

DETERRING TERROR THROUGH CIVIL LAW: A FRAMEWORK FOR STRATEGIC TORT LITIGATION

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1. *Introduction: The Barghouti Example*

On August 25, 2001, a deadly shooting attack occurred on Route 443 in Israel, in which Sharon Ben-Shalom and Yaniv Ben-Shalom, a married couple, were murdered, along with Doron Yosef Suwary – Sharon’s brother. At the time of the attack, Sharon and Yaniv’s two young daughters, Efrat Moshe Ben-Shalom and Shahar Moshe Ben-Shalom, were also in the vehicle. Sharon shielded her daughters with her body, saving their lives while sustaining fatal gunshot wounds. Efrat and Shahar survived, but suffered injuries from shrapnel. The attack was particularly shocking due to its outcome: a brother, a sister, and her husband were all killed at a young age, and two toddlers were left orphaned.

According to the court’s judgment,¹ Ahmad Taleb Mustafa Barghouti (hereinafter: ‘Ah-

¹ CivC (DC Jer) 3361-09 *Estate of the Deceased Sharon Ben Shalom v. the Palestinian Authority*, in *Nevo.co.il* (November 17, 2017).

mad') was one of the central participants in the execution of the attack. At the time, Ahmad served as the personal driver and bodyguard of Marwan Barghouti—the commander of Fatah in the West Bank and the leader of the Tanzim and the Al-Aqsa Martyrs Brigades, which functioned as militant arms of Fatah (hereinafter: 'Barghouti'). Ahmad held both logistical and operational responsibilities, with direct access to weapons and financial resources.

According to the indictment to which he pleaded guilty, Ahmad played an integral role in the planning and execution of the attack. He approved the inclusion of Muhammad Matzlach (also known as 'Abu Sattah') in a Tanzim cell engaged in planning shooting attacks. Ahmad provided Abu Sattah with an MP-5 submachine gun loaded with ammunition, knowing it was intended for use against Israeli civilians. Abu Sattah then transferred the weapon to the operatives who carried out the attack. Following the attack, Ahmad transferred a payment of \$500 to the attackers, which he had received from Ali Barghouti – a financial operative connected to Marwan Barghouti.

On May 20, 2004, Marwan Barghouti was convicted by the Tel Aviv District Court of premeditated murder in connection with three separate terrorist incidents that resulted in the deaths of five individuals. The court determined that Barghouti served as the leader of Fatah in the West Bank and commanded its field operatives. As part of these roles, he exerted influence over the terrorist cells and their commanders and ensured they received weapons and funding to support their operations. He was sentenced to five life sentences and additional lengthy prison terms.

Following the attack, the plaintiffs filed a tort claim in the Jerusalem District Court seeking both compensatory and punitive damages from the defendants for the harm caused by the attack. The plaintiffs alleged that not only the direct perpetrators, but also the Palestinian Authority and Marwan Barghouti bore legal responsibility.

The District Court ruled that both Barghouti and the Palestinian Authority were indeed liable for the damages suffered by the plaintiffs. The court found that at the time of the attack, the Palestinian Authority possessed various weapons and had approved requests from terrorist organizations to fund and procure weapons. Among those organizations were the Al-Aqsa Martyrs Brigades – the group to which the perpetrators of this particular attack belonged.

The court further found that Barghouti acted as the liaison between the terrorist organizations and Yasser Arafat, then Chairman of the Palestinian Authority. Barghouti relayed funding requests to Arafat, and after receiving approval, transmitted the authorized aid to the militant groups. The District Court concluded that both Barghouti and Arafat were aware that the requested weapons and funds were intended to carry out terrorist attacks against Israeli civilians.

As for damages, the District Court awarded punitive damages totaling NIS 62 million, to be divided such that the Palestinian Authority would bear 40% of the total amount, while Barghouti and the direct perpetrators would be jointly and severally liable for the remaining 60%.

Following an appeal, the Supreme Court of Israel issued its ruling on March 10, 2021²:

The Supreme Court upheld the District Court's ruling with respect to the liability of the defendants and confirmed that punitive damages were appropriate in this civil action. However, the Court reduced the amounts awarded, as follows:

The District Court had awarded NIS 10 million in punitive damages for each of the estates of the three deceased victims, and NIS 6 million each to Efrat and Shahar.

