits.” *Charity & Security Network*. <https://charityandsecurity.org/issue-areas/false-claims-act-lawsuits/>

14 Brechemnmacher, Saskia, and Thomas Carothers. “Defending Civic Space: Is the International Community Stuck?” *Carnegie Endowment for International Peace*. October 22, 2019. <https://carnegieendowment.org/2019/10/22/defending-civic-space-is-international-community-stuck-pub-80110>

2

Lawfare: Politicized Attacks on Civil Society Space

Defining Lawfare

This report focuses on a particular use of legal forums for political purposes – a practice known as “lawfare,” a relatively recent term. It is generally distinguishable from impact litigation that seeks to address the legal merits of issues, such as the NAACP’s series of lawsuits challenging racial segregation. Instead, there is a political element to lawfare that is more concerned with inflicting damage on an opponent than prevailing with a particular legal argument or proving facts based on evidence.

Lawfare can take many forms. There are four primary categories addressed in this report:

- Litigation
- Regulatory complaints, including attacks on charitable status
- Requests for government investigations or prosecution
- “Deplatforming,” or pressuring financial service providers to cancel the accounts of nonprofit organizations and human rights defenders

For the purposes of this report, which focuses on the negative connotations, the Wikipedia definition of lawfare will be used:

Lawfare is the misuse of legal systems and principles against an enemy, such as by damaging or delegitimizing them, tying up their time or winning a public relations victory. The term is a portmanteau of the words law and warfare.¹

The lawfare attacks on civil society organizations are an abuse of the legal system when undertaken in order to harass or undermine perceived political opponents, rather than legitimate attempts, as some have claimed, to promote compliance with nonprofit law or protect national security interests.

Since 2015, a series of politically motivated lawsuits, regulatory complaints, threatening letters and advocacy by pro-Israel extremist groups has targeted civil society organizations

¹ “Lawfare.” Wikipedia. Wikimedia Foundation. July 8, 2021. <https://en.wikipedia.org/wiki/Lawfare>

that work in Palestine or advocate for the human rights of Palestinians. These groups have had the active support of the Israeli government, through its Ministry of Strategic Affairs, now folded into the Ministry of Foreign Affairs. (See Chapter 3.)

Evolution of the Lawfare Concept

The term “lawfare” was popularized by the Lawfare Blog, launched in 2010 to address “that nebulous zone in which actions taken or contemplated to protect the nation interact with the nation’s laws and legal institutions.”² In his inaugural blog, co-founder and Editor in Chief Benjamin Wittes notes that “The term ‘lawfare’ is controversial in some circles, and subject to a variety of interpretations and uses... Going back to the 1950s, the term has frequently been used in contexts wholly unrelated to national security... But its most prominent usage today very much concerns national security.”³

In the context of the ongoing Israel/Palestine conflict, lawfare has emerged over the last six years as a tactic against human rights, humanitarian, and peacebuilding organizations, and those that support them.

Wittes traces the term back to U.S. Air Force Major General Charles Dunlop, who in a 2001 paper defined lawfare as “the use of law as a weapon of war” and later “expanded the definition of the term to mean ‘the strategy of using – or misusing – law as a substitute for traditional military means to achieve an operational objective.’”⁴

In the context of the ongoing Israel/Palestine conflict, lawfare has emerged over the last six years as a tactic against human rights, humanitarian, and peacebuilding organizations, and those that support them, as self-described “pro-Israel” groups reacted to human rights litigation against Israeli officials by going on the legal offensive against human rights defenders.

Extremist pro-Israel groups tend to view human rights litigation against the Israeli government as a threat to the state of Israel itself. This view gained some broader traction

2 “About Lawfare: A Brief History of the Term and the Site.” Lawfare. <https://www.lawfareblog.com/about-lawfare-brief-history-term-and-site>

3 Ibid

4 Ibid

after a highly controversial World Conference Against Racism, Racial Discrimination, Xenophobia and Intolerance in Durban, South Africa in 2001.⁵ This UN-sponsored event ended in controversy over contentious issues, including a debate on whether to equate Zionism with racism. After the conference's Declaration and Programme of Action cut out language about Israel, a parallel NGO Forum included the language in its outcome statement. The NGO Forum encouraged use of litigation to address issues of concern.⁶

The disinformation group NGO Monitor (described later in this report) published a report in 2011 that described the Durban NGO Forum as the place where NGOs crystalized lawfare as a tactic and have since “engaged in international lobbying as well as filing civil lawsuits or initiating criminal complaints against Israeli officials and those doing business with Israel for alleged ‘war crimes’ or ‘crimes against humanity’ throughout Europe and North America.” It characterized these actions as “lawfare” that are “intended to interfere with anti-terror operations, as well as block future actions.”⁷

Lawfare Distinguished from Impact Litigation

Although disinformation and lawfare groups accuse human rights groups of conducting “lawfare,” there is little similarity between the kinds of legal attacks described in this report and lawsuits filed by human right defenders that seek to enforce human rights protections or to change laws that do not sufficiently provide such protections. That kind of legal action is better described as impact litigation.

The Harvard Law School defines impact litigation as:

Planning, preparing, and filing or defending lawsuits focused on changing laws or on the rights of specific groups of people. Impact litigation is brought or defended typically when the case affects more than one individual even if there is one individual involved. Many impact litigation organizations are also deeply

5 Swarns, Rachel. “The Racism Walkout: The Overview: US and Israelis Quit Racism Talks Over Denunciation.” *The New York Times*. September 4, 2001. <https://www.nytimes.com/2001/09/04/world/racism-walkout-overview-us-israelis-quit-racism-talks-over-denunciation.html> ; “World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance.” *United Nations*. 2001. <https://www.un.org/WCAR/durban.pdf>

6 “WCAR NGO Forum Declaration.” *Asia Pacific NGO Movement for WCAR*. September 3, 2001. <https://www.hurights.or.jp/wcar/E/ngofinaldc.htm>

7 Herzberg, Anne. “NGO ‘Lawfare’: Exploitation of Courts in the Arab-Israeli Conflict.” *NGO Monitor*. January 11, 2011. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1737708

*involved in policy work.*⁸

The Washington College of Law at American University says:

*Impact Litigation (IL) refers to the strategic process of selecting and pursuing legal actions to achieve far-reaching and lasting effects beyond the particular case involved. In human rights literature, impact litigation is also known as cause lawyering, public interest law, or strategic litigation “where the protection and promotion of a core set of international human rights principles is the driving cause.” It invokes a rights-based approach to achieving social change through the use of complex litigation strategies and non-litigation tactics, such as the use of social media, grassroots organizing, and engagement with academic institutions.*⁹

The lawfare attacks described in this report do not exhibit these characteristics. Instead, they exemplify the negative side of lawfare, as set out in the Wikipedia definition, and cannot be accurately characterized as anything other than an abuse of the legal system.

Lawfare is Not About Accountability

Lawfare groups sometimes claim to be watchdogs over NGOs, seeking only to make them accountable and transparent. This claim is disingenuous. For example, the lawfare group NGO Monitor (described later in this report) claims that it works “to ensure that decision makers and civil society operate in accordance with the principles of accountability, transparency, and universal human rights.”¹⁰ But a study about NGO Monitor published in 2018 by a group of Israeli former diplomats, academics and other experts said, “This is a disingenuous description. In fact, years of experience show that NGO Monitor’s overarching objective to defend and sustain government policies that help uphold Israel’s occupation of, and control over, the Palestinian territories.”¹¹ It goes on to note that “While NGO Monitor demands extreme transparency from human rights

8 “Litigation: Impact.” Harvard Law School. <https://hls.harvard.edu/dept/opia/what-is-public-interest-law/public-interest-work-types/impact-litigation/>

9 “Impact Litigation: An Introductory Guide.” Center for Human Rights & Humanitarian Law. American University College of Law. 2016. <https://www.wcl.american.edu/impact/initiatives-programs/center/publications/documents/impact-litigation-an-introductory-guide/>

10 “About.” NGO Monitor. <https://www.ngo-monitor.org/about/>

11 “NGO Monitor: Shrinking Space: Defaming Human Rights Organizations that Criticize the Israeli Occupation.” Policy Working Group. September 2018. <http://policyworkinggroup.org.il/>

groups about their funding, it is highly reticent about its own sources of income.”¹²

The political rhetoric in the complaints filed by lawfare groups also exposes their political motivations, as do the drastic remedy requests that far exceed any proportionate accountability for the alleged damage. For example, the Zionist Advocacy Center (described later in this report) sought over \$90 million in damages against the Carter Center in a False Claims Act suit based on provision of water, cookies and fruit at a conflict resolution meeting that included representatives of two groups on the U.S. terrorist list.¹³ In addition, it sought to have Doctors Without Borders’ tax-exempt status revoked by the IRS (see Chapter 6) because its medical training in Gaza involved the Ministry of Health in the Hamas-controlled government.¹⁴ The IRS dismissed the request. Bankrupting Doctors Without Borders by taking away its charitable status would have harmed tens of thousands of people in need of medical care globally.

It’s About Disruption and Harassment

The politically motivated attacks against humanitarian, peacebuilding and human rights groups described in this report employ a range of tactics intended to disrupt and delegitimize the vital work of civil society organizations working in Palestine. Contrary to the assertions of lawfare groups involved in these attacks, their lawsuits, regulatory complaints and requests for official investigations are not legitimate attempts to make nonprofit organizations more accountable or to protect human rights—rather, they represent a concerted effort to stifle civil society space in Palestine and disrupt the work of organizations that support the well-being of Palestinians.

¹² Ibid

¹³ “United States of America ex rel. TZAC, Inc., v The Carter Center.” *U.S.D.C., D.C. No: 1:15-cv-02001* – Case summary available at <https://charityandsecurity.org/litigation/tzac-carter-center/>

¹⁴ “Legal Team Demands IRS Revoke Tax Exempt Status of MSF for Supporting Hamas.” *War News Information Press*. February 8, 2016. <https://warnewsinformation.blogspot.com/2016/02/legal-team-demands-irs-revoke-tax.html>

3 Who are Lawfare Attackers?

A combination of extreme pro-Israel disinformation groups and legal activists have joined forces, with support from the Israeli government, in coordinated efforts to delegitimize human rights and civil society organizations that aid or support Palestinians. Their tactics focus on attempting to associate their targets with terrorism, deprive them of platforms to be heard and cut off their funding.¹ The Israeli Ministry of Strategic Affairs and Public Diplomacy, which merged with the Foreign Ministry in 2021, provides technical support and funding to this effort.

These groups present themselves as researchers and watchdogs. But they have made their political agendas clear by virtue of their rhetoric and willingness to engage in malicious smear campaigns that deliberately distort and twist the truth.

This chapter provides an overview of these groups, background on the role of the Israeli government's role and the coordination between them. It also shares highlights from a report that provides an in-depth analysis of the defects in the logic and arguments used in these attacks. Chapter 8 offers a more comprehensive look at these groups.

Overview of Lawfare and Disinformation Groups

There are two types of groups engaging in politically motivated attacks against civil society in Palestine or supporting Palestinian rights: lawfare and disinformation. While there is some crossover between them, the lawfare groups generally bring complaints that draw on fabricated data generated by the disinformation groups. This section identifies key groups in each category.

Attorney David Abrams and the Zionist Advocacy Center (TZAC)

Attorney David Abrams operates TZAC from his law office in New York. The targets of his lawsuits and regulatory complaints include 13 charities based in the U.S. or Europe that operate programs in Palestine. These include food assistance, medical services,

¹ "Target Locked: The Unrelenting Israeli Smear Campaigns to Discredit Human Rights Groups in Israel, Palestine, and the Syrian Golan." *The Observatory for the Protection of Human Rights Defenders*. April 2021. https://target-locked-obs-defenders.org/IMG/pdf/obs_palestine2021ang-1.pdf

peacebuilding and democracy building programs, vocational training and youth services. The other targets are primarily U.S. or European groups that support Palestinian human rights and solidarity organizations. Although TZAC has sought over \$600,000,000 in damages, to date it has been mostly unsuccessful in these cases, collecting only 4.5 percent of that amount in two pre-trial settlements (see Chapter 5 Litigation). Its targets include the American University in Beirut, the Carter Center, Christian Aid, Doctors Without Borders, the New Israel Fund, Norwegian People's Aid and Oxfam GB.

International Legal Forum (ILF)

The ILF is an Israel-based nonprofit legal hub that provides lawyers and activists with resources. It focuses on legal issues in Israel's relationship to Palestine and attacks supporters of Palestinian rights, such as opposing International Criminal Court investigations into Israeli government human rights violations. It is active in settlement expansion and land policy issues and promotes the use of the International Holocaust Remembrance Alliance definition of antisemitism to characterize defense of Palestinian rights as antisemitism (see Chapter 4). The ILF works closely with the U.S.-based Zionist Advocacy Center on litigation and campaigns to close down financial services for NPOs it targets. It has close ties to the Israeli government, playing a significant role in coordination between lawfare attack groups and the Israeli Ministry of Strategic Affairs (now part of the Ministry of Foreign Affairs).²

Investigative Project on Terrorism (IPT)

IPT claims to have the "world's most comprehensive data center on radical Islamic terrorist groups."³ However, its credibility is questionable, with one AP reporter stating its leader, Steve Emerson, "could never back up what he said..."⁴ IPT's status as a nonprofit organization has been criticized as a lucrative platform for Emerson.⁵

2 "Exhibit A and B to Registration Under Foreign Agent Registration Act of 1938." U.S. Dept. of Justice. Registration Number 6676. May 11, 2020. <https://charityandsecurity.org/wp-content/uploads/2021/09/TZAC-FARA-Filing.pdf>

3 "About the Investigative Project on Terrorism." *The Investigative Project on Terrorism*. <https://www.investigativeproject.org/about.php>

4 Ali, Wajahat, et. al. "Fear, Inc.: The Roots of the Islamophobia Network in America." *Center for American Progress*. August 2011. p. 49 <https://cdn.americanprogress.org/wp-content/uploads/issues/2011/08/pdf/islamophobia.pdf>

5 Smietana, Bob. "Anti-Muslim Crusaders Make Millions Spreading Fear." *The Tennessean*. October 24, 2010. <https://www.tennessean.com/story/news/local/2010/10/24/antimuslim-crusaders-make-millions-spreading-fear/28936467/>

Keren Kaymeth Leisreal/Jewish National Fund (KKL-JNF)

KKL-JNF's land programs have generated controversy for displacing Palestinians, including Bedouin communities, as well as for policies that discriminate against Palestinian citizens of Israel in land sales and leases. KKL-JNF has affiliate organizations that raise funds in over 50 countries. It unsuccessfully sued the US Campaign for Palestinian Rights for its support to the Boycott National Committee in Palestine.

Lawfare Project

The Lawfare Project is a well-funded network of legal advocates based in the U.S.⁶ Its litigation primarily focuses on allegations of discrimination and free speech issues, as well as claims against "individuals and organizations that provide material support to terrorist networks..." It frequently partners with TZAC and has filed complaints with charity regulators.

Middle East Forum (MEF)

Based in the U.S., MEF often targets Muslim charities with faux research reports, advocacy aimed at cutting foreign assistance to groups that work in Palestine and other forms of attack.⁷ It has an extensive communications program to promote its political agenda, using blogs, articles, events and reports to promote its viewpoint, along with publishing the *Middle East Quarterly*.⁸ MEF has numerous critics, including Media Bias/Fact Check (MBFC), an independent online media outlet dedicated to educating the public on media bias and deceptive news practices.⁹ It rates MEF as a "Questionable Source," with a factual credibility rating of "Low."

NGO Monitor (NGOM)

NGO Monitor was founded in Israel in 2002 as a project of the conservative Israeli think tank Jerusalem Center for Public Affairs (JCPA). Founder Dorn Gold is a close ally of

6 The Lawfare Project's 2018 IRS Form 990 puts its budget at just over \$1.1 million. https://www.causeiq.com/organizations/view_990/272402908/a08b8d6eed5e7a63967a63071d413a9b

7 Bridge Initiative Team. "Fact Sheet: Middle East Forum." *Georgetown University*. August 14, 2018. <https://bridge.georgetown.edu/research/factsheet-middle-east-forum/>

8 "About the Middle East Quarterly." *Middle East Forum*. <https://www.meforum.org/meq/about.php>

9 "About Media Bias/Fact Check." *Media Bias/Fact Check*. June 2, 2021. <https://mediabiasfactcheck.com/about/>

former Israeli Prime Minister Benjamin Netanyahu.¹⁰ Its activities focus on disseminating politically charged critiques of non-governmental organizations (NGOs) that work in Palestine or support such work. It maintains a database on its website and publishes reports, books, and other publications, holds events and submits comments to official bodies. NGOM has been criticized for failing to practice the level of transparency it calls for in others.¹¹ In addition to providing disinformation that is used in lawfare attacks, it lobbies to cut U.S. and European foreign assistance funding for groups working in Palestine.

UK Lawyers for Israel (UKLFI)

UKLFI was formed in the United Kingdom as an unincorporated association in 2011. It has since created a non-profit company and a charitable trust. It has unsuccessfully filed numerous challenges to the charitable status of British groups that work in Palestine. It also pushed online donation payment platforms to shut down accounts of organizations that work in Palestine. The nonprofit company focuses on advocacy and proactive litigation and the charity focuses on research and “educational activities.” Most of the activities described in this report are conducted by the nonprofit company.

Zachor Legal Institute

Zachor Legal Institute’s primary focus is on action against groups that support the Boycott, Divestment and Sanctions (BDS) movement and its allies. However, it has pushed for government investigations of Palestinian human rights defenders and their allies, including Black Lives Matter. The two-person operation publishes reports and press statements, makes complaints to various administrative agencies and files amicus briefs in litigation. It also sends threatening letters to private companies, such as social media platforms, urging action against groups it labels as antisemitic.¹²

10 “NGO Monitor: Shrinking Space: Defaming Human Rights Organizations that Criticize the Israeli Occupation.” *Policy Working Group*. September 2018. p.11 <http://policyworkinggroup.org.il/>

11 Ibid

12 Machol, Ron. “Zachor Legal Institute Advocates for Social Media Companies to Rid their Platforms of Antisemitism.” *EIN Presswire*. June 4, 2020. https://www.einnews.com/pr_news/518525134/zachor-legal-institute-advocates-for-social-media-companies-to-rid-their-platforms-of-antisemitism

MEF's Islamist Watch Director Hit with Defamation Judgment in the UK

In a case that goes directly to the issue of credibility, Sam Westrop, Director of MEF's Islamist Watch project, was found liable for defamation in the UK, where a judgment of £140,000 was entered against him in 2017. The facts of the case, as described in the judgment, are illustrative of the disinformation methodology Westrop brings to MEF's Islamist Watch.

In this case, Westrop was writing as a director of Stand for Peace, a UK-based limited company that operates a website purporting to be a platform for discussion of issues that divide Jewish and Muslim communities. Like MEF, it profiles many British organizations and leaders it claims have links to terror. The website has no contact information and does not list any of its directors, staff or leadership.

In October 2014 Westrop published an article in Stand for Peace that claimed Mohamed Ali Harrath, CEO and founder of the Islam Channel in the UK, was guilty of terrorism. The article, titled *Subway withdraws sponsorship of extremist charity fundraiser*, recounted that the fast-food chain Subway had initially sponsored a fundraising event titled "Reviving Gaza," but withdrew after allegations about "extremist links." Westrop claimed this link was the Islam Channel and that CEO Harrath was a "convicted terrorist."

In April 2015, after he learned about the article, Harrath sued both Westrop and Stand for Peace for defamation in the Royal Courts of Justice. The court's judgement noted that Westrop tried to support his claim by linking to a since-removed October 24, 2010 *Guardian* article that incorrectly repeated a claim that the Islam Channel promoted extremist groups and that Harrath "has a conviction in Tunisia for terrorism related offenses." The judge noted that Harrath "discovered, after the event, that he had been 'convicted' of an offense in his absence by a Tunisian court in or about 2005. He still has no idea as to the evidence (if any) on which this was based. He denies that he had committed any such offense and contends that this was a politically

motivated act.” In 2011, all defendants convicted in absentia were cleared and compensated.

The court noted that Westrop mounted a defense based on the truth of his allegations, but that “There simply is no evidence to support the allegation of terrorism or to rebut his [Harrath’s] evidence to the contrary.”

On March 30, 2017, the court approved the judgment in favor of Harrath. In imposing the £140,000 amount, the judge said it was intended to leave “no doubt in the minds of a reasonable onlooker as to the claimant’s [Harrath’s] entitlement to vindication.” He went on to say, “I can safely proceed in the light of the evidence before me, on the basis that the Claimant is *not* a terrorist.”

Following the judgment, Harrath said, “Mr. Westrop and Stand for Peace had previously lauded themselves as experts on subjects of this kind and had been cited widely in the mainstream media. Yet, when it came to trying to excuse his conduct in publishing this grave libel, it became clear that the research that Mr. Westrop had undertaken had been wholly inadequate... The Court clearly had little sympathy for such excuses.”

Sources:

- [1] “High Court of Justice Queen’s Bench Division, Between Mohamed Ali Harrath Claimant and Stand for Peace Limited and Samuel Westrop Defendant.” Case No. HQ15D04437, Neutral Citation Number [2017] EWHC 653 (QB). *Carter-Ruck*. March 30, 2017. [https://www.carter-ruck.com/images/uploads/documents/Harrath-v-\(1\)Stand_for_Peace-\(2\)Westrop-Judgment.pdf](https://www.carter-ruck.com/images/uploads/documents/Harrath-v-(1)Stand_for_Peace-(2)Westrop-Judgment.pdf)
- [2] “Homepage.” *Stand for Peace*. <http://standforpeace.org.uk/> (NOTE: This url leads to a security warning before going to the site.)
- [3] Plunkett, John. “Islam Channel Chief Executive Arrested in South Africa.” *The Guardian*. January 26, 2010. <https://www.theguardian.com/media/2010/jan/26/mohamed-ali-harrath>
- [4] “High Court of Justice Queen’s Bench Division, Between Mohamed Ali Harrath Claimant and Stand for Peace Limited and Samuel Westrop Defendant.” Case No. HQ15D04437, Neutral Citation Number [2017] EWHC 653 (QB). *Carter-Ruck*. March 30, 2017. para. 3, 4, & 7. [https://www.carter-ruck.com/images/uploads/documents/Harrath-v-\(1\)Stand_for_Peace-\(2\)Westrop-Judgment.pdf](https://www.carter-ruck.com/images/uploads/documents/Harrath-v-(1)Stand_for_Peace-(2)Westrop-Judgment.pdf)
- [5] “Founder and CEO of the Islam Channel Awarded £140,000 in Libel Damages Over “Baseless” Terrorism Allegation.” *Carter-Ruck*. March 31, 2017. https://www.carter-ruck.com/images/uploads/documents/Harrath-Press_Release-310317.PDF

Israel's Ministry of Strategic Affairs and Public Diplomacy, Ministry of Foreign Affairs

Israel's Ministry of Strategic Affairs and Public Diplomacy (MSA), now part of the Ministry of Foreign Affairs, has at times been a cabinet level department. (This report will refer to it as the MSA/MFA.) Overall, the MSA/MFA has orchestrated a public relations program focused on stopping BDS and promoting the narrative that opposition to human rights violations or settlement expansion by the Israeli government amounts to "delegitimization" of Israel and antisemitism. The MSA's campaign reflects what journalist and scholar Ben White describes as "an intensified effort by the Israeli government—and its allies—to tarnish the Palestinian struggle for basic rights and, in particular, to equate BDS and anti-Zionism with anti-Semitism."¹³

The MSA/MFA says its mission is to "act against the delegitimization and boycott campaigns against the state of Israel..."¹⁴ It sponsors the Campaign Against Delegitimization and coordinates government efforts through "diplomacy, consciousness, academic, economic, cultural and legal activity."¹⁵ Its responsibilities include "Representing the government's position with regard to the campaign vis-a-vis non-governmental organizations in Israel and around the world, and working with them to advance the objectives of the campaign..."¹⁶ It has provided significant financial and other support to these groups as part of its strategy to promote the state's message through a network of organizations in Israel and abroad.

In addition to accusing civil society groups in Palestine and their supporters of antisemitism when they criticize Israeli policies, the MSA and its proxy groups have equated support for human rights with support for Hamas or other designated groups. (See Chapter 9 Summary of Lawfare Court Cases.) When the MSA released a report in 2019 claiming that NGOs promoting BDS have ties to listed organizations,¹⁷ the Associated Press noted that:

Most of the cases were based on somewhat vague accusations of affiliation or

13 White, Ben. "Delegitimizing Solidarity: Israel Smears Palestine Advocacy as Anti-Semitic." *Journal of Palestine Studies*, Vol. XLIX, No. 2, Winter 2020 p. 67 <https://www.palestine-studies.org/en/node/1649970>

14 "About." Ministry of Strategic Affairs and Public Diplomacy. https://www.gov.il/en/departments/units/ministry_of_strategic_affairs_and_public_diplomacy

15 Ibid

16 Ibid

17 "Terrorists in Suits: The Ties Between NGOs Promoting BDS and Terrorist Organizations." Ministry of Strategic Affairs and Public Diplomacy. August 1, 2019. https://www.gov.il/BlobFolder/generalpage/terrorists_in_suits/en/De-Legitimization%20Brochure.pdf

*expressions of sympathy for militant groups, in some instances connected to acts that took place years ago. A female Palestinian lawmaker cited in the report, for instance, has been jailed by Israel for over a year without being charged with a crime. At least two people on the list have received international recognitions for their human rights work.*¹⁸

The MSA/MFA has supported pressure campaigns urging online donation payment processors to drop accounts of Palestinian groups and their supporters. It provided indirect support for the Zionist Advocacy Center through the International Legal Forum's participation in a False Claims Act suit against the Carter Center that was dismissed on request of the Department of Justice (see Chapter 9). Its support has fueled legislative drives in the U.S. and elsewhere to make support for Boycott Divestment and Sanctions (BDS) activism illegal despite legal protections for free speech. The MSA/MFA also funded the creation of a database with information on news, court decisions, legislative proposals, and laws around the world. It has focused on creating messengers in youth groups, on campuses and in labor unions.¹⁹

The MSA/MFA has gone through several iterations since it was originally launched in 2006 to coordinate security and diplomatic initiatives on strategic threats, with a focus on Iran. It was disbanded in January 2008 when its minister left the government and reestablished in 2009 with its agenda expanded to include "Palestinian incitement."²⁰ In 2013 the MSA merged with the Intelligence Affairs Ministry, and in May 2015 it formed a separate ministry that incorporated the Public Diplomacy Ministry. Gilad Erdan of the Likud Party became MSA's Minister, with a broad mandate to "guide, coordinate and integrate the activities of all the ministers and the government and of civil entities in Israel and abroad on the subject of the struggle against attempts to delegitimize Israel

18 "Israel Releases Report on Links Between BDS and Militants." *Associated Press*. February 3, 2019. <https://apnews.com/article/israel-boycotts-middle-east-international-news-hamas-c0d1e395a08641dd8ed0d804dcb4dd07>

19 "Grants for Pro-Israeli Activity for 2019 – the Ministry of Strategic Affairs and Public Diplomacy." *Ministry of Strategic Affairs and Public Diplomacy*. July 8, 2019.

https://www.gov.il/en/Departments/General/strategy_support ; Jaffe-Hoffman, Maayan. "Strategic Affairs Ministry to Form Anti-BDS Legal Network." *Jerusalem Post*. December 20, 2018. <https://www.jpost.com/arab-israeli-conflict/ministry-of-strategic-affairs-to-create-international-anti-bds-legal-team-574946>

20 Katz, Yaakov. "Security and Defense: Who's in Charge of Whom and Over What?" *Jerusalem Post*. April 2, 2009. <https://www.jpost.com/features/front-lines/security-and-defense-whos-in-charge-of-whom-and-over-what>

and the boycott movement."²¹ Under his leadership the MSA quintupled its budget, to New Israel Shekel (NIS) 44 million, or about \$12 million USD, in 2016.²² After the 2021 Israeli election brought in a new government, the MSA was folded into the Ministry of Foreign Affairs.²³

The close collaboration between the Israeli government and lawfare groups was evident in late 2016, when Israel's UN Envoy Danny Danon told participants at a conference convened to counter the BDS movement that anti-BDS efforts were seeing results. He said, "In my opinion the combination of the courts, legislative houses and students on campus is a winning combination. I sincerely believe that it is possible to beat the BDS movement."²⁴

In early 2018, Erdan, who was also serving as Public Security Minister, said the MSA would expand its efforts to go after European government funding for groups that supported BDS, noting "We are moving from the defensive and going on the offensive."²⁵ Then in December 2018 he announced that the MSA would be spending NIS 3 million (over \$900,000) to launch a legal network to fight BDS, contracting with the International Legal Forum to administer a grants program that would provide as much as NIS 600,000, (about \$183,000) in support of organizations and professionals working to stop the BDS movement through legal actions.²⁶ This support continued into late 2020, when the MSA announced grants for "pro-Israel" groups to help address funding shortfalls during the Covid-19 pandemic.²⁷

21 Blau, Uri. "Inside the Clandestine World of Israel's 'BDS-Busting' Ministry." *Haaretz*. March 25, 2017. <https://www.haaretz.com/israel-news/MAGAZINE-inside-the-clandestine-world-of-israels-bds-busting-ministry-1.5453212>

22 Pink, Aiden. "U.S. Pro-Israel Groups Failed to Disclose Grants from Israeli Government." *The Forward*. August 31, 2020. <https://forward.com/news/israel/453286/us-pro-israel-groups-failed-to-disclose-grants-from-israeli-government/>

23 Berman, Lazar. "Netanyahu's Ouster Creates Diplomatic Openings for Israel, if Government Holds." *The Times of Israel*. June 24, 2021. <https://www.timesofisrael.com/netanyahus-ouster-creates-diplomatic-openings-for-israel-if-government-holds/>

24 Eichner, Itamar. "UN Envoy Danon Lauds Anti-BDS Successes." *YNet News*. November 17, 2016. <https://www.ynetnews.com/articles/0,7340,L-4880517,00.html>

25 Baruch, Eliran. "Likud Minister: We Are Going on the Offensive." *Arutz Sheva* 7. February 6, 2018. <https://www.israelnationalnews.com/News/News.aspx/241593>

26 Jaffe-Hoffman, Maayan. "Strategic Affairs Ministry to Form Anti-BDS Legal Network." *Jerusalem Post*. December 20, 2018. <https://www.jpost.com/arab-israeli-conflict/ministry-of-strategic-affairs-to-create-international-anti-bds-legal-team-574946>

27 Kampeas, Ron. "Strategic Affairs Ministry Announces Aid for Pro-Israel Groups as Funding Dives." *The Times of Israel*. October 3, 2020. <https://www.timesofisrael.com/strategic-affairs-ministry-announces-aid-for-pro-israel-groups-as-funding-dives/>

There has been little transparency about what non-governmental groups the MSA has funded and what activities these grantees undertook. The MSA did not release information about its grants until the summer of 2020, when, according to *The Forward*, “Israel’s new coalition government appointed a different ministry leader, who dropped the bureau’s long-standing stance of rebuffing public-records requests from reporters.”²⁸ *The Forward*’s analysis of the MSA’s grants for the first quarter of 2020 showed that it gave \$6.6 million to 11 U.S. organizations, and supported groups in Africa, Europe and Latin America.²⁹ One of the U.S. groups it funded, Proclaiming Justice to the Nations,³⁰ was listed as an anti-Muslim hate group by the Southern Poverty Law Center until 2021.³¹

There has been little transparency about what non-governmental groups the MSA has funded and what activities these grantees undertook.

The Forward investigation also found that the MSA’s grant program ran into roadblocks in 2017 when several prominent American Jewish groups, including the Anti-Defamation League and Jewish Federation of North America, turned down offers of funding out of concern that such grants would trigger registration and reporting requirements under the Foreign Agents Registration Act (FARA). To overcome this problem the MSA created a public benefit company – initially called Kela Schlomo and then Concert – to fight BDS and obscure the role of the MSA.³²

Close Coordination Between MSA/MFA and Attack Groups

Although there is limited information on specific grants, the MSA/MFA clearly coordinates

28 Pink, Aiden. “Israel Approved Grant to Tennessee Anti-Muslim ‘Hate Group.’” *The Forward*. August 31, 2020. <https://forward.com/news/israel/453335/israel-proclaiming-justice-nations-muslim-hate-south-africa/>

29 Pink, Aiden. “U.S. Pro-Israel Groups Failed to Disclose Grants from Israeli Government.” *The Forward*. August 31, 2020. <https://forward.com/news/israel/453286/us-pro-israel-groups-failed-to-disclose-grants-from-israeli-government/>

30 PJTN says it “educates, advocates, and moves to activate Christians, Jews and all people of conscience in building a global community of action and prayer in support of Jews and Israel.” – “Homepage.” *Proclaiming Justice to the Nations*. <http://www.pjtn.org>

31 Reynolds, Jason. “SPLC Removes Proclaiming Justice to the Nations from List of Hate Groups.” *The Tennessee Star*. January 20, 2021. <https://tennesseestar.com/2021/01/20/splc-removes-proclaiming-justice-to-the-nations-from-list-of-hate-groups/>

32 Pink, Aiden. “U.S. Pro-Israel Groups Failed to Disclose Grants from Israeli Government.” *The Forward*. August 31, 2020. <https://forward.com/news/israel/453286/us-pro-israel-groups-failed-to-disclose-grants-from-israeli-government/>

closely with the nonprofits it supports. For example, the board of the disinformation group NGO Monitor (see Chapter 3) includes Yosef Kuperwasser, a former MSA director-general who once headed the research department of Israel's intelligence service. He now heads Concert (described above), which had a budget for 2018-2020 of NIS 128 million (about \$39,084,803).³³

This close relationship facilitates the spread of NGO Monitor's disinformation throughout the MSA/MFA's well-funded global network. NGO Monitor touted this relationship in its 2016 Annual Report, saying it "continues to closely cooperate with the Ministry of Strategic Affairs and Public Diplomacy, as well as with the Ministry of Justice and the Ministry of Foreign Affairs. These ministries' staff reaches [sic] out to NGO Monitor for materials on NGOs and European government funding."³⁴ The report also notes that "NGO Monitor's continuously updated reports provided Israeli government officials with the details of European government funding to NGOs supporting BDS, lawfare, and antisemitism. In 2016, as a result of our research, the Israeli government gave this issue top priority."³⁵

The Policy Working Group's Analysis of NGO Monitor's Tactics and Methodology

In 2018 the Policy Working Group (PWG), a collective of Israeli former diplomats, academics and other experts, published *NGO Monitor: Shrinking Space: Defaming human rights organizations that criticize the Israeli occupation*.³⁶ It provides an in-depth analysis of NGOM's tactics and methodology, using examples to demonstrate that "Articles and reports by NGO Monitor contain baseless claims and factual inaccuracies."³⁷ Because NGOM's approach is typical of the arguments and misrepresentations employed by many lawfare and disinformation groups, the PWG analysis is summarized in depth below.

