Proposals to Expel Palestinians from the Occupied Territories as Catalyst for a Civil Adjudication Campaign

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Proposals to Expel Palestinians from the Occupied Territories as Catalyst for a Civil Adjudication Campaign

*Catherine A. Rogers*

I. INTRODUCTION

The unspeakable has not only been spoken, but articulated as a formal political strategy. In November 2002 Israeli Tourism Minister Benny Elon publicly urged the "transfer" of Palestinians from the West Bank, and his far-right Moledet party launched a formal publicity campaign in Israel advocating the position.1 Apparently echoing these calls, House Majority Leader Dick Armey later stated to a U.S. audience his "belie[f] that the Palestinians should leave" the West Bank and that "there are many Arab nations that have many hundreds of thousands of acres of land, soil and property and opportunity to create a Palestinian state."2 Just a few short years ago, the notion of "transfer"

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1. Radical New Plan for Mideast Peace; Israeli Movement Builds for Arab Population Transfer, at http://www.worldnetdaily.com/news/article.asp?ARTICLE_ID=29671 (posted November 15, 2002). The article states that the Moledet's new peace plan, called the "Elon Peace Plan," calls for the "forcible removal" of the Palestinians from the West Bank into surrounding Arab states, mainly Jordan. Id. Elon is quoted as saying, "The state of Israel must demand the relocation of the refugees as a precondition of peace within any future negotiations. We cannot relinquish these lands, and we cannot live peacefully with the Arab population currently living in them.... When you look at it, transfer is the only conclusion. It is the only light at the end of the tunnel." Id. For a complete discussion of the "peace plan" see the Moledet Party website at: http://www.moledet.org.il/english/index.html (last visited Apr. 9, 2003).

was a term not uttered in public in Israel. Today, it appears at least to some leading Israeli experts and academics that "transfer" is not only considered a viable goal for the current Israeli leadership, but also a proximate one.

The term "transfer" is considered a euphemism for "expulsion" or, in international parlance, "ethnic cleansing." In addition to violating international law, for those who study the region, proposals for transfer raise serious concerns about the prospect for Middle East stability and peace. As a consequence, the threat of forced expulsion of the Palestinians from the Occupied Territories has revived concerns about how to protect Palestinian rights and how to pressure Israel to comply with international law. In this Essay, I will explore whether an international civil adjudication campaign might provide an answer.


Two years ago, less than eight per cent of those who took part in a Gallup poll among Jewish Israelis said they were in favour of what is euphemistically called 'transfer' – that is, the expulsion of perhaps two million Palestinians across the River of Jordan. This month [April 2002] that figure reached 44 per cent.

Id. See also Ben Lynfield, The Moledet Party’s Media Blitz For the Mass Expulsion of Palestinians Is Gaining Momentum, CHRISTIAN SCI. MONITOR, Feb. 6, 2002 (stating that Elon himself recognizes that his position of transfer was "taboo" but wants to bring the idea back into the discussions), available at http://www.csmonitor.com/2002/0206/p05s01-wome.html.

4. See infra notes 38-40 and accompanying text.


6. The Jordan Times quoted Jordan’s King Abdullah warning that U.S. military action against Iraq could produce an “Armageddon” in the Middle East. Gareth Smyth, Cheney’s MidEast tour provokes hostile Arab reaction, FIN. TIMES, Mar. 19, 2002, available at 2002 WL 14809739. According to the long-time U.S. ally, such action could go "completely awry" and destabilize the entire region. He added, "If our aim is to win against terrorism, we can’t afford more instability in the area. Once you go down the road of violence, it is very, very difficult to control it.” Id.

7. See infra notes 38-40 and accompanying text.
I begin in Part II with a brief sketch of the history of stated policies to expel Palestinians from what is now Israel and the Occupied Territories, and then examine recent proposals that have been made and actions that have been taken to implement modern re-articulations of those historic policies. In Part III, I then review the grounds on which international law proscribes mass expulsions of indigenous and occupied peoples. While international law governing this issue is clear in its application and has been overwhelmingly endorsed by the larger international community, international law seems to have little influence on Israel's conduct. For this reason, my primary focus in this Essay will not be to analyze the international law issues, which have been exhaustively discussed elsewhere. I focus instead, in Part IV, on the enforcement of this well-established international law through private law suits. I review both civil adjudication's promise as an enforcement mechanism and the many obstacles that stand in the way of its success. I cannot in the space of this Essay analyze or resolve all obstacles, but I hope to outline the various benefits and limitations of adjudication as a response to human rights violations in this context, and to proffer a checklist of some of the important practical considerations entailed in launching an international civil litigation campaign on behalf of Palestinians.

II. PROPOSALS AND EFFORTS TO EXPEL PALESTINIANS

The notion of "transfer" of the Palestinian population has some antecedents that predate the creation of Israel. Others have traced in detail the history of Israeli expulsion plans, but one quote by Joseph Weitz, director of the Jewish National Fund's Land Department, captures the reasoning behind the idea of transfer:

"[I]t must be clear that there is no room in the country for both peoples . . . If the Arabs leave it, the country will become wide and spacious for us . . . The only solution [after the end of World War II] is a Land of Israel, at least a western Land of Israel [i.e., Palestine], without the Arabs. There is no room here for compromises . . . There is no way but to transfer the Arabs from here to the neighbouring countries, to transfer all of them, save perhaps for [the Arabs of] Bethlehem, Nazareth, and old Jerusalem. Not one village must be left, not one

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8. See infra notes 47-65 and accompanying text.

9. For a cataloging of UN Security Council Resolutions condemning Israeli conduct in the Occupied Territories, see infra note 59; see also infra note 64 (providing inventory of widespread condemnation of Israeli conduct).

10. See infra note 47.

On other occasions, the calls to forcibly expel Palestinians have been more explicit, such as Prime Minister Ben Gurion's orders to Israeli generals in 1948: "Drive them out!" 13

Fast forward to today, this reasoning still appeals to some. Gamla, a group founded by former Israeli military officers and settlers, recently published a nine thousand word manifesto on its website entitled "The Logistics of Transfer." 14 The site refers to expulsion of every Palestinian as "the only possible solution." 15 While the author acknowledges that Israel will never win widespread international support for expulsion, he argues that "only a modicum of support from its closest ally—the United States" is necessary to carry out the plan. 16 The plan detailed on the website includes an information campaign, systematic policies to make life unbearable for Palestinians and, finally, military strikes followed by immediate destruction of the homes evacuated in the strike. 17

In another example, the "Hamotzi-Assisted Emigration Services" is a group whose apparent aim is to rid the Occupied Territories of Palestinians because, it

12. MORRIS, supra note 11, at 27 (quoting from Weitz's diary). This vision found formal political expression in the Transfer Committees that operated in the nascent State of Israel. In 1948, Mr. Weitz pressed vigorously for creation of the First Transfer Committee. He also presented a detailed "eviction proposal" to the Committee for Abandoned Arab Property, which (in his words) contained "a list of Arab villages which should be cleared [of Arabs] in order to round out Jewish areas." See id. at 100.

13. This account, in which Ben Gurion ordered expulsion of Palestinian populations from Lydda and Ramleh, was part of the memoirs of Yitzhak Rabin, who was one of the generals receiving the order. David K. Shipler, Israel Bars Rabin From Relating '48 Eviction of Arabs, N.Y. TIMES, 23 Oct. 1979, at A3. The IDF executed the order, forcing 60,000 Palestinians out of their homes. BENNY MORRIS, 1948 AND AFTER: ISRAEL AND THE PALESTINIANS 2 (1994). Originally, this account was censored from Rabin's memoirs, but it was finally published thirty years later in the New York Times. Shipler, supra. Similar censorship continues today in efforts to erase the history of Israeli ethnic cleansing of Palestinians. For example, Teddy Katz, a devout Zionist and former student at Haifa University, wrote a masters thesis that historically documented in more than sixty hours of interviews with both Jewish and Palestinian eyewitnesses the "cleansing" (a term used at the time) in 1948 of the Palestinian village of Tantura. John Pilger, Israel's Secret Shame, at http://www.zmag.org/content/showarticle.cfm?SectionID=22&ItemID=2040 (June 26, 2002). Despite the fact that a Haifa University professor found it to be "a solid and convincing piece of work," and even though he was awarded a top grade by the Middle Eastern department, Haifa University annulled Katz's masters degree because of the thesis. Id.


15. Id.

16. Id.

17. Id.
claims, "[t]here is no room for compromise." 18 "[A]ny political solution is a mirage," they argue, because "this is a religious, not political conflict." 19 They have a significantly different approach than Gamla in effecting their aim, focusing on what they call "voluntary" emigration. 20 While advertising their services as a form of humanitarian assistance, their website refers consistently to the desperation that motivates Palestinians to want to leave and its connection to the current hardships imposed by the occupation and the continuing cycle of violence. 21 The implication is that their larger political goal, even pursued through "gentle" means, is dependent for its success on life being unbearable for Palestinians. 22

Viewed in this light, both of these organizations appear to give expression to what human rights groups have feared—that many Israeli policies are not simply austere and abusive, but instead establish (either intentionally or unintentionally) the preconditions for expulsion. The specific policies often pointed to include the diversion of water from Arab villages, 23 widespread


19. Id.

20. Id.

21. For example the site states:

The only way to escape the incessant cross fire is migration. The last year of this intifada, although costing Israel dearly in lives and lost income, has so reduced the average standard of living of Palestinians that about 380,000 Palestinians left their families and homes to emigrate elsewhere. These emigrants found that there was no emotional support network to help them adjust to the new country.

Id.

22. In fact, a similar approach was first proposed by Theodor Herzl in 1895 when he stated "We shall try to spirit the penniless Arab population across the border by procuring employment for it in the transit countries, while denying it employment in our own country." THEODOR HERZL, DIARIES (1895) (quoted in BENNY MORRIS, RIGHTEOUS VICTIMS: A HISTORY OF THE ZIONIST-ARAB CONFLICT, 1881-1999 at 21 (1999)).

