

Victims of Islamist 'Lawfare' Fight Back

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What do **Hamas**, the **Council on American-Islamic Relations (CAIR)** and the **National Iranian American Council (NIAC)** all have in common? They all are using the protections of western legal systems to harass and in some cases imprison their political enemies.

Hamas lawyers have filed lawsuits alleging war crimes against senior Israeli officials in British courts. Former Israeli foreign minister Tzipi Livni cancelled a recent trip to Britain for fear of being arrested.

CAIR has sued a wide variety of individuals and groups that have dared question its ties to the Muslim Brotherhood, even though documents describing those ties has been entered into evidence by U.S. federal prosecutors in terrorism-related cases.

NIAC has filed a libel suit against Iranian-American journalist Hassan Daioleslam for alleging that the group acts as a lobbyist for the Islamic Republic of Iran, something the group vigorously denies.

Defending against these lawsuits is costly, and that's part of the point. Even when the complaints are withdrawn, as CAIR has done frequently once challenged to produce internal documents through the discovery process, they can cost unsuspecting defendants hundreds of thousands of dollars in legal fees.

The practice is known as "**lawfare**" – using the law as a weapon of war.

"Lawfare is as American as apple pie," said Nicholas Rostow, former legal counsel to the US mission to the United Nations and a former deputy National Security Council advisor who now serves as vice chancellor for legal affairs at the State University of New York (SUNY). "Using the law for political purposes is very much a part of the American legal system. But now the tables are being turned."

“Let’s take the law to the bad guys and not just be patsies,” Rostow said. “It’s not as if we don’t have enough lawyers to throw against the enemy.”

Rostow was speaking in New York on Thursday at a conference organized by **The Lawfare Project**, a newly-minted organization headed by Brooke Goldstein, who until recently was in house counsel to the Middle East Forum and headed their Legal Project, which has helped find attorneys willing to **defend victims of lawfare on a pro-bono or reduced rate basis.**

“Islamic states, organizations and individuals with financial means have launched a ‘legal jihad,’ filing a series of malicious lawsuits, in American courts and abroad, designed to punish and silence those who engage in public discourse about radical Islam,” she said. “Such lawsuits are being used as a weapon of war against counter-terrorism experts, law enforcement personnel, politicians, and anyone working to disseminate information on Islamist terrorism and its sources of financing.”

The counter-attack has already begun. Nathan Lewin, a former U.S. government prosecutor, filed the first terrorism lawsuit against the **Holy Land Foundation** in 2000, eventually winning a \$156 million judgment in a Chicago court against the Hamas-affiliated group for on behalf of the family of an American man murdered by Hamas terrorists in Israel.

Lewin agreed that the time had come to fight back. “So you go after the bad guys... and you protect the good guys,” he said.

British libel law has long been used by Saudi princes and others to attack U.S. reporters who exposed their ties to terrorist groups. The most famous case, against New York financial journalist Rachel Ehrenfeld over her 2007 **book Funding Evil**, only ended when the plaintiff, Saudi billionaire banker Khaled bin Mahfouz, died in Jedda, Saudi Arabia last year.

Mahmouz and his family had filed more than forty lawsuits against journalists who reported on alleged ties between the family bank and charity to Hamas and al Qaeda.

“Singlehandedly, on behalf of his royal masters Mahfouz made libel tourism a multimillion-dollar industry for the British Bar, and London the “Libel Capital” of the world,” Ehrenfeld wrote when he died last year.

Before his death, **the New York State legislature passed the Libel Terrorism Protection Act to give Ehrenfeld and others legal immunity in the United States from such judgments.** “Yet even for journalists and bloggers protected by the New York law domestically, their ability to travel to the United Kingdom and Europe is seriously constrained by a judgment against them,” says Brooke Goldstein.

National security law professor Ruth Wedgewood, who was involved in the Bush administration determination to try al Qaeda terrorists in military tribunals, warned that the British libel laws are now threatening to “shut down the World Wide Web.”

She said that British courts are now arguing that “if it’s published on the web, it’s published in the UK,” giving plaintiffs the ability to sue their detractors wherever they might live.

Former Bush administration official John Bolton argued on Thursday that activists needed to “attack lawfare conceptually,” and linked its expansion to efforts to erode American sovereignty.

“We should say unequivocally that we recognize no higher authority in this world than the U.S. Constitution,” Bolton said. Recalling the Clinton administration decision to go to war against Serbia without United Nations backing, Bolton insisted that “no international permission is required for the United States to defend ourselves, no ‘mother may I’... I don’t want to discuss nuances here. This should be unequivocal.”

Critics of Israel’s January 2009 “Cast Lead” operation to stop Hamas rocket attacks against Israeli civilians are using the argument that the Israel Defense Force used “disproportionate force” against Hamas to file war crimes lawsuits against Israeli officials in European courts.

Bolton quipped: “I believe in disproportionate force. I do not believe in having a fair fight. We should have what the military calls full spectrum dominance when we go to war. Self-defense means... eliminating the source of the danger,” and is inscribed in the U.N. charter.

Canadian parliamentarian Irwin Cotler, a former attorney general and a distinguished human rights lawyer, urged The LawFare Project and like-minded groups to turn the tables and use humanitarian law aggressively against the Islamic Republic of Iran.

Cutler has been arguing for several years that Iranian president Mahmoud Ahmadinejad’s repeated calls to “wipe Israel off the map” amounted to blatant violations of the U.N. Covenant for the Prevention and Punishment of the Crime of Genocide, and that the Iranian regime should be referred to the U.N. Security Council as a “threat to international peace and security.”

He recently introduced legislation into the Canadian parliament that would compel the Canadian government to impose that and other sanctions on the government of Iran, including a cut off in strategic trade.