The PWG identifies three strategies NGOM employs:

➤ Faulty research:

"NGO Monitor does not conduct any independent field research. Its publications are

33 "NGO Monitor: Shrinking Space: Defaming Human Rights Organizations that Criticize the Israeli Occupation." *Policy Working Group*. September 2018. <http://policyworkinggroup.org.il/>

34 Ibid p. 15

35 Ibid p. 15

36 Ibid

37 Ibid p. 7

generally based on selective internet inquiries and on echoing claims by official Israeli sources. Moreover, it focuses its publications selectively and exclusively on refuting the observations and conclusions of NGOs it targets. By contrast, many human rights organizations attacked by NGO Monitor conduct independent and thorough field research.”³⁸ The report examines five examples of instances where NGOM’s reports contain baseless claims and factual inaccuracies.³⁹ It also cites examples of how NGOM dismisses and distorts thorough research conducted by human rights organizations, such as B’Tselem and Yesh Din. Notably, in 2013 Wikipedia permanently blocked NGOM’s online communications staffer Arnie Draiman from editing, after he made “hundreds of offensive edits on the pages of human rights groups” while obscuring his NGOM affiliation.⁴⁰

➤ Framing Israeli occupation of Palestinian territories as an internal affair:

“Accordingly, human rights organizations that criticize Israel’s conduct in the occupied Palestinian territories and receive foreign funding are framed as violating Israel’s sovereignty, as tainted by ‘foreign interests’ and as distorting the ‘domestic’ debate.” PWG says, “This framing ignores Israel’s international legal obligations and responsibilities as the occupying power and the commitments it undertook when ratifying international treaties and agreements.”⁴¹

➤ Claiming human rights NGOs pose an existential threat to Israel:

NGOM claims that NGOs shifted “the war against Israel – from attempts to destroy Israel through military power and terror attacks, to a ‘soft power’ political war aimed at erasing Israel through ‘non-violent’ means.”⁴² In its attempt to redirect criticism of Israel to human rights critics, NGOM characterizes NGOs as “powerful political actors” that are “highly influential, affecting change in government policy through lobbying and expensive media campaigns...”⁴³ NGOM also complains about NGOs’ use of litigation and legal proceedings. Such activities, protected by the International Covenant on Civil and Political Rights as protected speech and association, are tactics employed by NGOM

38 Ibid p. 8

39 Ibid p. 23-25

40 Ibid p. 27

41 Ibid p. 28

42 Ibid p. 8

43 Ibid p. 28

itself.⁴⁴

The PWG analyzes NGOM's tactics employed to implement these strategies, giving numerous examples:

➤ Accusations of terrorist affiliations

NGOM seeks to defame Palestinian NGOs, their allies and funders by claiming they have ties to listed terrorist organizations, with the Popular Front for the Liberation of Palestine (PFLP) often singled out. The PWG notes that NGOM "has not presented any evidence that the accused organizations ever participated in terrorist activities or violence. It also has not explained how the organizations' work – field research, documentation, legal work, international advocacy – is in any way related to terrorism."

The report goes on to note that the allegations are largely based on decades old information, selective internet searches and guilt by association. Typical terms used in such reports are "affiliated," "linked," or having "alleged ties."⁴⁵ The report notes that "with very few exceptions, no trials or formal indictments have been initiated by Israeli authorities against employees or board members of Palestinian organizations relevant to NGO Monitor's allegations and relating to their period of involvement in those organizations."⁴⁶ Similarly, the EU has not taken legal action based on NGOM's allegations. The report provides in-depth analyses of "how NGO Monitor constructs and spins misleading and malicious accusations against specific individuals, in order to fabricate a claim that Palestinian NGOs functions as a sort of European-funded 'front' for the PLFP," against the Palestinian Center for Human Rights, Al-Haq and Addameer.⁴⁷

➤ Using the Boycott, Divestment and Sanctions (BDS) Movement to defame NGOs

The BDS movement is a "Palestinian-led international movement that puts pressure on Israel to end its violations of human rights and international law."⁴⁸ NGO Monitor seeks

44 "International Covenant on Civil and Political Rights." *United Nations Office of the High Commissioner on Human Rights*. December 16, 1966. Articles 19 and 22. <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

45 "NGO Monitor: Shrinking Space: Defaming Human Rights Organizations that Criticize the Israeli Occupation." *Policy Working Group*. September 2018. p. 9 <http://policyworkinggroup.org.il/>

46 Ibid p. 33

47 Ibid p. 35-39

48 Ibid p. 9

to defund Palestinian NGOs that support BDS by lobbying the EU to cut their funding, despite the fact that the EU, while not supporting BDS, has recognized that it is protected by freedom of expression and association.⁴⁹ It does so through attacking the integrity and professional reputation of BDS advocates, demonizing NGOs that support BDS, claiming the movement is antithetical to human rights and using guilt by association to frame human rights defenders and civil society organizations as BDS supporters.⁵⁰

A Coordinated Assault on Civil Society

Taken together, these organizations and government agencies represent a well-connected, well-funded coalition of lawfare and disinformation outfits that are operating a concerted campaign to silence, discredit, defund and distract Palestinian voices and organizations operating in Palestine. Collectively, these groups represent a major threat, not only to civil society organizations operating in Palestine, but more broadly, through the propagation of its lawfare tactics, to civil society organizations and actors the world over.

49 Ibid p. 9

50 Ibid p. 31-32

Lawfare is Lucrative: What IRS Data Shows*

U.S. Lawfare Organizations	Director/CEO	Salary	Revenue**	Number of staff
Investigative Project on Terrorism	J. Mintz (Director) C. Peyser (Chair)	According to Charity Navigator, IPT's 990s show that it has allocated 100% of its expenses to the CEO/ founder's for-profit company SAE Productions, or to 'management,' depending on the year. It describes this practice as "atypical."***	\$2,219,616 \$947,172	0
Jewish National Fund (US)	M. Feinman (Ex.Dir.) R. Robinson (CEO)	\$190,454 \$657,452	\$94,297,217 \$386,715,002	294
Lawfare Project	B. Goldstein (Ex.Dir.) B. Ryberg (COO) Z. Reich (Dir. Litigation)	\$200,000 \$187,000 \$109,224	\$2,022,560 \$1,424,475	5
Middle East Forum	Daniel Pipes (Pres.) G. Roman (Secretary) M. Fink (Counselor)	\$259,000 \$174,627 \$121,366	\$5,033,4309 \$5,222,819	20

*All information taken from 2018 IRS Form 990 report for each organization.

** Based on most recently reported revenue, with total revenue listed first, then total assets listed prior to liabilities

*** See <https://www.charitynavigator.org/ein/134331855>

4

Facilitators of Lawfare

Lawfare attackers exploit policies and legal standards that enable their campaign, affecting nonprofit organizations (NPOs) in the U.S., UK, Europe and Palestine. First, the vagueness and breadth of the U.S. definition of prohibited material support of terrorism, combined with strict liability standards in U.S. counterterrorist financing laws, creates a “zero tolerance” legal environment where minor, inadvertent violations can lead to stiff penalties or prison sentences. In addition, commercial database-screening services that do not employ sufficient controls to ensure their results are based on credible sources have exacerbated this problem. Finally, the International Holocaust Remembrance Alliance’s (IHRA) definition of antisemitism, published in 2016, has been politicized to equate criticism of actions by the Israeli government with antisemitism.¹ These factors are described below.

Vague and Overly Broad Laws and Standards

Exploiting the U.S. material support prohibition to promote extreme interpretations of the law and harm NPOs

Lawfare groups have taken advantage of the vague and overly broad definition of material support for terrorism by using extreme interpretations of the law to support their allegations. To date, the courts have not adopted their approach. However, the vagueness and breadth of the law enable lawfare attackers to make sweeping legal claims that are repeated in public statements intended to smear and defame the groups they attack.

The U.S. criminal prohibition on providing material support for terrorism leaves substantial gray areas for both NPOs and government agencies to interpret. It prohibits the provision of:

...currency or monetary instruments or financial securities, financial services, lodging, training, expert advice or assistance, safehouses, false documentation or identification, communications equipment, facilities, weapons, lethal substances,

¹ “Working Definition of Antisemitism.” International Holocaust Remembrance Alliance. <https://www.holocaustremembrance.com/resources/working-definitions-charters/working-definition-antisemitism>

*explosives, personnel, transportation, and other physical assets, except medicine or religious materials.*²

The prohibitions on providing training, expert advice or assistance and personnel are particularly relevant in the context of the False Claims Act (FCA) cases to date (described in Chapter 5), in that lawfare allegations often involve peacebuilding or democracy building activities. The Supreme Court's *Holder v. Humanitarian Law Project* decision in 2010 found that these activities, even in the context of peacebuilding, can be deemed material support of terrorism.

However, the *Humanitarian Law Project* decision failed to address ambiguities in what is considered material support. Although the court was clear that First Amendment protections for freedom of speech allow someone to voice support for a terrorist group and their goals, any speech that is "coordinated" with or "under the direction and control" of the terrorist group crosses the line into prohibited material support. But there are no clear criteria for what constitutes either "coordinated" speech or what is "under the direction and control" of a listed group. Penalties for violations of the prohibition are severe, which results in overly cautious and restrictive interpretations of the law by all stakeholders, including government and NPOs.³



In its *Holder v. Humanitarian Law Project* decision in 2010, the Supreme Court found that the definition of material support of terrorism applies to key aspects of peacebuilding and democracy building work intended to get armed groups to end conflict.

Lawfare complaints and threatening letters often claim that the target has provided material support in some manner. While the facts and situations vary, they usually

² "18 USC 2339A." Legal Information Institute. Cornell Law School. <https://www.law.cornell.edu/uscode/text/18/2339A>

³ 18 USC 2339B(a)(1) Whoever knowingly provides material support or resources to a foreign terrorist organization, or attempts or conspires to do so, shall be fined under this title or imprisoned not more than 20 years, or both, and, if the death of any person results, shall be imprisoned for any term of years or for life.

involve some form of speech-related activity, ranging from vocational training to conflict resolution meetings. Because the material support prohibition is a criminal offense that can result in a minimum 20-year jail sentence or steep fines, accusations of violations, however unfounded, can have a chilling impact on the target. When lawfare groups send threatening letters to NPOs or their financial service providers they often copy law enforcement officials, implying that a criminal investigation is possible.

USAID's grant process includes an anti-terrorism certification (ATC) that must be signed by all recipients of funding. The ATC requires NPOs to explicitly certify that they have not provided material support to a terrorist group. (See Chapter 5 for more details on the ATC.) This certification has been used as a hook by the Zionist Advocacy Center to file suits under the False Claims Act, claiming violations of the ATC based on very broad interpretations of what constitutes material support.

Internal Revenue Service regulations on electioneering by charities

The Zionist Advocacy Center has taken advantage of vague IRS regulations on what constitutes prohibited partisan electioneering for or against candidates for office by charities in order to several accuse U.S. organizations of violating their tax-exempt status. It argued that human rights advocacy amounts to partisan electioneering (see Chapter 5). It sought revocation of tax-exempt status and in one case argued that a charity's tax-exempt status application was a false claim.

To maintain tax-exempt status and receive tax-deductible donations and foundation grants, public charities in the U.S. are "absolutely prohibited from directly or indirectly participating in, or intervening in, any political campaign on behalf of (or in opposition to) any candidate for elective public office."⁴ Because the penalty for violating this prohibition is loss of tax-exempt status and the ability to receive tax-deductible donations and foundation grants, charities are understandably concerned about activities or statements that may be perceived as support or opposition for a candidate. However, there are no clear, objective rules defining what is and is not partisan electioneering, as the IRS uses a "fact and circumstances" test to make case-by-case determinations. Although IRS Revenue Rulings and other IRS publications provide some guidance, over time there has

4 "The Restriction of Political Campaign Intervention by Section 501(c)(3) Tax-Exempt Organizations." IRS. <https://www.irs.gov/charities-non-profits/charitable-organizations/the-restriction-of-political-campaign-intervention-by-section-501c3-tax-exempt-organizations>

been criticism of the vagueness inherent in the facts and circumstances test.⁵

Strict liability and zero tolerance

Strict liability (legal responsibility that does not require negligence or intent to harm) is the standard in U.S. counterterrorist financing measures that are governed by various sanctions statutes, primarily the International Emergency Economic Powers Act (IEEPA).⁶ Executive orders designating terrorist organizations reference material support as one of the prohibited transactions, but do not define it. As a result, the definition of the criminal prohibition in the Antiterrorism and Effective Death Penalty Act is usually referred to, importing its problems with vagueness into the sanctions strict liability standard. Because the humanitarian exemption in the IEEPA has been cancelled in counterterrorism Executive Orders, NPOs providing humanitarian assistance are exposed to legal liability for even inadvertent, minimal violations.⁷

As a result, civil society organizations:

- Face challenges in getting financial institutions to facilitate transactions or extend credit. This leads to less funding for civil society, and challenges in paying staff on the ground.
- Struggle to carry out their missions when staff and volunteers are focused on overcoming economic challenges created by sanctions.
- Face increasingly repressive governments, as government efforts to limit internal dissent increase when states face greater external pressure.⁸

Commercial Screening Databases Do Not Assess Sources for Credibility

Since 9/11 there has been rapid growth of private companies that sell lists of people and organizations that are either on a government terrorist list or have been mentioned in

5 "IRS Rulemaking is an Opportunity for Positive Change." *The Bright Lines Project*. Public Citizen. <https://brightlinesproject.org/solutions/irs-rulemaking/>

6 The Financial Action Task Force's 2016 evaluation of the U.S. noted in its section on charities, terrorist financing and sanctions violations "are strict liability offenses." – "Mutual Evaluation of the United States." *Financial Action Task Force*. December 1, 2016. <http://www.fatf-gafi.org/publications/mutualevaluations/documents/mer-united-states-2016.html>

7 Guinane, Kay. "19 Years Later EO 13224 Continues to Block Humanitarian Aid. It's Time for an Update." *Charity & Security Network*. September 24, 2020. <https://charityandsecurity.org/blog/19-years-later-eo-13224-continues-to-block-humanitarian-aid-its-time-for-an-update/>

8 "Negative Impacts of Sanctions on Civil Society." *Charity & Security Network*. May 27, 2021. <https://charityandsecurity.org/wp-content/uploads/2021/05/CSN-Sanctions-Issue-Brief-May-2021.pdf>

news stories, blogs and unverified online sources as having suspected ties to terrorists, money laundering or financial crime. Corporate providers of due diligence screening products are a significant mechanism for the spread of disinformation, as their information collection systems lack adequate screening for the credibility of their sources. They also lack clear and transparent procedures for removing bad information.

The threshold for being listed in screening databases is much lower than government terrorist listings. They are often based on broad media searches, so even when disinformation groups fail to get traction with mainstream media, the smears they publish on fringe or far-right sources can generate red flags on screening databases. These low standards cause incorrect information to be unfairly applied to individuals and charities, which can be flagged without any evidence of wrongdoing. This in turn has a chilling effect on some humanitarian organizations, making them hesitant to provide aid to certain people or areas, even when no real threat is present.

Given the widespread use of these databases by financial institutions, governments, charities and others to screen customers and clients for compliance purposes, the lack of regulatory supervision or other forms of quality control for the information provided raises concerns about the lack of accountability and opportunities for redress for innocent people who find themselves on such lists. This is particularly problematic in the context of charitable giving and program operation, where disinformation about alleged terror ties from disinformation groups like the Middle East Forum is often included in organizational profiles. Muslim organizations are particularly affected. Such labels create serious problems for charities, ranging from difficulties accessing financial services to undeserved reputational damage.

A prime example of this trend is Refinitiv, owned by the investment company Blackstone and Thomson Reuters.⁹ (Dow Jones, Oracle Mantas, Detican NetReveal, Verafin, and Lexis Nexis databases also have products used to identify possible terrorists and money launderers.) Formerly known as World Check, it is one of the largest databases of individuals and entities flagged for enhanced scrutiny. As of early 2016, World Check had an estimated 2.7 million names and organizations, with 93,000 of those designated as “terrorist.” This list is used by more than 4,500 institutions, 49 out of 50 of the largest

9 “Refinitiv World-Check Risk Analysis.” Refinitiv. <https://www.refinitiv.com/en/products/world-check-kyc-screening>

banks in the world and 300 enforcement and regulatory agencies.¹⁰

Intelligence for the database is gathered from “hundreds of thousands of public sources including government, sanction and police sites as well as the national and international media.”¹¹ This could be problematic, as in the past some sites, such as the Middle East Forum, have published false or misleading information about NPOs accused of having ties to terrorism.¹² In early 2016, an investigative piece by *VICE News* revealed that many of its terrorist designations were sourced to Islamophobic blogs and other unreliable sources.¹³ After the *VICE News* investigation, British Labour Party MP Diane Abbott said, “World-Check says it uses only public domain sources to compile its terrorism designations. In some cases that appears to have involved plucking names from baseless online allegations and placing them onto an unregulated site, with no stringent process of review.”¹⁴

If a listed entity does discover that it is part of the World Check/Refinitiv database, it is unclear how it can be de-listed. While World Check/Refinitiv claims that anyone who believes the database includes false or misleading information about them can contact the company to seek a correction, there is no formal process to do so and no clear standards for assessing the accuracy of information posted.¹⁵

In 2016 security researcher Chris Vickory discovered a copy of World Check’s 2014 database unprotected online. The data was analyzed by *The Intercept*, which examined roughly 1,300 entries about U.S. citizens who were put in the terrorism category. It found

10 Shabibi, Namir, and Ben Bryant. “VICE News Reveals the Terrorism Blacklist Secretly Wielding Power Over the Lives of Millions.” *VICE News*. February 4, 2016. <https://www.vice.com/en/article/pa4mgz/vice-news-reveals-the-terrorism-blacklist-secretly-wielding-power-over-the-lives-of-millions>

11 Lichtblau, Eric. “Homeland Security Department Experiments With New Tool to Track Financial Crime.” *New York Times*. December 12, 2004. <https://www.nytimes.com/2004/12/12/politics/homeland-security-department-experiments-with-new-tool-to-track.html>

12 “List of Holy Land Unindicted Co-conspirators Ordered Sealed, But Remains Available.” *Charity & Security Network*. November 23, 2010. https://charityandsecurity.org/archive/unindicted_coconspirators_list_ordered_sealed/

13 Shabibi, Namir, and Ben Bryant. “VICE News Reveals the Terrorism Blacklist Secretly Wielding Power Over the Lives of Millions.” *VICE News*. February 4, 2016. <https://www.vice.com/en/article/pa4mgz/vice-news-reveals-the-terrorism-blacklist-secretly-wielding-power-over-the-lives-of-millions>

14 Ibid

15 “Am I on Revintiv World-Check?” *Revintiv*. <https://www.refinitiv.com/en/products/world-check-kyc-screening/am-i-listed-on-world-check>

many that were never convicted of terrorism-related offenses.¹⁶ Although World Check boasts that its screening is more comprehensive than government lists and claims its information comes from “reputable public domain sources,” the Intercept noted that “World Check’s definition of ‘reputable’ seems flexible.”¹⁷ Overall, it found that “the database relied on allegations stemming from right-wing Islamophobic websites to categorize under ‘terrorism’ people and groups like the Council on American-Islamic Relations, several mosques and regional Islamic organizations.” It also found that World Check “often links to the websites of Steve Emerson, Daniel Pipes, and David Horowitz, all described by the Southern Poverty Law Center as ‘anti-Muslim extremists,’” and used “outdated or debunked information.” Listings of political activists like Greenpeace were based on “old, minor infractions.”¹⁸

In the fall of 2015, BBC Radio 4 launched an investigation into World Check led by journalist Peter Osborne and producer Anna Meisel, who also scrutinized the 2014 World Check database. They found that entries relied on questionable sources, including the Muslim Brotherhood Watch, Jihad Watch and Frontpage Magazine and the UAE terrorist list.¹⁹ They noted that “This was troubling as the UAE has been criticized for human rights abuses and money laundering itself, and has been known to brand its political critics as terrorists.”²⁰

Two years after these exposés, an article by Osborne and Richard Assheton in the Middle East Eye found that World Check “is still using as sources websites accused of promoting far-right and Islamophobic agendas...”²¹ In particular, “a link to the website of the Gatestone Institute, a U.S. think tank which has been accused of publishing false and misleading stories about Muslims...” It went on to note that the Gatestone article “listed on the Finsbury Park Mosque’s World-Check profile is by Samuel Westrop, the

16 Currier, Cora. “Flimsy Evidence and Fringe Sources Land People on Secretive Banking Watchlist.” *The Intercept*. June 23, 2017. <https://theintercept.com/2017/06/23/flimsy-evidence-and-fringe-sources-land-people-on-secretive-banking-watch-list/>

17 Ibid

18 Ibid

19 Assheton, Richard, and Peter Osborne. “‘Terrorism’ Database Cites ‘Islamophobic’ Sources in Muslim Profiles.” *Middle East Eye*. December 23, 2018. <https://www.middleeasteye.net/news/terrorism-database-cites-islamophobic-sources-muslim-profiles> ; Osborne, Peter. “Banks Are Unfairly Targeting Muslims. Now Ministers Must End This Injustice.” *Middle East Eye*. February 1, 2017. <https://www.middleeasteye.net/opinion/banks-are-unfairly-targeting-muslims-now-ministers-must-end-injustice>

20 Ibid

21 Assheton, Richard, and Peter Osborne. “‘Terrorism’ Database Cites ‘Islamophobic’ Sources in Muslim Profiles.” *Middle East Eye*. December 23, 2018. <https://www.middleeasteye.net/news/terrorism-database-cites-islamophobic-sources-muslim-profiles>

founder of a self-proclaimed counter-extremist website Stand for Peace.”²² (This is the same Westrop who had a libel judgment entered against him by a UK court after being sued by the UK-based Islam Channel. See Chapter 3.)

While World Check/Refinitiv insists that it has “a responsible, proportionate ethical approach,”²³ Osborne and Assheton found “it also cites less credible sources: MEE has found 23 such examples, of which 12, which are all included in profiles of Muslim organizations and individuals, have been accused of Islamophobia.”²⁴

Finsbury Park Mosque in UK Wins Case Against World Check

In June 2014 the Finsbury Park Mosque in London got a letter from HSBC bank notifying it that its account was being closed. No explanation was provided. In the fall of 2015, mosque leaders learned from a BBC Radio 4 report that the compliance screening service World Check (now Refinitiv) had tagged them with a “terrorist” label. Journalist Peter Osborne wrote that “We input Finsbury Park Mosque into the World Check website. The first word that came up on the screen, input in red, was ‘terrorism.’”

It is important to note that one of the past leaders of the mosque was an al-Qaeda sympathizer. However, while World Check did include information that the mosque has been under new leadership for over a decade, Osborne said, “you have to study the page quite carefully to establish that the mosque’s connection to terrorism was far in the past.”

The mosque sued Thomson Reuters, which operated World Check at the time, and in June 2017 the company settled the case, agreeing to pay damages to the mosque and remove the defamatory information from the World Check

²² Ibid

²³ “Home Page.” *Refinitiv*. <https://www.refinitiv.com/en>

²⁴ Assheton, Richard, and Peter Osborne. “‘Terrorism’ Database Cites ‘Islamophobic’ Sources in Muslim Profiles.” *Middle East Eye*. December 23, 2018. <https://www.middleeasteye.net/news/terrorism-database-cites-islamophobic-sources-muslim-profiles>

database. A report on the case by the Middle East Eye noted that, “the case, heard in the High Court in London, has revealed major shortcomings in the database, which despite its reputation for thoroughness was shown to be largely based on ‘open source’ data gleaned through Google searches.” The mosque’s claim noted that “The defendant’s profiles are not subject to independent checks or research and those who are subject to profile reports are not given the opportunity to check the accuracy or correct errors.”

The Director of the Centre for Financial Crime and Security at the Royal United Services Institute, Tom Keatinge, told the Middle East Eye that, “The extent to which World-Check is relied upon by financial institutions is immense; yet it appears from this case that its quality control does not match this responsibility.”

Sources:

- [1] Osborne, Peter. “Banks Are Unfairly Targeting Muslims. Now Ministers Must End This Injustice.” *Middle East Eye*. February 1, 2017. <https://www.middleeasteye.net/opinion/banks-are-unfairly-targeting-muslims-now-ministers-must-end-injustice>
- [2] MEE Staff. “London Mosque Case Exposes Pitfalls of ‘Terror List’ Database.” *Middle East Eye*. February 1, 2017. <https://www.middleeasteye.net/news/london-mosque-case-exposes-pitfalls-terror-list-database>

The IHRA Definition of Antisemitism

A non-binding working definition of antisemitism adopted by the International Holocaust Remembrance Alliance (IHRA) in May 2016 has been interpreted broadly by lawfare groups in order to claim criticism of Israeli government officials constitutes antisemitism and illegal discrimination.

The definition itself uses general terms:

Antisemitism is a certain perception of Jews, which may be expressed as hatred toward Jews. Rhetorical and physical manifestations of antisemitism are directed toward Jewish or non-Jewish individuals and/or their property, toward Jewish

*community institutions and religious facilities.*²⁵

IHRA provides examples of speech or conduct that may be antisemitic. However, these examples are politically charged, despite a disclaimer that “criticism of Israel similar to that leveled against any other country cannot be regarded as anti-Semitic.”²⁶ Israel’s Ministry of Diaspora Affairs published a report the same year the IHRA definition was released that interpreted the IHRA definition to equate anti-Zionism with antisemitism.²⁷ It claims the traditional definition of antisemitism is unsuited to what it calls “diverse new and complex expressions of current Antisemitism,” and goes on to praise the IHRA definition.²⁸

Disinformation groups like NGO Monitor are also using the IHRA definition of antisemitism to buttress their claims that civil society groups are antisemitic when they raise human rights and humanitarian issues in relation to Israeli government actions in Palestine or seek to hold it accountable. As NGO Monitor President Gerald Steinberg told the audience in a February 2021 webinar sponsored by the Indiana University, he and his colleagues are working to “expand the normative impact of the definition... particularly in the realms of the United Nations and of nongovernmental organizations.”²⁹

The IHRA definition was incorporated into Executive Order 13899 by President Trump in December 2019.³⁰ The Executive Order notes that although Title VI of the Civil Rights Act of 1964 does not cover discrimination based on religion, “Discrimination against Jews may give rise to a Title VI violation when the discrimination is based on an

25 “Working Definition of Antisemitism.” *International Holocaust Remembrance Alliance*. <https://www.holocaustremembrance.com/resources/working-definitions-charters/working-definition-antisemitism>

26 Ibid

27 The Israeli Ministry of Diaspora Affairs. “Report on: Antisemitism in 2016. Overview, Trends and Events.” *European Jewish Congress*. November 29, 2016. <https://eurojewcong.org/resources/report-on-antisemitism-in-2016-overview-trends-and-events/>

28 Ibid; White, Ben. “Delegitimizing Solidarity: Israel Smears Palestine Advocacy as Anti-Semitic.” *Journal of Palestine Studies*, Vol. XLIX, No. 2, Winter 2020 p.67 <https://online.ucpress.edu/jps/article-abstract/49/2/65/107373/Delegitimizing-Solidarity-Israel-Smears-Palestine?redirectedFrom=fulltext>

29 Steinberg, Gerald. “NGOs, Antisemitism, and the IHRA Working Definition.” *Institute for the Study of Contemporary Antisemitism*. Indiana University. February 21, 2021. <https://isca.indiana.edu/conferences/webinars/Gerald-Steinberg.html>

30 “Executive Order 13899—Combating Anti-Semitism.” *The American Presidency Project*. December 11, 2019. <https://www.presidency.ucsb.edu/documents/executive-order-13899-combating-anti-semitism>

individual's race, color, or national origin."³¹ It goes on to say that it will be the "policy of the executive branch to enforce Title VI against prohibited forms of discrimination rooted in anti-Semitism as vigorously as against all other forms of discrimination prohibited by Title VI."³² It further says executive agencies shall consider the IHRA definition and examples when enforcing Title VI, "to the extent they may be useful as evidence of discriminatory intent."³³

This use of the IHRA definition was rejected by its lead drafter, scholar Kenneth Stern, who posted an opinion piece in the Guardian the same week the Executive Order was signed. In it he wrote, "This order is an attack on academic freedom and free speech, and will harm not only pro-Palestinian advocates, but also Jewish students and faculty, and the academy itself."³⁴ He also notes that "If you think this isn't about suppressing political speech, contemplate a parallel. There's no definition of anti-black racism that has the force of law when evaluating a title VI case. If you were to craft one, would you include opposition to affirmative action? Opposing removal of Confederate statues?"³⁵

In March 2021, an international group of scholars published the Jerusalem Declaration on Antisemitism (JDA) as "a usable, concise, and historically-informed core definition of antisemitism with a set of guidelines," noting that the IHRA definition has "caused confusion and generated controversy, hence weakening the fight against antisemitism, the JDA is offered as an alternative or a tool to interpret it."³⁶

In a statement published in The Forward on the date of the JDA's release, three of its 200 endorsers said, "The declaration thus helps create space for frank discussions of difficult questions about the political future for all inhabitants of Israel and Palestine without those discussions being conflated with antisemitism."³⁷

31 "42 U.S. Code § 2000d." *Legal Information Institute*. Cornell Law School. <https://www.law.cornell.edu/uscode/text/42/2000d> ; "Executive Order 13899—Combating Anti-Semitism." *The American Presidency Project*. December 11, 2019. <https://www.presidency.ucsb.edu/documents/executive-order-13899-combating-anti-semitism>

32 Ibid

33 Ibid

34 Stern, Kenneth. "I Drafted the Definition of Antisemitism. Right Wing Jews are Weaponizing it." *The Guardian*. December 13, 2019. <https://www.theguardian.com/commentisfree/2019/dec/13/antisemitism-executive-order-trump-chilling-effect>

35 Ibid

36 "The Jerusalem Declaration on Antisemitism." March 25, 2021. <https://jerusalemdeclaration.org/>

37 Bemporad, Elissa, Alon Confino and Derek Penslar. "A New Declaration Aims to Fight Antisemitism Without Curtailing Free Speech." *The Forward*. March 25, 2021. <https://forward.com/opinion/466509/a-new-declaration-aims-to-fight-antisemitism-without-curtailling-free/>

Weaponizing Antisemitism

Traditionally, “anti-Semitism” means hostility and prejudice toward Jews because they are Jews—a scourge that has imperiled Jews throughout history, and is a source of resurgent threats to Jews today. The IHRA definition, in contrast, is explicitly politicized, refocusing the term to encompass not only hatred of Jews, but also hostility toward and criticism of the modern state of Israel. For example, it labels as anti-Semitic “applying double standards” to Israel or requiring of Israel “behavior not expected or demanded of any other democratic nation.” While it notes that “criticism of Israel similar to that leveled against any other country cannot be regarded as antisemitic,” in practice this “double standard” language has paved the way for attacking virtually all criticism of Israel as prima facie anti-Semitic, based on the simplistic argument that focusing criticism on Israel, when other nations are guilty of similarly bad behavior, can only reflect animus against Jews.

—Lara Friedman, President of the Foundation for Middle East Peace,
in *The American Prospect*

Source:

Friedman, Lara. “Weaponizing Anti-Semitism, State Department Delegitimizes Human Rights Groups.” *The American Prospect*. November 12, 2020. <https://prospect.org/politics/weaponizing-anti-semitism-state-department-delegitimizes-human-rights-groups/>

Lawfare Depends on Its Enablers

Whether in the form of governmental support from Israel’s Ministry of Strategic Affairs and Public Diplomacy (now merged with the Ministry of Foreign Affairs), or in the form of legal frameworks that fail to adequately protect the rights of civil society programs, lawfare groups depend on these enablers to carry out their attacks on civil society. Countering lawfare thus requires a recalibration of the legal frameworks that enable it, as well as closer scrutiny of and accountability for the actors supporting it.

5 Litigation Targeting Civil Society

Litigation is a major tactic lawfare groups use to bring attention to their political agendas, harass those they disagree with and impose costs on operations they do not like. In the U.S., the Zionist Advocacy Center (TZAC) has filed most of the lawfare attack litigation cases against nonprofit organizations (NPOs) working to support Palestinian rights or democracy building in Israel. TZAC primarily uses the False Claims Act, a whistleblower statute. One additional suit was brought by an Israeli group under the Anti-Terrorism Act. The majority of these cases have been dismissed or settled without the targeted NPOs paying damages. This section describes the two primary U.S. statutes that have been used in lawfare attacks and analyzes the overall lawfare effort. A detailed summary of each case is provided in Chapter 9.

These suits have several factors in common. The allegations generally do not claim that money or tangible goods have been provided to a group on a terrorist list. Instead, they focus on speech and association necessary to carry out democracy building, conflict resolution and human rights advocacy programs. Many of the allegations are conclusory, lacking supporting factual detail. The complaints often include politicized descriptions of the target groups' activities and human rights positions, making broad and unsupported political accusations that are not relevant to the case or the legal standards required to establish liability.

The allegations generally do not claim that money or tangible goods have been provided to a group on a terrorist list. Instead, they focus on speech and association necessary to carry out democracy building, conflict resolution and human rights advocacy programs.

To date, TZAC's success using the False Claims Act has been limited. It has sought a total of \$600,763,895 in damages. Any damages would be paid to the U.S. government, with an award of up to 30 percent for a successful "relator," a whistleblower that alleges fraud in areas such as defence contracting and payment under government health benefit programs. However, TZAC has only succeeded in collecting 4.5 percent of that, \$2,725,000, from pre-trial settlements in two cases. From these cases, TZAC collected \$496,700 in fees and settlement awards. Even this limited monetary amount was not the

result of a verdict or judgment establishing liability.

Of the six cases that have been unsealed so far, two were settled out of court, three were dismissed and one was settled with no damages paid and no admission of wrongdoing. In the two cases settled out of court NPOs paid a small percentage of the damages sought in order to avoid the financial burden of litigating the case. To date, no case has progressed beyond the initial pleading stage, so no court has ruled on the substantive legal issues raised. All cases have stopped short of a court ruling on the merits.