23. For example, a report by the Applied Research Institute—Jerusalem (ARIJ) explains that in the West Bank as a result of discriminatory Israeli water policies, "[r]igorous water quotas are imposed on Palestinians, supply is often restricted leaving communities without water for considerable periods, and excess pumping is punished by heavy fines." Jad Isaac, Core Issues of the Palestinian-Israel Water Dispute, at http://www.arij.org/pub/corissues/ (Apr. 14, 2003). In addition, Palestinians are charged "extortionate" rates for their water supply. See id. ("Whereas settlers pay $0.40 for domestic consumption and a highly subsidized rate of $0.16 for agricultural use, Palestinians pay a standard rate of $1.20 for their piped water."). With regard to consumption, "Palestinians are only permitted to use 250 MCM per annum (83 cubic meters/Palestinian/year as a maximum) while six million Israelis are consuming 2,000 MCM/a (333 cubic meter/Israeli/year). This means that by force, four Palestinians must survive on the same amount of water consumed by each Israeli!" PALESTINIAN HYDROLOGY GROUP, ISRAELI AGGRESSION AGAINST PALESTINIAN WATER SECTOR DURING THE AL-AQSA INTIFADA: ONE METHOD OF ISRAELI ZIONISM, at http://www.phg.org/report_02.html (updated Dec. 21, 2000). According to the Palestinian Centre for Human Rights:
In the Gaza Strip, Israel also forbids Palestinians from digging any new agricultural wells, while settlers continue to dig wells at will. As a result, annual per capita consumption of water among settlers in the Gaza Strip is 1,000 cubic metres, compared to 172 per Palestinian. Israeli government subsidies make water available to settlers at one-fourth the price of water for Palestinians in the Gaza Strip, despite the enormous income disparities.


Palestinians are subject to a variety of closures, curfews, roadblocks and restrictions that have caused a near-collapse of the Palestinian economy. The restrictions affect almost all activities, rendering most Palestinians unable to carry out any semblance of a normal life and subject to daily hardships, deprivations and affronts to human dignity.

UNRWA, UNRWA EMERGENCY APPEAL 2003, at 3, available at http://www.un.org/unrwa/emergency/pdf/5th-appeal.pdf (Jan.-June 2003) [hereinafter UNRWA APPEAL]. In addition to these background factors, the actions taken by the Israeli Government during its “Operation Defensive Shield” in April 2002 left the Palestinian population in the West Bank in need of 9000 emergency shelters at a cost of $2.7 million. Id. at 12. In a UNRWA press release from April 16, 2002 the UNRWA describes the Jenin camp as the scene of a town rattled by an earthquake rather than the ravages of conflict. The UNRWA reported that the Israeli military would only allow two truckloads of aid to certain areas of the camps. Relief workers heard from residents that one could hear the voices of the dying from under the piles of rubble of what had been homes, businesses and schools. Press Release, UNRWA, PAL/1916, UN Relief Mission to Jenin Refugee Camp Reveals Monumental Destruction, available at http://www.un.org/News/Press/docs/2002/PALI916.doc.htm (Apr. 16, 2002) [hereinafter UNRWA Press]. The press release indicated “UNRWA installations such as a school and a health clinic were badly damaged in the assault on the camp and were extensively damaged by bullets.” Id. While difficult to quantify in precise dollar amounts, it is clear the destruction from Israeli incursions has been devastating on fundamental civilian infrastructure. SECRETARY GENERAL, UNITED NATIONS, ILLEGAL ISRAELI ACTIONS IN OCCUPIED EAST JERUSALEM AND THE REST OF THE OCCUPIED PALESTINIAN TERRITORY, REPORT PREPARED PURSUANT TO G.A. RES. ES-10/10, available at http://www.un.org/peace/jenin/ (July 30, 2002) [hereinafter SECRETARY GENERAL].

Operation Defensive Shield resulted in the widespread destruction of Palestinian private and public property. Nablus was especially hard hit, especially in its old city, which contained many buildings of cultural, religious and historic significance. . . . United Nations agencies and other international agencies, when allowed into Ramallah and other Palestinian cities, documented extensive physical damage to Palestinian Authority civilian property. That damage included the destruction of office equipment, such as computers and photocopying machines, that did not appear to be related to military objectives. While denying that such destruction was systematic, the Israeli Defence Forces have admitted that their personnel engaged in some acts of vandalism, and are carrying out some related prosecutions.

. . . . Over 2,800 refugee housing units were damaged and 878 homes were demolished or destroyed during the reporting period, leaving more than 17,000 people homeless or in need of shelter rehabilitation.

Id. The report also includes detailed information of events that occurred in Ramallah in April, where the IDF ransacked human rights group agencies, other information gathering centers and even removed computer hard drives and systems so that all statistics and information in these databases have been completely lost. Id. The report includes eyewitness testimony and the European Union
deportations of individual civilians or families. Relatedly, the widespread practices of sealing or demolishing Palestinian homes has been pointed to as a refugee-creating policy that may be a predicate to ultimate expulsion. According to Jewish human rights group B'Tselem, since 1987 Israel has "administratively" demolished at least 2450 Palestinian homes, resulting in an estimated 16,000 Palestinians losing their homes. It has also been argued that Israel is intentionally and systematically imposing extreme financial hardship on the West Bank in an effort to create widespread unemployment, poverty and malnutrition in the Palestinian population, which would make expulsion easier.

Report on the same incidents. Id.


28. B'TSELEM, HOUSE DEMOLITION STATISTICS, (1987-2002), at http://www.btselem.org/English/Planning_&_Building/Statistics.asp (last visited Jan. 13, 2002). The UN Secretary General reported that 878 houses were completely destroyed in Jenin alone in 2002. See SECRETARY GENERAL, supra note 24. Although it is difficult to accurately quantify the number of houses destroyed, there is no doubt that the practice is taking place, and has since the early days of Israel. In the (paraphrased) words of a French representative to the UN General back in 1948: "[m]any of the villages which they had been obliged to leave had been partly demolished by systematic action which was still continuing. . . . It was unthinkable that the horrors perpetrated during the war against the Jewish populations in Europe should be repeated or should be reproduced in respect of the Arab population. Such a situation, which was a disgrace to mankind, must be brought to a close."


29. According to a recent report by the Secretary General, recent events in the area have contributed to a decline of 30% in the per capita income of Palestinians in the Occupied Territories resulting in poverty rate of 45%, more than double what it had been before the violence began. SECRETARY GENERAL, supra note 24. The UNRWA Emergency Appeal claims that the poverty rate is over 55% in the West Bank and 70% in Gaza. UNRWA APPEAL, supra note 24. It also claims that "[i]n August 2002, the preliminary results of a nutritional survey in the Occupied Territories conducted jointly by Johns Hopkins University, CARE International, ANERA and others with funding from USAID were published." Id. The results showed that malnutrition among children
Accusations have also been made against certain settlers' activities. An editorial in the Israeli newspaper *Ha'aretz*, which was echoed by the Belgian human rights group *Kol Shalom*, accuses that by "burning the olive harvests, damaging the olive trees and preventing farmers from reaching privately owned groves," the settlers are, with the complicity of the Israeli military, "stealing... Palestinian food" and thus "laying the groundwork for Transfer, not by the state but by a group of settlers."  

Another factor pointed to by human rights activists as an indication of Israeli policy is the escalating number of governmentally subsidized settlements in the Occupied Territories—which has increased from an estimated 3176 Jewish settlers at the end of 1976, to approximately 65,000 in 1987, to between 200,000 and 400,000 in 2002. The building of so many settlements and the confiscatory policies that facilitate them have fueled fears of mass expulsions to close the circle of Israeli annexation of the West Bank. Within the State of under five had reached emergency levels, with approximately twenty-two percent of children suffering from acute or chronic malnutrition. Id. Figures in the Gaza Strip were significantly higher. Id. In both fields, nearly one-fifth of Palestinian children aged from six months to six years were shown to be moderately or severely anemic. Id. "More than half of the Palestinian population had been forced to decrease its food consumption." Id. Both the UNRWA Appeal and the SECRETARY GENERAL'S REPORT blame Israel for the continued activities and for not permitting relief workers from entering in order to relieve some of the conditions. UNRWA APPEAL, supra note 24; SECRETARY GENERAL, supra note 24. Theses general claims are reinforced by specific reports, such as that contained in the press release of April 16, 2002 when the UN reported "[a]t one point today a tank parked itself in front of one of UNRWA's half-full food trucks to prevent it from distributing its remaining food aid." UNRWA PRESS, supra note 24.

30. Ze'ev Schiff, *The army must stop the olive thieves*, *Ha'aretz*, Oct. 30, 2002, available at http://www.haaretzdaily.com/hasen/pages/ShArt.jhtml?itemNo=224957. *Ha'aretz* pointed out that the settlers had enlisted the former Chief Rabbi Mordeachi Eliahu who issued a religious edict ruling that Palestinian olive harvest belonged to the Jews. Id. In criticizing this edict, *Ha'aretz* editors argued that this position "is a rape of Jewish religion, the handiwork of idol worshipers and a disgrace for the people of Israel, whether from the right or the left, secular or religious." Id.

31. Accurate estimates on the number of settlements are difficult to find. The Israeli organization Shalom Akhshav—"Peace Now"—estimates that there are currently 200,000 settlers, but its report makes clear that the number is climbing quickly and constantly. PEACE NOW, FACTS ON THE GROUND SINCE THE OSLO AGREEMENTS, at http://www.peace-now.org/ FactsOnTheGroundSinceTheOsloAgreements.PDF (Dec. 4, 2000). Meanwhile, the Foundation for Middle East Peace, a U.S. organization with a board of academics and former diplomats, estimates that the number is closer to 400,000. LE MONDE DIPLOMATIQUE, SETTLEMENTS, available at http://mondediplomacy.com/focus/mideast/1298 (last visited Apr. 9, 2003) (citing report by Washington-based Foundation for Middle East Peace).


