

# Lifting the Veil: Terrorists Masquerading as International Organizations

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## ▶ 1 | Introduction

**The brutal massacre of October 7 has underscored the urgency of addressing a well-known but long-suppressed problem: the terrorist takeover of international organizations. Organizations such as the United Nations, the Red Cross, or the World Health Organization, under the guise of neutral bodies working to promote peaceful conflict resolution and human rights, have at best turned a blind eye, or at worst actively aided and abetted this infiltration.**

In the United States, where the law does not grant immunity to state sponsors of terror, legislators are already working to close a loophole regarding international organizations' immunity. On March 5, eight U.S. senators introduced a bill – Limiting Immunity for Assisting Backer of Lethal Extremism (LIABLE) – that allows American victims of terror to sue international organizations, including UNRWA, for civil damages incurred by acts of terror.<sup>1</sup> The first lawsuit was filed in the U.S. District Court for the District of Delaware against UNRWA USA, a tax-exempt organization that fundraises for UNRWA in the United States.<sup>2</sup> It is important to note that the lawsuit is against UNRWA USA and not against UNRWA itself, which still enjoys immunity. While it is expected that such lawsuits will increase, it should be borne in mind that they are a legal possibility only for those who hold U.S. citizenship.

1 LIABLE Act bill, <<https://www.hagerty.senate.gov/wp-content/uploads/2024/03/LIABLE-Act.pdf>>

2 "October 7 victims sue UNRWA USA for alleged financial support of Hama", Michael Starr. Jerusalem Post, March 10, 2024, <https://www.jpost.com/israel-amas-war/article-791159>; Case 1:24-cv-312, in United States District Court for the District of Columbia

It is intolerable that justice for victims of terror is available only to American citizens. On 12.3.2024, the Israeli Knesset passed a law allowing terror victims to sue for compensatory damages those who carry out, compensate or aid and abet acts of terror.<sup>3</sup> This law will incentivize victims to sue terror organizations, since up till now, the difficulty in winning damages acted as a deterrent.

This paper posits that the immunity granted by international and Israeli law to international organizations was never meant to apply to cases of systematic abuse of power and violation of law. The immunity was intended to allow these organizations to fulfil their purposes without the fear of legal burdens and frivolous lawsuits. Both committing acts of terrorism and financing terrorism are severe violations of international law, so much so that in some states, these form an exception to sovereign immunity. Therefore, even under the current legal situation, immunity should not constitute a barrier to lawsuits against international organizations. This paper will focus on the UN, it being the most prominent amongst international organizations; however, the legal analysis holds true for other international organizations as well.

To remove any legal ambiguity, this paper recommends it be codified in law that international organizations are not immune from liability for terrorist offenses. The paper will review what the sources in international and Israeli law for international organizations' immunity are, in particular the United Nations; will examine the gravity of the crime of aiding and abetting terrorism in international law, and will outline a case study of how the United Nations and its agencies, including UNRWA, can be sued even now, prior to removing their immunity.



Documented: Terrorists in UNWRA compound moving around in logistics centre  
// IDF spokesperson

3 Law bill: Damages for Victims of Terror Law- 2024

## ▶ 2 | International Organizations' Immunity in International and Comparative Law

International organizations' immunity is provided for in their founding constitutions, which States choose to sign on to. The UN's immunity from lawsuits is anchored in Article 105 of the UN Charter:

1. The Organization shall enjoy in the territory of each of its Members such privileges and immunities as are necessary for the fulfillment of its purposes.
2. Representatives of the Members of the United Nations and officials of the Organization shall similarly enjoy such privileges and immunities as are necessary for the independent exercise of their functions in connection with the Organization.

These general articles are further detailed in the UN's 1946 Convention on the Privileges and Immunities, ratified by 162 states<sup>4</sup>, and in its 1947 Convention on the Privileges and Immunities of the Specialized Agencies, ratified by 131 states.<sup>5</sup> The main points enumerated in the conventions are: recognition of the UN as a legal entity (Article 1); immunity of United Nations property from seizure and search (Article 2); diplomatic immunity of communications (Article 3); functional immunity of missions, representatives and experts (Article 6); and the recognition of diplomatic passports (Article 7).

Several court decisions in various states have discussed the source for international organizations' immunity. In 2001, the Belgian Court of Cassation (Supreme Court) determined that unlike the immunity of foreign states, there is no legal rule granting international organizations immunity from the legal jurisdiction of their host countries. According to the Court, international organizations' immunity (in this particular case the Arab League) was derived from an agreement between the organization and the host state.<sup>6</sup> Italian courts in 1999 and in 2007 rejected the comparison between the immunity of foreign states and the immunity of international organizations, and held that the latter's immunity was only a matter of treaty law.<sup>7</sup> However, in 1985, the Supreme Court of the Netherlands recognized a customary rule granting immunity to international organizations.<sup>8</sup>

4 Convention on the Privileges and Immunities of the United Nation, 1946 [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=III-1&chapter=3&clang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=III-1&chapter=3&clang=en)

5 Convention on the Privileges and Immunities of the Specialized Agencies, 1947 [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=III-2&chapter=3&clang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=III-2&chapter=3&clang=en)

6 League of Arab States v. T M., Belgian Court of Cassation, ILDC 42 (BE 2001), 12 March 2001.

7 EUJ v. Piette, Italian Yearbook of International Law (1999); ILDC 3718 (IT 2007); ILDC 297 (IT 2005), H4

8 Spaans v Iran-United States Claims Tribunal, Final appeal judgment, Case No 12627, Decision No LJN: AC9158, NJ 1986, 438, (1987) 18 NYIL 357, ILDC 1759 (NL 1985), 20th December 1985, Netherlands; Supreme Court [HR].