The Supreme Court revised these awards, holding that the defendants were to pay NIS 3 million for each of the victims' estates (instead of NIS 10 million), and NIS 1 million to each of the two injured daughters (instead of NIS 6 million).

This case, in which the Court addressed in a holistic and systematic way the relevant heads of tort, including punitive damages, I refer to as the 'Barghouti example', used to assist in the presentation of the forthcoming arguments. Thus, the following fundamental question emerges: in what manner can tort law be structured to support the war against terrorism? The goal of the present Article is to investigate how tort law can be leveraged as an additional tool in the deterrence toolkit of counterterrorism. My argument is that tort law is capable of playing an important deterrence role in the war on terrorism. I elaborate on how it is possible to structure tort procedures as a tool in the war against various circles of the world of terrorism, to make tort law an effective deterrence tool.

The Article proceeds as follows: Section B lays the conceptual groundwork for a tort-based approach to counterterrorism by identifying and defining three concentric categories of terror operatives – perpetrators, dispatchers, and enablers – and clarifying their respective roles within the architecture of terrorist activity. Section C contends that, under existing legal frameworks, tort liability can meaningfully deter such actors, both directly and indirectly, thereby supplementing the deterrent effect of criminal and administrative regimes. Section D proposes a normative and procedural blueprint for adapting tort law to the unique challenges of terrorism cases. Section E anticipates and responds to potential objections to the proposed framework. Finally, Section F offers concluding observations and outlines avenues for further scholarly and legislative development.

2. *The Anatomy of Terror: Perpetrators, Dispatchers and Enablers*

This section is devoted to defining the concept of 'terror operatives' by mapping the three distinct circles of actors involved in terrorist activity. It does not yet analyze how tort law can deter these actors but rather lays the conceptual foundation necessary for such an analysis. A clear understanding of who the relevant operatives are – and the nature of their affiliation with terrorist acts – is essential for constructing an effective tort-based deterrence

² CivA 71-18 *The Palestinian Authority v. Estate of the Deceased Sharon Ben Shalom*, in *Nevo.co.il* (March 10, 2021).

framework. The term ‘terror operatives’, as used throughout this article, encompasses the following three concentric circles: *perpetrators*, *dispatchers*, and *enablers*.

The term *perpetrator* refers to the individual terrorist or group of terrorists who physically carry out the attack. In the Barghouti example, this individual was Ahmad himself.

The *dispatchers* are those who orchestrate and plan the attack behind the scenes – they form the operational and ideological infrastructure that enables terrorism to materialize. This category includes organizations such as Al-Qaeda, ISIS, the Taliban, Hezbollah, and, in the Barghouti case, the Palestinian Authority.

Finally, *enablers* are those actors who could have reasonably prevented the terrorist act but failed to do so, thereby indirectly facilitating its occurrence. This category often includes financial institutions, such as banks that allow the transfer of funds from donors to terrorist organizations, which rely heavily on financial resources to support their operations. In some instances, these institutions also serve as channels for money laundering or concealment of funding sources. A bank that fails to implement adequate oversight and compliance mechanisms risks becoming a passive instrument of terrorist financing. Charitable organizations may likewise function as enablers: although their stated purpose is humanitarian, insufficient due diligence can lead to the inadvertent diversion of funds to terrorist groups instead of the civilian populations they aim to support.

Together, these three categories form the full ecosystem of terrorist operations – from execution, to planning, to indirect facilitation – and thus constitute the primary focus of this Article’s legal and normative analysis.

3. *Deterring Terrorism through Tort: the Role of Compensatory and Punitive Damages*

Tort law can serve as a meaningful deterrent to terror operatives by imposing significant monetary liabilities on those held responsible for committing acts of terrorism, as well as on individuals, organizations, or states that supported such acts – whether directly or indirectly. While these financial sanctions may not always dissuade those already within the perpetrator circle, they hold particular deterrent potential for the broader circles: the dispatchers and the enablers. These are the actors who assist terrorists or their sponsors prior to the attack, often by providing logistical, financial, or ideological support. When a court finds a person, organization, or state liable in a tort action, they may be required to pay substantial compensation to the victims. This economic burden – sometimes in the form of punitive damages or enhanced compensatory awards – can make involvement in terror-related activities prohibitively costly. By targeting dispatchers and enablers, tort law indirectly obstructs the operational capabilities of individual perpetrators, undermining the support networks that enable terrorism to function in practice.