A Palestinian Civil Litigation Campaign

Israel, human rights advocates point to widespread confiscation of Jerusalem residency cards from Palestinians, lack of funding for basic municipal needs in Palestinian neighborhoods in Jerusalem, and discriminatory policies and practices for issuing building permits in Jerusalem. Against the backdrop of these policies and practices, and notwithstanding concerned voices from human rights groups and Palestinian advocates, the once unspeakable idea of physically expelling the Palestinians appears to enjoy more than marginal political support. Going back to the specific proposals raised at the beginning of this Essay, Armey's office received more phone calls from supporters of the notion of transfer than from those in opposition. Although similar statements by major politicians usually garner some reaction in American editorial and news pages, his comments were largely ignored in the mainstream press. Meanwhile, in Israel, a significant segment of the general Israeli population (44% or 46% depending on the survey report) seems to support expelling the Palestinians, a position formally reserved to a relatively small group of far-right extremists.

34. For example, according to the Palestinian Academic Society for the Study of International Affairs, "Israel applies a number of discriminatory methods to control the number of Palestinians who legally reside in the city." PASSIA, Fact Sheet—Jerusalem, at http://www.passia.org/palestine_facts/pdf/pdf2002/jerusalem/IDcards-j.pdf (Apr. 17, 2003). Under this "Israeli policy of 'quiet deportation' in East Jerusalem—through court judgments, legal and administrative tactics—has resulted in the revocation of 6,444 ID Cards from Palestinian residents of East Jerusalem since 1967 (as of April 2001 [and not including dependent children])." Id. (emphasis in original); see also Shamai Leibowitz, The Case of Fareg Ibrahim: symptomatic of a slow process of ethnic cleansing, at http://electronicintifada.net/v2/article1200.shtml (Apr. 14, 2003) (documenting the illegal detention of and efforts to deport Fareg Ibrahim, an Arab-Egyptian married to an Arab-Israeli woman, efforts that are allegedly aimed at "caus[ing] Mr. Ibrahim's whole family to leave their home and property in Israel"); B'TSELEM, supra note 25. B'Tselem claims that "an Arab may get a building permit to build a two-story building of 50 square meters" while a "Jew owning the same size plot of land could build an eight-story building of 200 square meters." Id. This disparate treatment, in the words of one scholar, has meant that "[a]fter its emergence in 1948 Israel reversed 1800 years of history, usurped Jerusalem and transformed it from an Arab into a Jewish city, in violation of international law, UN resolutions and the rights of its original inhabitants." HENRY CATTAN, THE PALESTINE QUESTION 251 (1988).

35. Engel, supra note 2.


37. Compare Alexander Cockburn, Sharon's Final Solution for the Palestinians? (May 7, 2002), at http://www.globalresearch.ca/articles/COC205A.html (citing a Gallup poll conducted in April 2002 as finding 44% of Israelis supported transfer); with Anthony Arnow, Israel and the Threat of Transfer, (Apr. 9, 2002), at http://www.zmag.org/content/showarticle.cfm?SectionID=222&ItemID=1666 (citing a March 2002 poll by the Jaffe Center for Strategic Studies, which "showed that 46 percent of Israelis would support forcibly expelling Palestinians from their homeland"). The site for the Moledet Party claims that, according to the
These political realities provide a haunting backdrop to an April 2002 article by one of Israel's best-known military historians, Professor Martin van Crevald. In the article, Professor van Crevald cautions that Sharon's near-term goal is to "expel" Palestinians from the West Bank and predicts that a U.S. attack on Iraq or a terrorist strike in Israel could trigger a massive mobilization to "clear" the Occupied Territories of their two million Arabs. Since Professor van Crevald's article, there have been group letters sponsored by hundreds of Israeli and American academics warning of the same.

Notwithstanding the ominous threat of expulsion, there are signs that calls for expulsion of Palestinians have not completely overtaken rational discourse. Mr. Armey was eventually forced to respond to claims that his comments amounted to a call for ethnic cleansing and he issued a written statement in the days following his original remarks claiming that he had been misinterpreted.

38. van Crevald, supra note 3. While the motives Professor van Crevald ascribes to Israeli leaders may seem extreme, particularly in light of Sharon's silence on the issue, they are consistent with other statements made by other Israeli leaders. For example, according to the rightwing newspaper YEDIONT AHARONOT, in November 1989 Benjamin Netanyahu told students at Bar-Ilan University, "Israel should have exploited the repression of the demonstrations in China, when world attention focused on that country, to carry out mass expulsions among the Arabs of the territories." Reprinted in numerous sources, including Will Youmans, Israel May "Transfer" Palestinians During the War on Iraq, at http://endtheoccupation.org/resources/news-articles/youmans.html (Oct. 9, 2002).

39. van Crevald, supra note 3.

40. See PROFESSORS OF CONSCIENCE, LETTER AGAINST EXPULSION OF THE PALESTINIANS, at http://www.professorsofconscience.org. (last visited Sept. 29, 2002). The website contains letters from American and Israeli academics that are fearful of the increasing possibility of ethnic cleansing in the Occupied Territories by the Israeli government. Id. So far 981 American professors have signed on to the American response letter and, as of September 29, 2002, 187 Israeli professors had signed the original letter. Id.


42. Dick Armey, On the Palestinian Situation, at http://freedom.house.gov/library/foreignaffairs/hardball.asp (issued May 2, 2002). The posting on the House Majority Leader's website stated:

In my exchange with Chris Matthews tonight, I left the impression that I believe peaceful Palestinian civilians should be forcibly expelled from the West Bank and Gaza Strip. This does not reflect my views. I was merely trying to convey my strong belief that Israel should yield no further territory until its security is assured and that the individuals who support terrorist acts may properly be exiled from the area. Let me be clear: Israel is fighting the same war on terrorism that we are fighting. I reaffirm my support for their right to defend themselves and secure their peace and security.
The expulsion campaign launched by Israeli Tourism Minister Elon and the Moledet Party was harshly criticized by the Israeli newspaper Ha'aretz, which referred to "the disgrace of the transfer idea." Moreover, the newspaper was joined by opposition leader Yossi Sarid in calling for Sharon to expel Elon from the coalition for even making the proposal. Even the Gamla website acknowledges that the notion of transfer is still considered a "taboo topic" in Israel, which is consistent with the fact that an admittedly fragile majority of Israelis today support the creation of an independent State of Palestine.

On balance, however, it appears both from its statements and tactics that the current Israeli Government views "transfer" as a viable option and an important strategy. For those who have watched the escalating cycle of violence between Palestinians and Israelis, the prospect of full-scale efforts to militarily expel Palestinians threatens disaster for the region and untold further suffering for Palestinian refugees.

III. INTERNATIONAL LAW REGARDING THE MASS EXPULSION OF PALESTINIANS

It is clear beyond debate that international law prohibits mass expulsions of the sort predicted and feared in the Occupied Territories. Although there are

Id.

43. See Lynfield, supra note 3 (quoting HA'ARETZ article).

44. Id.

45. Boris Shusteff, GAMLA, The Logistics of Transfer, at http://www.gamla.org.il/english/article/2002/july/b1.htm (July 3, 2002) (stating that "The issue of transfer is a taboo topic in Israel. It is assumed a priori that transfer is impossible, unachievable and immoral to boot. Even to touch upon the subject is politically incorrect."). This assessment may have changed, particularly when considering a recent report that states that 63% of Israelis polled think that "the government of Israel should encourage the emigration of Israeli Arabs." Press Release, Arab Association for Human Rights, Sixty-three percent of Jewish Israelis think Arab Citizens are a Threat and Should Be "Encouraged to Emigrate," available at http://www.arabhra.org/pressrel/pressrel021218.htm (Dec. 19, 2002).


47. For a compelling discussion of how "expulsion" violates the various facets of international law see John Quigley, Displaced Palestinians and a Right of Return, 39 HARV. INT'L
several sources of legal authority, the most obvious is Article 49 of the Fourth Geneva Convention, which provides:

Individual or mass forcible transfers, as well as deportations of protected persons from occupied territory to the territory of the Occupying Power or to that of any other country, occupied or not, are prohibited, regardless of their motive. 48

In this provision, the term "protected persons" refers to "those who, at a given moment and in any manner whatsoever, find themselves ... in the hands of a[n] ... Occupying Power of which they are not nationals." 49

These prohibitions have been interpreted to apply not only to prohibit militarily imposed expulsion, but also to extend to orders, actions, policies and practices, intentionally aimed at directly or indirectly generating refugees. 50 These less overt means of expulsion involve more subtle questions of fact about whether a particular transfer is voluntary or involuntary, and whether it is the consequence of an affirmative governmental policy or an unintended consequence of otherwise legitimate governmental policies. It is beyond the scope of this Essay to engage in a protracted discussion of whether the various practices described above (settlements, home demolition, water diversion, etc.) violate international law prohibiting expulsion because most of these practices also constitute separate violations of other international human rights law. For example, the United Nations' Committee Against Torture concluded in

L.J. 171, 219-27 (1998); see also Christopher M. Goebel, A Unified Concept of Populations Transfer, 22 DENY. J. INT'L L. & POL'Y 1, 4-6 (1993) (defining "expulsion" as "[t]he mass removal of citizens across internationally recognized borders of a state"). Goebel goes on to state that such deportations or transfers were considered "crimes against humanity" by the Nuremberg War Crimes Tribunal and also argues that these actions violate human rights law in times of peace. Id. See also George E. Little, Forced Movement of Peoples, 90 AM. SOC'Y INT'L L. PROC. 545 (1996) (claiming that forced transfer of individuals is prohibited by Article 49 of the Fourth Geneva Convention in times of armed conflict and by Article 13 of the International Covenant on Civil and Political Rights for aliens during times of peace). Cf. Kathleen Sarah Galbraith, Moving People: Forced Migration and International Law, 13 GEO. IMMIGR. L.J. 597 (1999) (analyzing expulsion in the former Yugoslavia).