Unlike the diplomatic immunity of foreign states, which is based on the sovereign equivalency between the states, the UN's immunity is based on functional claims; in other words, on the necessity of making it possible for the organization's purposes to be fulfilled without fear of legal encumbrance. Indeed, the United States Court of Appeals for the Federal Circuit in *Mendaro v. World Bank* found that the immunity of UN subsidiary the World Bank is recognized by customary international law for the purpose of ensuring the organizations' independence from the states in which it operates.<sup>9</sup> The Supreme Court of the Netherlands reached a similar conclusion in 1985, rejecting a lawsuit filed by an Iran-United States Claims Tribunal employee, on the grounds that absolute immunity for international organizations would guarantee them free reign of action.<sup>10</sup> Similar rulings were handed down in Italian and Swiss courts.<sup>11</sup>

It can be inferred by an analysis of court decisions in various countries that there is no customary rule according to which international organizations enjoy absolute immunity. Moreover, functional immunity was never intended to cover systematic abuse of international organizations by terrorists. Immunity was intended to cover individual cases of tort or labor disputes, in order to prevent harm to organizations operating in a wide range of countries. It is inconceivable that states which, for example, signed the UN Charter in 1945, intended thereby to grant immunity to bodies supporting violent struggle in contravention of international law, simply because they operate under the guise of international organizations.

Alongside the immunity from litigation in state courts, Article 29 of the UN Convention establishes a limited internal mechanism for the resolution of private law disputes, as opposed to disputes over policy. However, some recent cases – the **lead poisoning case** in Kosovo, the **cholera case** in Haiti, and the **Mothers of Srebrenica case** – highlight how immunity promotes a culture of impunity and non-accountability, and blocks victims' access to justice.

After NATO forces intervened in Kosovo in 1999, UNMIK (the United Nations Mission in Kosovo) housed displaced persons in camps adjacent to lead mines. The level of contamination was extremely high, and despite repeated warnings from health officials, the UN continued to operate the camps in that location for five years. World Health Organization tests later revealed life-threatening levels of lead in the blood of all children under five years of age.<sup>12</sup> Victims seeking compensation filed claims against the UN through the standard internal mechanisms. On July 25, 2011, the UN rejected their claims on the grounds that it did

9 717 F.2d 610, 615-17 (1983).

10 *Spaans v Iran-United States Claims Tribunal*

11 *FAO v. INPDAI*, 87 ILR; pp. 1, 6-7

*ZM v. Permanent Delegation of the League of Arab States to the UN*, 116 ILR, pp.643, 647.

12 Boon, Kristen E. "The United Nations as good samaritan: immunity and responsibility" *Chi. J. Int'l L.* 16 (2015): 341.

not relate to a private law dispute.<sup>13</sup> According to a subsequent letter, the claim was not considered to be based on a private dispute because it constituted criticism of UNMIK's management and its policy in managing the displaced persons' camps.<sup>14</sup> Official policy, then, is immune from litigation, even in cases where its flaws lead to death and injury.

Another case demonstrating the injustice of granting the UN absolute immunity is the organization's conduct following the cholera outbreak in Haiti. In the aftermath of Haiti's 2010 earthquake, an outbreak of the cholera epidemic claimed the lives of 7,500 people. The epidemic originated in UN forces who had come from Nepal, where incidence of the disease is high. UN rules exempt peacekeeping forces from medical examinations, even when they arrive from countries that have widespread disease. In response to the suits for damages filed by five thousand victims, the UN determined that the claims referred to questions of policy, which are immune from internal procedures.<sup>15</sup> The victims then filed suit against the UN and UN senior members in a New York district court in 2013. On January 2015, the Court rejected their claim on the grounds that absent its own waiver, the UN enjoyed absolute immunity.<sup>16</sup> In 2016 the United States Court of Appeals for the Second Circuit affirmed this immunity and rejected their appeal.<sup>17</sup>

In 2007, an organization named Mothers of Srebrenica, representing families of the victims of the Srebrenica massacre sued the UN in a Dutch Court. The organization claimed that the UN had violated its duty of care when it did nothing to prevent Serbian forces from massacring the close to 8,000 Bosnian men who had been residing in the "safe zone" under UN protection during the Yugoslavian war in 1995. The Supreme Court of the Netherlands ruled that UN immunity is absolute, its extent unaffected by the plaintiffs' inability to obtain relief under Article 29 of the UN Convention.<sup>18</sup> The European Court of Human Rights upheld the absolute immunity on appeal, stating that the UN security forces in Bosnia had acted under a binding Security Council resolution, and acts or omissions of the Security Council were not subject to national jurisdiction without consent of the UN.<sup>19</sup>

The issue of victims being unable to obtain legal relief was brought before the European Court of Human Rights in 1990. Two British nationals sued their employer, the ESA (the European Space Agency) in a labor dispute. German courts rejected their suit on grounds of the immunity granted in the Convention on the Privileges and Immunities of the Specialized

13 Brien, U.N. Under-Secretary-General for Legal Affairs, to Dianne Post (Letter from Patricia O Jul.25 2011)

14 Letter from Pedro Medrano, Assistant U.N. Secretary-General, Senior Coordinator for Cholera Response, to Ms. Farha, Mr. Gallon, Mr. Pura and Ms. De Albuquerque 1 91 (Nov. 25, 2014)

15 O'Brien Letter to Post.

16 *Georges v. United Nations*, 84 F. Supp.3d 246, 2015 WL 129657, at \*4 (S.D.N.Y. 2015)

17 *Georges v. United Nations*, No. 15-455 (2d Cir. 2016).

