

BRIEFING TO PARLIAMENTARIANS BY Hickman & Rose Solicitors:

The British Government is considering legal changes to bar individual victims of war crimes from obtaining warrants for the arrest of suspects

(The Government's review of the law was prompted by Israeli complaints, but without the arrest and prosecution of Israeli suspects abroad, civilians under Israeli military occupation are unprotected by criminal law & impunity will prevail.)

INTRODUCTION

Under Fourth Geneva Convention 1949, the UK has a duty to "search for persons alleged to have committed or to have ordered to be committed...grave breaches, and shall bring such persons, regardless of their nationality, before its own courts".

That duty of universal jurisdiction was enacted in domestic legislation by the Geneva Conventions Act 1957 (GCA).

Under s25(2) Prosecution of Offences Act 1985, notwithstanding the need for the consent of the Attorney General to initiate a prosecution under the GCA, a Magistrate may issue an arrest warrant if he considers that: -

1. There are reasonable grounds to suspect that an offence under the act has been committed by the named suspect
2. There is evidence which could be received by a court in the United Kingdom which (if uncontradicted) could establish the elements of the offence alleged
3. He has jurisdiction to issue the warrant

On 10 September 2005, after a hearing in which he received a large amount of evidence, Senior District Judge Timothy Workman sitting at Bow Street Magistrates' Court issued a warrant for the arrest of (Israeli) Major General Doron Almog under the GCA in relation to the extensive destruction of Palestinian houses in Rafah City (Gaza) on 10 January 2002. It appears that this is the first arrest warrant issued under GCA.

The victims applied to court for an arrest warrant because in the time available before Doron Almog's visit to the UK, the police failed to make a decision whether to arrest him using their normal arrest powers. (Unfortunately, the police subsequently failed to execute the arrest warrant and Doron Almog escaped from the UK after having been tipped off as to the existence of the warrant.)

The response of the British Government

Despite the judicial process that led to the issue of the warrant, following Almog's escape, Jack Straw apologised to his Israeli counterpart, Silvan Shalom, and Tony Blair was reported to be embarrassed by the episode when it was raised with him by Ariel Sharon.¹

¹ See The Times: 17 September 2005: <http://www.timesonline.co.uk/article/0,,2-1784018,00.html>
& BBC News, 22 September 2005: http://news.bbc.co.uk/1/hi/uk_politics/4270664.stm

The Israeli government has since met twice with Home Office officials to lobby for urgent changes to UK law to prevent any chance of future arrests and/or prosecutions of Israelis in the UK.

One change that the British Government is considering is to repeal (or amend) s25(2) of the Prosecution of Offences Act, to prevent individuals from applying to the Magistrates' Court for an arrest warrant to be issued, at least in 'international cases'.

To change this status quo at the behest of the Israeli government will make it easier for **any** war crimes suspects to evade justice in the UK and send a political message to the rest of the world about the UK's commitment to search for and prosecute war crimes suspects, as well as suspected torturers and those implicated in acts of genocide and other crimes against humanity.

The application of universal jurisdiction is a safety net to combat impunity
Occupying armies and the military and civilian legal systems of an occupying power have a legal duty² to bring to account suspected 'war criminals'. In very few cases that does happen in Israel³, but the vast majority of alleged crimes in the Palestinian occupied territory (OPT) are not even investigated as such, being either ignored or sanctioned as being legal in court rulings, despite international legal opinion to the contrary.

Most cases of killings, punitive house demolitions and torture in the OPT have not been the subject of criminal investigations, let alone prosecutions, in Israel. In these circumstances a climate of impunity has taken hold.

Of course, Israel is not unique, and countries often fail to put on trial those suspected of torture or acts of genocide within their own borders.

One of the few ways to combat impunity is the practical application of the duty of 'universal jurisdiction' over war crimes.⁴ This is why victims and their lawyers (e.g. Palestinian Centre for Human Rights in Gaza) have sought legal remedies abroad.

Amnesty International is dismayed at reports that the UK government would even contemplate weakening its domestic legislation and thereby undermining global efforts to ensure that those accused of the most egregious crimes under international law, wherever committed, are brought to justice. These reports call into question the commitment of the UK authorities to the exercise of universal jurisdiction over international crimes, and their resolve to ensure reparation to victims of such crimes.⁵

² Under common Article 1 to all four Conventions, High Contracting Parties undertake to "respect and to ensure respect" for the conventions in all circumstances. This includes the prosecution of war criminals (A146, IVGC).

³ See the Human Rights Watch report of 2005, 'Promoting Impunity' <http://hrw.org/reports/2005/iopt0605/>

⁴ 'Universal jurisdiction' is explained by the International Committee of the Red Cross at: [http://www.icrc.org/Web/Eng/siteeng0.nsf/htmlall/5XDJ4G/\\$FILE/Kit_national_enforcement.pdf?OpenElement](http://www.icrc.org/Web/Eng/siteeng0.nsf/htmlall/5XDJ4G/$FILE/Kit_national_enforcement.pdf?OpenElement) ; and [http://www.icrc.org/Web/Eng/siteeng0.nsf/htmlall/57JNXQ/\\$FILE/Penal_Repression.pdf?OpenElement](http://www.icrc.org/Web/Eng/siteeng0.nsf/htmlall/57JNXQ/$FILE/Penal_Repression.pdf?OpenElement)

⁵ <http://www.amnesty.org.uk/news/press/16790.shtml>

POLITICAL COMMITMENT TO LAW & JUSTICE

For British politicians to apologise for the judicial decision of 10 September 2005 & the events of 11 September 2005, and for the British Government to consider changing in the law as the Israelis have requested (removing the ability of an individual to seek a judicial decision for the issue of an arrest warrant in cases of urgency and/or when the police have failed to act), is hypocritical, disrespectful of British justice and sends entirely the wrong message to the Israeli authorities and suspected war criminals across the world.