50. The preamble to the International Law Association's Declaration of Principles of International Law on Mass Expulsion, adopted at the 62d Conference, Seoul, Korea, August 24-30, 1986, states that "mass expulsion results from the use of coercion, including a variety of political, economic and social measures which are directly, or even more so indirectly, force people to leave or flee their homelands for fear of life, liberty or security..." reprinted in JEAN-MARIE HENCKAERTS, MASS EXPULSION IN MODERN INTERNATIONAL LAW AND PRACTICE app. 6 at 224 (1995). As Jean-Marie Henckaerts states: "expulsion of nationals, whether through direct expulsion orders or through indirect refugee-generating policies, are clearly prohibited in international law." Jean-Marie Henckaerts, Introductory remarks to George E. Little, Forced Movement of Peoples, 90 AM. SOC'Y INT'L L. PROC. 545, 545 (1996).
November 2001 that Israeli demolitions of Palestinian homes and policies on closure may in certain instances amount to cruel, inhuman or degrading treatment or punishment, in breach of the UN Convention Against Torture. House demolition has also been decried by a range of human rights groups as violating international human rights and humanitarian law against collective punishment. This overlap is not surprising since modern international law prohibitions against expulsions reflect a consolidation, because historically mass expulsions have been accompanied by, and accomplished through, other serious violations of international law. When the more general prohibition against mass expulsion was not as clearly pronounced as today, these ancillary violations were pointed to as a basis to denounce the larger expulsion.

Although Israel is a signatory to the Geneva Convention, over the years some Israeli scholars and politicians have advanced arguments that the Fourth Geneva Convention does not apply to the Occupied Territories. The various


52. See, e.g., Usama R. Halabi, Demolition and Sealing of Houses in the Israeli Occupied Territories: A Critical Legal Analysis, 5 TEMP. INT'L & COMP. L.J. 251, 267 (1992); see also BTSELEM, POLICY OF DESTRUCTION: HOUSE DEMOLITION AND DESTRUCTION OF AGRICULTURAL LAND IN THE GAZA STRIP, at http://www.btselem.org/Download/Policy_of_Destruction_En.pdf (Feb. 2002). For a thoughtful and detailed analysis of the application of the Fourth Geneva Convention to various Israeli practices and policies regarding the Palestinians, see Ardi Imseis, On the Fourth Geneva Convention and the Occupied Palestinian Territory, 44 HARV. INT'L L.J. 65, 100-21 (2003) (examining Israeli annexation and expropriation of Palestinian land, construction of Jewish settlements, infliction of torture and other great suffering or serious bodily injury, deportation of Palestinians, and deprivation of various rights, including right to a fair and regular trial). In addition, the UN Secretary General's report of July 30, 2002 provides other potential bases for human rights claims in its documenting of how Israel "has confiscated Palestinian land, exploited and abused natural resources and created a separate structure of life, including a different system of law, to carry out its illegal settlement campaign, which is the only remaining colonial phenomenon in the world at the beginning of the 21st century." SECRETARY GENERAL, supra note 24, at 21. Other examples of separately cognizable human rights violations abound. See, e.g., Isaac, supra note 23 (noting that Israeli discriminatory and confiscatory water policies violate the Geneva Convention).


54. See id. at 738-39 (noting that international law on displacement is less well developed and thus stressing the importance of component human rights violations).

55. For example, Israel has taken the position that the West Bank and Gaza are "administered areas" rather than "occupied territories," though Israel has always claimed to apply certain humanitarian provisions regarding the protection of civilians. Meir Shamgar, The Observance of International Law in the Administered Territories, 1 ISR. Y.B. ON HUM. RTS. 262, 266 (1971). Israel's argument, as articulated by Professor Justus Weiner, is that the Fourth Geneva Convention focuses on protecting civilians during war and has virtually nothing to say about
Theories proffered point to a range of factors that arguably make the Israeli occupation somewhat unique, such as the fact that Israel did not oust an established sovereign (Jordan had been occupying the West Bank) or the extreme length of the Israeli occupation. These various attempts to argue that its occupation is a special case outside the purview of international law's normal prescriptions, however, have been rejected by scholars and the international community more generally. Evidencing this rejection, the UN Security Council and the General Assembly have framed resolutions regarding Israel's conduct and the applicable humanitarian principles in terms that assume and insist that the Convention applies to the Occupied Territories.

Today, the debate about the applicability of the terms of the Geneva Convention to the Occupied Territories has been almost completely mooted. The Geneva Convention is largely understood as codifying international customary law, which would apply even if the Convention did not. Even the Israeli
Supreme Court has acknowledged that the provisions of the Geneva Convention are applicable as part of customary international law, and Israel purports voluntarily to apply the terms of the Convention in the Occupied Territories. In addition to the Geneva Convention, there are many human rights conventions that prohibit expulsion of nationals and aliens outside the context of occupation. For example, Israel ratified the International Covenant on Civil and Political Rights in 1991, which contains provisions in Article 13 that limit the possibilities of lawful expulsion of individuals.

In sum, mass expulsions are illegal under international law. It is not open to serious debate whether forcible transfer of the Palestinians out of the Occupied Territories in the terms cautioned by Professor van Creveld and advocated by some extremist groups would violate international law. Instead, the question is, given Israel's record of continued violations of international law, how to

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61. Dwikat v. Government of Israel, 34(1) P.D. 1 (1979) (stating that the Israeli High Court of Justice expressed that "the Hague Rules" "bind the military administration in Judea and Samaria, being part of customary international law").

62. For instance, Israel's manual for military advocates is based on the norms of international law and on the laws of war. I MILITARY GOVERNMENT IN THE TERRITORIES ADMINISTERED BY ISRAEL 1967-1980: THE LEGAL ASPECTS 50 (Meir Shamgar ed., 1982). Notwithstanding this assertion, Israeli military repeatedly breaches international laws of war, such as using human shields. Chris McGrael, Israel's human shields draw fire, GUARDIAN (London), Jan. 2, 2003, available at http://www.guardian.co.uk/israel/Story/0,2763,867343,00.html. In response to the use of human shields, Israeli human rights groups sought a supreme court order barring soldiers from seeking protection behind human shields after their widespread use during the army's assaults on Jenin and other West Bank cities. Id. The military admitted the policy was illegal and said it would stop, but according to human rights groups the practice has continued in violation of international law. Id.


[The state of emergency which was proclaimed in May 1948 has remained in force every since. This situation constitutes a public emergency within the meaning of Article 4(1) of the Covenant. The Government of Israel has therefore found it necessary, in accordance with the said Article 4, to take measures to the extent strictly required by the exigencies of the situation, for the defense of the State and for the protection of life and property, including the exercise of powers of arrest and detention. In so far as any of these measures are inconsistent with Article 9 of the Covenant, Israel thereby derogates from its obligations under that provision.

Id. This reservation relates to arrest and detention, not expulsion, which suggests by negative implication that Israel considers itself bound by the other provisions of the Convention.

64. Numerous informed individuals, organizations, and governmental agencies have "abundantly and persuasively" documented Israeli violations of international law protections for occupied peoples, as well as abuses of basic human rights. Falk & Weston, supra note 26, at 133-34. Included among these organizations are the following: the United Nations Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Populations of the Occupied Territories, the United States Department of State, Al Haq/Law in the Service of Man, Amnesty International, B'Tselem (The Israeli Information Center for Human Rights in the Occupied Territories), the International Commission of Jurists, the International Committee of the Red Cross,
prevent further violations of international law, particularly in the form of military expulsion of Palestinians and in the creation of preconditions for such expulsion. Framed in these terms, the concern over potential plans for expulsion raises the age-old problems for international human rights discourse—the tension between universal human rights and state sovereignty, between norm creation and norm enforcement.  

IV. THE POTENTIAL FOR CIVIL ADJUDICATION RESPONSE

In recent years, human rights activists have found a new mechanism for enforcing international human rights norms—the private civil law suit in national courts. Suits have been brought, with varying degrees of effectiveness, against a range of different human rights abusers. To date, Palestinians may not be as actively involved in pursuing civil litigation as other groups, and my aim in this last Part is to examine how that situation might change.

As a starting premise, any strategy of redress through civil litigation must be regarded as a supplement to, not replacement for, traditional international tools such as UN Resolutions of condemnation, international criminal prosecution, and economic sanctions. Another starting premise is that, to be most effective, civil adjudication should be pursued as part of an organized and coordinated campaign. There are many potential pitfalls, and resounding failures
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or tactical miscalculations could make international civil litigation more difficult not only for other Palestinian claimants, but also for other victims of human rights abuse. With these premises in mind, I first consider the overall purpose and function of a civil litigation campaign and then turn to the particular considerations of who, where and how.

A. Overview and Purpose of a Civil Litigation Campaign

Civil adjudication may offer a direct channel to invoke international law to protect individual Palestinians who have suffered violations, and may also offer a meaningful strategic tool for the larger Palestinian population as a whole. Because adjudication focuses on the grievances of individuals and aims to remedy proven wrongs, it can provide direct, needed and measurable relief for harms that have not been effectively redressed through traditional channels in the international system. However, the traditional mechanisms of international law are still tied to the primary actor at the international level—the nation-state.\(^6^8\) As stateless refugees, therefore, Palestinians begin with a distinct disadvantage in acting in the international system and must in most instances rely on indirect representation by nation-states whose sympathies they attract.\(^6^9\)

Individual civil claims, on the other hand, circumvent many of these limitations. By providing for the assertion of individual claims, civil litigation can shift the focus from Palestinians as a group, tangled in a complex and seemingly intractable political and historical situation, to individuals who have suffered identifiable and particularized harms. These individual injuries can be redressed, permitting the victims a degree of dignity and affirming the vitality of the individual rights articulated on their behalf.\(^7^0\) Underlying the very concept

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\(^6^8\) Traditionally, international law has taken what could be described as a state-centric approach, which posits that states are the primary actors in the international arena, and thus the instruments of international law can only establish legal obligations and rights upon the states, not individuals. See Michael Akehurst, *A Modern Introduction to International Law* 9 (1982) (stating that "international law is primarily concerned with states") (emphasis removed); Joel Richard Paul, *Cultural Resistance To Global Governance*, 22 Mich. J. Int’l L. 1, 13 n.55 (2000) (observing that since international law is focused on states, non-state actors have traditionally been neglected). While the state-centric model has shifted to acknowledge the rights and responsibilities of the individual, demonstrated by the advent of literally hundreds of treaties recognizing the rights and obligations of individuals, in reality, enforcement vis-a-vis individuals is limited because there is no international forum in which individuals can assert their rights or bring claims against a state. See William J. Aceves, *Liberalism and International Legal Scholarship: The Pinochet Case and the Move Toward a Universal System of Transnational Law Litigation*, 41 Harv. Int’l L.J. 129, 130 (2000).