18 S. Leyersdorff & L. Melvern, '[The Dutch Supreme Court Grants Immunity to the UN Regarding Srebrenica: A Legal Summary with Comments](#)', *Genocide Prevention Now*, 2012, No. 10.

19 ECHR, *Stichting Mothers of Srebrenica and Others v. the Netherlands* (dec.) - 65542/12.

Agencies under which the organization was established. The two then sued Germany in the European Court of Human Rights, claiming that the state had violated their right to fair and public hearing set down in the European Convention on Human Rights. According to the Court, a weighty consideration in deciding whether immunity was permissible under the convention was the existence of an alternative avenue for victims to protect their rights. In this particular case, the ESA's internal mechanisms for dispute resolution allowed for the possibility of the petitioners being granted relief despite the organization's legal immunity.<sup>20</sup> In a series of State rulings, Courts were persuaded by the mere existence of alternative mechanisms and not by their efficacy in obtaining justice for victims.<sup>21</sup>

In the US Supreme Court *Jam* decision, the Justices explicitly rejected the thesis of absolute immunity for international organizations. In the past decades, there has been a reduction in the immunity granted to foreign states. The common approach today distinguishes between state action, i.e., actions that can be carried out only by the state (such as warfare), that is protected by absolute immunity, and commercial activity, which can be conducted by private parties as well.<sup>22</sup> In ***Jam v. International Finance Corporation***, the US Supreme Court addressed changes in the scope of diplomatic immunity and its implications for international organizations. The 1945 International Organizations Immunities Act expressly equates the level of immunity enjoyed by foreign states with that of international organizations.<sup>23</sup> Therefore, the Court held that, as a part of the World Bank, the International Finance Corporation enjoyed a lesser level of immunity than it did in 1945 when the Act was passed. In this particular case, the Court held that the IFC could be sued by citizens of developing countries who had suffered pollution as a result of the corporation's activities in their neighborhoods.

Many scholars are critical of *de jure* or *de facto* absolute immunity, viewing it as a violation of the rule of law and an enabler of a culture of abuse and non-accountability for human rights violations.<sup>24</sup> After incidences of sexual exploitation by UN forces in African countries came to light, the UN Secretary-General appointed a review committee. This committee's report condemned the "culture of impunity" that had been created by the lack of accountability.<sup>25</sup> Consequently, while Israeli legislation clarifying that international organizations do not hold absolute immunity would be precedential, it would still be in line with both well-reasoned

20 Waite & Kennedy v. Gernnany, App. No. 26083/94, Eur. Ct. H.R. 15 (1999).

21 Joanna Jandali, "Jammed from Justice: How International Organization Immunity Enshrines Impunity", *Arizona State Law Journal* 55, no. 2 (Summer 2023), 743.

22 In Israeli case law, see PLA 7092/94 Her Majesty the Queen in Right of Canada v. Edelson, 51(1) at 625, 645 (1997).

23 586 U.S. \_\_\_\_ (2019).

24 For example, see: Boon; Jandali; Bhat, Neha. "Responsibility in the Time of Cholera: Liability of International Organisations for Wrongful Conduct". Available at SSRN 2213613 (2013); Freedman, Rosa. "UN immunity or impunity? A human rights based challenge". *European Journal of International Law* 25, no. 1 (2014): 239-254; Lindstrom, Beatrice. "When Immunity Becomes Impunity: Rethinking Liabilities for UN Harms". *Journal of International Peacekeeping* 24, no. 1-2 (2021): 164-189.

25 UNGA (2016) Report of an independent review on sexual exploitation and abuse by international peacekeeping forces in the Central African Republic (23 June 2016). UN Doc A/71/99. UN General Assembly.



criticism in the professional literature and with American and Canadian laws that exclude the financing of terrorism from sovereign immunity (discussed below). Israel's clarification of the limits of immunity may spur other countries that have been harmed by the UN and by other international organizations to also clarify the limits of immunity, and encourage the UN and other international bodies to engage in a serious effort at housecleaning.

### ▶ 3 | Aiding and Abetting and Financing Terrorism in International Law

International organizations are also subject to international law. As the International Court of Justice (ICJ) wrote in its opinion in 1980:

"International organizations are subjects of international law and, as such, are bound by any obligations incumbent upon them under general rules of international law, under their constitutional or under international agreements to which they are parties".<sup>26</sup>

Terrorism, aiding and abetting terrorism and financing terrorism are all international crimes under both customary and treaty law.<sup>27</sup> According to a decision by the Special Tribunal for Lebanon, international law has crystalized a legal definition for the crime of terror, according to which "*terrorism is a criminal action that aims at spreading terror or coercing governmental authorities and is a threat to the stability of society or the State.*"<sup>28</sup>

Since 1968, nineteen international treaties have been drafted to counter various components of terrorism.<sup>29</sup> The 1999 International Convention for the Suppression of the Financing of Terrorism prohibits financing terrorist activities either directly or indirectly. The Security Council also adopted several binding resolutions regarding terrorism, among them Resolution 1373. According to this resolution, all member states must:

- A.** Prohibit their nationals or any persons and entities within their territories from making any funds, financial assets or economic resources or financial or other related services available, directly or indirectly, for the benefit of persons who commit or attempt to commit or facilitate or participate in the commission of

26 Interpretation of the Agreement of 25 March 1951 between the WHO and Egypt, Advisory Opinion, 20 December 1980, ICJ Reports (1980) 73, para. 37

27 See Gilbert, Guillaume. "Terrorism and International Law". *The International and Comparative Law Quarterly* 53.3 (2004): 537; and Young, Reuven. "Defining terrorism: The evolution of terrorism as a legal concept in international law and its influence on definitions in domestic legislation". *BC Int'l & Comp. L. Rev.* 29 (2006): 23.