False Claims Act Cases

Background on the law

The most common vehicle for lawfare litigation in the U.S. is the False Claims Act (FCA). It is a U.S. law that allows private parties, called “relators,” to bring suits on behalf of the government against individuals, companies and organizations that knowingly defraud government programs.¹

While the government itself may proceed on the basis of public information, the FCA requires a relator to have “original” knowledge of the allegedly fraudulent events. The relator’s allegations cannot be based solely on information from the news media or government proceedings.

Complaints filed under the FCA are automatically sealed for 60 days while the government investigates the claims

Legal Defenses Against False Claims Act (FCA) Suits

Nonprofit organizations sued under the FCA may have strong legal defenses if:

- The relator has relied solely on publicly available information (is not an “original source”) and therefore lacks standing to sue.
- USAID has knowledge of the alleged violation and still made payment on the contract, so that the violation is not “material.”
- The activities referred to in the complaint do not constitute “material support” of terrorism.
- There are no damages caused by the alleged violation.

¹ “31 U.S. Code § 3730.” *Legal Information Institute*. Cornell Law School. <https://www.law.cornell.edu/uscode/text/31/3730>

and decides whether or not they merit further action. During this time the defendant (and the public) has no notice that a case has been filed. The court can extend the sealed period for months or even years. During the sealed period there may be indicators that a case has been filed. For example, an NPO may receive requests for documents or interviews or direct inquiries from USAID.

Once the government has investigated the claims, it may choose to:

- Join the lawsuit
- Ask that the case be dismissed
- Allow the complaining party to proceed on its own

Once the case is unsealed, the defendant is notified and the suit proceeds through the normal process for a civil case: pre-trial discovery, trial and judgment. If a defendant is found liable under the FCA it can be fined up to \$10,000 per violation. In addition, the government can recover up to three times the actual damages incurred. Successful relators are awarded a share of the cash judgment, up to 30 percent of the damages awarded to the government. If the defendant wins the case, it may seek reimbursement for its legal costs from the other parties.

In 2016 the U.S. Supreme Court limited the scope of liability under the FCA, holding that “minor or insubstantial” noncompliance is not enough to establish liability.² Instead, the violation must be “material” to the false claim. A claim may not constitute a false claim unless:

1. The defendant’s request to the government for payment on its contract makes specific representations about the goods or services provided, AND
2. The defendant’s failure to disclose noncompliance with material statutory, regulatory or contractual requirements constitutes a misleading half-truth.

The Supreme Court said that a government agency’s knowledge of and response to an alleged false claim is strong evidence of whether the agency considers the violation to be material. This means that if an agency is aware of a potential violation and still makes payment on the contract, the relator’s lawsuit may be dismissed. This meant to address the problem of whistleblowers second-guessing government decisions. Importantly, the court also said that minor or insubstantial noncompliance is not enough to establish

² “Universal Health Services, Inc. v. United States et al. ex rel. Escobar et al.” *Supreme Court of the United States*. June 16, 2016. https://www.supremecourt.gov/opinions/15pdf/15-7_a074.pdf

liability.

An example of a case that attempted to second guess U.S. foreign policy is TZAC's suit against the Carter Center. In its motion to dismiss the case, the Dept. of Justice said TZAC did not allege activities that met the "materiality" test in the Supreme Court's ruling in the Escobar case,³ noting that:

As stated in the Carter Center's public reports, the primary purposes of these activities were to facilitate dialog between the Palestinian factions and urge Hamas to recognize Israel's right to exist, forgo violence and accept previous peace agreements. In addition, the Carter Center routinely advised the United States government of its efforts to help resolve conflicts between Palestinian factions, including the activities identified by the Relator...⁴

The general standard for dismissal in False Claims Act cases is unclear because U.S. Circuit courts have taken different approaches. The Washington D.C. Court of Appeals has held that the government has absolute discretion to dismiss, while the Courts of Appeals in the 9th and 10th Circuits have held the government must show dismissal would serve a valid government purpose. The Southern District of New York, where most of TZAC's cases have been filed, is in the 2nd Circuit, which has not taken a position on this issue.



President Jimmy Carter, who founded the Carter Center with his wife Rosalynn, accepts the LBJ Liberty & Justice For All Award at The Carter Center in Atlanta, January 13, 2016. Photo by Michael A. Schwarz/LBJ Library.

3 "USA ex rel. TZAC, Inc. v. The Carter Center, Inc." *Charity & Security Network*. August 24, 2020. <https://charityandsecurity.org/litigation/tzac-carter-center/>

4 "United States of America ex rel. TZAC Inc. v. The Carter Center Inc." *U.S.D.C., D.C. No. 15 CV 2001 (RC) – DOJ Motion to Dismiss*, November 2, 2017. p. 3 <https://charityandsecurity.org/wp-content/uploads/2020/08/DOJ-Mtn-Dismiss-TZAC-v-Carter-Ctr.pdf>

Most states, along with the District of Columbia and Puerto Rico, have their own version of the False Claims Act.⁵ They generally follow the federal statute, but there are some variations. TZAC has filed one case based on the New York State act (case described below).

Six cases filed by the Zionist Advocacy Center

There are five unsealed federal False Claims Act cases filed by the Zionist Advocacy Center (TZAC) and one pending challenge to tax-exempt status at the Internal Revenue Service (IRS). They allege that some NPOs receiving USAID grants made false claims for payment of grant funds because they allegedly provided “material support” to listed terrorist groups, contrary to the anti-terrorism certification they signed with USAID. One additional case, based on the New York State False Claims Act, alleged that a group’s claim of state tax-exempt status was false, due to its advocacy activities in Israel.

Prior to a 2020 amendment, USAID grant agreements required grantees to sign a certification that the NPO “to the best of its knowledge, did not provide, within the previous ten years, and will take all reasonable steps to ensure that it does not and will not knowingly provide, material support or resources” to any person or group “that commits, attempts to commit, advocates, facilitates, or participates in terrorist acts, or has committed, attempted to commit, facilitated, or participated in terrorist acts.”⁶

USAID’s position is that this certification applies to all the organization’s activities, not just those it funds. In May 2020, USAID amended the anti-terrorism certification to reduce the look-back period to three years from ten and clarified that grantees need only check U.S. government and UN terrorist lists when screening partners and other persons and entities. The new certification does not apply retroactively, so grant agreements signed before the change continue to be subject to the ten-year look-back provision.

5 “State False Claims Act.” *Whistleblower Law Collaborative*. <https://www.whistleblowerllc.com/resources/whistleblower-laws/state-false-claims-acts/>

6 See USAID’s ADS Chapter 303 Grants and Cooperative Agreements to Non-Governmental Organizations, which requires USAID agreement officers to obtain a series of certifications from grantees, including the ATC (See p. 34, Sec. 303.3.8(a)(4)). The revised ATC appears in Certifications, Mandatory Reference for ADS Chapter 303 (see 303d section 4, p. 4-5). The Standard Provision is part of the overall Standard Provisions for U.S. Nongovernmental Organizations A Mandatory Reference for ADS Chapter 303 (see section M12, p. 12). – “ADS Chapter 303: Grants and Cooperative Agreements to Non-Governmental Organizations.” USAID. July 29, 2021. <https://www.usaid.gov/sites/default/files/documents/303.pdf>

TZAC's allegations and claims of damages

Because USAID's certification covers all of a grantee's programs however funded, it is not necessary for TZAC to allege USAID funds have been used to support any of the activities it cites in its lawsuits. As a result, the activities involved in TZAC's allegations mostly take place in Palestine (TZAC also has cases involving vocational training in Lebanon and democracy building work in Israel). There are no allegations that USAID funds were used for any of the activities in TZAC's FCA cases. For example, in the case against Norwegian People's Aid (NPA), the USAID grant was for humanitarian work in South Sudan, but the False Claims Act case was based on NPA's work in Palestine and Iran that was supported by other funders.

As noted, TZAC's allegations regarding "material support" do not include money or tangible goods. Instead, they primarily involve events: trainings, conferences, roundtable discussions, meetings and lectures. Approximately 75 percent of the event-related allegations are based on the alleged attendance of a member or representative of a listed group. The trainings by the NPOs sued by TZAC cover conflict resolution, youth political participation, journalism, vocational skills for persons with disabilities, and skills for police officers to deal with domestic violence. The remaining event-related allegations refer to invited speakers and one training sponsorship. Other activities cited by TZAC include agricultural programs, an NGO database for students, democracy building, conflict resolution and landmine clearance. In some instances, they allege association between the target group and a listed terrorist organization via several degrees of separation.

TZAC's claims for damages are excessive, especially since it does not allege USAID funds were used to carry out any of the activities described in the complaints. In many instances, the allegations involve technical rather than substantive violations. As such, if the cases had proceeded further than they did, they may have been dismissed because of the Supreme Court's ruling that technical violations do not rise to the level of materiality required to impose liability under the False Claims Act.⁷

TZAC's political motivation

TZAC does not hide its political motivations. Its complaints often include political

⁷ "Universal Health Services, Inc. v. United States et al. ex rel. Escobar et al." *Supreme Court of the United States*. June 16, 2016. https://www.supremecourt.gov/opinions/15pdf/15-7_a074.pdf

harangues cast as legal arguments, conflating criticism of Israeli government action in Palestine with antisemitism and characterizing any organization that calls for Israeli government accountability as “anti-Israel.” For example:

- In its complaint against Norwegian People’s Aid (NPA), TZAC cites NPA support for a boycott Israel website, concluding that “NPA is virulently anti-Israel”⁸ and, after referring to Hamas and the Popular Front for the Liberation of Palestine (PFLP), that “it appears that NPA shares the same goals as the above organizations – the complete destruction of Israel.”⁹
- TZAC’s complaint against the Carter Center claims that use of an office for a meeting that included members of Hamas and the PFLP amounts to harboring a terrorist.¹⁰
- The complaint against Oxfam GB states that “Oxfam is very much anti-Israel,” citing the disinformation group NGO Monitor.¹¹
- In the complaint against American University in Beirut, TZAC states that “despite its claim to be a liberal, American-styled institution, it is clear that it is proudly anti-Israel and sympathetic to those who wish to destroy Israel and its Jewish population.”¹²
- The complaint against New Israel Fund (NIF) characterizes its democracy building work by saying, “NIF consistently opposes Israeli security by supporting organizations which seek to undermine Israel.”¹³

U.S. government response

After conducting investigations into TZAC allegations while cases were sealed, the U.S. government chose not to intervene in four of the six cases and intervened in and settled

8 “United States of America ex rel. TZAC Inc. v. Norwegian People’s Aid, a/k/a Norsk Folkehjelp.” *U.S.D.C., S.D.N.Y.* No. 15 CV 4892. – TZAC Complaint, April 3, 2018. para. 3 <https://charityandsecurity.org/wp-content/uploads/2020/08/TZAC-Complaint-RESTRICTED.pdf>

9 Ibid para. 39

10 “United States of America ex rel. TZAC Inc. v. The Carter Center Inc.” *U.S.D.C., D.C.* No. 15 CV 2001 – TZAC Complaint, November 16, 2015. para. 29 <https://charityandsecurity.org/wp-content/uploads/2020/08/ComplaintTZACvCarterCenter.pdf>

11 “United States of America ex rel TZAC v Oxfam GB.” *U.S.D.C., S.D.N.Y.* No: 1:18-cv-01500-VEC. – TZAC Complaint, August 16, 2019. para. 4 <https://charityandsecurity.org/wp-content/uploads/2021/09/Complaint-TZAC-v-Oxfam-by-User-9027338.pdf>

12 “United States of America ex rel. Plaintiff-Relator v. American University Beirut.” *U.S.D.C., S.D.N.Y.* No: 1:14-cv-06899-JPO. – Plaintiff-Relator Complaint, March 30, 2017. para. 31 <https://charityandsecurity.org/wp-content/uploads/2020/08/AU-Beirut-Amended-Complaint.pdf>

13 “State of New York ex rel. TZAC Inc. v. New Israel Fund. No. 101260-19.” *Supreme Court of the State of New York.* — TZAC Complaint, August 15, 2019. para. 2 <https://charityandsecurity.org/wp-content/uploads/2021/03/Complaint-081819.pdf>

two. In two of the cases where it declined to intervene it also moved to dismiss. The Department of Justice (DOJ), which represented the government, made statements in those motions that pointed out that TZAC's attempt to use the False Claims Act for political purposes is inappropriate. For example, in the Carter Center case, the DOJ said:

*At its essence, Relator's complaint articulates a difference of opinion with the Carter Center about how to resolve conflict in the Middle East.*¹⁴

In the Oxfam GB case, the DOJ's memorandum in support of its motion to dismiss argued that allowing TZAC to proceed with the case would "impose a substantial burden on government resources" and interfere "with government policies and the administration of its programs" and "implicate the Government's foreign policy positions and international aid programs." The government noted that a relator's "subjective disagreement with the Government's investigative strategy and ultimate decision does not provide the Court with a basis to second-guess the Government's decision to dismiss the case."¹⁵

In the first of the two cases to be unsealed, the U.S. intervened and negotiated settlements with the defendant NPOs. Each settlement was announced shortly after the cases were unsealed, so the cases closed almost as soon as they opened. The settlements were for a fraction of the damages sought by TZAC: \$700,000 out of \$70,500,000 claimed against the American University in Beirut (.009 percent) and \$2,025,000 out of \$90,000,000 claimed against Norwegian People's Aid (.02 percent). In both cases the defendant NPOs also agreed to make changes in their oversight procedures.

In explaining why it settled the case, a representative of Norwegian People's Aid said, "Although we have disagreed on the fairness of the claim, NPA had accepted paying the settlement to reach closure. Due to the estimated costs, resources and time necessary to take this case to trial, we have concluded that the best decision for us is to agree on the settlement. In this way we can focus on our mission of making the world a safer and

14 "United States of America ex rel. TZAC Inc. v. The Carter Center Inc." U.S.D.C., D.C. No. 15-2001 – Motion to Dismiss, November 2, 2017. <https://charityandsecurity.org/wp-content/uploads/2020/08/DOJ-Mtn-Dismiss-TZAC-v-Carter-Ctr.pdf>

15 "United States of America ex rel. TZAC v Oxfam GB." U.S.D.C., S.D.N.Y. No 1:18-cv-01500-VEC. – Memorandum of Law in Support of the United States Motion to Dismiss. November 18, 2019. p. 17 <https://charityandsecurity.org/wp-content/uploads/2021/09/DOJ-Mtn-Dismiss-Memo-of-Law.pdf>

more just place.”¹⁶

NPA said the claims in the case were for “an unintentional breach” of its USAID antiterrorism certification and that it had “interpreted the above certification to apply only to activities funded by U.S. funds and not for activities funded by other donors. Activities mentioned in the settlement agreement were not funded by the U.S. and were not in breach of any Norwegian laws. Moreover, the said USAID agreement for South Sudan was implemented in line with the project’s objectives. The claim had nothing to do with the quality of emergency services NPA provided to the beneficiaries under that agreement.”¹⁷

TZAC’s legal arguments: stretching the limits of the material support prohibition

TZAC’s legal arguments stretch the Supreme Court’s ruling in *Holder v. Humanitarian Law Project* (HLP)¹⁸ beyond its already hazy borders to include speech and association that may well be outside the bounds of prohibited “material support.” As explained in Chapter 4, the definition is both broad and vague, leaving a host of unanswered questions about what communications with listed groups are permissible. The severity of the penalties for violating the material support prohibition – including a minimum prison sentence of 20 years – has led all stakeholders to an abundance of caution and narrow interpretations of what is permissible, a trend often referred to as over-compliance. As a result, some NPOs avoid work that could be effective in saving lives and addressing the drivers of terrorism.

TZAC has taken advantage of this ambiguity. Through its allegations in the False Claims Act cases, it is attempting to impose its answers to these questions on the U.S. government and on NPOs that must comply with the law. These are highly consequential questions that demand answers based on established democratic processes – acts of Congress or action by executive agencies – and not imposed by a private party with a political axe to grind.

16 “Norwegian People’s Aid Reaches a Settlement with the U.S. Government.” *Norwegian People’s Aid*. April 3, 2018. <https://www.npaid.org/news/norwegian-peoples-aid-reaches-a-settlement-with-the-u-s-government>

17 Ibid

18 “Holder v. Humanitarian Law Project.” *Charity & Security Network*. September 3, 2020. <https://charityandsecurity.org/litigation/hlp/>

The most difficult grey areas in the definition arise in speech-related activities, which are the primary source of TZAC's complaints. In the HLP decision the Supreme Court held that prohibited "training" and "expert advice and assistance" could be applied to HLP's planned peacebuilding program with two groups listed as Foreign Terrorist Organizations (FTO) by the Department of State. Up until that time the presumption had been that such peacebuilding activities would not violate the statute. After the Supreme Court's decision, many peacebuilding projects aimed at reducing armed conflict involving listed terrorist groups were no longer able to operate without risking criminal prosecution.

The court's opinion left the line between permissible and impermissible speech fuzzy at best, ruling that speech that is "independent advocacy" or that is not "coordinated with" or "under the direction of" a listed group is protected by the First Amendment. It even said the law does not prohibit membership in such a group.

The HLP decision addressed the law "as applied" to the proposed activities involved in that case. As law professor David Hudson Jr. explains, "The Supreme Court will often decide a case on an as-applied basis to avoid unnecessary or premature decisions regarding the constitutionality of a law."¹⁹ In limiting its ruling to the specific activities proposed by HLP, the court left the door open for future challenges based on the facts of enforcement cases. But since such cases would necessarily involve a criminal trial, conviction and appeal, something NPOs have taken steps to avoid, it is no surprise that, to date, none have arisen.

Outside the confines of the court building and in the field, where myriad civil society programs are implemented in places where listed groups are present, active or even in control of government, it is not at all clear when one crosses the line to "coordinated" speech or what comes "under the direction" of a listed group. For example, when the American University in Beirut organized events and representatives of a listed group attended, the university was in control of the event. Does this violate the prohibition?

Since Congress has not updated the law since 2004, well before the HLP decision, and no guidance from relevant authorities has been forthcoming, NPOs are left guessing about where the line is drawn.²⁰

19 Hudson, David L. Jr. "As Applied Challenges." *The First Amendment Encyclopedia*. 2009. <https://www.mtsu.edu/first-amendment/article/892/as-applied-challenges>

20 "Permissible Activities for Peacebuilders – Based on Statements by U.S. Officials." *Charity & Security Network*. April 2017. https://charityandsecurity.org/system/files/CSN%20Guidance%20Pb_0.pdf

Anti-Terrorism Act Case

In one case, the Jewish National Fund and a number of U.S. nationals living in Israel sued a U.S. nonprofit organization under the Antiterrorism Act, which allows victims of international terrorism to file civil suits against those who carry out or aid and abet acts of international terrorism. The suit was dismissed in March 2021.

Background on the law

The Antiterrorism Act (ATA)²¹ first passed in 1987²² to prohibit financial transactions to the Palestine Liberation Organization. It was amended in 1992 to: 1) add criminal penalties for attacks on U.S. nationals that occur outside the U.S., and 2) create a civil cause of action for U.S. victims of international terrorism to sue those who carry out such attacks. The law allows triple damages and attorneys' fees to be paid to successful plaintiffs. The 1992 amendments did not establish secondary liability for those who aid and abet such attacks.

In 2016, liability for aiding and abetting was added when Congress passed the Justice Against Sponsors of Terrorism Act (JASTA).²³ It allows victims of international terrorism, including their heirs and estates, to sue those who aid and abet acts of international terrorism by knowingly providing substantial assistance or conspiring with a person who committed, planned or authorized an act authorized by a Foreign Terrorist Organization.²⁴

To establish liability a plaintiff filing suit must show the following:

- An act of international terrorism that occurred outside the U.S. or transcended national boundaries. Domestic terrorism and acts of war are specifically excluded;
- Injury to a U.S. national or their survivors or estate;
- The defendant either caused the injury (direct liability) or aided and abetted the acts of others that were the proximate cause of the injury (indirect or secondary

21 "18 U.S.C. 2333 - Civil Remedies." GovInfo. <https://www.govinfo.gov/app/details/USCODE-2015-title18/USCODE-2015-title18-part1-chap113B-sec2333/summary>

22 Moreno, Joseph, Alexander Hokenson Cadwalader, and Wickersham & Taft LLP. "U.S. Firms Continue to Face Liability for Terrorist Attacks under the Antiterrorism Act." Casetext. August 31, 2018. https://casetext.com/analysis/us-firms-continue-to-face-liability-for-terrorist-attacks-under-the-antiterrorism-act?PHONE_NUMBER_GROUP=P&sort=relevance&resultsNav=false&q=

23 "Public Law 114-222, 114th Congress." GovInfo. <https://www.govinfo.gov/content/pkg/PLAW-114publ222/html/PLAW-114publ222.htm>

24 "18 U.S.C. 2333 - Civil Remedies." GovInfo. <https://www.govinfo.gov/app/details/USCODE-2015-title18/USCODE-2015-title18-part1-chap113B-sec2333/summary>

liability);

- The defendant acted with knowledge the acts would cause injury or was reckless or wilfully blind. The statute does not define the intent standard so it has been left to the courts, which have established standards based on tort law.

Jewish National Fund case against the U.S. Campaign for Palestinian Rights dismissed

In November 2019, the Jewish National Fund and 12 individual Americans living in Israel filed suit against Just Peace in the Middle East, a U.S. charity d/b/a the U.S. Campaign for Palestinian Rights (USCPR).²⁵ The suit made claims under the Antiterrorism Act for damages caused by incendiary devices launched into Israel from Gaza by unnamed persons. JNF argued that USCPR was liable because it collects funds from U.S. donors for the BDS National Committee (BNC) in Palestine and one of BNC's more than two dozen members is a coalition that includes Hamas, which the State Department has designated a Foreign Terrorist Organization (FTO).

USCPR's motion to dismiss, filed March 5, 2020, argued that the plaintiffs did not allege facts to support their conclusions, that USCPR's activities are lawful, that plaintiffs relied on guilt by association and did not allege facts that would "bridge the gap between these lawful, peaceful and protected acts and the damage caused..."²⁶ USCPR's motion to dismiss was granted by the United States District Court for the District of Columbia on March 29, 2021. The court said the plaintiff's arguments "are, to say the least, not persuasive."²⁷

The court explained that plaintiffs' claims "do not plausibly allege that defendants cause their injuries."²⁸ The plaintiffs did not offer facts to show USCPR's financial support to the BNC Committee, Great Return March and Stop the JNF Campaign was a "substantial factor in the sequence of events that led to their injuries" or that the injuries were "reasonably foreseeable or anticipated as a natural consequence."²⁹ JNF asked the court

25 "JNF v. EJPME." U.S.D.C., D.C. No. 19 CV 3425 – JNF Complaint, November 13, 2019. <https://charityandsecurity.org/wp-content/uploads/2021/04/Complaint-JNF-v-EJPME-USPCR.pdf>

26 "JNF v. EJPME." U.S.D.C., D.C. No. 19 CV 3425 – Motion to Dismiss, March 5, 2020. <https://charityandsecurity.org/wp-content/uploads/2020/10/Motion-to-Dismiss-and-Memo-of-Law-in-Support.pdf>

27 "JNF v. EJPME." U.S.D.C., D.C. No. 19 CV 3425 – Memorandum Opinion, March 29, 2021. <https://charityandsecurity.org/wp-content/uploads/2021/04/Leon-OPINION-dismissing-claims-29-March-2021.pdf>

28 Ibid p. 4

29 Ibid p. 5

to reconsider, and after the court denied that request appealed the case to the U.S. Circuit Court for the District of Columbia.³⁰

Weaponizing the Law to Score Political Points

The litigation described in this chapter attempts to twist U.S. law away from its intended purposes (e.g. protecting the government from fraud, providing justice to victims of terrorism) in order to disrupt operations and impose costs on the nonprofit organizations targeted. Although these suits have not succeeded in winning trials, they do not need to do so in order to achieve their goals. Nonprofits that are sued must divert substantial resources to legal defence, including attorneys' fees, even when cases are dismissed early in the process. This in turn has a chilling effect on all organizations that work in Palestine, or that wish to do so. Thankfully, this chilling impact has been partially offset by the fact that these lawfare attacks rarely succeed in court—but the potential for lawfare attacks to deal devastating blows to civic space will persist until flaws in the legal frameworks they rely on are addressed.

30 "Keren Kayemeth Lelsrael-Jewish National Fund et al. v. Education for a Just Peace in the Middle East." *U.S.D.C., D.C.*, No: 1:19-cv-03425. – Notice of Appeal, August 31, 2021. <https://charityandsecurity.org/wp-content/uploads/2021/09/JNF-Notice-of-Appeal.pdf>

Lawfare Cases Brought Against Nonprofit Organizations (NPOs)*

NPO Targeted	Type of Claim	Outcome	Total USAID Grants	Damages Sought	Damages Paid	Awards & Fees Paid
AUB	FCA-USAID ATC	Settled	\$23,500,000 over 6 years	\$70,500,000	\$700,000	\$126,000
NPA	FCA-USAID ATC	Settled	~\$30 million over 6 years	\$90,000,000	\$2,025,000	\$370,700
Carter Center	FCA-USAID ATC	Dismissed on motion of DOJ	\$30,572,849 over 6 years	\$91,716,000	\$0	\$0
Oxfam UK	FCA-USAID ATC	Dismissed on motion of DOJ	\$53,399,604 over 5 years	\$160,198,812	\$0	\$0
Christian Aid	FCA-USAID ATC	Motion to dismiss pending	\$26,116,361	\$78,349,083	N/A	\$0
New Israel Fund	NY FCA-IRS/TE	Settled	N/A	\$110,000,000 (3x taxes avoided via exemption)	\$0	\$0
USCPR	ATA	Dismissed, appeal pending	N/A	Unspecified Compensatory damages	\$0	N/A
TOTAL			\$163,588,814	\$600,763,895	\$2,725,000	\$496,700

*Abbreviations:

AUB – American University in Beirut

NPA – Norwegian People's Aid

FCA-USAID ATC – Federal False Claims Act re USAID Antiterrorism Certification

NY FCA-IRS/TE – New York State False Claims Act re Tax-Exempt Status

ATA – Antiterrorism Act suit

6

Regulatory Attacks on Charitable Status and Requests for Investigation

Lawfare groups have challenged the charitable status of several U.S. and UK organizations active in supporting Palestinian rights or providing aid in Palestine. These politically motivated attacks are existential threats to the targeted organizations, as recognized charitable status is essential for fundraising. To date none of these efforts have succeeded, but they have given lawfare groups an opportunity to impose costs, and perhaps more importantly, to issue public statements that make politically charged claims about support for terrorism, restating allegations based on novel legal arguments and unsubstantiated factual allegations.

United States – Internal Revenue Service (IRS)

In the U.S., charities are incorporated and registered at the state level, but the federal taxing authority (Internal Revenue Service, or IRS) determines which charities are eligible to receive donations that can be deducted from federal taxes. These charities are recognized under Sec. 501(c)(3) of the tax code and must meet stringent criteria to qualify and file annual reports after that. Significantly, many donors, including private foundations, limit their grantmaking to 501(c)(3) organizations. Loss of this status would result in significant loss of revenue for a charity and consequently impede or suspend the programs that those revenues support.

The Tax-Exempt and Government Entities division at the IRS makes determinations about tax-exempt status and enforces applicable IRS standards and regulations.¹ The list of possible violations on IRS Form 13909,² which is used for complaints by members of the public, includes use of the organization's assets to support illegal or terrorist activities. The IRS will review the complaint and determine whether further proceedings are warranted. While the IRS sends the complaining party an acknowledgement that it has received the complaint, the complainant has no further role in the proceeding.³ In

1 "Tax Exempt & Government Entities Division At-a-Glance." IRS. <https://www.irs.gov/government-entities/tax-exempt-government-entities-division-at-a-glance>

2 "Form 13909." IRS. <https://www.irs.gov/pub/irs-pdf/f13909.pdf>

3 "Tell the IRS about Suspected Tax Exempt Status Abuses." IRS. https://www.irs.gov/pub/irs-tege/divulge_all_suspected_tax_exempt_status_abuses_to_the_irs.pdf

cases where tax-exempt status is revoked the complainant can file for a monetary award.⁴

While there is a level of transparency aimed at informing the public about charities eligible to receive tax-deductible donations, all “taxpayers,” including exempt organizations, are protected by privacy laws.⁵ As a result, the IRS does not publish whistleblower complaints against charities or the findings and outcomes of its investigations. However, the complaining party can publish their complaint. In the cases described below, the Zionist Advocacy Center (TZAC) has done so.

Doctors Without Borders

In late August 2018 TZAC announced via Facebook that the IRS rejected its effort to revoke the charitable, tax-exempt status of Doctors Without Borders (MSF – Medecins Sans Frontiers).⁶ TZAC’s complaint was filed using an IRS whistleblower process.⁷ (MSF told the Charity & Security Network that it had no information about the complaint.)

The complaint alleges that MSF “admits to collaboration with the Palestinian Ministry of Health,” which is part of the Hamas-controlled government of Gaza, by providing intensive care training for medical and paramedical staff at Nasser Hospital and training to al-Shifa Hospital, both in Gaza and regulated by the Ministry of Health.⁸ It argued that these services amount to support of Hamas, which the U.S. has listed as a terrorist organization, and that providing training in hospitals that treat civilians in Gaza constitutes material support under the Supreme Court’s 2010 ruling in *Holder v Humanitarian Law Project*.⁹ However, that case did not address the question of how the material support prohibition applies to medical services for civilians in areas controlled by listed groups. (These

4 “Form 211.” IRS. <https://www.irs.gov/pub/irs-pdf/f211.pdf>

5 “Taxpayer Bill of Rights 8: The Right to Confidentiality.” IRS. May 27, 2021. <https://www.irs.gov/newsroom/taxpayer-bill-of-rights-8>

6 Zionist Advocacy Center. “The IRS Has Rejected my Whistleblower Complaint.” Facebook. August 29, 2018. [https://www.facebook.com/ZionistAdvocacyCenter/posts/2081532855494244?xsts__\[0\]=68.ARB67h0NwDhdCXD5xn5u_mhqRTb8jJPdik2j9Q21FebOmyO2P5MFYXUrQ0EtCE5N9EzrOtdbMSSBGyF1Lho93ldhwX4P1T4Vccqk9jj5Qxen5rZfsPqHwx1QJ6CDralDDt7MAIQ8GfF8-ngRez6VSHZ3HmlgQKAiG6DmwG2lBJuOll3O10UtGulk6j26tOw16q7PAMsgkec-LjMzCxfm0eg](https://www.facebook.com/ZionistAdvocacyCenter/posts/2081532855494244?xsts__[0]=68.ARB67h0NwDhdCXD5xn5u_mhqRTb8jJPdik2j9Q21FebOmyO2P5MFYXUrQ0EtCE5N9EzrOtdbMSSBGyF1Lho93ldhwX4P1T4Vccqk9jj5Qxen5rZfsPqHwx1QJ6CDralDDt7MAIQ8GfF8-ngRez6VSHZ3HmlgQKAiG6DmwG2lBJuOll3O10UtGulk6j26tOw16q7PAMsgkec-LjMzCxfm0eg)

7 “Whistleblower Office.” IRS. <https://www.irs.gov/compliance/whistleblower-informant-award>

8 The IRS does not publish its decisions in such cases, but TZAC’s complaint, minus the appendices, is available in a 2016 news story – “Legal Team Demands IRS Revoke Tax Exempt Status of MSF for Supporting Hamas.” *War News Information Press*. February 8, 2016. <https://warnewsinformation.blogspot.com/2016/02/legal-team-demands-irs-revoke-tax.html>

9 “Holder v. Humanitarian Law Project.” *Charity & Security Network*. September 3, 2020. <https://charityandsecurity.org/litigation/hlp/>

services enjoy protections under international humanitarian law.) Instead, it focused on training in conflict resolutions skills and human rights advocacy. The complaint also notes that there is no material support exemption for medical services. (It incorrectly states that only medicine and food are exempt. Food is not exempt, but religious materials are.)¹⁰

The complaint against MSF followed accusations by NGO Monitor that MSF took sides in the Israel/Palestine conflict, contrary to the humanitarian principle of neutrality because it publicly shared information about the impact of the conflict on Palestinians.¹¹ MSF said this information sharing was part of its “bearing witness” function, noting that:

*Our actions are guided by medical ethics and the principles of impartiality, independence and neutrality... Neutrality is not synonymous with silence. Our proximity to people in distress implies a duty to raise awareness on their plight to ultimately help improve their situation. We may seek to bring attention to extreme need and suffering, when access to lifesaving medical care is hindered, when our teams witness extreme acts of violence, when crises are neglected, or when the provision of aid is abused.*¹²

WESPAC

TZAC’s May 26, 2020 Facebook post announced that it filed a complaint with the IRS against the WESPAC Foundation, a Westchester County, NY social justice organization.¹³ The complaint alleged that WESPAC violated its status as a public charity under Section 501(c)(3) of the tax code by acting as a fiscal sponsor for Students for Justice in Palestine (SJP). TZAC alleged that WESPAC did not “exercise adequate oversight” over SJP and that SJP engaged in discriminatory conduct.

WESPAC, which has a Gold Seal for Transparency from Guidestar, has acted as fiscal sponsor for the National Students for Justice in Palestine (NSJP) annual conferences, helping to pay travel costs for participants. NSJP was founded in 2010 to coordinate efforts between over 200 campus chapters and host the annual gathering. Its donation

10 “18 USC 2339A(b)(1).” *Legal Information Institute*. Cornell Law School. <https://www.law.cornell.edu/uscode/text/18/2339A>

11 Schiffmiller, Yona. “Why Doctors Without Borders Has an Israel Problem.” *The Forward*. July 7, 2016. <https://forward.com/scribe/344495/why-doctors-without-borders-has-an-israel-problem/>

12 “We are Médecins Sans Frontières.” *Médecins Sans Frontières*. <https://www.msf.org/who-we-are>

13 “Complaint: To: IRS Re: Wespac Foundation Inc.” *The Zionist Advocacy Center*. May 26, 2020. <https://charityandsecurity.org/wp-content/uploads/2021/09/TZAC-Complaint-to-IRS-WESPAC.pdf>

page explains that WESPAC is its fiscal sponsor.¹⁴

Fiscal sponsorship relationships are common in the nonprofit sector. The National Council of Nonprofits' resource page on fiscal sponsorship notes that, "In essence the fiscal sponsor serves as the administrative home of the cause. Charitable contributions are given to the fiscal sponsor, which then grants them to support the cause."¹⁵

The discrimination claim is based on the working definition of antisemitism from the International Holocaust Remembrance Alliance (IHRA), a legally non-binding document that was incorporated into Executive Order 13899 by President Trump in December 2019.¹⁶ (See Chapter 4).