\(^6^9\) An example that demonstrates well the hindrances that apply to leaders who do not have political autonomy is Israel’s blockade of Arafat’s plans to travel to attend an Arab summit. See Saud Abu Ramadan, *Arafat Unlikely to Attend Arab Summit*, Wash. Times, Mar. 25, 2002, available at http://www.washtimes.com/upi-breaking/25032002-064005-5457r.htm.

\(^7^0\) As Harold Koh explains, "Like other accountability mechanisms, civil accountability combines several goals: compensation of the victims, denials of safe haven to the defendant in the judgment-rendering forum, deterrence of others who might contemplate similar conduct, and
of adjudication is the idea that an independent decision-maker can resolve disputes through reasoned application of law to facts and, in so doing, provide a meaningful law-based challenge to official wrongdoing. Moreover, vindication of the threads of these individual claims could be woven together to have a cumulative effect both in terms of the international publicity, political pressure and, to the extent that claims result in enforceable judgments, financial pressure on Israel. Finally, by directly involving victims in the legal process and affirming the rule of law, adjudication provides a meaningful alternative to violence as a means to vindicate their suffering.

In other contexts, attorneys and advocates working with victims of human rights abuses have observed that active participation within the legal process can be empowering and can restore a sense of justice to victims of grave human rights abuses for whom the courts of their countries provided no recourse. Because of the failure of public international law and its processes to effect solutions, some have claimed that law has little relevance to resolving the larger Palestinian-Israeli conflict. A concerted adjudication campaign may be able to send a message to both sides that law does have a role to play in resolving their conflict.

Optimism about the potential for a civil adjudication campaign should be tempered, however, because there are many limitations and obstacles to a civil adjudicatory approach. There are fundamental questions about how jurisdiction can be asserted, and once asserted, maintained and effectuated in the face of doctrines such as forum non conveniens and sovereign immunity.


72. See Koh, supra note 70, at 315.

73. In the words of Richard E. Messick, co-director of the World Bank’s Legal Institutions Thematic Group:

the taking of revenge can spark an endless cycle of violence as first one side and then the other retaliates. The adjudication of a dispute by a court of law offers an alternative, one where facts are carefully assayed and self-defense and such other considerations as may excuse or explain the conduct are reviewed. In short, courts are a way to resolve disputes justly, . . . justice can form the basis of a lasting social order.


74. "Even if no monetary recovery is possible, human rights victims receive the satisfaction that comes from a judicial acknowledgment that they have been wronged; such an acknowledgment likely serves other purposes as well, including denying the perpetrator a safe haven and deterring future, similar conduct." Aric K. Short, Is the Alien Tort Statute Sacrosanct? Retaining Forum Non Conveniens in Human Rights Litigation, 33 N.Y.U. J. Int’l L. & Pol. 1001, 1081 n.338 (2001).

75. See John Quigley, The Role of Law in a Palestinian-Israeli Accommodation, 31 Case W. Res. J. Int’l L. 351, 362 (1999) (warning against efforts by some to find a political solution to the Israeli-Palestinian conflict that disregards international law and bluntly violates Palestinian rights on such issues as borders, settlements, displaced persons, and Jerusalem).
also complicated questions about where to bring such litigation—generally, the United States is an inviting forum for such claims because of the availability of wide-ranging discovery, class actions, punitive damages, contingency fees, and the absence of a loser-pays rule, which together permit plaintiffs to bring claims that are difficult to sustain in other legal systems. On the other hand, the U.S. approach to sovereign immunity and the uniquely close alliance between the United States and Israel may counsel against focusing the campaign in the United States.

Notwithstanding these obstacles, the mounting threat of military expulsion demonstrates the potential for previously marginalized extremists to set Israeli policy and highlights the need for a sustained and coordinated campaign of international civil litigation to counter further human rights abuses. While such a campaign could not directly prevent militarily enforced expulsion, it could focus attention on the international law implicated in the Palestinian-Israeli dispute and reduce or alleviate the preconditions for expulsion. For example, while it might be difficult to satisfy a decision-maker that the settlements and the related diversion of resources or the demolition of Palestinian houses are part of a larger policy aimed at expulsion, they would be separately cognizable as human rights violations. Incremental legal challenges to claims that are collateral to or create the preconditions for an expulsion of Palestinians from the Occupied Territories may make larger plans for systematic expulsion less tenable. Relief from some of these on-going abuses could also stymie the continuing escalation of tension and violence and hence create fertile ground for meaningful peace talks.

B. Practical Considerations in Launching a Civil Adjudication Campaign

This Essay contemplates not simply the filing of an individual lawsuit or a few random suits, but a concerted campaign. Before such a campaign could be launched, there are a range of practical considerations that must be addressed.

1. What is the Definition of Success?

Human rights litigation often has multiple goals. Although framed in terms of claims for monetary relief payable to harmed individuals, even in the United

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76. See infra notes 128-32 and accompanying text.

77. See infra notes 128-32 and accompanying text.

78. See, e.g., Mitchell G. Bard, Roots of the U.S.-Israel Relationship, at http://www.us-israel.org/jsource/US-Israel/roots_of_US-Israel.html (stating that "Tod today, the United States and Israel are the closest of friends and allies.").

79. While I have used the current threat of military expulsion as the catalyst for launching a campaign, the campaign would be directed at Israel's on-going violations of basic human rights. These violations existed before Sharon came to office and are likely to continue even if the apparent plan to militarily expel Palestinians is never executed.

80. See supra notes 51-52 and accompanying text.
States where such litigation has been the most active and successful, most litigation does not result in a final judgment. Of those that have resulted in a final judgment, only rarely have they been successfully enforced. Even so, such claims are still worth pursuing when the prospect of obtaining an enforceable monetary judgment seems remote, because they serve other goals such as provoking changes in the law, bringing publicity to particular causes, "causing discomfort" and embarrassment to human rights abusers, opening avenues for factual investigation of alleged abuses by a neutral arbiter, providing a constructive context for victims to "tell their story," applying pressure on domestic legislatures to respond with legislation against repressive regimes, encouraging consumer boycotts and the like. Another

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81. See Beth Stephens, Taking Pride in International Human Rights Litigation, 2 CHI. J. INT'L L. 485, 485 (2001). As Professor Stephens explains:

Over the past 20 years, several dozen international human rights cases have been filed in US courts. Many have been dismissed; many are still pending. A small number have resulted in judgments against defendants accused of violations ranging from genocide and war crimes to torture and disappearances. While few money judgments have yet been collected, successful plaintiffs have expressed great satisfaction in the sense of justice and vindication they have obtained from participation in these lawsuits.

Id.


84. Anne-Marie Slaughter & David Bosco, Plaintiff's Diplomacy, 79 FOREIGN AFF. 102, 106 (2000) (arguing that the "principal benefit of these [human rights] suits to their plaintiffs is the public attention they generate").

85. The threat of lawsuits has already caused some discomfort for Israeli government officials, as demonstrated by the fact that the Israeli government recently issued an advisory to all government, security, and army officials, warning them that foreign travel could subject them to lawsuits for human rights abuses in those foreign jurisdictions. Nicholas Blanford, Sharon Begins to Take War-Crimes Lawsuit Seriously, CHRISTIAN SCI. MONITOR, July 30, 2001, at 7.

86. One Swiss scholar reluctantly acknowledged that litigation brought by Jewish Holocaust survivors had "the beneficial effect of forcing the Swiss to revisit some of the more unpleasant aspects of their country's history." Samuel P. Baumgartner, Human Rights and Civil Litigation in the United States Courts: The Holocaust-Era Cases, 80 WASH. U. L.Q. 835, 847 (2002).

87. Thomas E. Vanderbloemen, Assessing the Potential Impact of the Proposed Hague Jurisdiction and Judgments Convention on Human Rights Litigation in the United States, 50 DUKE L.J. 917, 929 (2000) (stating that "[t]he process of bringing a case before a neutral judge to explain the abuses one has suffered has been described as a valuable part of a victim's healing process.") (citing Edward A. Amley, Note, Sue and Be Recognized: Collecting § 1350 Judgments Abroad, 107 YALE L.J. 2177, 2180 (1998)).

88. Curtis A. Bradley, The Costs of International Human Rights Litigation, 2 CHI. J. INT'L L. 457, 459 (2001) (acknowledging that "a favorable judgment from a US court, even if not enforceable, may provide the victims with some moral vindication and psychological redress," though offering a skeptical analysis of the costs associated with such litigation).
important potential goal is provoking settlement—and there has been measured success in this regard. Some of the most incredible success stories are the settlements produced in response to a number of cases brought by survivors of the Holocaust and their heirs to recover compensation for losses suffered on the eve of, or during, World War II.91 These cases, which confronted not only the typical obstacles of human rights claims but also the additional problems associated with bringing claims that are nearly a half-century old, yielded an estimated eight billion dollars in settlements despite the fact that not a single judgment was rendered or enforced.92

It is beyond the scope of this Essay to define the actual goals of a civil adjudication campaign, but it is worth raising a few factors to be taken into account in determining what those goals should be. First, the larger, nonmonetary goals described above are part of a distinctly American tradition of using litigation as a tool for social change and as a regulatory tool.93 In civil law systems, public interest litigation has not been popular or successful in part because of "a different conception of the respective roles of legislation and adjudication in the law-making process."94 Even if less receptive to litigation as a tool for social change as a general matter, European countries generally have a much stronger commitment to upholding and enforcing international law.95 As a consequence, several European nations have made recent efforts to open their courthouse doors to international causes, though the redress they offer is not tied to large dollar-value judgments.96 Thus, identification of the ultimate goals must be tied to considerations of where suits should be brought, which is discussed in further detail below.


