



the case against avi dichter

international law
and
accountability

Just before midnight on July 22, 2002, the Israel Defense Forces (IDF) dropped a one-ton bomb on Al-Daraj, a densely-populated residential neighborhood in Gaza City in the Occupied Palestinian Territory (OPT). Among the 15 people who were killed were 8 children, and more than 150 were injured in the aerial bombing. The attack completely destroyed 9 apartment buildings and partially destroyed or seriously damaged 30 more.

Avraham (Avi) Dichter, the Director of Israel's General Security Service (GSS), was responsible for planning and directing the attack. He made the decision to carry out the "targeted" assassination with the knowledge that the so-called target's wife and approximately 10 other civilians would be killed in the attack. Dichter is responsible for extrajudicial killings and war crimes, including both direct and indiscriminate attacks against civilians. The Al-Daraj attack was widely condemned by the international community, including the U.S. government, and is currently being criminally investigated by Israel. To this day, however, there has been no accountability for the attack or justice for the victims. According to the Palestinian Center for Human Rights (PCHR), approximately 724 individuals were killed in these extrajudicial killings carried out by Israel between September 2000 and March 2008; the victims included 228 civilian bystanders, of whom 77 were children.

who is avi dichter?

Avi Dichter was the Director of Israel's GSS from 2002 to 2005. Dichter planned and directed the attack on the residential apartment building. He also had a central role in developing and escalating the practice of "targeted" assassinations and was quoted in a Washington Post article as saying, "After each success, the only thought is, 'Okay, who's next?'"

After leaving the GSS, Dichter was served with Plaintiffs' Complaint in the United States while he was a fellow at the Saban Center for Middle East Policy at the Brookings Institution. Dichter is currently Israel's Minister of Public Security.



Rubble from the Al-Daraj bombing

who are the victims of the al-daraj bombing?

Among the victims of the bombing are Ra'ed Matar, whose wife, Eman Ibrahim Hassan Matar, and three children (ages 1 1/2, 3 and 5 years) were killed, as well as his sister (10 years), niece (2 months), and grandmother. Mahmoud Al Huweiti's wife, Muna Fahmi Al Huweiti, and their two sons (ages 4 and 5 years) were also killed. More than 150 people were injured in the attack, including Marwan Zeino, whose spinal vertebrae were crushed. He sustained injuries all over his body and remains unable to work due to mobility constraints and pain.

how can foreign officials be held accountable in the united states for human rights violations abroad?

U.S. courts can hold former foreign officials who are visiting or residing in the U.S. liable for violations of customary international law. The Alien Tort Statute (ATS), a 1789 statute, gives non-U.S. citizens the right to file civil suits in federal courts for such violations. Congress also passed the Torture Victim Protection Act (TVPA) in 1992 to allow individuals to seek redress for torture and extrajudicial killings carried out under the authority of a foreign nation.

In 1980, the Center for Constitutional Rights (CCR) obtained a landmark decision under the ATS in *Filártiga v. Peña-Irala*, finding that a civil case against a former

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Paraguayan official in the U.S. for torturing Paraguayan Joelito Filártiga to death could be brought in U.S. court. In 2004, the Supreme Court in *Sosa v. Alvarez-Machain* affirmed the *Filártiga* line of cases, finding that the ATS provides a jurisdictional basis for claims for violations of “specific, universal and obligatory” international norms. Since *Filártiga*, former government officials from countries including Guatemala, Indonesia, Haiti, the Philippines, El Salvador and Ethiopia have been held liable under the ATS for violations such as torture, extrajudicial killings and war crimes.

War crimes, which are absolutely prohibited, include attacks directed at civilians or civilian objects, as well as indiscriminate attacks that fail to take feasible precautions to avoid harming civilians. International law also prohibits targeting a civilian in an occupied territory except when they are taking a direct part in hostilities.

matar v. dichter

On December 8, 2005, Plaintiffs Ra’ed Matar, Mahmoud Al Huweiti and Marwan Zeino brought a class action suit against Dichter on behalf of the Palestinians who were killed or injured in the Al-Daraj bombing. They are represented by CCR, CCR cooperating attorneys and the Palestinian Center for Human Rights. The suit seeks compensatory and punitive damages against Dichter for violations of customary international law, namely extrajudicial killing, war crimes, crimes against humanity and cruel, inhuman or degrading treatment or punishment.

The case was filed in the Southern District of New York District Court, pursuant to the ATS, the TVPA and state law, including claims for wrongful death, negligence, public nuisance, battery and emotional distress.

In February 2006, Dichter moved to dismiss the case, arguing that he is entitled to immunity under the Foreign Sovereign Immunity Act (FSIA) and that plaintiffs’ claims are political questions that would interfere with U.S. foreign policy if decided by the courts. The U.S. government submitted a “Statement of Interest,” arguing that even though the FSIA does not apply to individuals, Dichter is immune under federal common law and customary international law for any official acts. In May 2007, Judge Pauley dismissed the case, finding that Dichter was immune under the FSIA because, according to the Israeli government, he was acting in the course of his official duties, and that the political question doctrine also warranted dismissal.

Plaintiffs appealed the dismissal, arguing that the FSIA does not apply to individuals like Dichter who are no longer government officials when the complaint is filed. Plaintiffs further maintained that Dichter cannot be immune because he acted outside the scope of his lawful authority and because there is no immunity for violations of *jus cogens* norms, including war crimes. Moreover, the political question doctrine does not apply, as courts not only adjudicate cases arising out of conflicts like the Israel-Palestine conflict, but also challenges to U.S. military decisions.

Arguments on the appeal were heard on January 16, 2009. On April 16, 2009, the Second Circuit Court of Appeals affirmed the dismissal of the case. The Court deferred to the view of the Executive that it should decline jurisdiction over this case.

what you can do:

- Raise awareness in your community about the issues presented in this case— write letters to the editor or Op-eds demanding accountability for war crimes.
- Sign up for action alerts on www.CCRJustice.org.

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www.ccrjustice.org/ourcases/current-cases/matar-v.-dichter.