TZAC's complaint against WESPAC is a good example of how the IHRA definition can be stretched to cover protected speech, including criticism of Israeli government policies and actions. It conflates the supplemental examples with the definition itself, calling attention to one that states, "Denying the Jewish people their right to self-determination, e.g. by claiming that the existence of the State of Israel is a racist endeavor." TZAC attorney David Abrams interprets this broadly, arguing that WESPAC's fiscal sponsorship of Palestinian student groups is discriminatory, citing specific allegations of harassment of Jewish students by members of Palestinian student groups. However, Abrams does not present information tying these incidents to funding from WESPAC. It argues instead that WESPAC is responsible and has not maintained adequate oversight of its funds.

The factual allegations in the three-page complaint are taken from the Canary Mission website, a highly controversial database of highly detailed personal information about students, academics, activists and others that the site's anonymous sponsors declare to be antisemitic due to their criticism of Israel. A video on the site encouraged employers to use it as a blacklist, saying, "It is your duty to ensure that today's radicals are not tomorrow's employees."¹⁷

14 "Donate to National Students for Justice in Palestine." *National Students for Justice in Palestine*. <https://www.nationalsjp.org/donate>

15 "Fiscal Sponsorship for Nonprofits." *National Council of Nonprofits*. <https://www.councilofnonprofits.org/tools-resources/fiscal-sponsorship-nonprofits>

16 "Executive Order 13899—Combating Anti-Semitism." *The American Presidency Project*. December 11, 2019. <https://www.presidency.ucsb.edu/documents/executive-order-13899-combating-anti-semitism>

17 Holpuch, Amanda. "Website Targets Pro Palestinian Students in effort to Harm Prospects." *The Guardian*. May 27, 2015. <https://www.theguardian.com/us-news/2015/may/27/website-targets-pro-palestinian-students-harm-job-prospects>

As of September 2021, WESPAC has not reported any known outcome of the complaint process.

New Israel Fund

In addition to filing a False Claims Act case against the New Israel Fund (NIF) in New York State, the Zionist Advocacy Center attorney David Abrams submitted a complaint to the IRS seeking to have its tax-exempt status revoked. The complaint was based on the same allegations of partisan electioneering it made in the court case. (That case was settled with no admission of wrongdoing by NIF. See Chapter 9 for details.) To date there is no public information about the outcome of this complaint.

United Kingdom – Charity Commission of England and Wales

UK Lawyers for Israel (UKLFI) and the Lawfare Project have jointly filed complaints against several UK charities that provide assistance to and/or advocate for Palestinians. The complaints are filed with the Charity Commission of England and Wales, an independent governmental body whose function is to “register and regulate charities in England and Wales, to ensure that the public can support charities with confidence.”¹⁸ The Charity Commission is accountable to Parliament and maintains a registry of groups it determines meet its criteria to be listed as charities. It requires annual reports from charities, enforces standards through investigations that may result in corrective action and provides guidance and tools to assist charities in effective administration.

None of the complaints discovered during research for this report resulted in corrective action by the Commission. However, UKLFI shared the complaints with the charities’ online donation payment processors, resulting in interrupted online fundraising capacity in two cases.

18 “About Us.” Charity Commission for England and Wales. <https://www.gov.uk/government/organisations/charity-commission/about>

Deepfake “Journalist” Spread Disinformation in Three News Outlets

In April 2020 a War on Want senior staffer and her husband were targeted in an article published in *Algemeiner*, an American Jewish newspaper, and in two Israeli news outlets that labelled them as “known terrorist sympathizers” along with other damaging allegations. The couple wanted to initiate defamation proceedings, but could find no trace of the articles’ author. Suspecting foul play, *Reuters* began an investigation, analyzing the author photo published alongside the defamatory articles. The results were startling: the photo bore the marks of a sophisticated deepfake.

Reuters’ investigation into the alleged author revealed that his identity could not be confirmed. The university where the author claimed to be a student had no record of him. Two of the newspapers that published his articles could not confirm his identity. Calls to the phone number he gave editors went to an error message. *Algemeiner* and the *Times of Israel* eventually deleted the deepfake articles, but *Arutz Sheva* kept them up, only deleting the directly defamatory references.

The incident raises serious questions for publishers about the role they may play, knowingly or not, in providing platforms for disinformation. In response to the attack, War on Want’s Executive Director Asad Rehman explained, “These smears are part of a broader disinformation campaign aimed at attacking and discrediting human rights defenders, internationally-recognised Palestinian human rights organisations, their partner organisations and donors... We will not be deterred.”

Sources:

- [1] Satter, Raphael. “Deepfake Used to Attack Activist Couple Shows New Disinformation Frontier.” *Reuters*. July 15, 2020. <https://www.reuters.com/article/us-cyber-deepfake-activist/deepfake-used-to-attack-activist-couple-shows-new-disinformation-frontier-idUSKCN24G15E>
- [2] “Reuters Uncovers ‘Deepfake’ Journalist Used to Target War on Want.” *War on Want*. July 16, 2020. <https://waronwant.org/news-analysis/reuters-uncovers-deepfake-journalist-used-target-war-want>

War on Want

UKLFI and the Lawfare Project filed a joint complaint against War on Want, a UK charity, at the Charity Commission on Sept. 3, 2018.¹⁹ The complaint alleged that War on Want's advocacy for human rights in Palestine was outside of its charitable purpose, characterizing it as political propaganda that promotes hatred. It also claimed that War on Want is "linked" to terrorists through alleged connections its local Palestinian civil society partners have with the Popular Front for the Liberation of Palestine (PFLP). The complaint asked the Charity Commission to "take appropriate steps to secure the proper administration of this charity and to ensure that its conduct is limited to activities for the public benefit within its charitable objects."

The complaint does not allege that War on Want made payments to or partnered with the PFLP.²⁰ Instead, it relies on a guilt-by-association analysis, claiming that War on Want partners with legally registered Palestinian human rights groups Addameer, Al-Haq, which in turn it alleges have PFLP links. These are based on alleged affiliations of some board and staff members, including former board and staff, some dating back to the 1980s. It then goes on to argue that War on Want's work on behalf of Palestinians in need is not justified because Palestine is not as poor as areas like Sub-Saharan Africa and India (even though more than half of Gaza's population live under the poverty line).²¹ It implies that human rights advocacy is not a legitimate charitable purpose, although in 2006 the UK law changed to allow human rights advocacy as a charitable purpose.²² War on Want's mission statement and charitable mandate clearly includes such advocacy.²³

The day after UKLFI filed the complaint it issued a press release that included details of its allegations. It then sent notice of the allegations to PayPal, War on Want's online donation processing service provider. On Oct. 23, 2018 the Lawfare Project announced that PayPal had cut off service to War on Want, without waiting for the outcome of

19 "War on Want." Charity Commission for England and Wales. <https://register-of-charities.charitycommission.gov.uk/charity-details/?regid=208724&subid=0>

20 "Complaint and Request for Investigation of War on Want." UKLFI and the Lawfare Project. September 3, 2018. <https://uklfi.com/wp-content/uploads/2018/09/War-on-Want-Complaint-to-Charity-Commission-FINAL-3.9.18.pdf>

21 "Israeli Occupation Cost Gaza \$16.7 Billion in Past Decade - UNCTAD Estimates." United Nations Conference on Trade and Development. November 25, 2020. <https://unctad.org/news/israeli-occupation-cost-gaza-167-billion-past-decade-unctad-estimates>

22 Miller, Hannah. January 6, 2012. "A Change in Charity Law for England and Wales: Examining War on Want's Foremost Adoption of the New Human Rights Charitable Purpose." *The International Journal of Human Rights*. <https://www.tandfonline.com/doi/abs/10.1080/13642987.2011.646993>

23 "War on Want and Charity Law." War on Want. <https://waronwant.org/about/war-want-and-charity-law>

the Charity Commission investigation or giving the charity an opportunity to rebut the allegations.²⁴ (War on Want's current online Donate page is fully functional.)

War on Want filed a detailed response to the Charity Commission and on July 11, 2019 was informed that the Commission "does not consider any further regulatory action or engagement to be required, and that its assessment into this matter is now concluded."²⁵ In announcing the conclusion of the investigation, War on Want said the Commission informed it that they "have not identified any issues that we need to take forward."²⁶ War on Want noted that this was not the first time a politically-motivated complaint had been filed against it, saying, "This follows on the Charity Commission's rejection of the 2015 complaint made by Jewish Human Rights Watch against War on Want, on 8 March 2019, which confirmed that our trustees are 'acting in accordance with both their duties and the generic regulatory guidance.'"²⁷ Despite this decision, PayPal did not restore service.

Medical Aid for Palestine

On June 4, 2018 UKLFI and the Lawfare Project filed a complaint at the Charity Commission against Medical Aid for Palestinians (MAP), claiming it had "links with and funding of NGOs linked to" the PFLP and published "inaccurate and misleading content on its website and in its reports and fact sheets." They asked the Commission to "take appropriate steps to secure the proper administration of this charity and to ensure that its conduct is limited to activities for the public benefit within its charitable objects."²⁸

Part of UKLFI and the Lawfare Project's argument was that MAP's broad goals – "relief of poverty and the prevention and relief of sickness amongst the inhabitants of the Middle East Region, refugees and other displaced persons..." and education for such inhabitants and refugees "do not include medical care for injuries caused by armed conflict..."²⁹

24 "PayPal drops War on Want following Lawfare Project and UK Lawyers for Israel Complaint to the Charity Commission." *The Lawfare Project*. October 23, 2018. <https://www.thelawfareproject.org/releases/2018/10/23/paypal-drops-war-on-want-following-lawfare-project-and-uk-lawyers-for-israel-complaint-to-charity-commission>

25 "Charity Commission Response to Complaint by UK Lawyers for Israel and US-based The Lawfare Project." *War on Want*. October 2, 2019. <https://waronwant.org/news-analysis/charity-commission-response-complaint-uk-lawyers-israel-and-us-based-lawfare-project>

26 Ibid

27 Ibid

28 "Complaint and Request for Investigation of Medical Aid for Palestinians." *UKLFI and the Lawfare Project*. June 4, 2018. <https://uklfi.com/wp-content/uploads/2018/06/MAP-complaint-FINAL.pdf>

29 Ibid p. 1

The complaint did not include facts alleging that MAP funded or worked with the PFLP. Instead, it claimed MAP “has links with and funds” three Palestinian NGOs (Addameer, the Palestinian Centre for Human Rights and Al-Haq) that it alleges have links to the PFLP. It presented a list of various staff and leaders with these NGOs that it said demonstrate connections to the PFLP, including one family relationship.

It then challenged MAP’s research and fact sheets on the negative impact the Israeli occupation has had on the health care and health outcomes for Palestinians, citing other reports and data to support its conclusion that “Palestinian health and healthcare have improved enormously over the past 50 years.”³⁰

MAP investigated the allegations and filed a full response to the Charity Commission in September 2018. It posted a statement on its website on October 20, 2018 saying, “We do not have links to terrorist organizations. Our publications are all evidence based and the evidence is sourced from authoritative and credible sources.”³¹

In November 2018 the Commission wrote MAP to say it “does not consider that any further regulatory action or engagement is required at this time.”³² The letter contained routine references to published guidance from the Commission. However, UKLFI posted a statement mischaracterizing inclusion of the reference material as a warning to MAP in an attempt to frame dismissal of its complaint as a partial victory.³³ MAP criticized UKLFI’s posting as “grossly misleading.”³⁴

Education Aid for Palestinians

UKLFI announced it submitted a complaint against Education Aid for Palestinians (EAP)

30 Ibid p. 7

31 “Medical Aid for Palestinians’ Statement on Complaint by UK Lawyers for Israel and the Lawfare Project.” *Medical Aid for Palestinians*. October 20, 2018. <https://www.map.org.uk/news/archive/post/928-medical-aid-for-palestinians-statement-on-complaint-by-uk-lawyers-for-israel-and-the-lawfare-project>

32 “Charity Commission Response to Complaint by UK Lawyers for Israel and the Lawfare Project.” *Medical Aid for Palestinians*. February 27, 2019. <https://www.map.org.uk/news/archive/post/974-charity-commission-response-to-complaint-by-uk-lawyers-for-israel-and-the-lawfare-project>

33 “Charity Commission May Need to ‘Re-engage’ with Medical Aid for Palestinians.” *UK Lawyers for Israel*. February 5, 2019. <https://www.uklfi.com/charity-commission-may-need-to-re-engage>

34 “Charity Commission Response to Complaint by UK Lawyers for Israel and the Lawfare Project.” *Medical Aid for Palestinians*. February 27, 2019. <https://www.map.org.uk/news/archive/post/974-charity-commission-response-to-complaint-by-uk-lawyers-for-israel-and-the-lawfare-project>

to the Charity Commission on June 17, 2019.³⁵ The statement said EAP was “declared a banned association in Israel in 2008 for being part of Hamas’ fundraising operation, the Union of Good.” It also noted that EAP had substantial income donated by the UK-based charity Interpal, which is listed as a terrorist supporter by Israel, the U.S., Australia and Canada, but not in the UK. (After several investigations, the Charity Commission ordered organizational changes at Interpal and it continues to operate legally in the UK.)³⁶ The statement also claimed that university facilities EAP donated to were actually centers for weapons development.

On Oct. 4, 2019 UKLFI updated its statement to say “The Charity Commission has assessed EAP following the complaint by UKLFI and concludes that it does not consider that any regulatory action is required at this time....The Commission acknowledges the information that past and current trustees of EAP are designated in Israel but says that since these individuals are not designated in the UK, ‘the Commission is not aware of any reason why these individuals cannot legally be trustees of a UK charity.’”³⁷

However, dismissal of the complaint did not protect EAP from the negative impact of UKLFI’s action. In March 2019 the fundraising platform Muslim Giving discontinued service to it, after UKLFI noticed it that EAP was banned in Israel.³⁸

Requests for Investigation

In July 2020 the Zachor Legal Institute (Zachor), a U.S.-based advocacy group that produces legal materials “made available for use by the entire Zionist umbrella of organizations,” sent a letter to the Department of Justice (DOJ) calling for a criminal investigation of Black Lives Matter and other groups, claiming they are “fronts” and “affiliates” of three Palestinian organizations designated as Foreign Terrorist Organizations by the Secretary

35 “Education Aid for Palestinians.” *Charity Commission for England and Wales*. <https://register-of-charities.charitycommission.gov.uk/charity-details/?regid=1030807&subid=0> ; “UK Charity, Banned in Israel, is Reported to Charity Commission.” *UK Lawyers for Israel*. June 17, 2019. <https://www.uklfi.com/uk-charity-reported-to-charity-commission>

36 “Charity Interpal Cleared in UK, Banned in US.” *Charity & Security Network*. June 28, 2009. https://charityandsecurity.org/archive/interpal_cleared/ ; “Palestinians Relief and Development Fund.” *Charity Commission for England and Wales*. <https://register-of-charities.charitycommission.gov.uk/charity-search/-/charity-details/1040094/charity-overview>

37 “UK Charity, Banned in Israel, is Reported to Charity Commission.” *UK Lawyers for Israel*. June 17, 2019. <https://www.uklfi.com/uk-charity-reported-to-charity-commission>

38 “MuslimGiving Removes Education Aid for Palestinians.” *UK Lawyers for Israel*. March 28, 2019. <https://www.uklfi.com/muslimgiving-removes-education-aid-for-palestinians>

of State.³⁹ As evidence the July 8, 2020 request cites statements of support from Palestinian solidarity organizations for protests over the murder of George Floyd that use the word “intifada,” an Arabic term for “uprising” which is used by Palestinians to describe demonstrations against injustice. The letter also refers to allegations made in a 2018 request from Zachor to the DOJ that similarly portrays issue advocacy and political solidarity as the equivalent of “affiliation” and material support of terrorism. The DOJ did not respond to the 2018 letter.

Central to Zachor’s claims is a broad and undefined use of the term “affiliation.” Zachor uses it to describe groups that share stated goals regarding racial equality and human rights and who may collaborate on shared activities. These activities are otherwise known as “freedom of association” and “freedom of expression” in the First Amendment. Zachor then claims these associations constitute illegal material support of terrorism because, in its analysis, support for Palestinian rights is the same as support for the groups listed by the Secretary of State. The letter does not cite any facts that support its theory that the U.S. groups are controlled by the listed groups.

The letter also collectively blames the groups for “widespread violence” in what have been largely peaceful demonstrations. As part of this claim Zachor says that Antifa is an “affiliate” of Black Lives Matter, even though fact checkers in reputable news sources have made it clear that Antifa is an unstructured entity.⁴⁰

Regulatory Attacks Used as a Vehicle for Disinformation and Attacks on Funding

Although to date regulatory attacks have not succeeded in overturning the charitable status of the groups attacked, they still serve an important purpose for lawfare groups: spreading disinformation and undermining some groups’ ability to raise funds online. Attacks on charitable status are thus a means to another end: disruption and delegitimization.

39 Greendorfer, Marc. “Letter to William Barr, Attorney General and other Department of Justice Officials.” Zachor Legal Institute. July 8, 2020. <https://charityandsecurity.org/wp-content/uploads/2020/07/Zachor-ltr-to-DOJr-re.-BLM-Sent-to-DOJ-on-July-8-2020.pdf>

40 Suerth, Jessica. “What is Antifa?” CNN. May 31, 2020. <https://www.cnn.com/2017/08/14/us/what-is-antifa-trnd/index.html>

7 Targeting Nonprofits' Funding

Despite lawfare groups' claims that they only seek accountability and transparency, their political agendas and tactics point to a concerted effort to deprive nonprofit organizations (NPOs) working in Palestine of the resources necessary to do their work. In this they have the support of Israel's Ministry of Foreign Affairs and up until recently, its Ministry of Strategic Affairs and Public Diplomacy. These official bodies have joined lawfare groups in pressuring other governments to cut foreign assistance funds for groups working in Palestine. (See Chapter 3.)

Lawfare groups employ several tactics to achieve this goal: pushing online donation payment processors to close accounts of target groups, a practice known as "deplatforming," and direct lobbying of donor governments to cut off foreign assistance funds. In addition, they challenge the charitable status of target groups, seeking to limit fundraising capacity. Finally, by seeking extraordinary amounts of monetary damages in False Claims Act cases, lawfare plaintiffs work to bankrupt the groups they sue.

The use of deplatforming and demands for investigations to cut off funding are described below, with examples.

Deplatforming: Closing Online Donation Payment Platforms

Lawfare groups use the threat of legal liability to pressure online donation payment platforms to "deplatform" or cancel the accounts of NPOs and human rights defenders working in global hot spots, particularly in Palestine. They manufacture and use disinformation to support their politically motivated arguments.

An issue brief by the Charity & Security Network explains this tactic:

These groups erroneously tell the platforms that the NPO is associated with, working with or funding a listed terrorist group, and raise the specter, usually in forceful yet unsubstantiated terms, that keeping these accounts open puts the company at legal risk. Because the disinformation used in these deplatforming campaigns alleges ties to organizations that might be involved in furthering or supporting terrorist acts, the online platforms are understandably concerned about

prosecution for material support, sanctions violations and/or reputational damage. However, targeted NPOs are generally legitimate organizations recognized by regulatory authorities that, unlike white supremacy groups that promote violence, provide essential services and at times engage in constitutionally protected speech. These deplatforming campaigns are exploiting legitimate concerns about accountability and legality, and the platforms are being used as a tool for a political agenda.¹

The lack of clear, transparent policies at financial service firms means that all their clients are vulnerable to politically motivated campaigns. Decisions to deplatform may be made on an ad hoc basis, and the NPOs that lose their accounts have no recourse either with the company or in the legal system. Adopting comprehensive policies consistent with human rights standards can help companies prevent their platforms from being abused in support of politically motivated agendas. However, payment platforms have been slow to adopt such strategies.

In 2019 the Times of Israel reported that these groups, “working under the direction of Israel...” succeeded in closing 20 NPO accounts in Europe and 10 in the U.S.²

In a rare example of a legal victory based on a case of deplatforming, Defense for Children International Palestine (DCI-P), an organization that protects the rights of Palestinian children, forced a settlement of its libel case against UK Lawyers for Israel (UKLFI). On March 9, 2020 UKLFI posted a statement retracting a post on its website that alleged links between former DCI-P board members and a designated terrorist organization.³ The original post was part of a multi-year, ongoing disinformation campaign against DCI-P by UKLFI that included sending letters to DCI-P’s financial service providers alleging these same “links.” DCI-P publicly denied the allegations.⁴ As a result of this campaign, GlobalGiving’s third-party payment processor demanded that DCI-P projects

1 “Financial Services Deplatforming Hurts Aid, Peacebuilding.” *Charity & Security Network*. August 19, 2019. <https://charityandsecurity.org/sites/default/files/Deplatforming%20Issue%20Brief.pdf>

2 TOI Staff. “Israel Shuttters 30 BDS Fundraising Accounts by Revealing Alleged Terror Ties.” *Times of Israel*. June 11, 2019. <https://www.timesofisrael.com/campaign-shuttters-30-bds-fundraising-accounts-by-revealing-ties-to-terrorism/>

3 “Settlement in Libel Suit is Setback for Disinformation Campaign.” *Charity & Security Network*. March 12, 2020. <https://charityandsecurity.org/news/settlement-in-libel-suit-is-setback-for-disinformation-campaign/>

4 “UK Lawyers for Israel Recants Allegations of DCIP Material Support to Designated Terror Group.” *Defense for Children International Palestine*. March 10, 2020. https://www.dci-palestine.org/uk_lawyers_for_israel_recants_allegations_of_dcip_material_support_to_terror_group

be removed from the GlobalGiving website.⁵ Following its retraction, UKLFI attempted to walk back its original recantation, framing the settlement as DCI-P abandoning the case.⁶ UKLFI's allegations against DCI-P remain on its website.⁷ Despite the legal victory and GlobalGiving's finding that DCI-P fully complied with its nonprofit terms and conditions and legal requirements, the third-party payment processor continues to prohibit transactions that support DCI-P. As a result, DCI-P projects remain unlisted and removed from the GlobalGiving platform.⁸ Unfortunately, DCI-P remains a target of Israeli government efforts to suppress Palestinian civil society.⁹ Despite the fact that DCI-P works to protect Palestinian children, their work to hold the Israeli government accountable for rights violations has made it a target of lawfare groups and the Israeli government.

Legislative Advocacy to Cut Foreign Assistance Funding to Palestine

Lawfare and disinformation groups advocate in the U.S. Congress and European parliaments to pressure governments into cutting off foreign assistance funds to groups that work in Palestine or support Palestinian rights. In its 2016 Mid-Year Report, NGO Monitor called its approach the "Domino Strategy," where one European government after another is pressured to drop its funding for Palestinian civil society groups.¹⁰ The Israeli government has also exerted pressure to cut off funds in countries such as Denmark, the European Union, Finland, Germany, Ireland, the Netherlands, Norway, Switzerland and the United States.¹¹ A 2019 report by Michael Lynk, the UN Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, cited

5 Letter from Alix Guerrier, CEO GlobalGiving, to DCI-P. September 1, 2020 (on file with C&SN).

6 "DCI-P Withdraws Libel Claim Against UKLFI." *UK Lawyers for Israel*. March 11, 2020. <https://www.uklfi.com/dci-p-withdraws-libel-claim>

7 Ibid ; "UK Lawyers for Israel Recants Allegations of DCIP Material Support to Designated Terror Group." *Defense for Children International Palestine*. March 10, 2020. https://www.dci-palestine.org/uk_lawyers_for_israel_recants_allegations_of_dcip_material_support_to_terror_group ; Parker, Brad. "I was meant to talk about Palestinian kids at the UN. Israel forced me out." *+972 Magazine*. February 24, 2020. <https://www.972mag.com/palestinian-children-security-council/>

8 While DCI-P has access to other providers, the GlobalGiving platform has wide reach to donors and lack of access to it harms DCI-Ps ability to raise funds online.

9 "Israel Raids Office of Children's Rights Group, Confiscates Computers, Files." *Middle East Monitor*. July 29, 2021. <https://www.middleeastmonitor.com/20210729-israeli-forces-raid-dcip-office-confiscate-computers-and-client-files/>

10 Jamal, Amal. "The Rise of 'Bad Civil Society' in Israel: Nationalist Civil Society Organizations and the Politics of Delegitimization." *German Institute for International and Security Affairs*. January 2018. https://www.swp-berlin.org/publications/products/comments/2018C02_jamal.pdf

11 "Target Locked: The Unrelenting Israeli Smear Campaigns to Discredit Human Rights Groups in Israel, Palestine, and the Syrian Golan." *The Observatory for the Protection of Human Rights Defenders*. April 2021. p. 44-45 https://target-locked-obs-defenders.org/IMG/pdf/obs_palestine2021ang-1.pdf

attacks on funding sources as one of several strategies of “particular concern” used by Israeli authorities to silence their critics.¹²

Islamic Relief Worldwide

Founded in the United Kingdom in 1984, Islamic Relief Worldwide (IRW) has been a target of Islamophobic and disinformation groups for many years.¹³ It is a faith-inspired humanitarian aid and development agency working in over 45 countries, helping over 10 million people of all faiths every year. Its website explains that because it works closely with local communities, “we can often respond swiftly to emergencies and work in areas that other organisations cannot access.” It also notes that it is “the only Muslim charity to be awarded Core Humanitarian Standard certification,” enjoys UN consultative status and participates in the UK Disasters Emergency Committee.¹⁴ It partners with governments and UN programs around the world.¹⁵

In 2017 an effort in the U.S. House of Representatives unsuccessfully sought to de-fund IRW through an amendment proposed by then Rep. Ron DeSantis (R-FL) as part of the Department of State’s foreign operations appropriations.¹⁶ A grassroots effort by Islamic Relief USA, InterAction, and the Charity & Security Network, with support from then Rep. Keith Ellison (D-MN), succeeded in blocking the amendment.¹⁷ In addition, a letter Rep. Ellison sent to his fellow members opposing the amendment gathered more than 50 signatures from nonprofit organizations in less than 24 hours.¹⁸

The Ellison letter explained that when IRW was accused of providing support to terrorists, it shut down its operations in the West Bank and commissioned an independent audit.

12 Lynk, Michael. “Human Rights Situation in the Occupied Palestinian Territory, Including East Jerusalem, with a Focus on Access to Water and Environmental Degradation.” *United Nations Human Rights Council*. May 30, 2019. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/150/38/PDF/G1915038.pdf>

13 For example see: Westrop, Sam. “Islamic Relief: Charity, Extremism and Terror.” *Middle East Forum*. June 20, 2018. <https://www.meforum.org/7403/islamic-relief-charity-extremism-terror>

14 “About Us.” *Islamic Relief Worldwide*. <https://www.islamic-relief.org/about-us/>

15 Beyond the U.S., funders include the European Community Humanitarian Office, the World Food Programme and the governments of Canada, Sweden, Switzerland, the United Kingdom. It has also been funded by the UN High Commissioner for Refugees, Office for the Coordination of Humanitarian Affairs, UNICEF and UN Women.

16 “Amendment to Division G of Rules Committee Print 115–31 Offered by Mr. Desantis of Florida.” *Washington Free Beacon*. https://freebeacon.com/wp-content/uploads/2017/08/DESANT_056.xml.pdf

17 If passed, the amendment would have been subject to a challenge under Article 1 Section 9 of the U.S. Constitution, which bars bills of attainder (a legislative finding of guilt without providing a trial).

18 “Elison Dear Colleague Letter.” *Charity & Security Network*. September 13, 2017. <https://charityandsecurity.org/blog/ellison-dear-colleague-letter-september-2017/>

Ellison cited the UK Disasters Emergency Committee's (DEC) review of the audit, which stated, "We are satisfied that Islamic Relief has robust systems in place to ensure aid money is properly accounted for and spent appropriately. The DEC is not aware of any evidence that Islamic Relief has used aid funds inappropriately in Israel and the Occupied Palestinian Territories."¹⁹

The political motivations behind the DeSantis proposal were clear. Earlier that year he and Rep. Bill Johnson (R-OH) had launched a "Congressional Israel Victory Caucus," supported by the Middle East Forum, which said the caucus "builds on ideas promoted by the Middle East Forum that are now gaining support..."²⁰ The Southern Policy Law Center's HateWatch site noted that these ideas were drawn from a paper by Middle East Forum founder Daniel Pipes, which "contains a number of extreme recommendations including calls to 'reduce and then shut off the water and electricity that Israel supplies' to Palestinians if violence continues."²¹

This failed effort by DeSantis in 2017 did not deter continued attacks on IRW's funding. IRW's critics seized on reports in the summer of 2020 that disclosed antisemitic remarks by two of its board members, made on their personal Facebook pages in 2014-2015, prior to the time they joined IRW's board. After their resignations, the entire board stepped down as the UK Charity Commission opened an investigation into IRW's vetting process for board members and social media guidelines.²²

IRW changed its board selection process, holding its first ever election. It also commissioned former conservative attorney general Dominic Grieve to conduct an independent investigation. While these investigations were pending, a third IRW official resigned when antisemitic social media posts were revealed.²³

While these investigations were pending IRW's funding was suspended by the UK's

¹⁹ Ibid

²⁰ "Announcing the 'Congressional Israel Victory Caucus.'" *Middle East Forum*. April 24, 2017. <https://www.meforum.org/6652/congressional-israel-victory-caucus-to-launch>

²¹ "Anti-Muslim Activist Daniel Pipes and Congressmen to Launch 'Congressional Israel Victory Caucus.'" *Southern Poverty Law Center*. April 26, 2017. <https://www.splcenter.org/hatewatch/2017/04/26/anti-muslim-activist-daniel-pipes-and-congressmen-launch-%E2%80%99Ccongressional-israel-victory>

²² "Muslim Relief Charity's Board Steps Down." *The Nonprofit Times*. September 1, 2020. <https://www.thenonproffitimes.com/people/muslim-relief-charitys-board-steps-down/>

²³ Delahunty, Stephen. "Third Senior Figure at Islamic Relief Worldwide Steps Down After Making Antisemitic Comments." *Third Sector*. November 16, 2020. <https://www.thirdsector.co.uk/third-senior-figure-islamic-relief-worldwide-steps-down-making-antisemitic-comments/management/article/1699971>

Commonwealth and Development Office, as well as the governments of Germany and the Netherlands.²⁴ USAID notified IRW that it would require monthly reports on its compliance with the Charity Commission's recommendations.²⁵ In the last month of the Trump administration, the U.S. Department of State's Special Envoy to Monitor and Combat Anti-Semitism released a statement condemning the "well-documented record of anti-Semitic attitudes and remarks made by the senior leadership of Islamic Relief Worldwide" without noting that the leaders in question had been replaced. It also did not mention the pending investigations. The statement ended by encouraging other governments to end their relationship with IRW.²⁶

In January 2021 both the Charity Commission and Grieve investigation cleared IRW.²⁷ The Charity Commission found that:

- IRW "took swift action, including to condemn the comments and ensure that all three individuals left their roles...None has any ongoing involvement with the charity."
- IRW made "significant improvements to the recruitment and oversight of trustees and senior staff."
- The former trustees had not disclosed their social media posts to the charity. The posts were contrary to IRW's code of conduct.

The Grieve report, released on Jan. 14, 2021, found "absolutely no evidence that the reputational issues that have arisen over the conduct of a few individuals has had any link to the way IRW carries out its charitable work."²⁸ He made 19 recommendations for improving governance going forward. Grieve told the Guardian that, "the charity has

24 Sherwood, Harriet. "Report Clears Muslim Charity of Institutional Antisemitism." *The Guardian*. January 28, 2021. <https://www.theguardian.com/society/2021/jan/29/charity-islamic-relief-worldwide-exonerated-antisemitism-inquiry>

25 McElroy, Damien. "Islamic Relief Worldwide Forced to Supply Monthly Compliance Reports After Muslim Brotherhood Ties Exposed." *The National*. January 19, 2021. <https://www.thenationalnews.com/world/islamic-relief-worldwide-forced-to-supply-monthly-compliance-reports-after-muslim-brotherhood-ties-exposed-1.1149782>

26 Office of the Special Envoy to Monitor and Combat Anti-Semitism. "Islamic Relief Worldwide." *U.S. Department of State*. December 30, 2020. <https://2017-2021.state.gov/islamic-relief-worldwide/index.html>

27 "Regulator Oversees Governance Improvements After Senior Figures in Development Charity Post Anti-Semitic and Offensive Social Media Comments." *UK Charity Commission*. January 20, 2021. <https://www.gov.uk/government/news/regulator-oversees-governance-improvements-after-senior-figures-in-development-charity-post-anti-semitic-and-offensive-social-media-comments>

28 Grieve, Dominic. "Independent Commission into Governance and Vetting within Islamic Relief." *Temple Garden Chambers*. January 14, 2021. <https://www.islamic-relief.org.uk/wp-content/uploads/2020/09/Independent-Commission-Report-29.01.2021.pdf>

made a lot of effort to ensure there isn't antisemitism..."²⁹

European funding for Palestine targeted

In its 2018 report *The Money Trail*, the Israeli Ministry of Strategic Affairs falsely alleged that millions of Euros went to NGOs with "terror ties" and supporters of BDS.³⁰ The Policy Working Group (PWG), a collective of Israeli ex-diplomats, academics and others, who advocate for coexistence between Israel and Palestine, based on a two-state solution, characterized the report as echoing "recycled allegations against the EU and European and Palestinian NGOS that NGO Monitor (NGOM) has been making for years."³¹ The EU High Representative for Foreign Affairs, Federica Mogherini, responded to the report in a letter to the Israeli Ministry of Strategic Affairs, denouncing allegations of EU support for terrorism as "unfounded and unacceptable," noting that "vague and unsubstantiated accusations serve only to contribute to disinformation campaigns."³²

Retired Israeli Ambassador Ilan Baruch, Chair of the PWG, notes that groups like NGOM "pretend to be independent and nonpartisan. In reality, they work hand in hand with the Israeli government, which is using its resources to curtail and undermine the work of critical civil society organizations."³³ He says donors should avoid the trap laid by NGOM and similar groups that accuse human rights organizations of protecting or even assisting terrorists that falsely link human rights advocacy with being anti-Israel or antisemitic.