90. See id.


92. Bazyler, supra note 91, at 11-12.


95. For example, when European countries enter into treaties, in most instances the treaties automatically become part of those nations' municipal law and are treated as binding and enforceable through municipal mechanisms, while in the United States, the treaty must be "self-executing" or be incorporated through domestic legislation before it has the same effect. See, e.g., Sarah Joseph, A Rights Analysis of the Covenant on Civil and Political Rights, 5 J. INTL LEGAL STUD. 57, 67 (1999) (describing this difference in the context of the Covenant on Civil and Political Rights).

96. See infra notes 113-19 and accompanying text.
Second, and also related to geographic considerations, determining the goals of a civil adjudication campaign cannot be made wholly independent of the separately occurring political processes in the relevant nations. The allegations and the manner of pursuing them, even if nominally cordoned off from the political process, will have obvious and important ramifications in the foreign relations arena—not only between Palestinians and Israelis, but also for the host country or countries where such litigation is brought. If these foreign relations become too troublesome for the host country, they could affect the potential for success of such cases. For these reasons, in evaluating and delineating the goals of a civil adjudication campaign, the larger political context of the country that would host such litigation must be considered.

2. Who Are the Parties?

The pool of potential plaintiffs is obvious—individual Palestinians who have suffered violations of international law. But since the first efforts will serve as "test cases" for future ones, the most sympathetic claimants with the strongest cases should be selected to lead the campaign. The strength of these "test cases" may affect not only the legal success of individual claims, but also the public and political response to the campaign. For these reasons the first claims should be evaluated both in terms of the ease of establishing wrongdoing as a legal matter and the sources of proof needed to establish it as a factual matter, with priority given to claims with multiple sources of evidence, including neutral outside observers (media or human rights monitors).

As for defendants, there are more options. Corporate actors are attractive defendants because of their ability to pay and because they cannot invoke many of the procedural protections available to sovereign entities. Unlike some contexts in which large corporate interests have been accused of acting in concert with rogue governmental entities in the perpetration of human rights abuses, however, private commercial actors in this scenario have a less direct


99. See infra notes 111-19 and accompanying text.

100. Recent efforts by human rights activists have sought to expand the bases of corporate liability for human rights abuses to cover not only direct involvement in the execution of illegal acts by others, but also complicity in abuses committed by others. The overall success of these complicity theories is still uncertain, but to date they involved claims against companies whose involvement included more than knowingly selling products used to commit human rights abuses. Andrew Clapham & Scott Jerbi, Categories of Corporate Complicity in Human Rights Abuses, 24 Hastings Int'l & Comp. L. Rev. 339, 347 (2001) (citing claims involving Unocal's agreements and
role and thus their legal culpability would be more difficult to establish. For example, the Israeli government uses tractors manufactured by the Caterpillar Tractor Company to demolish Palestinian homes. Human rights groups have criticized Caterpillar Tractor Company for selling tractors and equipment to the Israeli government knowing that they might be or even are likely to be used for this purpose. Outrage at Caterpillar recently intensified when a Caterpillar tractor used by the Israeli army crushed to death American peace activist Rachel Corrie, who was trying to prevent the demolition of a Palestinian home in Gaza, and a nine-month pregnant Palestinian woman, Nuha Sweidan, whose home fell in on her as an adjacent home was being demolished.

activities with the government of Burma).


102. Georgetown University Professor Mark Lance resolutely described in a letter to executives at Caterpillar that the company knows of the use to which Israel puts its equipment and therefore it is "knowingly facilitating crimes and there is no way to avoid the responsibility that comes with this." Letter from Mark Lance to Caterpillar, Inc. (June 24, 2002), at http://www.sustaincampaign.org/cat_ceoletter.html. Instead of litigation, however, activist groups have pursued a public relations campaign:

The U.S. industrial machinery giant, Caterpillar, is the main supplier of the specially designed bulldozers which the Israeli military uses to carry out this destruction. Both Amnesty International and Human Rights Watch have condemned recent home demolitions as war crimes. We have called upon the Caterpillar Corporation to immediately halt all sales of equipment to the Israeli military. However, to date, they have not responded. Therefore we have decided to launch a national campaign to expose Caterpillar's complicity in Israel's war crimes and stop its sales to the Israeli military. We believe that focusing this campaign against a US brand name company that is exporting machines used directly in attacks on civilians is likely to have a powerful effect on public opinion.

FREE PALESTINE ALLIANCE, STOP CATERPILLAR'S DESTRUCTION OF PALESTINIAN LIVES!, at http://jerusalem.indymedia.org/news/2002/07/62747.php (July 30, 2002). In addition to the general boycott and publicity campaign, in one protest, activists staged a mock arrest of Caterpillar executives for war crimes.

103. Rachel Corrie was an American volunteer with the International Solidarity Movement (ISM), a movement of "Palestinian and International activists working to raise awareness of the struggle for Palestinian freedom and an end to Israeli occupation . . . [through] nonviolent, direct-action methods of resistance." THE INTERNATIONAL SOLIDARITY MOVEMENT, at http://www.palsolidarity.org/whoarewe.htm (last visited Apr. 7, 2003). According to the ISM's official statement regarding Rachael Corrie's death, "[d]eaths during home demolitions are far too common. On 2 December 2002, 68-year-old Ashur Salem, deaf, was crushed to death when the Israeli army dynamited his home while he was sleeping. On 6 February 2003, 65-year-old Kamla Abu Said, partially deaf, was also crushed to death when the Israeli army razed her home in Gaza." INTERNATIONAL SOLIDARITY MOVEMENT, STATEMENT ON THE MURDER OF RACHEL CORRIE, available at http://bbsnews.net/bw2003-03-21c.html (Apr. 16, 2003). In another report by Human Rights Watch, "[a]t least 20 people were injured, nine of them children, when the Israeli Defense Forces (IDF) prevented residents from evacuating their home while the IDF was demolishing the next-door house in Gaza. Human Rights Watch said in reporting eyewitness testimony, . . ." HUMAN RIGHTS WATCH, GAZA: IDF HOUSE DEMOLITION INJURES REFUGEES, at http://www.hrw.org/press/2002/10/gaza1024.htm (Oct. 24, 2002).
Pursuing claims against Caterpillar in civil actions, however, might require risking resources to develop and expand new theories of human rights liability for sellers. Caterpillar's moral culpability seems unmistakable, and eventually its legal liability may be equally certain in the same way that other corporate actors such as Swiss Banks, Ford Motor Company, or Unocal have been held legally accountable. In the early stages of the campaign, however, formal litigation against Caterpillar under creative new legal theories may risk detracting resources and momentum from claims against the primary source of the harm—Israeli military policy and actions. For this reason, actions against Caterpillar or other corporate entities should be reserved until later stages in the campaign.

The primary focus of a civil litigation campaign should be the Israeli Government and individuals working in official governmental or military positions. The advantages of pursuing claims directly against the State of Israel are that it is the fount of all offending policies and that it is the entity most likely able to satisfy a monetary judgment, both because of its wealth relative to individual actors and because it is more likely to have assets located outside of Israel that could be attached to satisfy any resulting judgments. On the other hand, direct suits against the State of Israel will confront more hurdles in terms of sovereign immunity. In the United States, for example, the Foreign Sovereign Immunities Act would effectively preclude suit directly against the Israeli Government. Some European countries have recently been demonstrating a greater willingness to lend their courts to the service of prosecuting human rights violations.

104. Private entities have come under increasing scrutiny for their active and tacit participation in human rights abuses, and international law does provide for liability under the customary "knew or should have known" standard when a wrongdoer is essentially acting as an agent for a defendant, but its application to sellers is as yet uncertain under international law. Jordan J. Paust et al., International Criminal Law 43-44, 617 (2d ed. 2000).

105. Caterpillar's willingness to provide equipment to the Israeli military knowing that Israel intends to use the equipment to commit grave breaches of the Geneva Convention and crimes against humanity violates Caterpillar's own claims to social responsibility. See Tom Cordano for Pax Christi USA, A Call to Corporate Responsibility, at http://www.sabeel.org/Cornerstone/suicidebombers/calltocorporateresponsibility.htm (last visited Apr. 14, 2003) (Pax Christi USA is a national Catholic peace movement of over 14,000 members including over 140 bishops and over 500 religious communities).

106. See, e.g., Nat'l Coalition Gov't of Union of Burma v. Unocal, Inc., 176 F.R.D. 329, 348 (C.D. Cal. 1997) (noting that a private company using slave labor coerced by a state acting as its agent may be subject to liability for violations of international law); see also Iwanowa v. Ford Motor Co., 67 F. Supp. 2d 424, 445 (D.N.J. 1999) (finding liability when defendant was "in close cooperation with" or had "work[ed] closely with" a state in perpetrating human rights violations).

107. This conclusion does not, of course, detract from the undeniable importance of boycott efforts and negative publicity against Caterpillar.

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rights claims, although to date those efforts have been focused on claims against individual actors not state governments. These considerations bring us to the next question about where Palestinian claims should be brought.

3. Where Should Claims Be Brought?

Another practical question is where such suits should be brought. Answering this question requires consideration of a host of variables that can affect the outcome of a suit and must be measured against the goals that are identified for the adjudicatory campaign. Over the past twenty years, several dozen cases have been filed in U.S. courts seeking redress for a range of international human rights violations throughout the modern world and reaching back into history. As noted earlier, the United States is a very attractive forum for human rights claims because of its tradition of public interest and impact litigation, which is facilitated by various procedural advantages such as wide-ranging discovery, class actions, punitive damages, contingency fees, and the absence of a loser-pays rule. Notwithstanding these practical advantages, the U.S. system nevertheless presents two potentially significant obstacles as the forum (or at least as the primary forum) for a concerted Palestinian civil litigation campaign in response to proposed plans for expulsion of Palestinians.