28 *Case STL 11-01/I, STL*, Appeals Chamber, Interlocutory Decision on Applicable Law: Terrorism, Conspiracy, Homicide, Perpetration, Cumulative Charging, 16 February 2011, at para. 97.

29 <https://www.ohchr.org/en/press-releases/2009/10/united-nations-treaties-against-international-terrorism>

terrorist acts, of entities owned or controlled, directly or indirectly, by such persons and of persons and entities acting on behalf of or at the direction of such persons;

- B. Refrain from providing any form of support, active or passive, to entities or persons involved in terrorist acts, including by suppressing recruitment of members of terrorist groups and eliminating the supply of weapons to terrorists;
- C. Deny safe haven to those who finance, plan, support, or commit terrorist acts, or provide safe havens;
- D. Prevent those who finance, plan, facilitate or commit terrorist acts from using their respective territories for those purposes against other States or their citizens."<sup>30</sup>

Consequently, aiding and financing terrorist organizations are an absolute and direct contravention of the principles and spirit of the UN convention and its resolutions.

Today, both the US and Canada recognize the financing of terrorism as an exception to foreign states' immunity. In 1996, the United States Congress amended the **Foreign State Immunity Act** to allow victims of terrorism to sue senior officials of foreign states declared by the State Department to be state sponsors of terrorism.<sup>31</sup> Congress expanded this exception in 2008 to permit lawsuits against the states' themselves and not only their officials. Grounds for suit are specific actions, related for the most part to terrorism: torture, extrajudicial killing, aircraft sabotage and hostage taking. Another exception to state immunity is "material support", broadly interpreted to include food supply, financial services, accommodations, storage, weapons or training.<sup>32</sup> The **Justice Against Sponsors of Terrorism Act** (JASTA) was enacted in 2016, waiving the requirement that a state be declared a sponsor of terror, and broadening the ability to also sue aiders and abettors of terrorism and not only the principal actors. One of the main reasons for this was to enable lawsuits against Saudi Arabia, following that country's involvement in the 9/11 terror attacks.<sup>33</sup> Nevertheless, JASTA did not expand the exception to include foreclosure or seizure of foreign state property, making it extremely difficult to provide effective remedies for victims.<sup>34</sup>

30 373.RES/S Doc UN (2001 September 28 (1373 Res) UNSC) Council Security Nations U

31 Title 28 USC, 1605A. Terrorism exception to the jurisdictional immunity of a foreign state.

32 Naomi Roht-Arriaza, "The Foreign Sovereign Immunities Act and Human Rights Violations: One Step Forward, Two Steps Back" (1998) 16 BJIL 71.

33 Justice against Sponsors of Terrorism, JASTA and its international impact. European Parliamentary Research Service, October 2016

34 Ingrid Wuerth, "Justice Against Sponsors of Terrorism Act: Initial Analysis" *Lawfare* (29 September 2016), online: <[www.lawfareblog.com/justice-against-sponsors-terrorism-act-initial-analysis](http://www.lawfareblog.com/justice-against-sponsors-terrorism-act-initial-analysis)>.



In March 2012, the Canadian Parliament passed the **Justice for Victims of Terrorism Act** (JVTA)<sup>35</sup> which amended the State Immunity Act, allowing for the suing of states designated as state supporters of terrorism by the Minister of Foreign Affairs. Currently, Iran and Syria are the only states so designated,<sup>36</sup> and the law further allows Canadian courts to enforce U.S. rulings against the two.

The terror exception to diplomatic immunity is controversial among scholars,<sup>37</sup> and state and international tribunals are also split on the issue. In the case of immunity of assets (*Germany v. Italy*), the ICJ noted that the American legislation is unique compared to other countries (the decision being handed down before similar Canadian legislation had been enacted).<sup>38</sup> The Supreme Court of Cassation in Italy ruled that an American decision against Iran was enforceable in the country, as it reflected the Italian policy according to which values of human dignity supersede absolute diplomatic immunity.<sup>39</sup> In contrast, The French Court of Cassation held that French law, following international law, does not recognize exceptions to sovereign immunity of state actions, even violations of international law.<sup>40</sup> In June 2023, Iran filed a suit against Canada in the ICJ, claiming that the JVTA law violated customary law regarding the immunity of diplomatic property.<sup>41</sup>

Unlike states' immunity anchored in customary law, the UN's immunity derives from treaty law, i.e., the UN Charter and the Conventions of Immunities and Privileges. Other international organizations' immunity is likewise derived from agreements between them and the states. The justification for the immunity of a state from being subject to the jurisdiction of another state is the sovereign equality between states,<sup>42</sup> which is why there is disagreement about the possibility of exceptions in cases of international crimes such as terrorism. In contrast, UN immunity is functional, intended to facilitate the fulfillment of its goals without the fear of lawfare. Clearly, financing terrorism or carrying out acts of terror are not part of the UN's goals and no state intended to grant immunity for such. The claim therefore, that the UN's immunity grants it the freedom to at best overlook and at worst actively cooperate with terror organizations is untenable.

