



# Israel's High Court of Justice: The flak jacket that was shattered

For decades the High Court of Justice [HC or its Hebrew acronym of Bagatz] has been distorting international law as the world understands it. Judgements permitting expulsions of Palestinians, collective punishment and discrimination in

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By Michael Sford \*

For 57 years now, the Israeli Occupation has enjoyed an almost flawless legal flak jacket. Worn by Israeli society to cover up its shame, this glittering judicial armour protected us from our crimes and defended each of our abominable acts. We could steal and colonise the lands of the Occupied for decades, humiliate them at checkpoints and in the open fields, arrest them by the thousands without trial, avoid arresting Jewish gangs who raid them, criminalise their non-violent political activities, and bombard the Gaza Strip every few years from the land, sea and air, while our legal Iron Dome, with the High Court of Justice [HCJ] or its Hebrew acronym of Bagatz] as its crowning top, protected us from despicable attempts in other jurisdictions to prosecute our actions.

But on its 58th year, this armour no longer operates with the same assuredness. Many delusions have been shattered over the past year. We believed that the strongest army in the Middle East gives our towns and villages full protection, and this turned out to be a terrible delusion. We were convinced that the intelligence community knows in real time even when someone takes a leak on a street corner in Gaza, and we discovered that that's all it knows. We were certain that the prestige of the Israeli legal system prevents intervention by international courts, and we discovered gentile judges are at the gate. Those at the forefront of the warranted struggle against the current regime claiming that the Israeli High Court of Justice is our Flak jacker are right, but it turns out even this armour is limited because as we all know, you can't fool everyone all the time.

History will judge whether Israel's Supreme Court [*Which sits as the High Court of Justice on constitutional and legal interpretation issues*] fulfilled its most important task: protect individual civil rights. The court will no doubt boast about its wide reaching, brave rulings, which protected democratic values and basic rights and consolidated them. It's not just a slogan. Bagatz indeed protected the rights of the LGBTQI community, halted religious coercion, and combatted government corruption.

Its judges are right to feel proud of those seminal rulings, which struck down discrimination against women, demanded a stop to torture (but not entirely), and protected freedom of speech and the right to protest from being violated by the elected government. These rulings were significant and greatly defined the character of Israeli society, giving many within it the right to basic rights, which without the court's intervention would have been stripped away.

But while they will regale the judges of history with their achievements, those other rulings they wish would just go away will also slip from under their robes and come into light. Thousands of judgements which are too numerous to conceal.

Judgements that enabled hitting the weakest in society, living under Israeli control without any rights or say over their own future; those who are not represented by any of the institutions that govern them.

And so I imagine them, the Israeli High Court judges of all the generations standing in history's judgement, speaking of all those rulings they hold so proud (and therefore they had them translated into English), while the sound of all their other rulings slipping from under their robes interferes with the flow of their arguments. Judgements permitting expulsions, forced relocations, expropriation of lands, home demolitions as collective punishment, executions without trial, prevention of development for Palestinians, and discrimination in every field. All that along with dual legal systems: a civil, modern one for the settlers, and a draconian military one for Palestinians. Those supreme court judges raise their voice, beads of sweat on their foreheads, but behind them accumulates a pile that tells of a tyrannical Apartheid regime enabled by their thousands judgements even if here and there they had mitigated it.

The requests for arrest warrants for the prime minister and defence minister filed by the International Criminal Courts' prosecutor conclude a lengthy decline in Bagatz's good reputation, which it hitherto enjoyed among the international legal community. Israel changed from a country that amazed the world in the 80s following the massacre at Sabra and Shatila, when its own legal system impeached one of our most powerful defence ministers, and severely impacted the career paths of generals found indirectly responsible for the massacre, to the country whose law enforcement turns a blind eye and even assists the bullies of the West Bank hill tops, and those destroying trucks carrying humanitarian aid.

The request to issue the arrest warrants marks the end of the International legal community's regard for Israeli legal advisers, police, military prosecutors and Bagatz as enforcement complying with international standards, at least when it concerns treatment of Palestinians.

And who are we to complain? For decades we've given near impunity to soldiers attacking Palestinians. We have barely had any military police investigations into the crimes committed by soldiers, and those that do occur are laughable. This is a

system in which the military and police only assist violent settlers and whitewash their crimes, while the state prosecution offices approve and support annexation and Apartheid, offering protection for any and all forms of lawless warfare in the belief that it's enough to issue media releases that "adherence to international law has been observed" to defend Israel from litigation.

For decades Bagatz has been distorting international law as the world understands it. This institution did once revel in prestige, but today it's known especially as a court that enables Israel to uproot whole communities in the South Hebron Hills, to expropriate lands in the West Bank, and to legitimise settlements, illegal in the eyes of the rest of world. And so, the police, prosecution office and Bagatz turned from being Israel's protective armour to being one more item in the list of charges against the state. It took some time, but the Israeli legal system could not keep hiding its true role in the Occupation.

We're now watching no less than Israel's legal avalanche, with the arrest warrants requested against its leaders by the ICC prosecutor, with interim orders issued by the International Court of Justice, with courts in various other countries no longer discarding the Israeli case, with the worn out cliché that "there are judges in Jerusalem". This is a legal avalanche, caused in part by our independent, professional legal system which despite having some credits to its score insisted on supporting the violation of the rules of warfare and occupation.

Welcome to the 58th year.

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Translated by **Keren Rubinstein** for the Middle East News Service edited by **Sol Salbe**

[Hebrew original in Haaretz](#)

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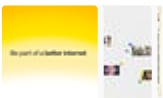
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