The first obstacle is procedural. In the United States, it is generally not possible to assert jurisdiction over foreign sovereigns, which would make it virtually impossible to bring such litigation against the Israeli Government directly. The Foreign Sovereign Immunities Act generally bars suits against foreign governments, even for claims involving alleged violations of international jus cogens or international violations that would give rise to universal criminal jurisdiction under international law.

109. See infra note 115.

110. Stephens, supra note 82, at 2 (noting that "for international law scholars and practitioners in the United States, the development of a civil remedy for international human rights violations has been one of the most exciting and closely watched developments of the last two decades"); Shirin Sinnar, Book Note, 38 STAN. J. INT'L L. 331, 331 (2002) (reviewing TORTURE AS TORT: COMPARATIVE PERSOECTIVES ON THE DEVELOPMENT OF TRANSNATIONAL HUMAN RIGHTS LITIGATION, CRAIG SCOTT, ED.) ("Once unthinkable, U.S. courts have over the last twenty years embraced civil liability for such extraterritorial violations of international law.")

111. See Stephens, supra note 82, at 12-16 (describing the procedural advantages of litigation in U.S. courts).

112. The 1996 Antiterrorism and Effective Death Penalty Act (AEDPA) amends the Foreign Sovereign Immunities Act (FSIA) to allow suits by U.S. nationals for certain international crimes and human rights violations, but only against states designated as "terrorist" by the U.S. State Department, and to date, the only countries that have made the list are Iran, Libya, North Korea, Sudan, and Syria. See 28 U.S.C. § 1605(a)(7)(A) (2001) and 50 U.S.C. app. § 2405(j). Given their historical relationship, Israel is not likely to be added to this list by the U.S. State Department as a terrorist state under the AEDPA. See supra note 59 (listing the numerous UN Security Council vetoes cast by the United States to prevent passage of resolutions critical of Israel).
In Europe, many countries have enacted domestic statutes or experienced judicial innovations specifically providing for the exercise of extraterritorial jurisdiction for claims involving grave international crimes. For example, a Greek court denied immunity to Germany in a case seeking compensation for atrocities committed in violation of established international *jus cogens* norms. In another example, cases against Pinochet in the United Kingdom and Spain represent new efforts by national courts to invoke universal jurisdiction to try human rights abusers. Similarly, Belgium has adopted legislation specifically enabling courts to prosecute violators of the Geneva Conventions and their Protocols, and has expanded the principle of universal jurisdiction to permit prosecution of cases involving genocide and crimes against humanity. Under these changes, Ariel Sharon has already been named in a civil "indictment" alleging that he is responsible "for the massacre, killing, rape and disappearance of civilians that took place in Beirut between Thursday 16 and Saturday 18 September 1982 in the camps of Sabra and Shatila and surrounding area." Most recently, interpreting the Act in light of international law on sovereign immunity, the Belgium Supreme Court ruled that Sharon could stand trial after he leaves office. Moreover, German and Swiss legislatures

113. *See*, e.g., *Smith v. Socialist People's Libyan Arab Jamahiriya*, 101 F.3d 239, 246-47 (2d Cir. 1996) (stating that violation of *jus cogens* norm did not constitute waiver of sovereign immunity).


115. Under specific circumstances, in some European countries, a victim of human rights abuses can both initiate a criminal proceeding when the criminal prosecutor fails to act and join a civil claim with the criminal proceedings in order to gain compensation. Beth Van Schaack, *In Defense of Civil Redress: The Domestic Enforcement of Human Rights Norms in the Context of the Proposed Hague Judgments Convention*, 42 HARV. INT'L J. L. 141, 145-48 (2001). This procedural device has been successfully invoked to prosecute human rights abuses civilly as well as criminally in a number of civil jurisdictions. For example, initiation of such proceedings in Spain by various victims of abuses by the regime of General Augusto Pinochet have led to the request for extradition of Pinochet from the United Kingdom to Spain. *Id.* at 146-47.

116. *See* Luc Reydams, *International Decision: Belgian Tribunal of First Instance of Brussels (Investigating Magistrate)*, 93 AM. J. INT'L L. 700, 701 (1999) (explaining that a Belgian court has held the Act to apply to individuals even if they are not present in Belgium, because the legislative intent unambiguously provides universal jurisdiction in such circumstances).


118. *See* Tom Miles, *Sharon faces war crimes trial once out of office*, INDEP. (London), Feb. 13, 2003, at P12, available at 2003 WL 11353267 (reporting that Belgium's highest court delivered a landmark ruling that Israeli Prime Minister Ariel Sharon can be prosecuted for war crimes after he leaves office). Interestingly, most American papers adopted a very different tone and emphasis in reporting the same decision. *See*, e.g., *The World Belgian Court Won't Try Sharon*, L.A. TIMES, Feb. 13, 2003, at A17, available at 2003 WL 2384914 (stating that "Belgium's supreme court threw out an attempt by a group of Palestinians to bring Israeli Prime Minister Ariel Sharon to trial for war
have remedied some of the legal obstacles that stood in the way of Jewish Holocaust litigants in those countries, and these changes presumably hold some benefits for other human rights victims. As Europe grows more intolerant of U.S. acquiescence in the face of Israeli human rights abuses, European countries may offer a more hospitable climate in which to bring human rights claims on behalf of Palestinians, even if they do not offer some of the same procedural advantages of the U.S. system.

Finally, it should be acknowledged that suits can be brought in Israel and, in fact, many suits seeking redress for violations of Palestinian rights already have been pursued. While efforts within the Israeli system should be continued, with a few notable exceptions, Israeli courts, including the Israeli Supreme Court, have not been particularly effective at responding to or protecting Palestinian rights. Including Israel in the larger world-wide campaign contemplated in this Essay, however, holds several potential advantages. While it may be more difficult to obtain favorable judgments in Israel, the prospects of enforcement are presumably higher because legal systems tend to enforce their own judgments at higher rates than they do foreign judgments. In addition, such judgments would have a much higher degree of legitimacy to Israelis than foreign judgments issued by distant courts. It is also possible that continued losses in Israeli courts might become internationally embarrassing when contrasted to successes in other neutral fora.

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119. Baumgartner, supra note 86, at 852.

120. Patrick E. Tyler, A Deepening Fissure, N.Y. TIMES, Mar. 5, 2003 (arguing that the declaration issued by Germany, Russia, and France against war in Iraq and critical of U.S. handling of the Palestinian-Israeli conflict "may go down as the loudest 'No!' shouted across the Atlantic in a half century or more"), available at http://www.nytimes.com/2003/03/06/intemational/europe/06ASSE.html. The United States' circumvention of the UN Security Council in pursuing military action against Iraq gives credence to commentator Samuel Huntington's claim that "in the eyes of many countries it [the United States] is becoming the rogue superpower ... [and] the single greatest external threat to their societies." Samuel P. Huntington, The Lonely Superpower, FOREIGN AFF. 35, Mar./Apr. 1999, at 42-43.

121. See Catherine M. Grosso, International Law in the Domestic Arena: The Case of Torture in Israel, 86 IOWA L. REV. 305 (2000) (describing development of Israeli Supreme Court to reports of incessant and deadly torture of Palestinian prisoners).

122. For example, Palestinians have appealed to the Supreme Court of Israel to try to prevent housing demolitions that are illegal under international law. John Quigley, Punitive Demolition of Houses: A Study in International Rights Protection, 5 ST. THOMAS L. REV. 359, 384-85 (1993). Instead of responding with condemnation of these clear violations of international human rights, the Court has instead given great latitude to the commanders. id.
4. Which Claims Should Be Pursued?

One strategic decision advocates will have to consider is which claims and which genres of claims should be brought. Although I use the threat of military expulsion as the catalyst for this discussion, it is clear that civil litigation could not actually prevent or provide full and meaningful relief from a military campaign of expulsion. Instead, the claims that could be brought would be against the Israeli actions that arguably establish the preconditions for expulsion. The question, though, is which claims should be pursued?

It is at least theoretically possible that claims could be brought for the original dispossession in 1948. Claims of ethnic cleansing of Palestinian villages that accompanied the War of 1948 would find renewed support in recently released Israeli Defense Forces documents and other security documents that the Israeli government has released. But given the difficulties in developing evidentiary proofs for events so long in the past and the enormous consequences of a case based on such claims, prudence would caution against pursuing such historical claims, at least initially. Instead, it seems that litigation in the short run would be most effective at providing remedies for more proximate harms that are presently occurring or have recently occurred in the West Bank and Gaza Strip. As previously noted, strategists developing a civil litigation campaign should choose the strongest recent claims, both in terms of their legal basis and the potential sources of evidence to set a groundwork for either further adjudication or political resolution of some of the pervasive and deeply rooted problems.

5. Potential Backlash

Even assuming that advocates were successful at a procedural level in bringing and sustaining suits against the Israeli Government, one likely response from Israelis would be counter suits—such as claims that the Palestinian Authority is orchestrating suicide bombings against civilians in Israel. If Arafat or officials under his control were ever proven to be involved in these violations of international human rights law, they could, in addition to being held criminally liable, also be found civilly liable for such violations. But to

123. See supra notes 51-52 and accompanying text (explaining Israeli actions taken as precursors to expulsion).

124. See generally Morris, supra note 11.

125. Even before the full swing of the current human rights litigation, some suits had been brought against Arafat and the PLO. For example, Shimon Prachik filed a petition in the Israeli courts seeking to charge Arafat with terrorist crimes, which was submitted to Israel's High Court in May 1994. The petition alleged that Arafat was responsible for numerous terror attacks in Israel and abroad. Evelyn Gordon, High Court Asked to Order Criminal Probe of Arafat When He Enters Gaza or Jericho, THE JERUSALEM POST, May 12, 1994, at 2. For a famous example in the United States, see Tel-Oren v. Libyan Arab Republic, 726 F.2d 774, 816 (D.C. Cir. 1984) (per curiam).