NGOM continued to press the issue. In May 2020 the EU Commissioner for Neighborhood and Enlargement, Oliver Varhelyi, told the press that, due to requests from Israeli authorities and others, he had instructed the Heads of Mission in Tel Aviv, Gaza and the West Bank to investigate the matter. In response, the PWG Chair Amb. (ret.) Ilan Baruch sent Varhelyi a letter providing context for the investigative requests coming out of Israel. Noting the NGOM's political agenda, he wrote, "Indeed our civil society is under duress, prey to predator-style organizations whose sole purpose is to discredit and disrupt NGOs

29 Sherwood, Harriet. "Report Clears Muslim Charity of Institutional Antisemitism." *The Guardian*. January 28, 2021. <https://www.theguardian.com/society/2021/jan/29/charity-islamic-relief-worldwide-exonerated-antisemitism-inquiry>

30 "The Money Trail: European Union Financing of Organizations Promoting Boycotts Against the State of Israel." *Ministry of Strategic Affairs and Public Diplomacy, Government of Israel*. January 2019. <https://www.gov.il/en/departments/general/nativ010819>

31 "NGO Monitor: Shrinking Space: Defaming Human Rights Organizations that Criticize the Israeli Occupation." *Policy Working Group*. September 2018. <http://policyworkinggroup.org.il/>

32 Ibid p. 15

33 Ibid p. 3

that monitor violations of human rights and international law in the context of Israel's occupation of Palestine." He noted that NGOM's propaganda campaigns are "nothing new" and that its actions "cannot be seen detached from the plans and preparations of the Israeli Government to annex large and vital parts of the West Bank." Finally he urged Varhelyi to "refrain from any statements and actions that could aid their escalating campaign to cut funding and shrink civil space for critical NGO – a campaign that is also designed to distract your attention from annexation."³⁴

Examples of NGO Monitor's (NGOM) Efforts to Cut Off European Funding for Nonprofit Organizations (NPOs) Working in Palestine

- *Bolstering Prime Minister Netanyahu's pressure campaign to end British and Belgian funding*

NGOM's report on its first 15 years of operation cited Netanyahu's use of its research in meetings in 2017 with the prime ministers of the UK and Belgium that called on them to defund a list of NPOs involved in the BDS movement.

- *Targeting the Human Rights & International Humanitarian Law Secretariat*

Denmark, the Netherlands, Switzerland and Sweden created the Human Rights & International Humanitarian Law Secretariat to promote aid effectiveness for Israeli and Palestinian NGOs that document human rights violations in Palestine, whether committed by Israel, Hamas or the Palestinian Authority. From 2013-17 it was the largest donor in this area. NGOM lobbied to end this funding, accusing the Secretariat of funding NGOs that were politicized and tied to terrorist organizations. The four participating countries decided to continue their funding individually from 2018 onward, and the Secretariat was discontinued. However, NGOM falsely claimed it had brought down the funding framework.

34 "PWG letter to Commissioner Oliver Varhelyi." May 27, 2020. <https://www.scribd.com/document/463361387/PWG-letter-to-Commissioner-Oliver-Varhelyi>

➤ *Litigation aimed at disclosure of internal information about European Union funding programs*

NGOM's president, Gerald Steinberg, sued the European Union in the European Court of Justice in 2010, seeking disclosure of detailed information on two grant programs for Israeli and Palestinian NPOs: Partnership for Peace and the European Instrument for Democracy and Human Rights. The European Commission had taken the position that "disclosure would undermine the protection of the public interest as regards public security." The court rejected Steinberg's claim, calling it "manifestly unfounded" and "manifestly lacking any foundation in law." He was charged for legal costs.

➤ *Promoting motions to cut Swiss and Dutch funding for Palestinian NGOs*

In 2016 NGOM pushed a motion in Switzerland that would have defined prohibited incitement of hatred as any criticism that could be "considered offensive to sovereign states" as well as support for BDS movements. Although the Lower House of Parliament adopted the measure, the Upper House removed these provisions. The Swiss Minister of Foreign Affairs said the proposal would have "swept away any possibility for civil society to criticize governments."

The same year NGOM promoted a motion in the Dutch Parliament aimed at terminating funding for NPOs that support BDS. The Dutch government refrained from fully implementing the motion, noting that while the government rejects BDS, it does not consider civil society support for it a reason to reject funding, "considering that statements or gatherings of the movement are protected by freedom of expression and freedom of association, as enshrined in the Dutch Constitution and the European Convention on Human Rights."

Source:

"NGO Monitor: Shrinking Space: Defaming Human Rights Organizations that Criticize the Israeli Occupation." *Policy Working Group*. September 2018. <http://policyworkinggroup.org.il/>

Freezing Funds “Pending Investigation”

Union of Agricultural Work Committees

The case of the Union of Agricultural Work Committees (UAWC) illustrates the escalating efforts to defund and delegitimize groups that serve Palestinians and the degree to which disproportionate action by governments can harm innocent program beneficiaries. Founded in 1986, UAWC is a Palestine-based organization that is “contributing to the agricultural sector’s development, through empowering farmers steadfastness and sovereignty on their resources within a sustainable community-based liberational developmental framework...”³⁵ As an organization that supports farmers and Palestinian land use in areas targeted for settlement expansion by Israel, it is a long-time target of groups like NGO Monitor and UK Lawyers for Israel.³⁶



A Palestinian woman plants an olive tree in the Gaza Strip’s “buffer zone” with Israel, February 9, 2012. Photo by Joe Catron licensed under [CC BY-NC 2.0](https://creativecommons.org/licenses/by-nc/2.0/).

In 2020 UAWC’s funding from the Dutch government was frozen pending investigation due to the combined effects of the arrest of two staff members by Israel alleging involvement in a bombing that killed Israeli teenager Rina Snorb, ongoing attacks by NGO Monitor and UK Lawyers for Israel (UKLFI), and Dutch electoral politics. The Foreign Ministry of the Netherlands suspended UAWC’s funding pending an independent investigation into alleged links to the Popular Front for the Liberation of Palestine (PFLP), which is on the U.S. and EU lists of terrorist organizations. The resulting damage to agricultural programs is significant and ongoing, impacting over 100 communities in the occupied West Bank, costing over 300 agricultural workers their livelihoods and leaving 200 farmers unable to

³⁵ “About Us.” *Union of Agricultural Work Committees*. <https://www.uawc-pal.org/UAWCAbout.php>

³⁶ Gadzo, Mersiha. “‘It Will Be a Disaster’: Palestinians Prepare for Annexation.” *Al Jazeera*. June 30, 2020. <https://www.aljazeera.com/news/2020/6/30/it-will-be-a-disaster-palestinians-prepare-for-annexation>

pay their employees.³⁷ As the investigation, which covers the period of 2007-2020, drags on, the damage will only increase.

The case illustrates the inherent problems with freezing funds pending investigation. If the organization is exonerated, there is no way to undo the damage caused to Palestinian farmers and rural communities. If ties to the PFLP are found, the remedy is to address deficiencies in UAWC's governance and program administration, not to deprive farmers of much needed assistance. In general donors and governments should focus on proportionate responses when serious accusations are made, both to protect beneficiaries of NPO programs and to avoid over-reactions in response to political pressure.

It is important to note that previous attempts by lawfare groups to cut off funding to UAWC have been unsuccessful. For example, in 2012 Shurat HaDin, another Israeli nonprofit with ties to the Israeli government, attempted to cut off UAWC's funding from Australia.³⁸ After a temporary freeze an investigation by the Australian Federal Police and the Australian Secret Service Intelligence Organization concluded that "no breach existed and that there was no proof for the allegations."³⁹

In May 2019 UKLFI wrote to the Head of Mission of the Netherlands Representative Office in the Palestinian Territories, alleging "links" between UAWC and the PFLP.⁴⁰ In a June 19, 2019 reply the Head of Mission wrote back to say:

The Dutch government does not possess any information that leads us to conclude that our financial support to UAWC has been used by organizations that the Netherlands or European Union consider terrorist organizations. The information

37 Kane, Alex, and Mariam Barghouti. "How an Israeli Smear Campaign is Ripping Away Funds from Palestinian Farmers." *+972 Magazine*. January 25, 2021. <https://www.972mag.com/palestinian-funding-uawc-israel-lobby/>

38 Williams, Dan. "Fighting Israel's Foes in U.S. Courts, Lawyer Had Help from Mossad." *Reuters*. November 2, 2017. <https://www.reuters.com/article/us-security-israel-lawyer/fighting-israels-foes-in-u-s-courts-lawyer-had-help-from-mossad-idUSKBN1D2296>

39 "Intervention of Senator Xenophon." *Parliament of Australia*. October, 30, 2012. <https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22chamber%2Fhansards%2F22bf1f16-2a0b-4177-8209-58163298188d%2F0163%22>

40 "Dutch Government Ignored Warnings About Funding Terror Linked NGO." *UK Lawyers for Israel*. June 23, 2020. <https://www.uklfi.com/dutch-government-ignored-warnings-about-funding-terror-linked-ngo>

*provided by yourself does not change this assessment.*⁴¹

The pressure on the Dutch government to cut off funding to UAWC escalated after the arrest of two UAWC employees in connection with the bombing that killed Shnerb. In October 2019 NGO Monitor wrote to Netherlands Foreign Minister Stef Blok, asking for information about Dutch funding for UAWC.⁴² It cited media reports that UAWC's West Bank financial director, Samer al-Arbeed, had been arrested in connection with the bombing, which it attributed to the PLFP.⁴³

According to the Dutch government, UAWC had informed the Ministry of the arrests in October 2019 and had:

- Sent all employees a reminder on its policy banning active membership in political organizations; and
- Terminated the contracts of the employees in question.⁴⁴

A follow up letter to Blok in June 2020 expanded NGO Monitor's accusations to note that two current and one former UAWC employees were arrested in connection with the 2019 bombing.⁴⁵ In addition to al-Arbeed, it said Abdelrazek Farraj, UAWC's Administrative Director, was indicted for authorizing the bombing and Ubai Aboudi, a monitoring and evaluation officer for UAWC until April 2019, was accused of recruiting for the PFLP. The letter said, "We urge the Netherlands to take necessary measures and, like the EU, launch an investigation in order to prevent the abuse of development funds by those involved in or supporting terror organizations."⁴⁶ UKLFI wrote to the Ministry again in May and June of 2020.⁴⁷

41 Van Baar, Kees. "Response to UKLFI's Letter." *Kingdom of Netherlands, Head of Mission, Representative Office in the Palestinian Territories*. June 19, 2019. <https://charityandsecurity.org/wp-content/uploads/2021/09/Response-to-UKLFIs-Letter.pdf>

42 "NGO Monitor Letter to Foreign Minister Stef Blok Regarding Dutch Funding to UAWC." NGO Monitor. October 10, 2019. <https://www.ngo-monitor.org/ngo-monitor-letter-to-foreign-minister-stef-blok-regarding-dutch-funding-to-uawc/>

43 Ibid

44 Van Leeuwen, Geoffrey. "Re: Donations by the State of the Netherlands to the Union of Agricultural Work Committees." *Kingdom of Netherlands, Ministry of Foreign Affairs*. July 20, 2020. <https://charityandsecurity.org/wp-content/uploads/2021/09/Donations-by-the-State-of-the-Netherlands-to-the-Union-of-Agricultural-Work-Committees.pdf>

45 "NGO Monitor June 2020 Letter to Foreign Minister Stef Blok Regarding Dutch Funding to UAWC." NGO Monitor. June 21, 2020. <https://www.ngo-monitor.org/ngo-monitor-june-2020-letter-to-foreign-minister-stef-blok-regarding-dutch-funding-to-uawc/>

46 Ibid

47 The Dutch government disclosed the letters on August 20, 2020.

On July 20, 2020, the Director of the Dutch Foreign Ministry's North Africa and Middle East Department responded to UKLFI's more recent letters.⁴⁸ He explained that although "None of the monitoring conducted to date, including external audits, gives any indication that Dutch funding was used for purposes other than those agreed on," it was suspending payments to UAWC pending an external review. This was because, "[i]n the process of answering questions posed by members of the Dutch parliament on the issue, it emerged that the salary of the two employees accused of involvement in the bomb attack had been paid as part of the overhead costs of UAWC, which is standard practice. These costs were partly funded by the Netherlands. The employees were not, however, involved in the project management unit."⁴⁹

UAWC addressed the Dutch funding suspension in a public statement saying, "We have been exposed to toxic smear campaigns in an attempt to intimidate our donors and stop their funding. During the past years, several donor governments have launched reviews into recurring allegations that UAWC is linked to the PFLP. Each time, such allegations were proven to be false." The statement noted UAWC's policy that prohibits employees from being politically active.⁵⁰

The UAWC statement also said the key reason behind the ongoing attacks is its work in Area C of the occupied West Bank, "where we help vulnerable communities hold on to their land. The Israeli government has built illegal settlements in this area and wants to annex it."⁵¹

NGO Monitor was quick to claim credit for the suspension of funding, saying, "As a direct result of NGO Monitor research the Dutch government is halting €8 million in funding,

48 Van Leeuwen, Geoffrey. "Re: Donations by the State of the Netherlands to the Union of Agricultural Work Committees." *Kingdom of Netherlands, Ministry of Foreign Affairs*. July 20, 2020 <https://charityandsecurity.org/wp-content/uploads/2021/09/Donations-by-the-State-of-the-Netherlands-to-the-Union-of-Agricultural-Work-Committees.pdf>

49 Ibid

50 "Statement by UAWC After Dutch Government Announces Review." *Union of Agricultural Work Committees*. July 22, 2020. <https://uawc-pal.org/news.php?n=3624&lang=2>

51 As explained by ANERA, "The 1995 Oslo II Accord established the administrative division of the West Bank into areas A, B, and C. Area C, which Israel administers, covers over 60 percent of the West Bank. An estimated 300,000 Palestinians live in 532 residential areas located partially or fully in Area C, along with some 400,000 Israeli settlers residing in approximately 230 settlements." – "What are Area A, Area B, and Area C in the West Bank?" ANERA. <https://www.anera.org/what-are-area-a-area-b-and-area-c-in-the-west-bank/>

over three years, to the Palestinian NGO known as 'UAWC.'"⁵² In contrast, a statement from the Palestinian Non-Government Organizations Network and the Palestinian Human Rights Organizations Council condemned the campaign against UAWC and criticized the Dutch government's decision to suspend funding. It said that decision was "triggered by a coordinated pressure campaign of organizations closely affiliated with the Israeli government..." and that they "are gravely concerned that the Dutch review will have a catalyzing effect on shrinking civic space..."⁵³

Over the following months evidence emerged that one of the former UAWC employees who was arrested, Samer al-Arbeed, was tortured while in Israeli custody in the fall of 2019. Al-Arbeed was rushed to a hospital three days after his arrest, suffering from life-threatening injuries.⁵⁴ Both Amnesty International and the Public Committee Against Torture in Israel expressed concern about this incident.⁵⁵ This not only taints the prosecutorial case against him, but also raises serious concerns about Israeli human rights policy.⁵⁶

The case was further complicated in August 2020 when the PFLP issued a statement claiming that Al-Arbeed took part in the bombing.⁵⁷ His family promptly refuted that claim.⁵⁸

On September 8, 2020, Sigrid A.M. Kaag, then Minister for Foreign Trade and Development Cooperation, wrote to the Chairman of the Dutch Parliament responding

52 "Dutch Gov't Halts Funds to NGO Linked to Terrorists." *NGO Monitor*. July 22, 2020. <https://www.ngo-monitor.org/dutch-govt-halts-funds-to-ngo-linked-to-terrorists/>

53 "PNGO and PHROC Call on the Dutch Government to Protect UAWC from Harm and to Shield Palestinian Civil Society." *Al-Haq*. Aug. 27, 2020. <https://www.alhaq.org/palestinian-human-rights-organizations-council/17257.html>

54 Shany, Yuval. "Special Interrogation Gone Bad: The Samer Al-Arbeed Case." *Lawfare Blog*. October 10, 2019. <https://www.lawfareblog.com/special-interrogation-gone-bad-samer-al-arbeed-case#>

55 "Israel/OPT: Legally-Sanctioned Torture of Palestinian Detainee Left Him in Critical Condition." *Amnesty International*. September 30, 2019. <https://www.amnesty.org/en/latest/press-release/2019/09/israel-opt-legally-sanctioned-torture-of-palestinian-detainee-left-him-in-critical-condition/> ; Steiner, Tal. "Opinion: Hey Shin Bet, Can You Really Torture someone 'IN a Statesmanlike Manner'?" *Haaretz*. January 30, 2021. <https://www.haaretz.com/opinion/.premium-hey-shin-bet-can-you-really-torture-someone-in-a-statesmanlike-manner-1.9495144>

56 "Israel/OPT: Legally-Sanctioned Torture of Palestinian Man 'Utterly Outrageous.'" *Amnesty International*. September 30, 2019. <https://www.amnesty.org.uk/press-releases/israelopt-legally-sanctioned-torture-palestinian-man-utterly-outrageous>

57 "PFLP: Arrested NGO Official is a 'Hero' and a 'Commander.'" *NGO Monitor*. September 1, 2020. <https://www.ngo-monitor.org/pflp-arrested-ngo-official-is-a-hero-and-a-commander/>

58 "She Confirmed that the Prisoner Samer Denied All the Charges Against Him by the Occupation." *Watan News Agency*. September 10, 2020. <https://www.wattan.net/ar/news/319335.html>

to parliamentary questions about UAWC and another group, Al Mezan. In her letter, Kaag explained the scope of the independent investigation of UAWC, saying it would seek clear answers based on verifiable information regarding possible ties between UAWC and the PFLP. To accomplish this the investigation is covering the entire period of Dutch funding for UAWC, from 2007 to 2020. It also is looking at how UAWC implements its personnel policy barring employees from political activity.⁵⁹

Kaag also noted the Netherlands' support for a two-state solution and that Dutch development programs work with civil society in Palestine in support of that goal. She said that, "Development cooperation in the Palestinian Territories takes place within the context of the occupation. This is increasingly accompanied by a shrinking of space for civil society, especially where civil society is committed to a two-state solution." She also noted that "civil society organizations are providing important services to the Palestinians in Area C for the realization of the two-state solution."⁶⁰

In July 2020 UKLFI expanded its campaign against UAWC to attack its funding sources in Norway, sending a letter reiterating the allegations sent to the Netherlands.⁶¹ In its webpost UKLFI said "We would like to thank Med Israel for Fred (MIFF), NGO Monitor and International Legal Forum for their assistance with this project." Both NGO Monitor and the International Legal Forum have close ties to the Israeli Ministry of Strategic Affairs (See Chapters 3 and 4). This is indicative of the coordinated effort to deprive Palestinian organizations resources to carry out their work.

The increasingly politicized nature of these attacks on civil society funding is detailed in a +972 article about the UAWC case.⁶² Reporters Alex Kane and Mariam Barghouti noted that, in addition to the issue of the employees who were arrested:

The freeze also came as a result of pressure from Dutch political parties – including the Christian Union, a member of the center-right coalition – who disagree with their government's long history of funding Palestinian civil society, and who are

59 Kaag, Sigrid A. M. "Letter from the Minister for Foreign Trade and Development Cooperation." *Dutch Parliament*. September 8, 2020. <https://zoek.officielebekendmakingen.nl/kst-23432-478.html>

60 Ibid

61 "Norway Under Pressure to Stop Funding UAWC." *UK Lawyers for Israel*. July 30, 2020. <https://www.uklfi.com/norway-under-pressure-to-stop-funding-uawc>

62 Kane, Alex, and Mariam Barghouti. "How an Israeli Smear Campaign is Ripping Away Funds from Palestinian Farmers." *+972 Magazine*. January 25, 2021. <https://www.972mag.com/palestinian-funding-uawc-israel-lobby/>

*now allying with the right-wing pro-Israel groups.*⁶³

The article also notes that these events took place in the runup to the March 2021 election in the Netherlands. Kaag was both Minister for Foreign Trade and Development Cooperation and a leader of the progressive party D66. The ministry has authority over UAWC's funding, and, as Kane and Barghouti note, "Depending on how well her party does, she could have a shot at becoming the first Dutch female prime minister. The Dutch right wants to stop that prospect in its tracks, and are now using Kaag's oversight of funding for UAWC as a political cudgel to attack her."⁶⁴ (In March 2021 Kaag's party made major gains in the election, coming in second and gaining seats in Parliament.)⁶⁵

Al Mezan Centre for Human Rights

In August 2020 NGO Monitor published a report attacking the Gaza-based Al Mezan Centre for Human Rights.⁶⁶ Al Mezan's mission is "protecting and advancing the respect of human rights – especially economic, social and cultural rights – supporting victims of violations of international human rights law and international humanitarian law, and enhancing democracy, community and citizen participation, and respect for the rule of law in Gaza as part of the occupied Palestinian territory."⁶⁷ Its activities include monitoring and documentation, providing legal assistance and advice, advocacy and public education.

The NGO Monitor report was the basis for a push to end Dutch funding for Al Mezan. A set of parliamentary questions was submitted by the Party for Freedom, a far-right group led by Geert Wilders, "who became an influential force on his country's political right through the promotion of anti-Islamic and anti-immigration views."⁶⁸ On Oct. 8, 2020 Foreign Affairs Minister Stef Blok and Minister for Trade and Development Cooperation Sigrid A.M. Kaag published their response, which cleared Al Mezan of the allegations. It said that based on the examples provided by NGO Monitor, "there is no reason to

63 Ibid

64 Ibid

65 Sterling, Toby. "Pro-Europe Dutch Politician Kaag Books Gains in Election." *Reuters*. March 17, 2021. <https://www.reuters.com/world/pro-europe-dutch-politician-kaag-books-gains-election-2021-03-17/>

66 "Al Mezan Center For Human Rights' Ties to the PFLP Terror Group." *NGO Monitor*. August, 2020. http://www.ngo-monitor.org/pdf/AlMezan_0820.pdf

67 "About Us." *Al Mezan Centre for Human Rights*. <https://www.mezan.org/en/page/1/About+Us>

68 Ray, Michael. "Geert Wilders, Dutch Politician." *Britannica*. July 14, 2021. <https://www.britannica.com/biography/Geert-Wilders>

assume that there are links between Al Mezan and PFLP.”⁶⁹

Blok and Kaag’s response provided a detailed analysis of NGO Monitor’s factual errors and sloppy research. For example, NGO Monitor alleged:

- That one Al Mezan official is a member of PFLP, confusing that individual with a deceased person with the same name.
- That another official was a leader of the first Intifada, but at that time the official was only 11 years old.
- That a third Al Mezan employee expressed support for a prisoner on hunger strike. However, the support related to conditions of imprisonment and not the prisoner’s underlying offense.

The Ministers also rejected NGO Monitor’s complaints that Al Mezan participated in meetings where Hamas, the PFLP and other organizations were present. After noting that this included meetings focused on reconciliation between Palestinian factions, a goal supported by the Netherlands, the Ministers said, “The simple fact that people are meeting or at a gathering are present cannot, according to the cabinet, be interpreted as support for an organization, let alone membership.”⁷⁰

NGO Monitor also complained that Al Mezan engages in “lawfare” because it brings legal actions against the state of Israel and submits information to international bodies. The Ministers pointed out that “bringing alleged violations to international organizations is a legitimate and common means, used by human rights organizations in many countries under various circumstances.”⁷¹

69 Blok, Stef and Sigrid A.M. Kaag. “Answer to Questions from Members De Roon, Wilders and Van Weerdenburg About ‘Even More Dutch Aid Money for Palestinian Terrorists.’” *House of Representatives of the States General*. October 8, 2020. (in Dutch, translated via Google Translate). <https://www.tweedekamer.nl/kamerstukken/kamervragen/detail?id=2020D39444&did=2020D39444>

70 Ibid

71 Ibid



Policy Working Group-Israel
@IsraelPolicy

"Do you agree that NGO Monitor is deliberately undermining Israeli and Palestinian human rights organisations that criticise the Israeli occupation?"
Dutch Foreign Minister Stef Blok responds to parliamentary question on @NGOMonitor (short answer: yes)
tweedekamer.nl/kamerstukken/k...

Question 3

Do you agree that for years NGO Monitor has been a driving force in deliberately reducing that space and undermining and disrupting Israeli and Palestinian human rights organisations that criticise the Israeli occupation and violations resulting from it?

Foreign Minister Blok:

The Netherlands is concerned about the shrinking civic space in Israel and therefore consistently brings this matter up in conversations with Israeli authorities. The government emphasizes the importance of the work of human rights organizations for a free and pluralistic society. The government is familiar with the accusations by NGO Monitor against a broad group of Israeli and Palestinian human rights organisations, as well as with criticism of the conduct of NGO Monitor itself, as expressed, for example, in the report of the Policy Working Group, a collective of Israeli former diplomats, academics and others (September 2018). This research shows that many of NGO Monitor's accusations are based on selective citations, half-facts and insinuations, but not necessarily on hard evidence, even though not all of the accusations are irrelevant or untrue. These accusations have contributed to a climate in which human rights organisations have come under increasing pressure

A Policy Working Group tweet screenshots one of Dutch Foreign Minister Stef Blok's responses to a parliamentary question regarding NGO Monitor, January 15, 2020. <https://twitter.com/IsraelPolicy/status/1217406466296074240>

8

A Comprehensive Look at Lawfare Attack Groups

This chapter provides a detailed look at the lawfare and disinformation groups most active in attacking civil society organizations providing aid to Palestinians or supporting human rights for them. It supplements the overview of lawfare attack groups in Chapter 3.

The lawfare groups examined here are the Zionist Advocacy Center, The International Legal Forum, Keren Kaymeth LeIsrael/Jewish National Fund, The Lawfare Project, Zachor Legal Institute and UK Lawyers for Israel. This chapter also covers the disinformation groups Middle East Forum, NGO Monitor and the Investigative Project on Terrorism.

Attorney David Abrams and the Zionist Advocacy Center

Created in May 2015 by New York-based attorney David Abrams, the Zionist Advocacy Center (TZAC) is one of the most active lawfare entities in U.S. courts. It is a one-person operation registered as a business entity in New York State, with Abrams as its CEO.¹ Because it is a for-profit entity, its finances, donors and activities are not publicly disclosed. Abrams hosts a Facebook page for TZAC where he announces new developments.² There is no website, and this entity operates out of Abrams' law office.

This report includes an examination of TZAC's suits against charities that work in Palestine or support human rights in Palestine and Israel (described in detail in Chapter 9). Abrams, through TZAC, has brought a variety of cases in U.S. courts against charities that work in Palestine and advocate for human rights in Palestine and Israel, as well as supporters of the Boycott, Divestment and Sanctions (BDS) movement. TZAC has filed 26 actions to date, including 10 federal cases under the False Claims Act (FCA), one based on the New York State False Claims Act, nine cases related to the BDS movement and various complaints to regulatory bodies.³ TZAC also sends threatening letters to NPOs and in

1 "Entity Information: TZAC, Inc." *New York State Division of Corporations*. DOS 4754142. January 3, 2019. <https://charityandsecurity.org/wp-content/uploads/2021/09/Entity-Information.pdf>

2 "The Zionist Advocacy Center." *Facebook*. <https://www.facebook.com/ZionistAdvocacyCenter/>

3 Some suits have been brought in conjunction with the Lawfare Project, described below. Because False Claims Act cases are sealed upon filing, TZAC may have more pending cases than it has announced on its Facebook page.

some cases, to online donation payment platforms that provide service to NPO clients.

The targets of TZAC's actions include 13 charities based in the U.S. or Europe that operate programs in Palestine, such as food assistance, medical services, peacebuilding and democracy building programs, vocational training, and youth services. The other targets are primarily U.S. or European groups that support Palestinian human rights and solidarity organizations, including the BDS movement. The allegations in these suits range from claims of discrimination to accusations of providing material support to designated terrorist groups.

It is no accident that each charity TZAC sued has made statements critical of Israeli action in Palestine. For example, Oxfam's website explains the harmful humanitarian impacts of Israel's blockade of Gaza, calling it illegal, a position consistent with numerous United Nations Security Council resolutions.⁴

According to Ron Kampeas, a veteran reporter with the Jewish Telegraphic Agency, "Abrams is at the vanguard of a right-wing pro-Israel movement that has successfully used the courts and laws to inhibit advocacy on behalf of causes it sees as threatening to Israel."⁵

Abrams has made his political motivations clear, despite his claims that he only wants NPOs to comply with the law.⁶ In the complaint filed in one case, he states that TZAC "advocates for the Jewish State."⁷ In an interview with the New Humanitarian, he said, "I'm a pro-Israel advocate."⁸ In a January 2019 interview on a Turkish public television network, he declared he makes "no secret" of his "pro-Israel" stance.⁹

4 "Occupied Palestinian Territory and Israel." *Oxfam International*. <https://www.oxfam.org/en/what-we-do/countries/occupied-palestinian-territory-and-israel> ; UNSCR 446, 452, 465, 471 and 476.

5 Kampeas, Ron. "Activist Targets New Israel Fund for 'Electioneering' via Anti-Racism Groups." *Times of Israel*. August 5, 2020. <https://www.timesofisrael.com/activist-targets-new-israel-fund-for-electioneering-via-anti-racism-groups/>

6 Parker, Ben. "A Q&A with the Pro-Israel US Lawyer Rattling NGOs on Counter-Terror Compliance." *The New Humanitarian*. September 24, 2018. <https://www.thenewhumanitarian.org/2018/09/25/qa-pro-israel-us-lawyer-rattling-ngos-counter-terror-compliance>

7 "State of New York ex rel. TZAC, Inc. v New Israel Fund." *Supreme Court of the State of New York*. No: 101260-19 – TZAC Complaint, August 15, 2019. para. 5 <https://charityandsecurity.org/wp-content/uploads/2021/03/Complaint-081819.pdf>

8 Parker, Ben. "A Q&A with the Pro-Israel US Lawyer Rattling NGOs on Counter-Terror Compliance." *The New Humanitarian*. September 24, 2018. <https://www.thenewhumanitarian.org/2018/09/25/qa-pro-israel-us-lawyer-rattling-ngos-counter-terror-compliance>

9 TRT Network. "Do Counter-Terror Laws Hamper International Charities?" *Youtube*. January 24, 2019. <https://www.youtube.com/watch?v=bXeduyMQ7Ys>

In a 2018 article in *Justice*, a magazine published by the International Association of Jewish Lawyers and Jurists, Abrams also said that his litigation “serves notice” on NPOs that they are being monitored and would be sued if they “step over the line.”¹⁰ The problem is that, given the vagueness of the law, the line is blurry at best, and Abrams’ interpretation of what constitutes prohibited material support of terrorism is even broader, as seen in the factual claims in his lawsuits.

In a November 2018 Facebook post Abrams said, “I receive no financial support from the Israeli government, nor do I have any intention of seeking any.”¹¹ However, he benefits indirectly through the in-kind help of Yifa Segal, an attorney and Chair and CEO of the Israel-based International Legal Forum (ILF), which has received substantial support from Israel’s Ministry of Strategic Affairs (see Chapter 3).¹² For example, in an October 2018 Facebook post, Abrams said, “Today, along with Yifa Segal of the International Legal Forum and Daniel Meier of North Carolina, I filed suit in North Carolina Superior Court against the City of Durham.”¹³

ILF has received substantial support from Israel’s Ministry of Strategic Affairs (see Chapter 3) which actively attacks human rights advocates and the BDS movement.¹⁴ In May 2019 TZAC registered under the U.S. Foreign Agent Registration Act as an agent of the ILF, acknowledging that ILF received funding from the Israeli government. He described his activities on behalf of ILF as “Submission of reports of terrorist financing and anti-Israel/anti-Semitic activity to the authorities and/or to financial services firms.”¹⁵

10 Abrams, David. “Suing Anti-Israel Organizations.” *Justice* No 61. Fall 2018. <http://intjewishlawyers.org/justice/no61/#32/z>

11 Abrams, David. “Statement Regarding Financial Support from the Israeli Government.” Facebook. November 29, 2018. <https://www.facebook.com/ZionistAdvocacyCenter/posts/statement-regarding-financial-support-from-the-government-of-israeli-regularly-g/2131995800447949/>

12 Jaffe-Hoffman, Maayan. “Strategic Affairs Ministry to Form Anti-BDS Legal Network.” *Jerusalem Post*. December 20, 2018. <https://www.jpost.com/arab-israeli-conflict/ministry-of-strategic-affairs-to-create-international-anti-bds-legal-team-574946>

13 Abrams, David. “TZAC Facebook Post.” Facebook. October 31, 2018. <https://www.facebook.com/ZionistAdvocacyCenter/posts/2114364732211056>

14 Jaffe-Hoffman, Maayan. “Strategic Affairs Ministry to Form Anti-BDS Legal Network.” *Jerusalem Post*. December 20, 2018. <https://www.jpost.com/arab-israeli-conflict/ministry-of-strategic-affairs-to-create-international-anti-bds-legal-team-574946>

15 “Exhibit A and B to Registration Under Foreign Agent Registration Act of 1938.” U.S. Dept. of Justice. Registration Number 6676. May 11, 2020. <https://charityandsecurity.org/wp-content/uploads/2021/09/TZAC-FARA-Filing.pdf>

International Legal Forum

The ILF is an Israel-based nonprofit legal hub that provides lawyers and activists with resources. Its stated mission is to “promote justice, peace and equality in Israel and the Middle East.”¹⁶ ILF says its four attorneys, led by its Director Yifa Segal since 2015, work in the areas of antisemitism, terror financing, international public law, international criminal law, constitutional rights and discrimination.

A review of ILF’s publications, events and activities on its website reveals a focus on contentious legal issues in Israel’s relationship to Palestine and supporters of Palestinian rights. For example it opposes the BDS movement, International Criminal Court investigations into human rights violations by the Israeli government, and supports Israeli settlements and land policy. It also promotes the International Holocaust Remembrance Alliance (IHRA) definition of antisemitism (see Chapter 4), which has been used by lawfare groups to equate criticism of Israeli government action or policy with antisemitism and discrimination.