35 Bill C-10 (Part I), *Justice for Victims of Terrorism Act*, 1st Sess., 41th Parl., 2011.

36 *Order Establishing a List of Foreign State Supporters of Terrorism*, SOR/2012-170 at Schedule I; *Order Accepting the Recommendation of the Minister of Foreign Affairs Concerning the Two-year Review of the List of State Supporters of Terrorism*, Canada Gazette Part I, Vol. 151, No. 26.

37 Coombes, Karinne. "The quest for justice for victims of terrorism: International law and the immunity of states in Canada and the United States". *UNBLJ* 69 (2018): 251.

38 *Jurisdictional Immunities of the State (Germany v. Italy)* ICJ.

39 Corte Suprema di Cassazione (Sezione i Civile), *Angela Stergiopoulos et al. v. Islamic Republic of Iran, Central Bank of Iran and other Iranian Public Agencies*, 10 December 2021, Order No. 39391 (President F.A. Genovese, Judge-Rapporteur F. Terrusi).

40 Enforceability of foreign judgments: State immunity from jurisdiction and jus cogens (Ruling n° 443 - 21-19.766). <<https://www.courdecassation.fr/toutes-les-actualites/2023/06/28/enforceability-foreign-judgments-state-immunity-jurisdiction-and>>

41 ICJ Alleged Violations of State Immunities, (Islamic Republic of Iran v. Canada), 27 June 2023.

42 See Lord Browne-Wilkinson in *Ex parte Pinochet (No 3)*. [2000] 1 AC 147, 201; 110 ILR, p. 152, and Lord Miller in *Holland v. Lampen-Wolfe* [2000] 1 WLR 1573. 1588; 119 ILR, p. 367.

## ▶ 4 | UN Immunity in Israeli Law

The immunity of international organizations, among them the UN, is anchored in Israeli domestic law. The 1947 United Nations' Privileges and Immunities Order authorizes the Minister of Foreign Affairs to order the immunities and privileges which the United Nations shall enjoy "to the extent that they are specified in the ordinance".<sup>43</sup> Indeed, The United Nations' Privileges and Immunities Ordinance provides, in accordance with the Order, that the UN shall be immune from lawsuits and legal action.<sup>44</sup> The Minister of Foreign Affairs is authorized to issue orders regarding other international organizations in accordance with the Privileges and Immunities law (International Organizations and Special Missions) 5743-1983. The Minister of Foreign Affairs has indeed issued orders for other organizations such as The European Investment Bank (EIB), the International Atomic Energy Agency and the European Organization for Nuclear Research.

The UN has preeminent status amongst the international organizations. The question of the UN's immunity has yet to be resolved by the Supreme Court, although it has been discussed and ruled on by Judge Shapira in a District Court. His decision is instructive of the approach seeking to limit the scope of immunity,<sup>45</sup> although his decision lacks legal validity, having been overturned when a settlement reached by the parties was given the force of law.<sup>46</sup> Nevertheless, the judge's legal analysis points to the trend of narrowing the scope of immunity.

The case involved a claim for the eviction of property which the plaintiff alleged had been occupied and held by the United Nations Truce Supervision Organization (UNTSO) since 1948. UNTSO, supported by the Attorney General, contended that the United Nations enjoyed absolute immunity both under international law, pursuant to the United Nations Charter and other relevant treaties, and under Israeli law, pursuant to the United Nations Privileges and Immunities Order and Ordinance.

Judge Shapira held that UN immunity was functional, meaning, only to the extent it fulfilled the organization's purpose. This conclusion arises from an analysis of the provisions 's language. The Order's purpose is laid out in its title: **"An order to grant immunities and certain privileges to the UN and related purposes"** (emphasis added). Article 3 of the Ordinance states:

43 United Nations' Privileges and Immunities Order-1947, Article 2(a).

44 Addendum, Article A (1)

45 CivC (Jerusalem) 4262/04 *UNTSO v. Siragnian* (2005).

46 CivA 2346/05.

"The UN shall enjoy all legal capabilities of an incorporated body, to the extent necessary to achieve any of the UN's purposes included in the UN Charter, and without denigrating from the above, has the capacity to acquire property, to contract and to institute legal proceedings" (emphasis added).

The judge further found that the language of the law drew a comparison between the UN's immunity and the immunity of a foreign sovereign. For instance, Article B of the Addendum, dealing with the immunity of officials, states that officials are immune "from lawsuits and similar legal action, **as is granted in Israel to an ambassador of a foreign sovereign power**" (emphasis added). In Article C, it is once more stated that immunity is granted for "actions taken or not taken **while fulfilling their official role**" (emphasis added). The judge noted several American court cases in which lawsuits were heard against UN workers (although not against the organization itself). The judge observed the disagreement among jurists and invoked Reinisch August:

"National courts, on the whole, do not appear to be convinced that international organizations should enjoy absolute immunity from suit. They often find ways to exercise their adjudicative power over disputes involving international organizations".<sup>47</sup>

According to Judge Shapira, absolute immunity in civil matters "can lead to arbitrary conduct towards the host states' citizens", and so accepted the suit.