ACTION

A: PLEASE SUPPORT EDM NUMBER 1577: Jeremy Corbyn MP:

War Criminals

That this house expresses concern that the government may be considering diluting laws relating to the arrest of alleged war criminals and torturers entering or residing in the UK; notes that no good reason has been given to alter the status quo and that the current system wherein a judge makes a decision whether to grant an arrest warrant has worked satisfactorily to date; notes also that such arrest warrants have been issued very infrequently and this would indicate that the granting of them is taken very seriously indeed by the judiciary which is a safeguard against frivolous applications; calls upon her Majesty's government to uphold Britain's duty and right to arrest and prosecute alleged war crimes suspects if they arrive on or reside in its territory and to fund the police and immigration authorities adequately to enable such arrests to be made so that this country cannot be regarded as a 'safe haven' for such persons.

B: PLEASE WRITE TO THE HOME SECRETARY AND/OR THE FOREIGN SECRETARY, MAKING SOME OR ALL OF THESE POINTS.

- 1. Ask the Government to publicly recommit itself to implementing international criminal law, making it plain that the recent ministerial letters to MPs that speak of the significance attached to dealing seriously with alleged war criminals is matched by:
 - (a) appropriate funding to the police; and**
 - (b) public pronouncements to the effect that where evidence is available no suspected war criminal is exempt from British justice (subject only to rules on diplomatic immunity, which in no way protect former or current military leaders such as Doron Almog)****

- (c) cooperation and liaison with other jurisdictions to seek out and prosecute war criminals as is our obligation as a High Contracting Party to the Geneva Conventions**
- 2. Ask the Government to publicly state that it will not submit to pressure from the Israeli Government to change UK law and practice, including measures that:-**
- (a) make it impossible for a victim to obtain an arrest warrant from the court where the police (for good reason) are unable to exercise their general powers of arrest, and/or**
 - (b) add criteria to the exercise of universal jurisdiction in the UK with the practical effect of excluding the arrest of suspected Israeli war criminals.**

MAGISTRATES' COURTS ACT 1980

1 Issue of summons to accused or warrant for his arrest

- (1) Upon an information being laid before a justice of the peace for an area to which this section applies that any person has, or is suspected of having, committed an offence, the justice may, in any of the events mentioned in subsection (2) below, but subject to subsections (3) to (5) below, –
- (a) issue a summons directed to that person requiring him to appear before a magistrates' court for the area to answer to the information, or
 - (b) issue a warrant to arrest that person and bring him before a magistrates' court for the area or such magistrates' court as is provided in subsection (5) below.
- (2) A justice of the peace for an area to which this section applies may issue a summons or warrant under this section –
- (a) if the offence was committed or is suspected to have been committed within the area, or
 - (b) if it appears to the justice necessary or expedient, with a view to the better administration of justice, that the person charged should be tried jointly with, or in the same place as, some other person who is charged with an offence, and who is in custody, or is being proceeded against, within the area, or
 - (c) if the person charged resides or is, or is believed to reside or be, within the area, or
 - (d) if under any enactment a magistrates' court for the area has jurisdiction to try the offence, or

(e) if the offence was committed outside England and Wales and, where it is an offence exclusively punishable on summary conviction, if a magistrates' court for the area would have jurisdiction to try the offence if the offender were before it.

(3) No warrant shall be issued under this section unless the information is in writing and substantiated on oath.

(4) No warrant shall be issued under this section for the arrest of any person who has attained the age of eighteen years unless –

(a) the offence to which the warrant relates is an indictable offence or is punishable with imprisonment, or

(b) the person's address is not sufficiently established for a summons to be served on him.

(5) Where the offence charged is not an indictable offence –

(a) no summons shall be issued by virtue only of paragraph (c) of subsection (2) above, and

(b) any warrant issued by virtue only of that paragraph shall require the person charged to be brought before a magistrates' court having jurisdiction to try the offence.

(6) Where the offence charged is an indictable offence, a warrant under this section may be issued at any time notwithstanding that a summons has previously been issued.

(7) A justice of the peace may issue a summons or warrant under this section upon an information being laid before him notwithstanding any enactment requiring the information to be laid before two or more justices.

(8) The areas to which this section applies are commission areas in England or preserved county in Wales.

Prosecution of Offences Act 1995

25 Consents to prosecutions etc.

(1) This section applies to any enactment which prohibits the institution or carrying on of proceedings for any offence except –

(a) with the consent (however expressed) of a Law Officer of the Crown or the Director; or

(b) where the proceedings are instituted or carried on by or on behalf of a Law Officer of the Crown or the Director;

and so applies whether or not there are other exceptions to the prohibition (and in particular whether or not the consent is an alternative to the consent of any other authority or person).

(2) An enactment to which this section applies –

(a) shall not prevent the arrest without warrant, or the issue or execution of a warrant for the arrest, of a person for any offence, or the remand in custody or on bail of a person charged with any offence; and

(b) shall be subject to any enactment concerning the apprehension or detention of children or young persons.

(3) In this section “enactment” includes any provision having effect under or by virtue of any Act; and this section applies to enactments whenever passed or made.