The resources provided to its network include strategic planning, research and administering a grant program funded by Israel’s Ministry of Strategic Affairs (see Chapter 4), aimed at silencing the BDS movement.¹⁷ ILF’s network has members in Australia, Europe, the Middle East and North and South America. It provides them with technical assistance, including research and strategic planning, publishes position papers, hosts events, and engages in litigation and legislative campaigns. In 2018 ILF partnered with the Ministry of Strategic Affairs (now part of the Ministry of Foreign Affairs) and the Israeli Bar Association to host its first legal conference, reporting that “Over one hundred legal experts from 24 countries convened in Jerusalem” and “focused on combating boycott initiatives and de-legitimization of Israel.”¹⁸

ILF works closely with U.S.-based Zionist Advocacy Center (see above) on litigation and campaigns to close down financial services for nonprofits it targets. For example, ILF’s website notes it, with TZAC, succeeded in getting three payment processing companies to close the accounts of Samidoun, an international Palestine prisoner solidarity project,

16 “Who We Are.” *The International Legal Forum*. <https://www.ilfngo.org/copy-of-who-we-are>

17 Jaffe-Hoffman, Maayan. “Strategic Affairs Ministry to Form Anti-BDS Legal Network.” *Jerusalem Post*. December 20, 2018. <https://www.jpost.com/arab-israeli-conflict/ministry-of-strategic-affairs-to-create-international-anti-bds-legal-team-574946>

18 “1st Ever Legal Network Initiative (LNI) Conference.” *The International Legal Forum*. 2018. <https://www.ilfngo.org/1st-lni-conference>

blocking its access to online fundraising.¹⁹ In 2018 Yifa Segal and TZAC filed a motion to allow Segal to appear in TZAC's case against the Carter Center (see Chapter 9 for detailed case summaries). The court denied the order because "because she is not a member in good standing of the bar of any United States Court or of the highest court of any State, and therefore is not admitted pro hac vice under the Local Rules."²⁰

Investigative Project on Terrorism

Steve Emerson founded the U.S.-based Investigative Project on Terrorism (IPT) in 1995 as a research project. It is a tax-exempt charity under Sec. 501(c)(3) of the U.S. tax code. IPT claims to have the "world's most comprehensive data center on radical Islamic terrorist groups."²¹

The group and Emerson have come under fire for making false claims about Muslims, and Emerson's "history of peddling questionable facts."²² For example, in a 2015 interview on Fox News he told interviewer Jeanine Pirro "that the city of Birmingham, England, is totally Muslim and that it is a place where non-Muslims don't go." While Pirro issued an apology afterwards, the remarks', and Fox News' failure to correct or challenge it on air, were heavily criticized. It led to a censure of Fox News by Ofcom (the UK's communications regulator), which said the remarks were "materially misleading and had the potential to cause harm and offence to viewers."²³

A 2011 report by the Center for American Progress (CAP) cited Emerson's reputation for poor credibility:

In 1997, Emerson presented the Associated Press with a purported FBI dossier showing ties between Muslim American organizations and radical Islamist groups.

19 "Blocked Terror Funding Via Large Financial Platforms." *The International Legal Forum*. <https://www.ilfngo.org/financial-platforms>

20 "U.S. ex rel. TZAC, Inc. v. Carter Center, Inc.," U.S.D.C., D.C., No. 1:15-cv-02001-RC – Docket Items 19 and 20, available at <https://pacer.uscourts.gov/>

21 "About the Investigative Project on Terrorism." *The Investigative Project on Terrorism*. <https://www.investigativeproject.org/about.php>

22 Ali, Wajahat, et. al. "Fear, Inc.: The Roots of the Islamophobia Network in America." *Center for American Progress*. August 2011. <https://cdn.americanprogress.org/wp-content/uploads/issues/2011/08/pdf/islamophobia.pdf>

23 Plunkett, John. "Ofcom Criticizes Fox News for Calling Birmingham No-Go Zone for Non-Muslims." *The Guardian*. September 21, 2015. www.theguardian.com/media/2015/sep/21/ofcom-criticises-fox-news-for-calling-birmingham-no-go-zone-for-non-muslims ; "Fox Apology for Birmingham 'Muslim-Only City Claim.'" *BBC News*. January 18, 2015. <https://www.bbc.com/news/uk-england-birmingham-30870062>

The AP reporters concluded the dossier was created by Emerson and “[Emerson] had edited out all phrases, taken out anything that made it look like his.” Another AP reporter stated, “[Emerson] could never back up what he said. We couldn’t believe that document was from the FBI files.”²⁴

In addition, IPT’s status as a nonprofit organization has been criticized as a lucrative platform for Emerson.²⁵ Charity Navigator posted an advisory about the organization, noting that its 2010 IRS filings show that 100 percent of the group’s income was directed to IPT’s CEO and founder’s for-profit management company. More recent filings show income going to “management,” a practice that Charity Navigator describes as “atypical.”²⁶ The site further notes that it has reached out to IPT for further clarification “but have not received an adequate explanation.”²⁷ A 2015 version of the CAP report asserts similar findings, stating that “IPT employs unsubstantiated threats that portray Muslims as dangerous to accrue funding often transferred to Emerson’s for-profit entity, SAE Productions.”²⁸

Keren Kaymeth Leisrael/Jewish National Fund

The Keren Kaymeth Leisrael/Jewish National Fund (KKL-JNF) was founded in Europe in 1901 by the Fifth Zionist Congress to acquire land “for the purpose of settling Jews” in the area that was then Ottoman Palestine. Between that time and 1948, when the state of Israel was founded, it raised funds globally, accumulated land and helped found the city of Tel Aviv. In 1948 the new Israeli government sold land to JNF, which became a quasi-government entity. Then in 1953 it was dissolved and reorganized as KKL-JNF, which in 1960 transferred land to a government run agency, the Israel Land Administration (ILA). KKL-JNF appointed 10 of the ILA’s 22 directors. The entity owns about 13 percent of the

24 Ali, Wajahat, et. al. “Fear, Inc.: The Roots of the Islamophobia Network in America.” *Center for American Progress*. August 2011. <https://cdn.americanprogress.org/wp-content/uploads/issues/2011/08/pdf/islamophobia.pdf>

25 Smietana, Bob. “Anti-Muslim Crusaders Make Millions Spreading Fear.” *The Tennessean*. October 24, 2010. <https://www.tennessean.com/story/news/local/2010/10/24/antimuslim-crusaders-make-millions-spreading-fear/28936467/>

26 “Investigative Project on Terrorism Foundation.” *Charity Navigator*. <https://www.charitynavigator.org/ein/134331855> (Click on “See details” under “Archived CN Advisory.”)

27 Ibid

28 Duss, Matthew, et. al. “Fear, Inc. 2.0: The Islamophobia Network’s Efforts to Manufacture Hate in America.” *Center for American Progress*. February 2015. p.57 <https://cdn.americanprogress.org/wp-content/uploads/2015/02/FearInc-report2.11.pdf>

land in Israel. When the ILA sells land the proceeds go to KKL-JNF.²⁹

KKL-JNF's land programs have generated controversy for displacing Palestinians, in particular Bedouin communities, and for policies that discriminate against Palestinian citizens of Israel in land sales and leases. Its extensive tree planting program has been criticized for environmentally harmful practices as well as restricting Bedouin herding and covering Palestinian village-sites that were destroyed and cleared after 1948.³⁰ After the 1967 war it started working in the Palestinian territories. In early 2021 KKL-JNF approved a plan to buy land for settlement expansion in the occupied West Bank.³¹

KKL-JNF has affiliate organizations that raise funds in over 50 countries.³² Its U.S. affiliate has 501(c)(3) charitable status with the IRS.³³ In 2015 and 2016 the U.S. based human rights organization T'ruah, a rabbinic human rights organization based in the U.S.,³⁴ led a transparency campaign that led JNF-USA to disclose its funding of settlements in the West Bank.³⁵

The Lawfare Project

Founded in 2010 by U.S. attorney Brooke Goldstein, the Lawfare Project is a New York-based nonprofit with tax-exempt status under Sec. 501(c)(3) of the tax code. Its mission statement says it "provides pro bono legal services to protect the civil and human rights of the Jewish people worldwide." Prior to founding the Lawfare Project Goldstein headed the Legal Project at the Middle East Forum (see below), where her work was primarily directed at defending Islamophobic speech. The Lawfare Project has gone on the legal offensive, focusing on groups that support Palestinian rights.³⁶ Goldstein's online biography characterizes this work as "dedicated to raising awareness about and

29 Peretz, Sami. "It's Time for Israel to Shut Down the Jewish National Fund." *Haaretz*. April 24, 2018. <https://www.haaretz.com/israel-news/.premium-it-s-time-for-israel-to-shut-down-the-jnf-1.5463918>

30 "Jewish National Fund." *Wikipedia*. Wikimedia Foundation. July 3, 2021. https://en.wikipedia.org/wiki/Jewish_National_Fund

31 Shezaf, Hagar, and Hagai Amit. "Jewish National Fund Leadership Okays Plans to Expand West Bank Settlements." *Haaretz*. February 14, 2021. <https://www.haaretz.com/israel-news/.premium-jewish-national-fund-okays-plan-to-expand-west-bank-settlements-1.9538161>

32 "About." *Stop the JNF*. www.stopthejnf.org/about

33 "We Are JNF." *Jewish National Fund USA*. <https://www.jnf.org/menu-3/about-jnf>

34 "About T'ruah." *T'ruah*. <https://truah.org/about/>

35 "Our Previous JNF-USA Campaign." *T'ruah*. <https://truah.org/jnf-over-the-green-line-a-brief-history-with-videos/>

36 Goldstein, Brooke. "Memorandum submitted by Brooke M. Goldstein, Director, The Legal Project at the Middle East Forum." *The Legal Project*. March 2009. <http://www.legal-project.org/238/memorandum-submitted-by-brooke-m-goldstein>

facilitating a response to the abuse of Western legal systems and human rights law.”

The Lawfare Project is a well-funded network of legal advocates.³⁷ Its litigation focuses on allegations of discrimination and free speech issues, as well as claims against “individuals and organizations that provide material support to terrorist networks...” It has partnered with the Zionist Advocacy Center in a case against the National Lawyers Guild and with UK Lawyers for Israel on challenges to charitable status in the UK. Most of its cases target support for BDS or advocacy on college campuses. The Lawfare Project’s four-person staff operates a network of 350 attorneys who engage in litigation in the U.S. and abroad, including Canada, the UK and several European countries.

The Lawfare Project: Not to be Confused with the Lawfare Blog

Lawfare Blog Editor-in-Chief Benjamin Wittes said, “the Lawfare Project is a combatant in the culture wars over national security law that we try to bridge. And it’s a drag as well because Goldstein’s particular form of combat sometimes crosses what I consider lines of propriety with respect to discussion of Islam and Muslims.”

Source:

Wittes, Benjamin. “Putting A Lot of Distance Between Lawfare and the Lawfare Project.” *Lawfare Blog*. August 1, 2013. <https://www.lawfareblog.com/putting-lot-distance-between-lawfare-and-lawfare-project>

Goldstein’s track record of public statements reveals the anti-Palestinian bias and political agenda behind the Lawfare Project’s work. For example:

- In 2012 UK Lawyers for Israel sponsored a speaking tour in the UK for Goldstein. An event hosted by the Henry Jackson Society was cancelled due to concerns about Goldstein’s links to Geert Wilders, a far-right Dutch politician known for his Islamophobic view.³⁸
- In a 2016 meeting hosted by the World Zionist Organization, Goldstein said, “Why are we using the term Palestinian? There’s no such thing as a Palestinian

37 The Lawfare Project’s 2019 IRS Form 990 shows its budget at just over \$1.2 million (see page 1). <https://pdf.guidestar.org/PDF/Images/2019/272/402/2019-272402908-202023119349301977-9.pdf>

38 Elgot, Jessica. “Jewish Students Cancel ‘Controversial; Lawyer’s Invite.’” *The Jewish Chronicle*. March 15, 2012. <https://www.thejc.com/news/uk/jewish-students-cancel-controversial-lawyer-s-invite-1.32317>

person.”³⁹

Middle East Forum

The Middle East Forum (MEF) is a Philadelphia-based organization founded in 1994 by Daniel Pipes. The mission statement says it “promotes American interests in the Middle East and protects Western values from Middle Eastern threats.”⁴⁰ A fact sheet from the Georgetown University Bridge Initiative notes that MEF’s 2015 IRS Form 990 put its expenses at \$3.4 million.⁴¹ Director Greg Roman leads an 18-person staff. It is recognized as a tax-exempt public charity by the IRS under Sec. 501(c)(3) of the U.S. tax code.

MEF describes its goals as follows:

*In the Middle East Forum, we focus on ways to defeat radical Islam; work for Palestinian acceptance of Israel; develop strategies to contain Iran; and deal with advancing anarchy. Domestically, the Forum emphasizes the danger of lawful Islamism; protects the freedoms of anti-Islamist authors and activists; and works to improve Middle East studies.*⁴²

However, according to the Bridge Initiative at Georgetown University, “The Middle East Forum is a right-wing anti-Islam think tank that spreads misinformation, creates ‘watchlists’ targeting academics, and advocates hawkish foreign policy. MEF provides funding to numerous anti-Muslim organizations and has provided legal services to a number of anti-Muslim activists including Geert Wilders and Tommy Robinson.” In recent years it has expanded its activity to support anti-Muslim forces in India. In short, MEF specializes in targeting Muslim charities the world over.⁴³

MEF says it is “exerting direct influence through its projects.” These include Islamist Watch, which works “to combat the ideas and institutions of lawful Islamism,” and the Washington Project, which “works to translate the Forum’s ideas into U.S. policy.” Its Legal Project provides representation to “advocates” in order to, “protect the right in the West

39 “BDS: The New Anti-Semitism – Standing Room Only in NYC.” *American Zionist Movement*. June 7, 2016. <https://azm.org/bds-new-antisemitism-successful-event-nyc-june-3-2016>

40 “About the Middle East Forum.” *Middle East Forum*. <https://www.meforum.org/about/>

41 Bridge Initiative Team. “Fact Sheet: Middle East Forum.” *Georgetown University*. August 14, 2018. <https://bridge.georgetown.edu/research/factsheet-middle-east-forum/>

42 “About the Middle East Forum.” *Middle East Forum*. <https://www.meforum.org/about/>

43 Bridge Initiative Team. “Fact Sheet: Middle East Forum.” *Georgetown University*. August 14, 2018. <https://bridge.georgetown.edu/research/factsheet-middle-east-forum/>

to freely discuss Islam, radical Islam, terrorism, and terrorist funding,"⁴⁴ primarily providing "legal resources to defendants facing libel lawsuits from Muslims and Islamic activists."⁴⁵ Such lawsuits challenge disinformation campaigns, but ironically, MEF says they "are predatory, filed without a serious expectation of winning, but undertaken as a means to bankrupt, distract, intimidate, and demoralize defendants."⁴⁶ This more accurately describes the lawsuits filed by lawfare groups against NPOs working in Palestine.

MEF's Campus Watch project purportedly "reviews and critiques Middle East studies in North America with an aim to improving them."⁴⁷ In 2016 MEF launched The Israel Victory Project "to steer U.S. policy toward backing an Israel victory over the Palestinians to resolve the Arab-Israeli conflict." It also operates Jihad Intel, an online database that claims to "educates law enforcement and the general public with intelligence on radical Islam and Islamic terrorist groups. We provide local and state police with tools to connect the dots before major terrorist incidents and to solve cold cases."⁴⁸

MEF makes policy recommendations and conducts research and communications efforts. It operates an Education Fund that makes grants "to about 75 groups and individuals working to promote the Forum's goals," including grants of \$100,000 to the Center for Security Policy⁴⁹ and \$10,000 to the David Horowitz Freedom Center.⁵⁰

Critics Challenge MEF's Credibility

MEF has an extensive communications program, using blogs, articles, events and reports to promote its viewpoint, along with publishing the Middle East Quarterly.⁵¹ MEF also has numerous critics:

44 "The Legal Project." *Middle East Forum*. <https://www.legal-project.org/>

45 "Middle East Forum." *Militarist Monitor*. https://militarist-monitor.org/profile/middle_east_forum/

46 Ibid

47 "Campus Watch." *Middle East Forum*. <https://www.meforum.org/campus-watch/>

48 "About Jihad Intel." *Middle East Forum*. <https://jihadintel.meforum.org/about/>

49 The Southern Poverty Law Center says, "Founded in 1988 by former Reagan administration official Frank Gaffney, Jr., The Center for Security Policy (CSP) has gone from a respected hawkish think tank focused on foreign affairs to a conspiracy-oriented mouthpiece for the growing anti-Muslim movement in the United States." – "Center for Security Policy." *Southern Poverty Law Center*. <https://www.splcenter.org/fighting-hate/extremist-files/group/center-security-policy>

50 The Southern Poverty Law Center describes the Freedom Center as "a driving force of the anti-Muslim, anti-immigrant and anti-black movements." – "About David Horowitz." *Southern Poverty Law Center*. <https://www.splcenter.org/fighting-hate/extremist-files/individual/david-horowitz>

51 "About the Middle East Quarterly." *Middle East Forum*. <https://www.meforum.org/meq/about.php>

- Media Bias/Fact Check (MBFC),⁵² an independent online media outlet dedicated to educating the public on media bias and deceptive news practices, rates MEF as a “Questionable Source,” with a factual credibility rating of “Low.” MBFC labels MEF as Extreme Right, Propaganda, Conspiracy, Anti-Islam, noting that it rarely provides hyperlinked sourcing.⁵³ MBFC places MEF on the extreme right of the political spectrum,⁵⁴ saying that:

A questionable source exhibits one or more of the following: extreme bias, consistent promotion of propaganda/conspiracies, poor or no sourcing to credible information, a complete lack of transparency and/or is fake news. Sources listed in the Questionable Category may be very untrustworthy and should be fact checked on a per article basis.

- In 2011 the Center for American Progress report *Fear Inc.- The Roots of the Islamophobia Network in America* listed MEF as one of “five key think tanks led by scholars who are primarily responsible for orchestrating the majority of anti-Islam messages polluting our national discourse today.”⁵⁵
- The Southern Poverty Law Center put MEF on its Hatewatch list, citing its funding for a rally in the UK “in support of English far-right provocateur Tommy Robinson,” including paying for Rep. Paul Gosar’s (R-AZ) travel expenses for the rally.⁵⁶
- The Militarist Monitor (MM) is an independent project that “assesses the work of prominent organizations and individuals—both in and out of government—who promote militaristic U.S. foreign and defense policies.”⁵⁷ It says MEF “employs extremist rhetoric regarding Islam and attacks academics who disagree with its militaristic views on Israeli security and Middle East politics.”⁵⁸ MBFC gives MM a

52 “About Media Bias/Fact Check.” *Media Bias/Fact Check*. June 2, 2021. <https://mediabiasfactcheck.com/about/>

53 Ibid

54 “Middle East Forum.” *Media Bias/Fact Check*. June 18, 2020. <https://mediabiasfactcheck.com/middle-east-forum/>

55 Ali, Wajahat, et. al. “Fear, Inc.: The Roots of the Islamophobia Network in America.” *Center for American Progress*. August 2011. <https://cdn.americanprogress.org/wp-content/uploads/issues/2011/08/pdf/islamophobia.pdf>

56 “Middle East Forum Bankrolls Violent ‘Free Tommy’ Rally.” *Southern Poverty Law Center*. June 11, 2018. <https://www.splcenter.org/hatewatch/2018/07/11/middle-east-forum-bankrolls-violent-free-tommy-rally>

57 “About the Militarist Monitor.” *Militarist Monitor*. <https://militarist-monitor.org/about/>

58 “Middle East Forum.” *Militarist Monitor*. November 2, 2015. https://militarist-monitor.org/profile/middle_east_forum/

“High” credibility rating, with a “center/left” bias.⁵⁹

A Look at MEF's Founder

MEF founder Daniel Pipes is a long-time controversial figure. He received a PhD in medieval Islamic history from Harvard in 1978. Pipes was on the State Department's planning staff from 1982-83. After a period of adjunct lecturing at various universities he worked at think tanks, including the Foreign Policy Research Institute, where in 1990 he organized the Middle East Forum as a project. MEF spun off and became its own entity in 1994.

President George W. Bush nominated Pipes to the board of the U.S. Institute of Peace (USIP) in 2003, sparking a confirmation battle in the Senate where Democrats such as Sen. Edward Kennedy cited evidence of his anti-Muslim bias.⁶⁰ Ultimately Bush used a recess appointment to put Pipes on USIP's board, where he served until 2005.

The focus of Pipe's teaching and writing has been the Middle East, where he has earned a reputation as a foreign policy hawk (supporting the Vietnam war, opposing the nuclear agreement with Iran). He is an alarmist on “what he believes to be the dangers of ‘radical’ and ‘militant’ Islam to the Western World.”⁶¹ His characterizations of Muslims have been criticized as racist, including a New York Times report that quoted him saying mosques are “breeding grounds for terrorism” and Muslims in public and military service are a security threat.⁶²

John Esposito of the Georgetown University's Bridge Initiative describes Pipes as an “anti-Muslim figure” who is “promoting anti-Muslim tropes” and a financier of “numerous activists and organizations that spread misinformation about Muslims and Islam.”⁶³

59 “Militarist Monitor.” *Media Bias/Fact Check*. August 30, 2020. <https://mediabiasfactcheck.com/right-web/>

60 “Daniel Pipes USIP Nomination Stalled in Committee.” *Muslim Public Affairs Council*. July 22, 2003. <https://www.mpac.org/issues/islamophobia/daniel-pipes-usip-nomination-stalled-in-committee.php>

61 “Daniel Pipes.” *Wikipedia*. Wikimedia Foundation. August 15, 2021. https://en.wikipedia.org/wiki/Daniel_Pipes

62 “Aftereffects: Washington Memo: For Muslims, a Mixture Of White House Signals.” *The New York Times*. April 28, 2003. <https://www.nytimes.com/2003/04/28/us/aftereffects-washington-memo-for-muslims-a-mixture-of-white-house-signals.html>

63 Bridge Initiative Team. “Factsheet: Clarion Project.” *Georgetown University*. April 3, 2018. <https://bridge.georgetown.edu/research/factsheet-clarion-project/> ; Bridge Initiative Team. “Factsheet: Daniel Pipes.” *Georgetown University*. August 14, 2018. <https://bridge.georgetown.edu/research/factsheet-daniel-pipes/>

NGO Monitor

NGO Monitor (NGOM) was founded in 2002 as a project of the conservative Israeli think tank Jerusalem Center for Public Affairs (JCPA). Founder Dorn Gold is a close ally of former Israeli Prime Minister Benjamin Netanyahu, who appointed Gold to be UN Ambassador and then director-general of the Ministry of Foreign Affairs.⁶⁴ Its activities focus on disseminating politically charged critiques and unsubstantiated allegations about NPOs that work in Palestine or support such work. It maintains a database on its website and publishes reports, books, events and other publications and submits comments to UN bodies.

NGOM became a separate entity in 2007 after members of the JCPA board raised concerns about the accuracy of NGOM publications.⁶⁵ After the Israeli Ministry of Justice rejected its registration under the name NGO Monitor it registered as the “Amuta for NGO Responsibility.”⁶⁶ Its website says it is a project of The Institute for NGO Research. It is not clear if the difference in names is the result of translation or a legal change. Since 2014 the Institute for NGO Research has had Special Consultative Status with the UN Economic and Social Council.

NGOMonitor’s website says it “provides information and analysis, promotes accountability, and supports discussion on the reports and activities of NGOs (non-governmental organizations) claiming to advance human rights and humanitarian agendas.” It describes itself as a “globally recognized research institute promoting democratic values and good governance.” It goes on to say, “We publish fact-based research and independent analysis about non-governmental organizations (NGOs), their funders, and other stakeholders, primarily in the context of the Arab-Israeli conflict.”⁶⁷

In September 2018, the Policy Working Group (PWG), a collective of Israeli ex-diplomats, academics and others, published the report *Shrinking Space – NGO Monitor*:

64 “NGO Monitor: Shrinking Space: Defaming Human Rights Organizations that Criticize the Israeli Occupation.” *Policy Working Group*. September 2018. p.11 <http://policyworkinggroup.org.il/>

65 Ibid

66 Amuta is the Hebrew term for an Israeli charitable organization. – Ibid p. 9

67 “About.” *NGO Monitor*. <https://www.ngo-monitor.org/about/>

*Defaming human rights organizations that criticize Israeli occupation.*⁶⁸ It extensively documents NGOM's activities and political motivations, finding that NGOM's stated mission of promoting NGO transparency from an independent, nonpartisan viewpoint is "a disingenuous description. In fact, years of experience show that NGO Monitor's overarching objective is to defend and sustain government policies that uphold Israel's occupation of, and control over, the Palestinian territories."⁶⁹ The report concludes that "NGO Monitor is a government-affiliated organization that selectively targets human rights organizations, relies almost entirely on funding from donors in the US, shirks the transparency it demands of others and disseminates misleading and tendentious information, which it presents as in-depth factual research."⁷⁰

The 12-member staff is led by co-founder Gerald Steinberg, who also has ties to former Prime Minister Netanyahu, having served as a consultant to the Ministry of Foreign Affairs and National Security Council, as well as a steering committee of the Prime Minister's office. According to the Policy Working Group, "NGO Monitor's staff and board include hawkish, politically motivated and ideological partisan figures..." For example, its Legal Advisory Board includes Alan Baker, who served on a government committee that concluded settlements in the West Bank are not illegal because the area is not militarily occupied, a finding contrary to international consensus.

NGOM has been widely criticized for using misleading information to score political points against critics of Israeli policy regarding Palestine. At a minimum, the organization is controversial.⁷¹ It is one of the most insidious disseminators of disinformation on NPOs working or supporting work in Palestine.

NGOM has also been criticized for failing to practice the level of transparency it calls for in others. For example, the limited financial information available on its website indicates that most of its funds come from foreign donors, although NGOM criticizes Israeli and Palestinian NPOs that accept donations from foreign sources. In 2016 the U.S.-based organization REPORT (was formerly known as "American Friends of NGO

68 The Policy Working Group (PWG) describes itself as "a collective of Israeli ex-diplomats, academics and others, who on a voluntary basis advocate and promote a transformation of relations between Israel and Palestine from occupation to coexistence, based on a two-state solution." – "NGO Monitor: Shrinking Space: Defaming Human Rights Organizations that Criticize the Israeli Occupation." *Policy Working Group*. September 2018. <http://policyworkinggroup.org.il/>

69 Ibid p. 3

70 Ibid p. 4

71 "NGO Monitor." *Wikipedia*. Wikimedia Foundation. August 12, 2021. https://en.wikipedia.org/wiki/NGO_Monitor

Monitor”) accounted for about 90 percent of NGOM’s funding.⁷² In 2010 REPORT gave NGOM a grant of \$500,000.⁷³ The president of REPORT, Joshua Katzen, is also a board member of the Middle East Forum and “founded American right-wing news site Jewish News Service and the neoconservative think tank Jewish Institute for National Security Affairs.”⁷⁴

UK Lawyers for Israel

According to a post on the Israeli Ministry of Foreign Affairs website, UK Lawyers for Israel (UKLFI) was formed in the United Kingdom as an unincorporated association in 2011 after a conference in Israel that included British lawyers.⁷⁵ UKLFI’s website says its mission is to use “the law against attempts to undermine, attack and delegitimise Israel, Israeli organisations, Israelis, and supporters of Israel.”⁷⁶ One of its founders, barrister Jonathan Turner, characterized its mission in more starkly political terms, saying UKLFI uses legal skills to “ensure that this area was used to combat some of the efforts of enemies of Israel.”⁷⁷

UKLFI claims it is “not aligned with any particular political viewpoint or party in the UK or Israel.”⁷⁸ However, it has clear ties to both the Israeli government and so-called “pro-Israel” groups that have clear political agendas. For example:

- In addition to being featured on the Israeli Ministry of Foreign Affairs (MFA) website, UKLFI co-sponsored a London conference with the Israeli embassy in 2012. The topic was “Legal Challenges and Opportunities in Israeli Policy and Advocacy.”⁷⁹ The MFA held a similar conference in Paris and thanked its local partners in a

72 “NGO Monitor: Shrinking Space: Defaming Human Rights Organizations that Criticize the Israeli Occupation.” *Policy Working Group*. September 2018. p. 7 <http://policyworkinggroup.org.il/>

73 “NGO Monitor.” *Wikipedia*. Wikimedia Foundation. August 12, 2021. https://en.wikipedia.org/wiki/NGO_Monitor

74 “NGO Monitor: Shrinking Space: Defaming Human Rights Organizations that Criticize the Israeli Occupation.” *Policy Working Group*. September 2018. p. 20 <http://policyworkinggroup.org.il/>

75 “UK Lawyers for Israel.” *Israel Ministry of Foreign Affairs*. May 17, 2011. https://mfa.gov.il/MFA/internationalLaw/Pages/UK_Lawyers_for_Israel.aspx

76 “Our objects.” *UK Lawyers for Israel*. <https://www.uklfi.com/about-us-2/our-objects>

77 Turner, Jonathan. “Stopping Our Taxes Being Given to Palestinian Terrorists.” *Revelation TV*. Youtube. August 20, 2018. At 3 minutes 26 seconds. <https://www.youtube.com/watch?v=GloSsMtrKxQ>

78 “Homepage.” *UK Lawyers for Israel*. <https://www.uklfi.com/>

79 “Legal Policy and Advocacy Update-July 2012.” *Israel Ministry of Foreign Affairs*. July 25, 2012. https://mfa.gov.il/MFA/internationalLaw/Pages/UK_Lawyers_for_Israel.aspx

web posting the month after the events.⁸⁰ In 2015 Turner wrote that UKLFI “has consulted with the Israeli embassy and other pro-Israel organizations.”⁸¹

- UKLFI has also worked jointly with the lawfare and disinformation groups NGO Monitor, the Lawfare Project and the Zionist Advocacy Center (see examples in Chapters 6 and 7). In addition, its reports reflect a highly charged political agenda. In a 2012 report, UKLFI disputed that the West Bank is an occupied territory, despite the international consensus on that fact.⁸² In 2014 it co-authored a report with Anne Herzberg of NGO Monitor that defended Israeli annexations in East Jerusalem and the Syrian Golan Heights, as well as settlements in the West Bank.⁸³ It has supported settlers and pro-settlement organizations, meeting with settlers in 2019 in the West Bank to strategize about cutting off funding for Palestinian organizations working in Area C.⁸⁴ That same year it hosted a speaker from a right-wing Israeli organization, Regavim, for an event that was the subject of protests.⁸⁵

UKLFI describes its tactics as “advocacy, legal research and campaigning to support Israel, Israeli organisations, Israelis, and/or supporters of Israel against BDS and other attempts to undermine, attack or delegitimise them.”⁸⁶ Apparently much of its “campaigning” consists of spreading disinformation behind the scenes. During a 2017 interview on an Israeli radio show, Turner said, “our enemies preferably know as little about us as possible... by and large we operate outside of court.”⁸⁷ He went on to claim that UKLFI has been successful with this approach.

In February 2013 UKLFI formalized by creating UKLFI Ltd. as a non-profit company with

80 “Legal Policy and Advocacy Update.” *Israel Ministry of Foreign Affairs*. July 2012. https://mfa.gov.il/MFA_Graphics/MFA%20Gallery/Legal%20Advocacy/Legal%20Policy%20and%20Advocacy%20Update%20-%20July%202012.pdf

81 Turner, Jonathan, and Fiona Sharpe. “Are Street Protests the Right Way to Fight Back?” *The JC*. October 15, 2015. <https://www.thejc.com/comment/opinion/are-street-protests-the-right-way-to-%EF%AC%81ght-back-1.60160>

82 “Recycling Veolia.” *Christian Middle East Watch and UK Lawyers for Israel*. September 2012. p. 16 <https://www.dropbox.com/s/nupymvoy1d71b0x/Recycling%20Veolia%20Report-final.pdf>

83 Turner, Jonathan, and Anne Herzberg. “Boycotts, Divestment, Sanctions and the Law.” *Justice*, No. 54, Summer 2014. p.15-20 <http://din-online.info/pdf/ju54.pdf>

84 Maoz-Ovadia, Miri. “Right and Left, East and West.” *Binyamin*. November 20, 2019. <https://www.binyamin.org.il/digital-magazin/articles/item/490/>

85 Weich, Ben. “Anti-Occupation Jews Blockade Lecture by ‘Extremist’ Pro-Settlement Group in London.” *The JC*. December 5, 2019. <https://www.thejc.com/news/uk-news/anti-occupation-jews-blockade-lecture-by-extremist-pro-settlement-group-in-london-1.494023>

86 “About Us.” *UK Lawyers for Israel*. <https://www.uklfi.com/about-us-2>

87 “How British Jews Attack Antisemitism.” *Arutz Sheva* 7. March 10, 2017. <http://www.israelnationalnews.com/News/News.aspx/226496>

an elected board. UKLFI Charitable Trust was registered as a UK Charity in September 2016 to “facilitate fund raising from UK donors for parts of our activities that are charitable under UK law,” according to its website, which also notes that “Some of the activities previously carried on by UKLFI have been transferred to the charity.”⁸⁸

The allied organizations have separate websites, with the nonprofit company focusing on advocacy and proactive litigation and the charity focusing on research and “educational activities.”⁸⁹ Most of the activities described in this report are conducted by the nonprofit company, which describes its legal projects as including litigation, “pre-emptive and reactive legal activity,” complaints to regulatory bodies, outreach, education and “submissions to legal consultations.”