In another case, the Court held that the UN was immune from debt collection procedures. The judgment reads: "The State of Israel is bound to act in accordance with the provisions of a treaty to which it is a party, and to respect the status and immunity of the UN. We note that the Charter grants the UN immunity from "any form of legal process", although it provides for waiving such immunity. However, the treaty explicitly states that no waiver of immunity extends to any measure of execution against the UN (Section 2), and section 3 explicitly states that UN property and assets are immune from executive action, meaning that no procedure of execution can be carried out against the UN or any of its subsidiary organs, such being the status of Respondent 1... the question of the UN's immunity is part of international treaty law (the convention), anchored in Israeli domestic law (the Order)...".<sup>48</sup>

In 2011, the issue of UNRWA (United Nations Relief and Works Agency for Palestine Refugees in the Near East)'s immunity from a tort claim was brought before Judge Mintz in the Jerusalem District Court.<sup>49</sup> The plaintiff had suffered bodily injury from an undetected birth defect, and among others, sued UNRWA, which operated the baby clinics that had failed to

47 Reinisch A. Conclusions. In: *International Organizations before National Courts*. Cambridge Studies in International and Comparative Law. Cambridge University Press; 2000:391-393.

48 ReqLA (Jerusalem) 3093/07 Ibrahim Mahlwas v. UNTSO para 11, 15.

49 Saja Ibrahim v. Red Crescent Association, UNRWA, Israel, Regional Labor Court of Jerusalem, 2524/08, 5 May 2011.

detect the defect. According to Judge Mintz, the UN's immunity stems from the UN Charter, which Israel signed in 1949 and incorporated into domestic law. The judge rejected the comparison between the UN's immunity, based on a treaty, and foreign states' immunity, based on customary law, itself subject to a trend of reduction in scope.

All the above point to a sound basis for the position according to which the UN does not have absolute immunity in regard to tort suits involving acts of terrorism. Obviously, such immunity is not necessary for the organization to fulfill its purpose. In fact, acts of terror are in direct opposition to the UN's purposes, defined by the organization's charter as: "To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace".<sup>50</sup>

Thus, it is possible to make a distinction between cases of terrorism and Justice Mintz's court decision. Managing healthcare facilities is indeed part of the UN's purpose, and immunity from claims of medical negligence is intended to prevent legal encumbrance. In contrast, Israel obviously never intended to grant immunity to an organization that aids, finances and cooperates with terror organizations. Nonetheless, in the aforementioned cases the AG held that the UN was immune from any form of legal suit. Perhaps the AG will think differently when suits are filed on the grounds of terrorism.

## ► 5 | Test Case: UNRWA as a Front of Palestinian Terrorism

The longstanding relationship between UNRWA and Hamas is an open secret, rendering this example particularly instructive of the existing legal loophole that incentivizes systematic violations of basic human rights.

Back in 2004, then Commissioner-General of the aid organization Peter Hansen said in an interview: "Oh, I am sure that there are Hamas members on the UNRWA payroll, and I don't see that as a crime".<sup>51</sup> Since at least 2009, Hamas has been in control of the staff union of UNRWA in Gaza.<sup>52</sup> The terror organization's takeover of this UN agency is an institutional issue, not a matter of isolated incidents.

UNRWA's education system, at the heart of the organization's activities,<sup>53</sup> is steeped in

50 UN Charter Article 1(2).

51 MATTHEW LEVITT, HAMAS: POLITICS, CHARITY, AND TERRORISM IN THE SERVICE OF JIHAD 95 (2006).

52 Resignation of Suhail al-Hindi, chairman of the UNRWA staff union in the Gaza Strip, after exposure of his election to Hamas' new Gazan political bureau, THE MEIR AMIT INTELLIGENCE AND TERRORISM INFORMATION CENTER (Apr. 24, 2017), <https://www.terrorism-info.org.il/en/21194>; see also, Fact Checking UNRWA Claims About Teachers and Education, UN WATCH (updated Nov. 7, 2023), <https://unwatch.org/fact-checking-unrwa-claims-about-teachersand-education>.; Elliott Abrams, Which Side Is UNRWA On?, COUNCIL ON FOREIGN RELATIONS (updated Sep. 1, 2014), <https://www.cfr.org/blog/which-side-unrwa>

53 education + training, UNRWA USA, <https://www.unrwausa.org/pillars/education> (last visited Mar. 10, 2024).

incitement to terrorism and violence, anti-Israel and anti-Semitic content and the glorification of "*Shahidim*" [those who die committing terror attacks]).<sup>54</sup> A March 2023 report by the IMPACT-se and UN Watch organizations describe schools that held activities in memory of Dalal Mughrabi, a Fatah terrorist who murdered 38 Israelis, and lavished praise on attacks against Jews in the vicinity of Ramallah.<sup>55</sup> Another report describes the outpouring of joy and celebration in the UNRWA employee telegram group (numbering some 3000 members) when the extent of the October massacre atrocities were made public.<sup>56</sup>

The UNRWA agency and its workers took active part in the October 7 attack. Based on Israeli intel, US media reported that at least twelve teachers who worked for the organization participated in the action.<sup>57</sup> According to that intel, some of them abducted Israelis, some were tracked to murder sites in the Gaza Envelope and some ran logistics for the attack, including amassing weapons. According to the reports, the commander of the brutal attack on the Be'eri Kibbutz, where ninety-seven Israelis were murdered and twenty five abducted, was an UNRWA teacher.<sup>58</sup> After the release of some of the Israeli hostages in the late December-early January deal, it was discovered that at last two UNRWA workers had held hostages in their homes.<sup>59</sup> Recently, a video surfaced showing a terrorist, an UNRWA social worker, abducting the body of an Israeli from the Be'eri Kibbutz gate, loading it on a truck and driving off to Gaza.<sup>60</sup> On February, Minister of Defense Gallant announced that according to updated intel, nearly thirty UNRWA employees took part in the massacre, and 12% of the organization's workers are Hamas and Islamic Jihad members.<sup>61</sup>

For at least a decade, it has been well known that UNRWA schools and facilities serve as warehouses for weapons, missiles and terrorist infrastructure. During Operation Protective Edge in 2014, UNRWA admitted that weapons were "discovered" in a high school in Gaza

54 UN Teachers Call To Murder Jews, Reveals New Report, UN WATCH (Mar. 14, 2023), <https://unwatch.org/unteachers-call-to-murder-jews-reveals-new-report>.