126. Suicide bombings against Israeli civilians are war crimes and crimes against humanity.
date the extent of the Arafat and the Palestinian Authority's involvement remains contested and direct proof of such involvement has not materialized. Nevertheless, it is not necessary to speculate whether the underlying accusations could be used as the premise for counter-litigation because lawyers representing thirty-three Israelis and Belgians have already brought suit in Belgium alleging that Arafat initiated terrorist attacks. It is also not difficult to imagine from these initial suits the potential for a frenzy of lawsuits, brought by Palestinians and Israelis alike, each complaining of grievances caused by the other. If the frenzy were to reach epidemic proportions, it would also be fair to imagine considerable backlash from the political establishment of countries that were host to such suits.

Political response could take the form of legislative curtailments of the bases for jurisdiction or additions to the already difficult burden of evading sovereign immunity protections. In the United States and common law jurisdictions, in addition to the possibility of legislative responses, there is also the possibility that an onslaught of these cases would inspire courts to more willingly dismiss under the doctrine of forum non conveniens, under the Political Question Doctrine, or based on direct interjection by the executive urging deference to Israel. As many have observed, human rights litigation in the United States does not occur in a political vacuum, even if it occurs in politically independent courts. Some already argue against the genre


127. In its report, Human Rights Watch condemned Arafat and the Palestinian Authority for failing to take appropriate actions to deter suicide bombings, thereby improperly fostering an "atmosphere of impunity," but it concluded based on the information available to it that the Palestinian Authority's failure to take preventative action or punish perpetrators outside of its control does not meet the criteria for command responsibility under international law. See id. at http://www.hrw.org/reports/2002/isrl-pa/ISRAELPA1002-07.htm#P1077_287405.


131. GARY B. BORN, INTERNATIONAL COMMERCIAL ARBITRATION IN THE UNITED STATES: COMMENTARY AND MATERIALS 687-99 (2d ed., 1992) (describing the "Bernstein exception" to the Act of State Doctrine, which allows the Executive to submit by letter its complaint that litigation of the relevant issues may cause embarrassment to the Executive).

132. Many critics argue that courts should defer to the Executive on issues of human rights.
altogether as a perversion of the proper role of the U.S. legal system and a threat to U.S. foreign policy. Any campaign on behalf of Palestinians should be coordinated to be effective in the long-term, minimizing the potential for backlash by nations hosting the litigation.

6. The Possible Creation of an International Civil Tribunal

Instead of closing national courthouse doors, a firestorm of lawsuits might also force consideration of the establishment of an international civil tribunal. The possibility of a permanent, all-purpose civil international court has been raised before. However, such aspirations still seem remote and unrealistic, particularly in light of the disruption the United States recently caused with creation of a permanent international criminal court. The other alternative, for which there already exists significant precedent, is creation of specialized ad hoc tribunals to respond to large numbers of claims arising out of particular relationships. The most famous of these tribunals, borne out of the onslaught of lawsuits brought against Iran in response to its nationalization of American property and taking of American hostages, is the U.S.-Iran Claims Tribunal, which to date has resolved more than 3,000 claims. More recently, the United Nations Compensation Commission (UNCC) was created by the United Nations and has ordered compensation on more than 125,000 claims brought by those injured by Iraq's actions during the first Persian Gulf War. The most recent


137. Id. One of the main criticisms of the UNCC is that the reparations and sanctions imposed on Iraq after the first Gulf War are unduly oppressive and have led to widespread and severe suffering, malnutrition, and death, particularly among children in Iraq. See George Bisharat, Sanctions as Genocide, 11 Transnat'l L. & Contemp. Probs. 379, 381 (2001) (stating that "[i]n the twelve years that have followed the imposition of sanctions, as many as one to two million Iraqis may have died as a result of sanctions, many of them children under the age of five."). Roger
and most analogous tribunals are the Claims Resolution Tribunal for Dormant Accounts in Switzerland and the International Commission on Holocaust Era Insurance Claims, both of which were created to facilitate payment of thousands of claims brought by Holocaust survivors.\(^\text{138}\)

The potential, however, for establishing an international civil compensation tribunal or system faces significant obstacles. First, there is the question of legitimacy since it seems unlikely such a tribunal could be created under the auspices of the United Nations. Because the United States supplies Israel annually with approximately $3 billion per year ($1.2 billion in economic aid and $1.8 billion in military aid,\(^\text{139}\) which is roughly one-sixth of all U.S. Foreign aid),\(^\text{140}\) it seems unlikely that the United States would support establishment of a system designed to force Israel to pay out large sums of money. This reality makes creation of a tribunal directly by the UN highly unlikely since it would have to depend on the unlikely participation of the United States. The potential for a tribunal based on the model of the U.S.-Iran Claims Tribunal, however, may still be a possibility. One of the necessary preconditions for establishing such a tribunal in the absence of U.S. support and without the consent of Israel would be broad-based multi-lateral support.\(^\text{141}\)

A significant number of claims that are based on compelling and well-founded allegations might signal the need for creation of such a tribunal, and mounting international frustration at the lack of peaceful and law-based options may be enough to inspire the necessary political will.

Another important precondition, if the tribunal is to render effective and not just symbolic awards, is a fund of identified assets against which awards could be enforced. The basis for establishing the Iran Claims Tribunal was the seizure

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\(^{138}\) Alford, On War as Hell, 3 CHI. J. INT'L L. 207, 212-14 (2002) (describing effect of WW1 sanctions on Germany and the conditions leading to the rise of the Nazi regime, and Iraqi responses to the oppressive burden of reparations under the UNCC).


\(^{141}\) Shirl McArthur, U.S. Tax Dollars at Work: Calculating Foreign Aid to Israel, http://www.hotpolitics.com/tax4israel.htm (last visited Mar. 29, 2003). According to one source, for every dollar in U.S. aid that goes to an African, $250.65 goes to an Israeli. At http://www.rescuemideastpolicy.com/factsheet/usinside/usaidinside.pdf (last visted Mar. 29, 2003). This statistic is remarkable in light of the fact that Israel is the sixteenth wealthiest country in the world, and the sixth most powerful in terms of military might. Id.
of sizable Iranian assets located in the United States and the basis for the UNCC was Iraq's oil reserves. Unlike Iran or Iraq's enormous oil wealth, Israel does not appear to have a readily identifiable pool of government assets located abroad. Even more significant than the question of the amount of assets is the question of whether even sympathetic governments would be willing to go to the extraordinary measure of freezing Israeli assets to create a fund that could provide a basis for an international tribunal.

If these obstacles could ever be surmounted, an international tribunal could offer the most neutral and legitimate forum for adjudication of Palestinian human rights claims.

V. CONCLUSION

My purpose in this Essay is to open for consideration the possibility of a civil adjudication campaign as a peaceful and law-based response to certain Palestinian claims against Israel. The ominous and apparently growing threat of forced expulsion renders unacceptable continued reliance solely on the chorus of international condemnation or the blunt instruments of political negotiations. Viewed in the most hopeful light, civil litigation may offer a peaceful response to Palestinian injuries caused by Israeli conduct and a mechanism for exerting sustained and continued pressure on Israel to respect international law. While it


[T]he Algiers Accords established a fund, the Security Account, with a portion of the Iranian assets that the United States had frozen. With the Algerian Government acting as escrow agent for the Security Account pursuant to the Tribunal's instructions, the Security Account assures the availability of funds to satisfy most awards of the Tribunal.

Id. The UNCC created a payment mechanism by tapping 30 percent of all Iraqi oil revenues to pay claimants. Alford, supra note 137, at 212.

143. Israel's economy may also be considered relatively fragile, despite its size, as demonstrated by its recent downside caused by enormous military expenditures, as well as the decline in investment and tourism as a consequence of the recent violence. See generally Ben Lynfield, Israel's Poor Lost in Political Fray, CHRISTIAN SCI. MONITOR, Nov. 21, 2002, available at http://www.csmonitor.com/2002/1121/p06s01-wome.html; Avi Machlis, Israel's Economy Takes a Hit, Tourism Takes a Blow, JEWISH TEL. AGENCY, available at http://www.jewishsf.com/bk001110/icrisisecon.shtml (last visited Mar. 12, 2003); Sam Bahour, Israel's Economy is in Disarray, MIDDLE EAST TIMES, available at http://www.metimes.com/2K2/issue2002-40/bus/israels-economy_is.htm (last visited Mar. 12, 2003).

144. While it is a significant question, an affirmative answer may not be entirely implausible when viewed in light of recent international campaigns to divest from Israel. See generally DIVEST FROM ISRAEL CAMPAIGN, YALE DIVEST NOW, YALE UNIVERSITY DIVESTMENT PETITION, at http://www.divest-from-israel-campaign.org/Yale/DivestfromIsraelPetition.html (last visited Mar. 12, 2003); UC DIVESTMENT CAMPAIGN, PETITION FOR UC DIVESTMENT FROM ISRAEL, at http://ucdivest.org/ (last visited Mar. 12, 2003) (detailing various university divestment projects); see also Desmond Tutu, Build Moral Pressure To End The Israeli Occupation Of The Palestinian Lands, INT'L HERALD TRIB., June 14, 2002, at 9, available at 2002 WL 2886934 (calling international divestiture a necessary first step to ending the Israeli occupation).
would not likely resolve the largest questions involving trenchant land issues, it might be able to refocus attention on those issues by providing an outlet through which to evaluate and provide relief for the auxiliary claims which arise out of on-going practices, incite emotions and distract from reasoned resolution of these larger issues. There remain innumerable practical and strategic obstacles to be considered in actually launching a civil adjudication campaign. As the odious and previously inconceivable idea of expelling the Palestinians is apparently gaining political momentum, however, so too must the previously implausible idea of an international civil litigation campaign. Indeed, a concerted international adjudication campaign may provide a practical means of chipping away at underlying policies and practices that have made expulsion seem like an achievable aim to some in Israel.