Zachor Legal Institute

On its website the Zachor Legal Institute describes itself as “a legal think tank and advocacy organization” and says it “is taking the lead in creating a framework to wage a legal battle against anti-Israel movements in America.”⁹⁰ Founded in 2015, it has charitable status with the IRS. Charity Navigator notes that, “This organization cannot be evaluated by our Encompass Rating methodology because it files Form 990-N, as allowed by the IRS for charities with less than \$50,000 annual revenue.”⁹¹

The Zachor Institute’s primary focus is on action against groups that support BDS and their allies. The two-person operation publishes reports and press statements, makes complaints to various administrative agencies and files amicus briefs in litigation. It also sends threatening letters to private companies, such as social media platforms, urging action against groups it labels as antisemitic.⁹² Founder and attorney Mark Greendorfer is a partner at Tri Valley Law in San Ramon, CA, which he describes as “specializing in corporate transactional law.”⁹³

88 “About Us.” *UK Lawyers for Israel*. <https://www.uklfi.com/about-us-2>

89 “Homepage.” *UK Lawyers for Israel Charitable Trust*. <http://uklficharity.com/>

90 “About Us.” *Zachor Legal Institute*. <https://zachorlegal.org/about-us/>

91 “Zachor Legal Institute.” *Charity Navigator*. <https://www.charitynavigator.org/ein/474687613#finance-details-section>

92 Machol, Ron. “Zachor Legal Institute Advocates for Social Media Companies to Rid their Platforms of Antisemitism.” *EIN Presswire*. June 4, 2020. https://www.einnews.com/pr_news/518525134/zachor-legal-institute-advocates-for-social-media-companies-to-rid-their-platforms-of-antisemitism

93 “Marc Greendorfer [LinkedIn Page].” *LinkedIn*. Retrieved September 2, 2021. <https://www.linkedin.com/in/marc-greendorfer-3042821/>

Politically Motivated False Claims Act Cases Targeting Programs in Palestine

U.S. ex rel TZAC v. American University Beirut

TZAC filed a federal False Claims Act (FCA) complaint against the American University Beirut (AUB) in the U.S. District Court for the Southern District of New York on Aug. 25, 2014.¹ It alleged that AUB falsely certified it had not provided material support to groups on the U.S. terrorist list when it obtained grants from USAID. The case was ordered sealed per FCA requirements. The Department of Justice (DOJ) intervened and filed its own complaint against AUB on March 21, 2017.² Two days later it issued a press release announcing a settlement in the case.³ On March 28, 2017 a court order unsealed key documents and approved the settlement, which required AUB to pay the government \$700,000 in damages and augment its internal compliance procedures including staff training, on compliance with U.S. law and to conduct periodic external audits on compliance.⁴

DOJ's complaint alleged that AUB's journalist training program included representatives of al Nour Radio and al Manar TV, both designated as terrorist supporters on the Treasury Department's list of Specially Designated Nationals (SDN). It noted that participants in the training had their transportation, meals and accommodation costs covered by AUB. In addition, it said AUB included Jihad al-Binaa, also on the SDN list, in a database connecting students with nonprofit organizations.

DOJ, like TZAC, argued that including these representatives violated USAID's anti-

1 "United States of America ex rel TZAC v. American University Beirut." U.S.D.C., S.D.N.Y. No: 1:14-cv-06899-JPO – (Original complaint was not unsealed.)

2 "United States of America ex rel TZAC v. American University Beirut." U.S.D.C., S.D.N.Y. No: 1:14-cv-06899-JPO – DOJ complaint, March 21, 2017. <https://charityandsecurity.org/wp-content/uploads/2020/08/USG-Compalint-AU-Beirut.pdf>

3 "Acting Manhattan U.S. Attorney Announces Settlement With American University Of Beirut, Resolving Claims It Provided Material Support To Three Entities Designated Prohibited Parties Under U.S. Law." *Department of Justice, U.S. Attorney's Office, Southern District of New York*. March 23, 2017. <https://www.justice.gov/usao-sdny/pr/acting-manhattan-us-attorney-announces-settlement-american-university-beirut-resolving>

4 "United States of America ex rel TZAC v. American University Beirut." U.S.D.C., S.D.N.Y. No: 1:14-cv-06899-JPO – Settlement order, March 28, 2017. <https://charityandsecurity.org/wp-content/uploads/2020/08/Settlement-Stipulation-AU-Beirut.pdf>

terrorism certification. The definition of material support in the certification includes training, expert advice and assistance and personnel. The certification in force at the time stated that grantees would not “knowingly provide” material support and would verify that individuals or entities it serves are not on the SDN list. DOJ argued that “knowing” includes reckless disregard as well as actual knowledge and that “AUB failed to put in place sufficient safeguards to ensure that it was not providing material support or resources to SDN List entities.”⁵

The original TZAC complaint and exhibits were not unsealed. However, TZAC filed an amended complaint on March 30, 2017 that included broader claims and allegations than DOJ asserted or that were cited in the settlement agreement.⁶ These included several events and conferences at which speakers or guests from Palestinian groups on the SDN list appeared. In addition to the material support claim, TZAC claimed the conduct amounted to discrimination, also a violation of the USAID certification. These claims were effectively dismissed when the settlement was approved.

The government’s complaint did not seek a specific amount of damages but noted that the FCA allows triple damages. TZAC’s amended complaint noted that AUB received \$23,500,000 from USAID over a course of six years and sought \$70,500,000 as triple damages.

U.S. ex rel. TZAC v. Norwegian People’s Aid

TZAC filed a False Claims Act (FCA) case against Norwegian People’s Aid (NPA) on June 24, 2015 in the U.S. District Court for the Southern District of New York.⁷ The case was unsealed in April 2018. The complaint claimed that NPA defrauded USAID by signing the anti-terrorism certification while carrying out programs in Gaza and Iran that TZAC argued provided material support to terrorism. NPA’s USAID grant was for a humanitarian program in South Sudan. It used other funds to provide democracy training for youth in Gaza and landmine clearing programs in Iran that included participants from listed

5 “United States of America ex rel TZAC v. American University Beirut.” *U.S.D.C., S.D.N.Y.* No: 1:14-cv-06899-JPO – DOJ complaint, March 21, 2017. p. 14 <https://charityandsecurity.org/wp-content/uploads/2020/08/USG-Compalint-AU-Beirut.pdf>

6 “United States of America ex rel TZAC v. American University Beirut.” *U.S.D.C., S.D.N.Y.* No: 1:14-cv-06899-JPO – Amended Complaint, March 30, 2017. <https://charityandsecurity.org/wp-content/uploads/2020/08/AU-Beirut-Amended-Complaint.pdf>

7 “United States of America ex rel TZAC v. Norwegian People’s Aid.” *U.S.D.C., S.D.N.Y.* No: 1:15-cv-04892-GHW – TZAC Complaint, April 3, 2018. <https://charityandsecurity.org/wp-content/uploads/2020/08/TZAC-Complaint-RESTRICTED.pdf>

organizations. TZAC argued, and the U.S. government agreed, that the certification applied to all NPA's programs, regardless of funding source.

Citing the cost of litigation in a foreign country, on March 28, 2018 NPA (a Norwegian organization) entered into a pre-trial settlement agreement that required it to pay \$2,025,000 to the U.S. government and make changes to its internal compliance procedures.⁸ Because the case settled prior to trial there was no legal determination as to whether either of the projects constituted material support.

Although the suit was filed in 2015, NPA did not know about it until September 2017 when USAID's Office of Inspector General (OIG) told it an investigation was underway. Earlier, in February 2017, NPA had responded to a request from the OIG about its projects in the Middle East. When told about the investigation five months later, NPA hired a U.S. lawyer and sought a settlement. DOJ made confidentiality about the case a condition of settlement discussions.

DOJ intervened in the case on March 29, 2018.⁹ Its complaint joined TZAC's argument that NPA's certification was false and induced USAID to make a grant it otherwise would not have, and that its claims for payment of the grant for the South Sudan program were presented under false pretenses.¹⁰

In Gaza, NPA partnered with the Institute for Development Studies from 2012-16 in the "Youth of Today, Leaders of Tomorrow" program, funded by the Norwegian Agency for Development Cooperation (NORAD). Youth ages 15-28 were trained in democracy skills such as organizing, advocacy and conflict resolution, as well as human rights and responsible business conduct. TZAC's complaint said that program included representatives associated with Hamas, the Popular Front for the Liberation of Palestine (PFLP) and the Democratic Front for the Liberation of Palestine (DFLP), entities that are on the SDN list of prohibited parties.

8 "United States of America ex rel TZAC v Norwegian People's Aid." *U.S.D.C., S.D.N.Y.* No: 1:15-cv-04892-GHW – Stipulation and Order of Settlement and Dismissal, March 28, 2018. <https://charityandsecurity.org/wp-content/uploads/2020/08/NPA-Settlement-Stipulation-Dismissal.pdf>

9 "United States of America ex rel TZAC v Norwegian People's Aid." *U.S.D.C., S.D.N.Y.* No: 1:15-cv-04892-GHW – DOJ Notice of Intervention, April 3, 2018. <https://charityandsecurity.org/wp-content/uploads/2020/08/DOJ-Notice-Intervene.pdf>

10 "United States of America ex rel TZAC v Norwegian People's Aid." *U.S.D.C., S.D.N.Y.* No: 1:15-cv-04892-GHW – DOJ Complaint in Intervention, unsealed April 4, 2018. <https://charityandsecurity.org/wp-content/uploads/2020/08/DOJ-Complaint-v-NPA.pdf>

In addition, it cited the Youth of Today project led workshops in Gaza, which were intended to bridge the trust gap between youth and political parties and promote political participation. The program included Hamas, the PFLP and DFLP. A press release from the U.S. Attorney's office said the workshops enabled the listed groups to "alter their behavior in order to become more attractive to youth and, thereby, benefit from increased youth support."¹¹

The landmine removal program in Iran was undertaken with a contract with Norsk Hydro, an energy company, to clear mines as part of an oil development project. NPA planned to use the proceeds for humanitarian programs. Because NPA interacted with Iranian government officials to carry out the program and Iran is on the U.S. state sponsors of terrorism list, the U.S. considered the program to be material support, making NPA's USAID certification false.

The complaint from TZAC included additional allegations not cited in DOJ's complaint or the settlement agreement, as well as political statements unrelated to the legal issues. One allegation cited NPA's funding the Palestinian Center for Democracy and Conflict Resolution (PDCDR) to conduct training for police officers regarding domestic violence and another program (no allegation of NPA funding) that trained corrections officers in conflict resolution. With the settlement, these claims were effectively dismissed.

NPA issued a statement on the settlement that noted NPA's "positive long-term relationship with USAID and other U.S. funding agencies since the 1990s" and explained that any false certifications were "done unintentionally" as it interpreted it to only apply to USAID funds.¹² It went on to say that:

Although we disagreed on the fairness of the claim, NPA had accepted paying the settlement to reach closure. Due to estimated costs, resources and time necessary to take this case to trial, we have concluded that the best decision for us is to agree on the settlement. In this way we can focus on our mission of making the world a safer and more just place.¹³

11 "Manhattan U.S. Attorney Announces Settlement With Norwegian Not-For-Profit, Resolving Claims That It Provided Material Support To Iran, Hamas, And Other Prohibited Parties Under U.S. Law." *Department of Justice, U.S. Attorney's Office Southern District of New York*. April 3, 2018. <https://www.justice.gov/usao-sdny/pr/manhattan-us-attorney-announces-settlement-norwegian-not-profit-resolving-claims-it>

12 "Norwegian People's Aid Reaches a Settlement with the U.S. Government." *Norwegian People's Aid*. <https://www.npaid.org/news/norwegian-peoples-aid-reaches-a-settlement-with-the-u-s-government>

13 Ibid

NPA also released fact sheets about the programs in Gaza and Iran. Its description of the Youth of Today Leaders of Tomorrow program in Gaza said it was advertised to the general public, "with registration open to all."¹⁴ It went on to say NPA "partners do not require course participants or those taking part in similar activities to reveal whom they vote for."¹⁵ NPA's description of its landmine program in Iran noted that it conducts landmine clearing in more than 20 countries, "often in cooperation with the U.S. Department of State ..."¹⁶

In addition to paying the damages, in the Stipulation and Order of Settlement and Dismissal, NPA agreed to revise its internal policies to comply with U.S. law, provide training on compliance with U.S. grant terms to its managers and administrative staff, and submit to stringent external audits and periodic reviews on its compliance.¹⁷

The settlement does not preclude further U.S. legal action against NPA or the individuals associated with the programs in Gaza and Iran. The agreement explicitly left open the possibility of future action by the IRS, criminal prosecution, conduct not covered by the agreement, suspension and debarment from eligibility to receive government grants and contracts or liability of individuals.¹⁸ NPA also agreed to cooperate with any U.S. investigation of those not covered by the agreement, "consistent with NPA's obligations under Norwegian law." It agreed to encourage cooperation of its officers, directors and employees in such investigations and furnish non-privileged documents that may be requested.¹⁹

NPA said its costs in defending the action were over \$250,000. The law allows the private citizen relator to collect part of any damages paid to the government. In this case, TZAC attorney David Abrams collected \$346,500.

14 "NPA Gaza Project." *Norwegian People's Aid*. <https://www.npaid.org/oig-facts/npa-gaza-project>

15 Ibid

16 "NPS's Programme in Iran 2001 – 2008." *Norwegian People's Aid*. <https://www.npaid.org/oig-facts/npas-programme-in-iran-2001-2008>

17 "United States of America ex rel TZAC v Norwegian People's Aid." *U.S.D.C., S.D.N.Y.* No: 1:15-cv-04892-GHW – Stipulation and Order of Settlement and Dismissal, March 30, 2018. <https://charityandsecurity.org/wp-content/uploads/2020/08/NPA-Settlement-Stipulation-Dismissal.pdf>

18 Ibid p. 9

19 Ibid p. 5-6

U.S. ex rel. TZAC v. The Carter Center

In November 2015 TZAC sued the Carter Center under the U.S. False Claims Act (FCA).²⁰ The case was filed in the U.S. District Court for the District of Columbia. TZAC alleged that by hosting conflict resolution meetings that included Hamas and the Popular Front for the Liberation of Palestine (PFLP), both designated as terrorist groups by the U.S., and serving refreshments, the Carter Center provided material support to terrorist groups, contrary to the anti-terrorism certification in its USAID grant agreement. The Department of Justice (DOJ) moved to dismiss the case, saying that TZAC's claims "are without legal basis..."²¹ On May 31, 2018 the U.S. District Court in Washington, DC granted DOJ's motion and the case was dismissed.²²

TZAC's legal argument was that the Carter Center, a USAID grantee, defrauded the government because it falsely certified in its grant agreement it had not provided material support. The complaint did not allege that USAID funds were used to support the meetings TZAC cited. TZAC said the Carter Center received over \$30 million from USAID between 2010 and 2015 and should pay \$91,716,000, plus costs and "an appropriate award" to TZAC.

The specific allegations of material support in TZAC's complaint focused on speech-related activities: a May 2015 meeting in Ramallah and various other events. At the Ramallah meeting the Carter Center hosted representatives of various Palestinian political parties, including Hamas and the PFLP, at its facility. A picture from the meeting included in the complaint shows water bottles, fruit and cookies at the meeting table. TZAC alleged the meeting constituted prohibited material support of terrorism because:

- The Hamas and PFLP representatives were supplied with the food and water.
- The meeting site provided a physical facility for the meeting to take place.
- The meeting gave Hamas and PFLP an "opportunity to network and connect with

20 "United States of America ex rel TZAC v. the Carter Center." *U.S.D.C., D.C. No: 1:15-cv-02001 – TZAC Complaint*, November 16, 2015. <https://charityandsecurity.org/wp-content/uploads/2020/08/ComplaintTZACvCarterCenter.pdf>

21 "United States of America ex rel TZAC v. the Carter Center." *U.S.D.C., D.C. No: 1:15-cv-02001 – DOJ Motion to Dismiss*, November 2, 2017. <https://charityandsecurity.org/wp-content/uploads/2020/08/DOJ-Mtn-Dismiss-TZAC-v-Carter-Ctr.pdf>

22 "United States of America ex rel TZAC v. the Carter Center." *U.S.D.C., D.C. No: 1:15-cv-02001 – Order to Dismiss*, May 31, 2018. <https://charityandsecurity.org/wp-content/uploads/2020/08/Order-Dismiss-Carter-Ctr.pdf>

prominent individuals from other factions.”²³

In addition, the complaint said that the Carter Center sponsors “meetings, workshops, round-table discussions and private consultations to promote dialogue and discussions among Palestinian factions (including terrorist organizations) with the aim of promoting electoral consensus and general reconciliation.”²⁴ TZAC alleged that in May 2011 the Carter Center and its local partner, the Arab Thought Forum, organized a meeting that included representatives of Hamas and PFLP, “to assist various Palestinian factions in developing a new electoral code.”²⁵ TZAC said such meetings are inconsistent with the Supreme Court’s 2010 decision in *Holder v. Humanitarian Law Project*, which said Congress can prohibit training, services and technical advice and assistance as material support of terrorism, even when it is intended to reduce conflict. TZAC claimed such meetings constitute material support because:

- The Carter Center provided the facilities for the meetings to take place, and
- If Hamas and the PFLP resolve their differences, “it will free up more resources to engage in terrorism against Israelis.”²⁶

The complaint lists several such meetings that took place before the Supreme Court decision, a period when the lower courts had found application of the material support prohibition to such activities to be unconstitutionally vague and broad.

DOJ moved to dismiss the case in November 2017.²⁷ It pointed out that TZAC did not allege that the Carter Center concealed its activities or failed to meet its obligations under the USAID grants. DOJ said while TZAC had a “difference of opinion with the Carter Center about how to resolve conflict in the Middle East” its complaint “does not allege facts addressed to the elements it or the United States must prove to establish violations of the FCA.”²⁸

That same month TZAC filed a motion to unseal the case and open the hearing on the

23 “United States of America ex rel TZAC v. the Carter Center.” *U.S.D.C., D.C. No: 1:15-cv-02001 – TZAC Complaint*, November 16, 2015. p. 7 <https://charityandsecurity.org/wp-content/uploads/2020/08/ComplaintTZACvCarterCenter.pdf>

24 *Ibid* p. 7-8

25 *Ibid* p. 8

26 *Ibid* p. 9

27 “United States of America ex rel TZAC v. the Carter Center.” *U.S.D.C., D.C. No: 1:15-cv-02001 – DOJ Motion to Dismiss*, November 2, 2017. <https://charityandsecurity.org/wp-content/uploads/2020/08/DOJ-Mtn-Dismiss-TZAC-v-Carter-Ctr.pdf>

28 *Ibid* p. 4

government's motion to dismiss to the public, citing provisions of the FCA that allow a hearing to enable the party bringing the action to "ensure that the government has a complete and accurate understanding of the full picture of the case" in making its decision to proceed or not.²⁹ On Jan. 9, 2018 the court granted the motion for a public hearing and unsealed the complaint, motion to dismiss and motion to unseal the case. However, other documents filed prior to its order remained sealed.³⁰

A hearing set for April 24, 2018 was cancelled when TZAC opted to instead meet with DOJ informally in an attempt to change the agency's position. DOJ filed a notice with the court on May 31 saying it had conducted a "diligent investigation" of the facts and the meeting with TZAC had not changed its position.³¹ DOJ's response is notable because it said there was no allegation that the meeting at issue was funded by USAID or that the Carter Center failed to fulfill its grant obligations to USAID. It noted that the Carter Center had not concealed its activities.

In the DC Circuit the government has full discretion on whether or not to pursue False Claims Act cases, so on May 31, 2018 the court entered a final and appealable order dismissing the case.³² TZAC issued a statement saying that while it disagrees with the outcome "there is not much to do about it" and that it would "continue investigating the Carter Center."³³

USA ex rel TZAC v Oxfam GB

The U.S. District Court for the Southern District of New York unsealed TZAC's False Claims Act case against Oxfam GB on Aug. 16, 2019.³⁴ It had been filed and sealed

29 "United States of America ex rel TZAC v. the Carter Center." *U.S.D.C., D.C. No: 1:15-cv-02001* – TZAC Motion to Unseal, November 14, 2017. <https://charityandsecurity.org/wp-content/uploads/2021/09/Mtn-to-Unseal-TZAC-v-CarterCtr-2.pdf>

30 "United States of America ex rel TZAC v. the Carter Center." *U.S.D.C., D.C. No: 1:15-cv-02001* – See Docket, available at <https://pacer.uscourts.gov/>

31 "United States of America ex rel TZAC v. the Carter Center." *U.S.D.C., D.C. No: 1:15-cv-02001* – DOJ Notice, May 31, 2018. <https://charityandsecurity.org/wp-content/uploads/2021/09/DOJ-Notice-Dismissal-Carter-Ctr-May31-1.pdf>

32 "United States of America ex rel TZAC v. the Carter Center." *U.S.D.C., D.C. No: 1:15-cv-02001* – Order of Dismissal, May 31, 2018. <https://charityandsecurity.org/wp-content/uploads/2020/08/Order-Dismiss-Carter-Ctr.pdf>

33 The Zionist Advocacy Center. "Facebook post." Facebook. June 1, 2018. <https://www.facebook.com/ZionistAdvocacyCenter/posts/1995941934053337>

34 "United States of America ex rel TZAC v Oxfam GB." *U.S.D.C., S.D.N.Y. No: 1:18-cv-01500-VEC* – TZAC Complaint, August 16, 2019. <https://charityandsecurity.org/wp-content/uploads/2021/09/Complaint-TZAC-v-Oxfam-by-User-9027338.pdf>

on Feb. 20, 2018. TZAC alleged that Oxfam's Gaza Urban and Peri-Urban Agricultural Platform (GUPAP), which worked to address food insecurity and decrease dependence on foreign aid and markets, violated the anti-terrorism certification in its grant from USAID. The basis for that claim was that GUPAP allegedly supported ministries tied to both Hamas, which is on the U.S. terrorist list, and the Palestinian Authority, which is not. Although Oxfam's GUPAP program was funded by the Swiss government and not USAID, the USAID certification applies to all activities of an organization regardless of funding source. The complaint listed 30 USAID grants to Oxfam between October 2013 and September 2017, amounting to over \$53 million.

The complaint argued that, because the Ministries of Agriculture and National Economy are part of the government in Gaza and because Hamas controls the government, GUPAP provided material support to Hamas by assisting the ministries with the agricultural program. TZAC's complaint also claimed that Oxfam GB is part of a larger "anti-Israel" confederation, citing the disinformation group NGO Monitor (see Chapter 8 for a profile of NGO Monitor).

TZAC expanded its legal theory from past cases to claim that the ministries are "nominally subdivisions of the Palestinian Authority," which it claimed is an "entity" that supports terrorism by providing financial support to family members of people injured or killed in the conflict with Israel, including families of people convicted or accused of terrorist offenses. TZAC called this a "pay to slay" scheme, bringing hotly contested issues of fact and policy into the grey area surrounding the definition of material support. TZAC sought triple damages under the FCA.

The government investigated TZAC's allegations and in July took the position it would not intervene. On Sept. 20, 2019 DOJ told the court it planned to file a motion to dismiss.³⁵

TZAC's argument that any assistance or support to the Palestinian Authority is material support, despite the fact that it is not on the terrorist list, attempted to stretch the law beyond the limits of how it is currently applied. The U.S. government has provided funding to the Palestinian Authority in the same time frame that Oxfam supported the GUPAP

35 "United States of America ex rel TZAC v Oxfam GB." *U.S.D.C., S.D.N.Y.* No: 1:18-cv-01500-VEC. – Letter to court from DOJ, September 20, 2019. <https://charityandsecurity.org/wp-content/uploads/2021/09/DOJ-Ltr-Sept-20-re-Mtn-Dismiss-from-Director.pdf>

program. If TZAC's reasoning was taken to its logical conclusion, the U.S. government had violated its own material support prohibition, as have any other entities that have done business with or worked with the PA.

The government filed a Motion to Dismiss the case on Nov. 17, 2019. The supporting memorandum argued that the government has discretion to seek dismissal under its law enforcement powers.³⁶ In addition, the government argued that allowing TZAC to proceed with the case would "impose a substantial burden on government resources" and interfere "with government policies and the administration of its programs" and "implicate the Government's foreign policy positions and international aid programs." The government noted that a relator's "subjective disagreement with the Government's investigative strategy and ultimate decision does not provide the Court with a basis to second-guess the Government's decision to dismiss the case."³⁷

The government further argued that the court should avoid decisions that could impair the government's decisions in foreign policy and national security. It argues:

Should the pending litigation go forward, Relator would ask this Court to adjudicate whether alleged actions purportedly involving certain foreign entities constitute material support of terrorism and violate the certification language contained in USAID's grants to Oxfam. In order to decide the present action, the Court would need to determine, for example, the novel question of whether the non-monetary support described in the Complaint, which Relator alleges was provided to Hamas by Oxfam through an intermediary, see Compl. ¶¶ 14-15, constitutes "material support" of terrorism. The Court would also need to decide whether the Palestinian Authority, the self-government body of the Gaza Strip, should be considered a "terrorist" entity, as alleged by Relator. Id. ¶¶ 17-19. Lastly, the Court would need to determine whether Oxfam's representations to USAID were in fact material to USAID's decision to award funds to the defendant. The adjudication of these issues would necessarily interfere with the Government's own foreign policies, as well as its administration of USAID grant funds. The Government accordingly has a valid interest in precluding Relator from litigating these issues on behalf of the

36 "United States of America ex rel TZAC v Oxfam GB." U.S.D.C., S.D.N.Y. No: 1:18-cv-01500-VEC – Memorandum of Law in Support of United States Motion to Dismiss Pursuant to US 31 USC 3730(c)(2) (A), November 18, 2019. <https://charityandsecurity.org/wp-content/uploads/2021/09/DOJ-Mtn-Dismiss-Memo-of-Law.pdf>

37 Ibid p. 13

*Government in the context of a declined qui tam action.*³⁸

On Dec. 18, 2019 TZAC filed a Voluntary Dismissal and the case was closed.³⁹

USA ex rel TZAC v. Christian Aid

The Zionist Advocacy Center (TZAC) announced unsealing of a False Claims Act lawsuit in October 2020, alleging that the UK-based charity Christian Aid violated the terms of its USAID anti-terrorism certification. The complaint was filed in June 2017 but sealed while the government investigated the allegations.⁴⁰ According to the court's order unsealing the case, the government declined to intervene in the case. Christian Aid filed a motion to dismiss, which was granted by the U.S. District Court for the Southern District of New York on June 9, 2021, for lack of jurisdiction.⁴¹

TZAC alleged that Christian Aid co-sponsored a vocational training for disabled Syrian refugees in Lebanon with Jihad-al-Binaa, an organization the U.S. listed as a supporter of Hezbollah in 2010, making Christian Aid's representations to USAID that it had not provided material support to terrorist groups a false one. However, Christian Aid provided support for the workshop to the Lebanese Physical Handicap Union, which in turn hired Jihad-al-Binaa to conduct the training. In granting Christian Aid's motion, the court ruled that TZAC failed to demonstrate facts that would establish the court's jurisdiction over Christian Aid. As a result, the case was dismissed without addressing the merits of TZAC's claim. However, the court did note that "TZAC has not asserted that Christian Aid actually knew about the association with Jihad al Binna..."⁴² TZAC's complaint also included non-related criticism of Christian Aid's advocacy in support of Palestinian human rights.

After the case was unsealed, Christian Aid submitted a letter to the court on Nov. 19,

38 Ibid p. 12

39 "United States of America ex rel TZAC v Oxfam GB." U.S.D.C., S.D.N.Y. No: 1:18-cv-01500-VEC – Notice of Voluntary Dismissal, December 18, 2019. <https://charityandsecurity.org/wp-content/uploads/2021/09/TZAC-notice-of-voluntary-dismissal.pdf>

40 "United States of America ex rel. TZAC v Christian Aid." U.S.D.C., S.D.N.Y. No: 1:17-cv-04135-PKC. – TZAC Complaint, May 30, 2017. <https://charityandsecurity.org/wp-content/uploads/2021/04/Complaint-TZAC-v-Christian-Aid.pdf>

41 "United States of America ex rel. TZAC v Christian Aid." U.S.D.C., S.D.N.Y. No: 1:17-cv-04135-PKC. – Opinion and Order, June 10, 2021. <https://charityandsecurity.org/wp-content/uploads/2021/09/Opinion-and-Order-Dismissing-Case.pdf>

42 Ibid p. 8

2020 requesting leave to file a motion to dismiss, citing TZAC's vague and speculative claims, lack of allegations that Christian Aid acted knowingly or with reckless disregard for the facts and lack of jurisdiction. In response, TZAC filed an Amended Complaint on Dec. 18, 2020 that sought to strengthen its arguments. In a follow up letter to the court Christian Aid said the Amended Complaint "concedes that the program was actually organized not by Christian Aid but by a grantee of Christian Aid, the 'Lebanese Physical Handicap Union (LPHU)." TZAC also admitted that Christian Aid made payments to its grantee, not the listed group.

Christian Aid filed its Motion to Dismiss on Feb. 12, 2021.⁴³ In addition to raising jurisdictional objections, its arguments included two key points:

- TZAC failed to allege Christian Aid knew its anti-terrorism certification was false when it was made or that it in fact violated it;
- TZAC did not allege the purported false certification would have been material to USAID's decision to grant funds to Christian Aid. In fact, the motion points out that USAID directly funded the same group (LPHU) during the same time period. As a result, Christian Aid argues that even if a small portion of its grant proceeds supported the training event at issue, the allegation is "not one that plausibly would have led USAID to refuse to do business with Christian Aid had it been now prior to contracting with Christian Aid."⁴⁴

TZAC filed its Opposition to the Motion to Dismiss on March 11, 2021,⁴⁵ followed by Christian Aid's Reply brief⁴⁶ and request for oral argument on March 26, 2021.

In his opinion and order dismissing the case Judge Kevin Castel found that Christian Aid's contacts with the U.S. were insufficient to satisfy due process requirements.⁴⁷ TZAC had argued that Christian Aid could be brought before the court because:

43 "United States of America ex rel TZAC v Christian Aid." *U.S.D.C., S.D.N.Y.* No: 1:17-cv-04135-PKC – Memorandum in Support of Motion to Dismiss, February 12, 2021. <https://charityandsecurity.org/wp-content/uploads/2021/04/Mtn-Dismiss-Supporting-Memo-TZAC-v-CA.pdf>

44 Ibid p. 3

45 "United States of America ex rel. TZAC v Christian Aid." *U.S.D.C., S.D.N.Y.* No: 1:17-cv-04135-PKC TZAC – Memorandum in Opposition to Motion to Dismiss, March 11, 2021. <https://charityandsecurity.org/wp-content/uploads/2021/04/TZAC-Memo-Opposition-Mtn-Dismiss.pdf>

46 "United States of America ex rel. TZAC v Christian Aid." *U.S.D.C., S.D.N.Y.* No: 1:17-cv-04135-PKC – Christian Aid Reply Brief, March 26, 2021. <https://charityandsecurity.org/wp-content/uploads/2021/04/Reply-Memo-Christian-Aid-to-TZAC-Opp-Mtn-Dismiss.pdf>

47 "United States of America ex rel. TZAC v Christian Aid." *U.S.D.C., S.D.N.Y.* No: 1:17-cv-04135-PKC – Opinion and Order Dismissing the Case, June 9, 2021. <https://charityandsecurity.org/wp-content/uploads/2021/09/Opinion-and-Order-Dismissing-Case.pdf>

- it is a member of the Act Alliance, which has one of its offices in New York,
- it was involved in creation of a New York registered nonprofit Inspriaction,
- that some of its executives traveled to New York in 2018 and 2019 to attend conferences, and
- Christian Aid's grant agreement with USAID says the U.S. has the right to seek judicial enforcement of grant assurances.

The court found that "Even taking these allegations as true, these are insufficient contacts to support this Court's exercise of personal jurisdiction over Christian Aid on either a general jurisdiction or specific jurisdiction basis."⁴⁸ The judge also denied TZAC request to file another amended complaint, saying that "TZAC has had over three years to bolster its jurisdictional allegations."⁴⁹ TZAC appealed to the U.S. Circuit Court of Appeals for the Second Circuit and filed its appeal brief on September 19, 2021.⁵⁰ Christian Aid's brief is due in December 2021.

Tax-Exempt Status Issue in False Claims Act

USA ex rel TZAC v. New Israel Fund

A False Claims Act suit⁵¹ brought by the Zionist Advocacy Center (TZAC) against the New Israel Fund (NIF) was dismissed on March 11, 2021 as a result of a settlement in which the parties "agreed to disagree" on the issues and facts of the case, with no party admitting to wrongdoing and NIF paying no damages.⁵² The parties also agreed they "will not publicly disparage each other in connection with the lawsuit" or "claim a 'win' or 'victory.'" The case involved the novel claim that NIF falsely claimed tax-exempt status in New York State because, TZAC alleged, its issue advocacy and democracy building work in Israel constituted partisan electioneering, in violation of federal tax rules for charities. The ACLU, co-counsel for NIF, told the Jewish Telegraphic Agency that TZAC's faulty legal arguments could "undermine a lot of the work nonprofits do both in the United States

48 Ibid p. 6

49 Ibid p. 10

50 "United States of America ex rel. TZAC v Christian Aid" *U.S. Court of Appeals for the Second Circuit*. No: 21-1542 - Plaintiff-Appellant Brief, September 21, 2021. <https://charityandsecurity.org/wp-content/uploads/2021/09/TZAC-Appeal-Brief-v-Christian-Aid.pdf>

51 "State of New York ex rel. TZAC, Inc. v New Israel Fund." Supreme Court of the State of New York. Index No.: 101260-19 – TZAC Complaint, August 15, 2019. <https://charityandsecurity.org/wp-content/uploads/2021/03/Complaint-081819.pdf>

52 Ibid

and around the globe to promote the value of constitutional democracy.”⁵³

TZAC’s original False Claims Act case against the New Israel Fund was filed Aug. 15, 2019 in New York State court and, under FCA rules, sealed while the state determined whether to take it up or not. The State of New York subsequently declined to intervene, and the case was unsealed in December 2019.⁵⁴ It was removed to federal court in April 2020 pursuant to rules that allow removal when a federal question is involved (here, the Internal Revenue Service (IRS) rules on partisan electioneering).⁵⁵

TZAC’s original complaint made its political motivation clear, stating that it “advocates for the Jewish State,”⁵⁶ and going on to allege that NIF “opposes Israeli security by supporting organizations which seek to undermine Israel.”⁵⁷

It then goes on to cite examples of NIF grantees’ issue advocacy and human rights advocacy in Israel, claiming these constituted partisan electioneering for or against candidates. In one case it alleged that calling a campaign message “racist” violates IRS rules. (para. 30) In fact, NIF is a U.S.-based grantmaking organization that has sponsored over \$300 million to more than 900 Israeli civil society organizations since 1979. NIF’s projects in Israel include strengthening civil society, combating racism, and protecting democratic channels for minorities. Its programs range from protecting Holocaust survivors to improving the socio-economic inclusion of Israeli Arabs and rural communities.⁵⁸

TZAC’s complaint cited NIF’s annual reports to the IRS (Form 990) for the years 2008-2017, claiming that NIF falsely certified it had not intervened in elections because it gave “general grants” to organizations TZAC argued did engage in partisan activity. TZAC did not allege that NIF’s grants were used for this purpose, a central issue in the case.

