From Durban to The Hague: 20 Years of NGO Lawfare

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By [Gerald M. Steinberg](https://jewishjournal.com/author/geraldmsteinberg/)

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The announcement by the prosecutor of the International Criminal Court (ICC) that she was opening investigations against Israel for alleged war crimes should not have been a surprise. This was the culmination of a twenty-year political campaign that began even before the ICC opened its doors in The Hague in 2002. Leaders of this effort have long prepared to use the ICC and the façade of international law to extend the soft-power targeting of Israel.

The strategy was launched during the NGO Forum of the 2001 UN Durban conference, in which 5000 delegates [condemned](https://www.hurights.or.jp/wcar/E/ngofinaldc.htm) the “Israeli systematic perpetration of racist crimes, including war crimes, acts of genocide and ethnic cleansing.” Reviving the language of the odious 1975 UN resolution that labeled Zionism as racism, the forum’s final declaration made numerous references to an entirely invented version of international law, such as a Palestinian “right of resistance” (often manifesting as terror), mixed with the language of the Rome Statute that is the foundational document of the International Criminal Court.

At the time, the Israeli government did not take this threat seriously. The powerful NGOs that played central roles in Durban were not on the Israeli Foreign Ministry’s radar. The ICC was still a vague framework, and Israel, like the United States, Russia and China, was not a member. In addition, the Palestinian Authority was not a state and, according to the Rome Statute, did not have standing to initiate a complaint.

But this network of NGOs, in cooperation with the Palestinian leadership, pursued an ICC investigation — known as lawfare — with great intensity, spending tens of millions of Euros, Pounds and Krona. Human Rights Watch played a central role from the beginning, joined by Amnesty International, numerous Palestinian NGOs with ties to the PLO and PFLP terrorist groups and a number of Israeli groups claiming to promote human rights.

European governments provided much of the NGO funding for this campaign. Four Palestinian organizations — [Al-Haq](https://ec.europa.eu/budget/fts/index_en.htm), Al-Dameer, PCHR and Al-Mezan — [received millions in direct funding](https://www.ngo-monitor.org/funder/human_rights_and_international_humanitarian_law_secretariat_denmark_sweden_switzerland_and_the_netherlands0/) from Switzerland, Holland, Sweden and Demark to compile allegations of Israeli violations of international law to present to the ICC. Other Palestinian and Israeli NGOs are funded for similar projects related to [“support for international law”](https://www.ngo-monitor.org/nm/wp-content/uploads/2021/03/Yesh-Din-activity-appraisal-document-4000001603.pdf) by the Netherlands, Germany, the European Union (EU), Ireland and others. (The EU, the UN and the Canadian government were also the main funders of the Durban NGO Forum.) While European officials issued statements opposing the politicization of the ICC for anti-Israel lawfare, they continued to fund the NGO leaders of this process.

It was only after the UN Human Rights Council’s 2009 Goldstone Report on Gaza repeated the NGO’s accusations and threatened a referral to the ICC that the Israeli government began paying attention to this campaign. Israel’s Foreign and Defense Ministries published rebuttals of the accusations mentioned in the report. In parallel, Goldstone was confronted with the unsubstantiated claims and inconsistencies that characterized his report. (He later acknowledged these failures, but the damage was done, and the campaign gained momentum and visibility.)

Supported by the NGO network, Palestinians gained UN General Assembly approval for calling themselves a state in 2014, despite the absence of the necessary criteria (such as a government in total control of a defined territory) and immediately used this dubious achievement to join the ICC and file complaints against Israel. In 2015, ICC prosecutor Fatou Bensouda announced that she would consider jurisdiction. The Israeli government focused on convincing her to reject the Palestinian claims to statehood and on highlighting the integrity of Israel’s legal system. In theory, this should have prevented ICC involvement according to the Rome Statute, which states that ICC is only authorized to intervene (or “complement”) national courts in situations in which the states involved lack the ability to bring suspected war criminals to trial.

In practice, Israel’s claims were insufficient in the face of the powerful political forces promoting the lawfare strategy. In December 2019, Bensouda claimed jurisdiction and “a reasonable basis” for investigating possible Israeli war crimes, and in February 2021, after two of the three judges who reviewed her claims declared their approval, she moved quickly to open a formal investigation.

Major damage in the form of demonization of Israel has already been done, but if enough counter-pressure can be applied, including by negating the power and resources of the NGOs behind this process, the ICC travesty might be stopped. The current prosecutor is finishing her term, and her successor, Karim Khan, from the United Kingdom, might be persuaded to halt the pseudo-investigations, particularly if the survival of the ICC is at stake.

In parallel, European funders of the campaign must be confronted directly and consistently. Anyone who is concerned about the abuse of the ICC for political campaigns, including Americans and Israelis, should demand to end the demonization under the façade of human rights and international law. Germany, for instance, is one of the main funders of the ICC and the largest single supporter of the NGOs leading the campaigns. The absurdity of German funding for anti-Israel NGOs has not yet received the necessary priority.

September 2021 will mark the twentieth anniversary of the UN’s anti-Semitic Durban conference and the NGO Forum, where both ICC lawfare and the BDS campaigns against Israel were launched. The best way to mark this date is to ensure that the perpetrators and their allies have nothing to celebrate.