55 UN WATCH & IMPACT-SE, UNRWA EDUCATION: REFORM OR REGRESSION? 43-47 (2023), [https://www.impactse.org/wp-content/uploads/UNRWA\\_Report\\_2023\\_IMPACT-se\\_And\\_UN-Watch.pdf](https://www.impactse.org/wp-content/uploads/UNRWA_Report_2023_IMPACT-se_And_UN-Watch.pdf)

56 UN WATCH, UNRWA'S TERRORGRAM: HOW A TELEGRAM GROUP OF 3,000 UNRWA TEACHERS IN GAZA CELEBRATED THE OCTOBER 7TH HAMAS MASSACRE (2024), available at <https://unwatch.org/wpcontent/uploads/2024/01/UN-Watch-UNRWA-Terrorgram-.pdf>; Evidence Shows Widespread Support for October 7th Terrorists Among UNRWA Teachers in Gaza, UN WATCH (Jan. 2024), <https://unwatch.org/unrwa-terrorgram>

57 Ronen Bergman & Patrick Kingsley, Details Emerge on U.N. Workers Accused of Aiding Hamas Raid, N.Y. TIMES (Jan. 28, 2024), <https://www.nytimes.com/2024/01/28/world/middleeast/gaza-unrwa-hamas-israel.html>

58 Carrie Keller-Lynn & David Luhnow, Intelligence Reveals Details of U.N. Agency Staff's Links to Oct. 7 Attack, WALL ST. J. (updated Jan. 29, 2024), <https://www.wsj.com/world/middle-east/hamas-military-compound-foundbeneath-u-n-agency-headquarters-in-gaza-7e29c758>.

59 Teachers Held Israeli Boy, Elderly Woman Hostage for Hamas, WASH. FREE BEACON (Feb. 2, 2024) <https://freebeacon.com/national-security/unrwa-teachers-held-israeli-boy-elderly-woman-hostage-forhamas>

60 Chris Dehghanpoor, Miriam Berger, Sarah Cahlan, Shane Harris & Joyce Sohyun Lee, Video is said to show U.N. relief worker taking body of Israeli shot on Oct. 7, WASH. POST (Feb. 16, 2024), <https://www.washingtonpost.com/investigations/2024/02/16/unrwa-video-oct-7-israel>

61 *supra*

Beach.<sup>62</sup> In the 2015 UN Secretary General's report investigating incidents occurring during the operation, it was confirmed that missiles were stored in a Gaza Beach school as well as in a school in the Nuseirat Refugee Camp.<sup>63</sup> The school in Nuseirat was also found to have had war plans on a blackboard, and the report acknowledged there was evidence that the school "could have been used for an unknown period of time by members of a Palestinian armed group and that it was likely that such a group may have fired the mortar [shells of which had been found] from within the premises of the school".<sup>64</sup> The same report found that terror organizations used UNRWA schools in Jabalia Refugee camp to launch an attack on July 14, 2014.<sup>65</sup>

According to a report by NGO Monitor, in the past decade half a dozen UNRWA schools were found to be located above or adjacent to Hamas terror tunnels.<sup>66</sup> In 2021, a report by the US State Department confirmed that tunnels were found under two UNRWA schools during Operation Defensive Wall, and that in that year alone, UNRWA violated its neutrality obligation 298 times when it allowed terror organizations access to and storage of weapons in its facilities.<sup>67</sup>

The IDF publicized documentation of Hamas tunnels under UNRWA headquarters in Gaza, through which Hamas leader Yahya Sinwar escaped. Boxes bearing UNRWA aid labels are visible inside the tunnels. In addition, an electric grid was discovered eighteen meters underneath an UNRWA center in the Rimal neighborhood, which used the center's electricity.<sup>68</sup>

Israeli courts recognized the Palestinian Authority (PA)'s tort liability for acts of terror<sup>69</sup> and such decisions can be used as precedents for suits against UNRWA. Israeli law recognizes exceptions to foreign states' immunity, with the Supreme Court going so far as to holding that even were the PA entitled to sovereign immunity, it would not be thereby protected against tort suits under Article 5 of the 2008 Foreign States immunity law.<sup>70</sup> Once Israel

62 Press Release, UNRWA, UNRWA Condemns Placement of Rockets, for a Second Time, in One of Its Schools (July 22, 2014), <https://www.unrwa.org/newsroom/press-releases/unrwa-condemns-placement-rockets-second-time-oneits-schools>

63 U.N. SECRETARY-GENERAL, Summary by the Secretary-General of the report of the United Nations Headquarters Board of Inquiry into certain incidents that occurred in the Gaza Strip between 8 July 2014 and 26 August 2014, 58-59, U.N. DOC. S/2015/286 (Apr. 27, 2015). Par. 53, 71-82.