53 Kampeas, Ron. “An Activist Says it is ‘Electioneering’ for Nonprofits to Call Candidates Racist. Jewish Groups Say it’s Routine.” *Jewish Telegraphic Agency*. August 4, 2020. <https://www.jta.org/2020/08/04/united-states/an-activist-says-it-is-electioneering-for-nonprofits-to-call-candidates-racist-jewish-groups-say-its-routine>

54 Ibid

55 “State of New York ex rel. TZAC v. New Israel Fund.” *U.S.D.C., S.D.N.Y.* No: 1:20-cv-02955-GHW – Notice of Removal, April 10, 2020. <https://charityandsecurity.org/wp-content/uploads/2021/09/NIF-Notice-of-Removal.pdf>

56 “State of New York ex rel. TZAC, Inc. v New Israel Fund.” *Supreme Court of the State of New York*. Index No.: 101260-19 – TZAC Complaint, August 15, 2019. para. 5 <https://charityandsecurity.org/wp-content/uploads/2021/03/Complaint-081819.pdf>

57 Ibid para. 2

58 “About NIF.” *New Israel Fund*. <https://www.nif.org/about/>

NIF moved to dismiss the case in June 2020.⁵⁹ Its supporting memorandum stated that, “Apparently dissatisfied with its ability to advance its cause in the marketplace of ideas and the regular channels of federal tax law enforcement, TZAC has filed this qui tam action to litigate its grievance instead.”⁶⁰ NIF also argued that:

- TZAC’s complaint failed to meet the FCA’s criteria for whistleblowers, as it was based on publicly available information, including IRS Form 990 and news media;
- “Federal tax law does not prohibit the defense of basic rights and Israel’s system of laws, even if such advocacy might incidentally benefit or hinder certain candidates in their campaigns for office.”⁶¹
- The Israeli organizations’ activities that are not funded by NIF cannot be imputed to NIF. The motion cited IRS Revenue Ruling 68-489, which made it clear that a §501(c)(3) does not jeopardize its tax exemption if it retains discretion and control over use of its funds for tax-exempt purposes only.

In July 2020 TZAC filed an amended complaint,⁶² which was substantially similar to the original but attempted to strengthen TZAC’s legal position. NIF quickly moved to dismiss,⁶³ making similar arguments to its first motion and noting that the amended complaint did not allege NIF grantees used NIF funding for any of the alleged activities. It also said that:

- “The line between permissible issue advocacy and prohibited electioneering is notoriously hazy, and TZAC does not identify any judicial or administrative guidance that would have put NIF on notice that the conduct alleged would be deemed to fall on the wrong side of that line.”⁶⁴

TZAC opposed the motion to dismiss,⁶⁵ arguing its allegations were sufficient for the case to proceed to the pre-trial discovery phase, and that New York law does not consider

59 “State of New York ex rel. TZAC Inc. v. New Israel Fund.” *U.S.D.C., S.D.N.Y.* No: 1:20-cv-02955-GHW – Memorandum of Law in Support of Motion to Dismiss, June 26, 2020. <https://charityandsecurity.org/wp-content/uploads/2021/03/NIF-Memo-Support-Mtn-Dismiss-June-2020.pdf>

60 *Ibid* p. 2

61 *Ibid* p. 14

62 “State of New York ex rel. TZAC Inc. v. New Israel Fund.” *U.S.D.C., S.D.N.Y.* No: 1:20-cv-02955-GHW. – TZAC Amended Complaint, July 17, 2020. <https://charityandsecurity.org/wp-content/uploads/2021/03/TZAC-Amended-Complaint-SDNY.pdf>

63 “State of New York ex rel. TZAC Inc. v. New Israel Fund.” *U.S.D.C., S.D.N.Y.* No: 1:20-cv-02955-GHW – NIF Memo Supporting Motion to Dismiss, August 25, 2020. <https://charityandsecurity.org/wp-content/uploads/2021/03/NIF-Memo-Support-Mtn-Dismiss-Aug-2020.pdf>

64 *Ibid* p. 4

65 “State of New York ex rel. TZAC Inc. v. New Israel Fund.” *U.S.D.C., S.D.N.Y.* No: 1:20-cv-02955-GHW. – TZAC Memo Opposing Motion to Dismiss, September 14, 2020. <https://charityandsecurity.org/wp-content/uploads/2021/03/TZAC-Memo-Opposing-2d-Mtn-Dismiss-Sept.-2020.pdf>

posting on the Internet alone to constitute public disclosure.

The court denied NIF's motion on Feb. 16, 2021, noting that under Rule 12(b)(6) of the Federal Rules of Civil Procedure, "A court must accept all facts alleged in the complaint as true and draw all reasonable inferences in the plaintiff's favor."⁶⁶ Addressing NIF's specific arguments, the court said:

- Although it recognized that TZAC's partisan electioneering claim "relies on the premise that those activities can be attributed to NIF," and that "Here, while TZAC has not alleged that NIF's funds were specifically used by its grantees to engage in the electioneering activities, it has alleged that NIF gives 'general grants' to its grantees."⁶⁷ Under the legal standard that the court must view the issue in the light most favorable to the non-moving party (TZAC), the court found TZAC's allegations were sufficient for the case to move forward.
- TZAC's reliance on IRS Form 990 disclosure did not preclude it bringing the action, as New York State's public disclosure bar is narrower than federal law, allowing use of information provided pursuant to a disclosure request to a public agency. It also held that New York State law does not consider information to be publicly available as "news media" merely because it is posted online.⁶⁸

On March 2, 2021 NIF filed a formal answer to the complaint, denying all allegations and asserting 12 defenses.⁶⁹ The same day it petitioned the court⁷⁰ to permit an interlocutory appeal to the Second Circuit Court of Appeals under a rule that allows a federal district court judge to allow appeal of an order that would otherwise be unappealable if the order "involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation."⁷¹

66 "State of New York ex rel. TZAC Inc. v. New Israel Fund." U.S.D.C., S.D.N.Y. No: 1:20-cv-02955-GHW – Court Memo Opinion and Order, February 21, 2021. <https://charityandsecurity.org/wp-content/uploads/2021/03/Ct-Opinion-Denying-NIF-Motion-to-Dismiss.pdf>

67 Ibid p. 36

68 Ibid p. 21

69 "State of New York ex rel. TZAC Inc. v. New Israel Fund." U.S.D.C., S.D.N.Y. No: 1:20-cv-02955-GHW – NIF Answer, March 2, 2021. <https://charityandsecurity.org/wp-content/uploads/2021/03/NIF-Answer-to-Amended-Complaint.pdf>

70 "State of New York ex rel. TZAC Inc. v. New Israel Fund." U.S.D.C., S.D.N.Y. No: 1:20-cv-02955-GHW – NIF Motion to Certify the Court's February 16 Opinion and Order, March 2, 2021. <https://charityandsecurity.org/wp-content/uploads/2021/03/NIF-NOTICE-Mot.-Intloc.-Appeal.03.02.21v2-.pdf>

71 "28 U.S. Code § 1292 - Interlocutory decisions." *Legal Information Institute*. Cornell Law School. <https://www.law.cornell.edu/uscode/text/28/1292>

NIF cited TZAC's failure to allege NIF's funds were used for partisan electioneering and that immediate appeal would "advance the ultimate termination of this litigation and promote the public interest."⁷² Specifically, it noted this question has "ramifications far beyond this particular dispute" and allowing the case to proceed to pre-trial discovery imposes costs and burdens that "will invite more ideologically motivated groups and individuals to file qui tam actions as a way to harass and impose costs on those who hold views different from theirs."⁷³

TZAC filed its opposition to interlocutory appeal on March 10, 2021, but the following day the case was dismissed "with prejudice" to TZAC, based on the settlement agreement.⁷⁴ Key terms of the settlement were that:

- Neither side pays damages or legal costs.
- The settlement is not to be construed as an admission of liability or wrongdoing by either party or reflect on the merit of their positions.
- The parties will "not publicly disparage each other" in connection with the suit, imply the other's position was baseless, frivolous or unmeritorious or claim a "win" or "victory" in the case;
- Limit any public statement about the case to state they disagree with the other side's position or that they "believe" the other side's position lacked merit.
- NIF will take reasonable steps to comply with the law (which it states it already does).
- TZAC will not file or help others file any other lawsuit or claim against NIF it may have had up until the date of the settlement.

Anti-Terrorism Act Case: Seeking to Hold Organization Liable for Acts of Others

Keren Kayemeth Lelsrael-Jewish National Fund v. Education for a Just Peace in the Middle East d/b/a US Campaign for Palestinian Rights

In November 2019 the Jewish National Fund and 12 individual Americans living in Israel

72 "State of New York ex rel. TZAC Inc. v. New Israel Fund." U.S.D.C., S.D.N.Y. No: 1:20-cv-02955-GHW – NIF Memorandum in Support of Motion to Certify the Court's February 16 Opinion and Order, March 2, 2021. <https://charityandsecurity.org/wp-content/uploads/2021/09/NIF-Memo-Support-Mtn-Interloc-Appeal.pdf>

73 Ibid p. 10

74 "State of New York ex rel. TZAC Inc. v. New Israel Fund." U.S.D.C., S.D.N.Y. No: 1:20-cv-02955-GHW. – Settlement Agreement, March 11, 2021. <https://charityandsecurity.org/wp-content/uploads/2021/03/NIF-Ordered-StipDismiss-March-2021.pdf>

filed suit⁷⁵ against Just Peace in the Middle East, a U.S. charity d/b/a the US Campaign for Palestinian Rights (USCPR). The suit made claims under the Anti-Terrorism Act for damages caused by incendiary devices launched into Israel from Gaza by unnamed persons. JNF argued that USCPR was liable because it collects funds from U.S. donors for the Boycott National Committee (BNC) in Palestine and one of BNC's members is a coalition that includes Hamas, which the State Department has designated a Foreign Terrorist Organization (FTO). USCPR's motion to dismiss,⁷⁶ filed March 5, 2020, argued that the plaintiffs did not allege facts to support their conclusions, that USCPR's activities are lawful, that plaintiffs relied on guilt by association and did not allege facts that would "bridge the gap between these lawful, peaceful and protected acts and the damage caused..." USCPR's motion to dismiss was granted by the United States District Court for the District of Columbia on March 29, 2021.⁷⁷ The court said the plaintiff's arguments "are, to say the least, not persuasive." JNF asked the court to reconsider, and after the court denied that request appealed the case to the U.S. Circuit Court for the District of Columbia.⁷⁸

The Anti-Terrorism Act (ATA)⁷⁹ allows any U.S. national suffering injury due to an act of international terrorism to sue in federal court and, if successful, recover triple damages.⁸⁰ The standard to establish liability is for an act of international terrorism to be "committed, planned, or authorized" by a designated FTO (direct liability) or "any person who aids and abets, by knowingly providing substantial assistance, or conspires with the person who committed such act of terrorism" (indirect liability).⁸¹

JNF's suit was based on three allegations against USCPR:

- First, JNF alleged that, by acting as the U.S. fiscal agent for the BNC, the USCPR

75 "Keren Kayemeth Lelsrael-Jewish National Fund et al. v. Education for a Just Peace in the Middle East." *U.S.D.C., D.C.*, No: 1:19-cv-03425. – KKL/JNF Complaint, November 13, 2019. <https://charityandsecurity.org/wp-content/uploads/2021/04/Complaint-JNF-v-EJPME-USPCR.pdf>

76 "Keren Kayemeth Lelsrael-Jewish National Fund et al. v. Education for a Just Peace in the Middle East." *U.S.D.C., D.C.*, No: 1:19-cv-03425. – USCPR Motion to Dismiss, March 5, 2020. <https://charityandsecurity.org/wp-content/uploads/2020/10/Motion-to-Dismiss-and-Memo-of-Law-in-Support.pdf>

77 "Keren Kayemeth Lelsrael-Jewish National Fund et al. v. Education for a Just Peace in the Middle East." *U.S.D.C., D.C.*, No: 1:19-cv-03425. – Memorandum Opinion, March 29, 2021. <https://charityandsecurity.org/wp-content/uploads/2021/04/Leon-OPINION-dismissing-claims-29-March-2021.pdf>

78 "Keren Kayemeth Lelsrael-Jewish National Fund et al. v. Education for a Just Peace in the Middle East." *U.S.D.C., D.C.*, No: 1:19-cv-03425. – Notice of Appeal, August 31, 2021. <https://charityandsecurity.org/wp-content/uploads/2021/09/JNF-Notice-of-Appeal.pdf>

79 "18 U.S.C. 2333 - Civil Remedies." *Legal Information Institute*. Cornell Law School. <https://www.law.cornell.edu/uscode/text/18/2333>

80 Ibid (a)

81 Ibid (d)(2)

supported Hamas. The BNC was established in 2008 to promote boycott of Israel as “a central form of civil resistance,” responding to a call from more than 170 Palestinian civil society organizations.⁸² The BNC is not on the U.S. FTO list. The plaintiffs allege that one of BNC’s members, the Palestinian National and Islamic Forces (PNIF), which also is not on the U.S. FTO list but includes Hamas, has an unnamed representative on the BNC Secretariat. The motion to dismiss said, “The Complaint attempts to connect the BNC to Hamas through the PNF, Compl. ¶¶ 70-85, but none of these allegations relate to any conduct by the U.S. Campaign.”⁸³ It further noted that because “the BNC is a coalition of organizations, one of which is another coalition representing numerous Palestinian groups, some of which have been designated as FTOs—Plaintiffs seek to hold the US Campaign liable for supporting terrorism.”⁸⁴

- Second, JNF claimed USCPR’s support for the Great Return March, a series of demonstrations in support of Palestinian rights under UN Resolution 194 to return to lands they were expelled from in 1948, amounted to support for launch of incendiary devices into Israel and the impact on land owned by JNF and the individual plaintiffs. USCPR’s motion to dismiss stated that “the Complaint makes the circular allegation that the US Campaign supported the GRM ‘as part of its campaign and conspiracy’ to support the BNC, which in turn supported the GRM, and ‘other acts of international terror’... Based on this, the Complaint leaps to the unsupported conclusion that the US Campaign ‘materially supports’ acts of trespass, public nuisance and terror.”⁸⁵
- Third, JNF alleged USCPR’s participation in the “Stop the JNF” campaign, which seeks to end “on-going displacement of indigenous Palestinians from their land” amounts to tortious interference with JNF’s right to do business. In response to this, USCPR’s motion to dismiss stated that, “Longstanding Supreme Court doctrine makes clear that a claim of tortious interference cannot be based on participation in a lawful campaign of political and social change. Claiborne, 458 US. At 914.”⁸⁶

82 “Keren Kayemeth Lelsrael-Jewish National Fund et al. v. Education for a Just Peace in the Middle East.” *U.S.D.C., D.C.*, No: 1:19-cv-03425. – KKL/JNF Complaint, November 13, 2019. p. 24 <https://charityandsecurity.org/wp-content/uploads/2021/04/Complaint-JNF-v-EJPME-USPCR.pdf>

83 “Keren Kayemeth Lelsrael-Jewish National Fund et al. v. Education for a Just Peace in the Middle East.” *U.S.D.C., D.C.*, No: 1:19-cv-03425. – USCPR Motion to Dismiss, March 5, 2020. p. 4 <https://charityandsecurity.org/wp-content/uploads/2020/10/Motion-to-Dismiss-and-Memo-of-Law-in-Support.pdf>

84 Ibid p. 4

85 Ibid p. 5

86 Ibid p. 36

JNF filed its opposition to the Motion to Dismiss on May 19, 2020.⁸⁷ It repeatedly claimed, without factual support, that the BNC is comprised of listed Foreign Terrorist Organizations. It makes extensive claims against Hamas and then argues that USCPR should be held liable for Hamas' actions based on a "chain of liability" theory.

USCPR's Reply, filed June 9, 2020, argued that JNF had presented suppositions rather than facts and that, "Stripped of conclusory and unfounded assertions, the Opposition would be forced to confront the issue actually before this Court: that the allegation that the US Campaign served as a fiscal sponsor of the BNC and made statements in support of the protesters at the Great Return March are insufficient to state a plausible claim that the US Campaign's acts 'were a 'substantial factor' – or any factor at all – 'in the sequence of events that led to Plaintiffs' injuries...'"⁸⁸

The court's opinion dismissing the case rejected plaintiffs' arguments, stating that "Plaintiffs' conclusory assertions that the US Campaign directly financed or supported Hamas, lacking in any specific factual basis, cannot save plaintiffs' direct liability claims,"⁸⁹ and that "plaintiffs have failed to state a claim for aiding-and-abetting liability under the ATA."⁹⁰

The court explained that plaintiffs' claims "do not plausibly allege that defendants cause their injuries."⁹¹ The plaintiffs did not allege facts to show USPCR's financial support to the BNC Committee, Great Return March and Stop the JNF Campaign was a "substantial factor in the sequence of events that led to their injuries" or that the injuries were "reasonably foreseeable or anticipated as a natural consequence."⁹² It noted that the presence of an intermediary (here the BNC Committee) attenuates the chain of causation. Since plaintiffs did not allege USCPR gave direct support Hamas. The court

87 "Keren Kayemeth Lelsrael-Jewish National Fund et al. v. Education for a Just Peace in the Middle East." *U.S.D.C., D.C.*, No: 1:19-cv-03425. – JNF Opposition to the Motion to Dismiss, May 19, 2020. <https://charityandsecurity.org/wp-content/uploads/2020/10/JNF-Opposition-Mtn-Dismiss-April-2020.pdf>

88 "Keren Kayemeth Lelsrael-Jewish National Fund et al. v. Education for a Just Peace in the Middle East." *U.S.D.C., D.C.*, No: 1:19-cv-03425. – USCPR Reply Brief in Support of Motion to Dismiss, June 9, 2020. p. 8-9 <https://charityandsecurity.org/wp-content/uploads/2020/10/USCPR-Reply-to-Opposition-Mtn-Dismiss-April-2020.pdf>

89 "Keren Kayemeth Lelsrael-Jewish National Fund et al. v. Education for a Just Peace in the Middle East." *U.S.D.C., D.C.*, No: 1:19-cv-03425. – Memorandum Opinion, March 29, 2021. p. 7 <https://charityandsecurity.org/wp-content/uploads/2021/04/Leon-OPINION-dismissing-claims-29-March-2021.pdf>

90 Ibid p. 11

91 Ibid p. 4

92 Ibid p. 5

found that USCPR's "support of the BNC and other groups are simply too removed from a terrorist act or organization to state a claim under the ATA."⁹³ The court also found that JNF failed to meet the six-factor test to establish liability for aiding and abetting. The plaintiffs' state claims were also dismissed.

⁹³ Ibid p. 6

Conclusions, Observations and Recommendations

Conclusions

The information gathered and analyzed in this report leads to some clear and unavoidable conclusions. First, civil society organizations that work in Palestine, whether providing aid, defending human rights or assisting development projects, are dedicated to their missions and operate under very difficult circumstances. The same can be said for organizations in the United States and Europe that work to support Palestinian rights. They are crucial to the welfare of Palestinians, and that has made them the target of politically motivated attacks.

Second, these attacks exploit post-9/11 counterterrorism policies in the United States and elsewhere. The Israeli government and allied pro-Israel extremists have spearheaded a wide-ranging campaign of disinformation and legal chicanery to suppress civil society and human rights in Palestine. This misuse of legal processes to conduct a political war has, for want of a better term, come to be known as “lawfare.”

Third, this systematic abuse of legal process is enabled by the vague and out of date prohibition on material support of terrorism in U.S. law. It is at the root of many of the problems cited in this report because lawfare attackers use it as the legal basis in many of their claims. In addition to being a serious criminal offense, the material support prohibition is written into sanctions enforcement and foreign assistance program standards. The Supreme Court’s *Humanitarian Law Project* decision left open many unanswered questions about what kinds of speech and interactions with listed groups are permissible. Lawfare groups have taken advantage of the large gray areas in the law to push extreme interpretations of it.

Lastly, the role of disinformation cannot be understated, as it fuels lawfare campaigns. While disinformation is a global problem that extends far beyond the instances described in this report, the role it plays in attacks against civil society and human rights defenders has not been sufficiently recognized. This is not just problematic for organizations that are attacked, as big lies help fuel instability, violence and human rights violations.

Observations

Lawfare takes advantage of policy gaps, avoids difficult policy debates and incurs little risk

Lawsuits are not the place to settle foreign policy debates. That is the role of the government leaders, and the people they represent. The U.S. Department of Justice's motion to dismiss in the Carter Center case noted that the Zionist Advocacy Center (TZAC) had a "difference of opinion with the Carter Center about how to resolve conflict in the Middle East" but did not allege elements of fraud. TZAC and other lawfare attackers are trying to push governments into taking positions on important public policy questions through these lawsuits, rather than engaging in the democratic process.

Lawfare is not only cheap to wage (anyone with the resources to pay the \$402 filing fee can initiate a lawsuit in a U.S. Federal District Court), but a convenient way for bad actors to profit from politically motivated attacks on humanitarian and human rights groups. The salaries reported to the IRS (see Chapter 3) by many of the lawfare and disinformation groups described in this report are generous, to say the least. Over time people have built careers on carrying out these campaigns, developing a cottage industry that thrives on fear mongering to perpetuate itself.

There is a glaring lack of accountability for lawfare and disinformation attacks. While most such cases have been dismissed, there have been no penalties for bringing a frivolous lawsuit, nor requirements for lawfare attackers to pay legal costs for the groups they sue. Accountability for parties that bring cases for harassment and propaganda purposes is missing.

Regulatory attacks take even fewer resources from lawfare groups than litigation. They can fill out forms, make broad allegations based on disinformation and then sit back while both regulators and nonprofit organizations (NPOs) waste time and resources on investigations. In the meantime, the filing of the complaint itself becomes another opportunity to spread disinformation, causing reputational damage to defendants even when claims are baseless.

Civil society response shows that pushback works

Experience has shown that providing legal resources and technical assistance to the targets of lawfare cases is enormously helpful. It is essential that the victims of these attacks are not isolated and that their allies, donors and colleagues support and defend them.

Vigorous defense produces good results for NPOs. Experience with lawfare attacks shows that organizations that not only address technical legal issues but also expose the political nature of the claims are successful in defending themselves. Conversely, legal settlements that include payment of damages and agreements to change due diligence procedures can backfire. This was the case with Norwegian People's Aid, which clearly stated it did not believe it had committed any transgressions but settled the case to avoid the expense of a trial. That did not stop TZAC from characterizing and promoting the settlement as an admission of wrongdoing.

The track record to date suggests that NPOs that stand up to these legal bullies are more successful than those that do not. But even successful legal defenses entail a substantial drain on organizational resources. This makes support from the rest of civil society crucial. By pushing back aggressively in their own cases, these defendant NPOs are not just protecting themselves, but protecting all similarly situated organizations and preventing harmful precedents from becoming entrenched.

The larger context of shrinking civil society space and the rise of authoritarianism enables lawfare

Pressure on the freedom of expression and the right to associate and assemble with others from autocratic regimes and restrictive counterterrorism legal frameworks is a global problem. Civil society is a primary exemplar of the need to protect these rights, as its functions depend on free exercise of all of them. As pressure on these rights shrinks space for civil society groups to operate, it expands opportunities for groups like NGO Monitor to operate.

The emergence of lawfare against NPOs is not surprising, given the toxic combination of rising authoritarianism, overly broad post-9/11 emergency measures, and increasing encroachment on the space within which civil society can operate. Add to that a

contentious political stalemate, ongoing annexation and settlement of Palestinian land, and lack of a promising peace process for Israelis and Palestinians—the result is a legal and political environment that enables disinformation and lawfare attacks.

While lawfare campaigns against civil society are primarily focused on groups operating in Palestine or supporting the human rights of Palestinians, use of this tactic is slowly spreading, and can spread further, if there is not a robust response by civil society globally. These politically motivated tactics should be called out and exposed. There should also be consequences for those that abuse legal processes.

What lawfare groups' actions tell us about their political goals

In the short run, the objective of lawfare attacks is to waste the resources of their targets on responding to false allegations and legal claims. Lawfare attacks are also used to create the appearance of a public record, however incorrect or unverified, which then can be cited in smear campaigns, and which show up in search engines, creating an impression of legitimacy.

What is the ultimate goal of lawfare groups' campaigns against NPOs? What do they hope to achieve by shutting down civil society operations in Palestine and denying victims of human rights abuses venues for redress? To answer these questions, the motivation behind lawfare attacks must be considered. Primary drivers that emerge from the information in this report include fear of a united Palestinian political front, the desire to expand areas targeted for Israeli settlements, and a notable degree of racial and ethnic animus toward Palestinians. While lawfare groups claim to focus on nonprofit accountability, they do not target organizations that support Israeli settlement expansion, which are illegal according to international law. Instead, they only target NPOs that seek to hold the Israeli government accountable for de facto annexation and related human rights violations.

Fear of a united Palestinian political front

The lawfare groups described in this report target groups that build capacity for Palestinian civil society and democracy, including programs to engage youth in civic affairs (Norwegian People's Aid, American University in Beirut). Youth leadership development, civics education, and strengthening the electoral system are among the

activities lawfare groups characterize as “material support,” by alleging participation or involvement by a listed group or individual. If lawfare groups can prevent Palestinians from expanding democratic and civic engagement, it will be more difficult for them to organize in defense of their rights, and to hold the Israeli government accountable for its settlement expansion and other human rights violations.

Cutting off outside support to Palestinians

Lawfare targeting these particular groups is not an attempt to stop terrorist financing, as there is little or no evidence to support those claims. Instead, silencing opposition to Israeli government policies – both in Palestine and Israel (NIF case) – is an important goal, if not the primary one. The missions and activities of targeted groups illuminate the strategy of their detractors—isolating Palestinians by disabling groups that empower them.

Legislative campaigns go straight to the heart of lawfare campaigns’ purpose: to cut off funding for humanitarian assistance, democracy building, peacebuilding, and human rights defense. For example, the Carter Center sought to bring Palestinian factions together to resolve their differences. Impeding that mission would have served the purposes of Israeli hardliners who find it easier to advance their political agendas when Palestinians are politically divided.

Land and settlement expansion

Analyzing the attacks and considering which groups are targeted and what kinds of programming lawfare attackers complain about, it becomes clear that these lawfare efforts indirectly support Israeli settlement expansion on land where Palestinian communities and farms are located. Lawfare groups target NPOs that assist Palestinian farmers and stand up for Palestinian land rights. For example, Oxfam and the Union of Agricultural Work Committees both operate programs assisting farmers in Area C of the West Bank, an area targeted for settlement expansion.

The Israeli government is at the heart of the lawfare network

The degree of open collaboration and coordination between the Israeli government and the disinformation and lawfare groups it supports is striking. The Israeli government has

played a central role in orchestrating the lawfare strategy, in addition to providing groups with resources.

Despite their claims to be watchdogs and research organizations, lawfare groups are not independent or unbiased. They are government operated or organized NGOs, known as GONGOs, and should be treated accordingly. That means not taking their self-descriptions, analyses, or even their purported facts at face value.

Recommendations

The ongoing abuse of legal processes by bad-faith actors who rely on smear campaigns and political pressure is harming vital programs that provide Palestinians with necessities of everyday life. These legal attacks also undermine efforts to promote democracy in Palestine and Israel and find pathways to peaceful coexistence for the Palestinian and Israeli people.

This situation should not be allowed to continue. In order to address it, the following recommendations for key stakeholders are put forward in the hope that the trend of escalating lawfare attacks can be reversed.

For all stakeholders

Everyone, including publishers and government officials, should be wary of allegations made by lawfare and disinformation groups. Where lawfare attacks occur, the disinformation used should be exposed as the politically motivated smear tactic that it is. Lawfare groups should be held accountable and given no presumption of truthfulness or credibility.

The information in this report and available elsewhere can be used to inform journalists, editors, and public officials who may receive information from lawfare and disinformation groups. Public officials, journalists, editors, researchers and others should recognize red flags that often accompany disinformation, including phrases such as “linked to,” “associated with,” that attempt to link NPOs to listed groups, or “anti-Israel,” which misrepresents NPOs’ positions.

*For governments**1. Government investigators should avoid becoming tools of outside forces.*

Lawfare groups are using disinformation to make serious allegations. However untrue or unsubstantiated these claims may be, public officials take them seriously because of the gravity of the issue. However, if the lack of credibility of the source of the information is not considered, government officials can (and have) responded disproportionately, overreacting and allowing their procedures to be abused and resources wasted.

Rather than giving unfounded claims the benefit of the doubt in the form of investigations and deplatforming of targeted civil society organizations, governments and financial institutions must work harder to ensure that their funding for and financial services offered to nonprofits are not derailed by politically motivated campaigns. While they cannot ignore serious allegations entirely, they must take a more measured approach that minimizes undue harm.

2. The Israeli government should stop supporting lawfare and disinformation groups.

The direct funding and technical assistance the Israeli government provides to lawfare and disinformation groups has fueled and elevated the most acrimonious and extreme voices in debates over the future of Israel and Palestine. For peace processes to succeed, this funding should be withdrawn.

3. Where lawfare attacks occur, governments should address the factors that enable them.

Governments can close the legal gaps that lawfare groups take advantage of by making post-9/11 restrictions more targeted in order to safeguard civil society, and by providing clarity in the law that avoids overly restrictive interpretations. In addition, courts can award costs and fees to NPO defendants when cases are dismissed, and utilize mechanisms (such as Rule 11 of the Federal Rules of Civil Procedure) to hold lawfare groups accountable.

4. The U.S. government should take concrete steps to protect civil society space, which would reduce the threat of lawfare attacks.

The *Congress* should update the material support statute to provide essential safeguards for humanitarian and peacebuilding programs and human rights defenders.

The *Department of Justice* should provide greater clarity on what will or will not be prosecuted under the material support prohibition. This can be achieved by issuing a memorandum to U.S. attorneys that sets out clear criteria for enforcement action. That guidance should be made public so that all stakeholders can operate within the same framework of understanding. For example, such guidance can make it clear that people living in an area controlled by listed groups are civilians that are entitled to humanitarian assistance.

The *Secretary of State* should exercise its authority under 18 USC 2339B(j) to allow civil society organizations to provide training, expert advice and assistance, and services to listed groups as part of their engagement in peace processes.

Courts should recognize and act to deter frivolous lawsuits. They should not facilitate them by allowing plaintiffs to amend deficient complaints or otherwise try to bolster meritless claims. This includes enforcing Rule 11 of the Federal Rules of Civil Procedure, which states in part:

By presenting to the court a pleading, written motion, or other paper—whether by signing, filing, submitting, or later advocating it—an attorney or unrepresented party certifies that to the best of the person’s knowledge, information, and belief, formed after an inquiry reasonable under the circumstances: (1) it is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation.¹

Even where the defendant NPO may not move for such sanctions (which would require additional up-front legal expenses) the rule allows the court to do so on its own motion.² In the case of a False Claims Act suit, before launching an investigation and requesting documentation from a grantee, USAID should ensure the complaint meets the criteria to proceed required by law:

- that the relator be a an “original source” of the information,

1 “Rule 11. Signing Pleadings, Motions, and Other Papers; Representations to the Court; Sanctions.” *Legal Information Institute*. Cornell Law School. https://www.law.cornell.edu/rules/frcp/rule_11

2 On the Court’s Initiative. On its own, the court may order an attorney, law firm, or party to show cause why conduct specifically described in the order has not violated Rule 11(b). – Ibid

- that the alleged violations meet the “materiality” standard set by the Supreme Court – in other words, that the alleged violation be something that would have caused USAID to turn down a grant application or deny payment, and
- that USAID was unaware of the facts alleged.

For civil society

1. Experience shows that civil society organizations should not be provoked into tit-for-tat responses to disinformation attacks. This only creates opportunities for attackers to amplify their false claims. Instead, they can regularly post information that describes their work and good governance, while ensuring they are on the record with an accurate depiction of events when such clarifications seem necessary.³
2. Civil society stakeholders, from funders to operational groups on the ground, should recognize the political nature of lawfare attacks and push back accordingly. That includes creating and implementing a legal strategy in the case of lawsuits or regulatory complaints.
3. The philanthropic sector can increase its support for civil society organizations that work in Palestine and human rights defenders that advocate for Palestinian rights. This can include added capacity to deal with disinformation and specific lawfare attacks. Resources (funds or pro bono assistance) should be available for legal representation for groups that are the subject of litigation or regulatory attacks. In addition, ongoing technical assistance for groups that have specific legal questions about their operations would reduce the threat posed by lawfare.
4. While groups that are attacked need funds to hire lawyers to defend themselves, it is essential that those providing legal assistance and advice have expertise in dealing with politicized situations. That could mean a combination of attorneys in legal advocacy organizations, those in private law firms and law professors. In any case, if NPOs that are attacked know such resources are available, they are more likely to mount a robust and effective defense.
5. Civil society organizations should not be intimidated or deterred from

³ For example, see: “Israeli Forces Raid DCIP Office, Confiscate Computers and Client Files.” *Defense for Children in Palestine*. July 29, 2021. <https://www.dci-palestine.org/israeli-forces-raid-dcip-office-confiscate-computers-and-client-files>

speaking up or from doing their essential work. That includes avoiding over-compliance, which does not deter attacks and makes the general atmosphere even more hospitable to harassment lawsuits and complaints.

6. It is important for civil society to develop common information sharing and joint strategy mechanisms for pushing back as a sector.

For donors

Donors, particularly government foreign assistance programs, must have more confidence in their own due diligence and screening protocols, which are very robust. The grantees that qualify under these protocols have passed high hurdles and are subject to ongoing oversight. As a result, there should be a presumption that their programs are run appropriately. While complaints and accusations should be assessed, the politicized nature of lawfare and the abuse of the complaint process now requires donors to assess the credibility of the accuser when deciding how to address complaints. This means being clear about the problem of guilt by association.

Donor over-reaction can lead to policy incoherence and disproportionate responses. For example:

- On the one hand, USAID's Office of Inspector General (OIG) says it prioritizes investigations into major fraud, but on the other, it responds to specific complaints involving allegations of minor or minimal violations with wide ranging, comprehensive investigations. This diverts resources away from major fraud investigation and uses up staff time and funds of the target of the investigation that could otherwise be spent on program operation.
- The Dutch government's freeze on funding for the Union of Agricultural Work Committees pending its investigation imposed a penalty before there was outcome in the proceedings. This has had a high cost in terms of jobs and income for hundreds of Palestinian farmers. The Dutch government should restore all funding cut off pending investigation, with appropriate supervision during the investigation to ensure that beneficiaries are protected.

Finally, when donor investigations are launched, they should be limited to the allegations in the complaint, and not become fishing expeditions that ultimately serve the political agenda of lawfare actors.

For publishers

Material submitted for publication in magazines, blogs, news outlets and professional journals should be screened to ensure they are not providing a platform for further dissemination of disinformation submitted by bogus authors. If the factual allegations are not backed up or rely on the disinformation groups described in this report, the articles or posting should be rejected.