64 Par. 82.

65 Par.70.

66 Tunnels Under Schools: NGO Human Rights' Monitoring for Palestinian Children Ends When Israel is Not to Blame, NGO MONITOR (Jan. 18, 2023), <https://www.ngo-monitor.org/tunnels-under-schools-ngo-human-rightsmonitoring-for-palestinian-children-ends-when-israel-is-not-to-blame>

67 Adam Kredo, After \$150 Million Boost From Biden, UN Agency Cited for Inciting Violence Against Jews, WASH. FREE BEACON (July 13, 2022), <https://freebeacon.com/national-security/after-150-million-boost-from-biden-unagency-cited-for-inciting-violence-against-jews>

68 Ronny Reyes, Israel uncovers Hamastunnels under UNRWA headquarters in Gaza, claimsterroristssiphonedelectricityfromthesite, N.Y. POST (Feb. 11, 2024) <https://nypost.com/2024/02/11/news/israel-uncovers-tunnels-beneath-unrwas-headquarters-in-gaza/>

69 See CivA 2362/19 A v The Palestinian Authority (10 April 2022); CivC (Jerusalem) 2538-00 Norzetz Litvak et al v. The Palestinian Authority et al.

70 Article 5: "A foreign state shall not have immunity from jurisdiction in an action in tort where personal injury or damage to



recognized the exception of terrorism for foreign states, there is no reason to grant international organizations a greater level of immunity.

In the Mentin case, the Israel Supreme Court outlined three dimensions of the PA's involvement in terror – (i) ideological (the PA sanctioned acts of terror as a legitimate and important element in the struggle against Israel, thereby encouraging the use of terrorism as a tool for promoting its goals)<sup>71</sup>; (ii) financial support (the systematic and consistent policy of incorporating activists involved in conflict with Israel into the 'national security' apparatus, even when it was clear to officials at the highest levels, including Arafat himself, that they were committing acts of terror against Israel)<sup>72</sup>; and (iii) the practical dimension (the PA's security and 'general intel' apparatuses gave direct and indirect aid to terroristic infrastructure and actions).<sup>73</sup> The Court further awarded punitive damages, after it was established that the terrorist attack was causally connected to the military training the terrorist had received from the PA and to the violent content he was taught.

These dimensions are just as valid in regard to UNRWA's involvement in the October 7 and other terror attacks. UNRWA provides Hamas with direct financial aid, allows them use of their facilities for terroristic activity and gives inspiration and ideological sanction to acts of terror by an education system that consistently incites Jihad, antisemitism and murder.<sup>74</sup> All this indeed forms the basis for a new lawsuit filed in France against the agency for crimes against humanity.<sup>75</sup>

## ▶ 6 | Recommendations

The UN and other international organizations are protected by broad functional immunity, intended to allow them to fulfill the goals of international cooperation without fear of legal encumbrance. Since crimes of terror or the finance of terror are a severe violation of international law, a situation where terrorist elements have free reign to commit severe crimes under the protective shield of immunity is unacceptable. Immunity for international organizations was never intended to protect systematic or systemic crimes.

Many states maintain limited immunity for foreign states, and American and Canadian law

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tangible property has occurred, provided the tort was committed in Israel."

71 CivA 2144-13 Estate of Amit Amos Mentin v. The Palestinian Authority (Nevo, 12/06/2017).

72 *Ibid*, par 79

73 *Ibid*, par 84.

74 See, the Case Against UNRWA, UN Watch. <https://unwatch.org/the-case-against-unrwa/>

75 Demand to Prosecute UNRWA For Crimes Against Humanity: [France-Israel Association – Alliance Général Koenig complaint to Paris Judicial Tribunal \(Crimes Against Humanity Division\)](#), Feb. 8, 2024

have excepted crimes of terror from immunity. As far back as the *Jam* decision, the US Supreme Court compared international organizations' immunity to foreign states' level of immunity. Israeli law, while holding no special exception for crimes of terror, does allow tort lawsuits against foreign states. Thus, there is no justification for allowing international organizations to hide behind immunity in order to avoid legal repercussions.

The October 7 events must be a clear watershed moment in the relations between Israel and international organizations, particularly the UN.<sup>76</sup> For years, senior Israeli and Western officials have pointed out the anti-Israel bias and built-in antisemitism prevalent in the world of international organizations. Israel now has a historic opportunity to bring about serious internal inspection within international organizations, putting an end to the notorious "culture of impunity" and allowing terror victims a measure of justice.

UNRWA constitutes a test case for the way immunity has allowed Hamas and Palestinian terror organizations to take over the agency unchallenged; one extreme example of the rot that has spread through many international organizations. Only political and legal repercussions can compel the UN to undertake a thorough housecleaning. Such a step could serve as an example for other states that have also been harmed by the UN and have encountered its intransigence and the subsequent refusal of either the organization or its senior members to take responsibility.

Therefore,

- A.** The Knesset must amend the United Nations' Privileges and Immunities Order: "The United Nations shall not be immune from jurisdiction and the enforcement of claims for wrongful acts causing damage to body or property, arising from an act of terrorism as defined in the Counter-Terrorism Law, 5776–2016, provided that the act of terrorism was committed by a terrorist organization so designated by the Minister of Defense under the Counter-Terrorism Law, 5776–2016".
- B.** The Knesset must amend the 1983 Privileges and Immunities law (International Organizations and Special Missions): "International organizations shall not have immunity from jurisdiction in respect of a claim for damages for an injury to the body or property caused by an act of terrorism as defined in the Counter-Terrorism Law, 5776–2016, provided that the act of terrorism was committed by a terrorist organization designated as such by the Minister of Defense under the Counter-Terrorism Law, 5776–2016".

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76 Anti-Israel Action at the U.N. Since October 7. AIPAC.

<https://www.aipac.org/resources/anti-israel-united-nations#:~:text=This%20anti%2DI%20israel%20prejudice%20has,even%20justified%20the%20gruesome%20attacks>