Deterrence through tort law can be effectively applied across all three circles of terrorism. *Perpetrators*, or their estates in the case of deceased attackers, can be subject to civil lawsuits

in which courts may impose substantial monetary damages for their direct involvement in acts of terrorism. *Dispatchers* – such as terrorist organizations – can be held civilly liable as well, and upon judgment, any assets under their control may be subject to seizure and forfeiture in order to satisfy the court’s ruling. The same applies to *enablers* – including banks, corporations, or even governments – that knowingly or negligently provided direct or indirect financial or logistical support to terrorists or their sponsors.³ These entities can also face tort claims and be compelled to pay significant compensation. As a result, financial institutions and other potential enablers are more likely to adopt stricter compliance policies, conduct enhanced due diligence, and exercise greater caution in vetting clients and transactions – particularly where there is a risk of exposure to liability for aiding terrorism, even unintentionally.

Returning to our example, it is known that the PA budget includes an item called payment to *shabeeds*⁴ and security prisoners. In other words, the PA chose to pay people for perpetrating acts of terrorism.⁵ It is reasonable to assume that this payment policy serves as an incentive for terrorists to continue to perpetrate acts of terrorism. Among others, the policy provides security prisoners and the families of *shabeeds* with financial security in the form of a monthly salary, which is proportional to the severity of the attack perpetrated by them. Put simply, the longer the terrorists’ prison term is, the higher their monthly salary. This PA policy creates a direct, open relationship between the severity of the attack and the size of the salary it pays security prisoners (for those surviving the attack) and their estate (for those killed in the course of the attack). This payment policy has been met with sharp criticism, and several countries have condemned it and halted the transfer of financial aid to the PA because of it.⁶

³ See *infra* Section 4.1. for a discussion about how a foreign government difficulty may arise because of its immunity.

⁴ One who has given his life for his religious belief or a higher cause, especially one who is killed in battle for Islam. *Shahid*, in *Encyclopedia.com* (last visited July 1, 2025).

⁵ To ensure its payments to security prisoners, released security prisoners, the families of *shabeeds*, and the wounded, the PA enacted, among others, two laws. See “Law for Support of Prisoners in Israeli Prisons No. 14, *An-Najah Nat’l U.*,” in *Maqam.najah.edu* (2004); “Released Prisoners Law No. 19,” in *Palestinian News and Info. Agency* (2004). See also “Law of Released Prisoners No. 19,” in *Info.wafa.ps* (2004).

⁶ For example, Germany expressed concern that funds transferred by it to the PA would be used to fund terrorism and promised to investigate their destination. See Ahren Raphael, “In First, Germany Admits PA is Likely Paying Terrorists’ Families,” in *Timesofisrael.com* (September 5, 2016). The UK suspended the transfer of funds to the PA in 2016 because of similar concerns. See Hawkes Steve, “Taxpayer Funded Terrorists: Britain Suspends Millions of Aid Payments to Palestine Amid Claims Cash is Handed to Terrorists,” in *TheSun.com* (October 7, 2016). Australia changed the allocation of payments transferred by it in the course of 2018 because of concerns that they would be used to finance salaries to terrorists. See “Reallocation of Aid to the Palestinian Authority,” in *Dfat.gov.au/news* (July 2, 2018). Norway expressed concern that aid funds would be transferred for these purposes and was satisfied with a promise by the PA that it would refrain from doing so. See “Abbas Confirms PA Still Paying Terrorists’ Salaries - Report,” in *Timesofisrael.com* (May 7, 2016). The U.S. froze the transfer of funds to the PA as long as these payments continued by enacting the Taylor Force Act, Pub. L. No. 115-141, §§ 1002-07, 132 Stat. 347, 1143-47 (2018). In this context, it should be added that the ‘reallocation game’ is problematic. Money is fungible. The money from Norway can be used to fund lunch for kindergarten students and the money saved from the kindergartens’ budget is used to pay terrorists.

Nevertheless, the PA continues to defend this policy and annually allocates some 7% of its budget, for a total of some 300 million dollars,⁷ for payments to security prisoners and their families. The imposition of tort liability on the PA in such cases, obligating it to pay heavy sums of money, is likely to contribute to their deterrence. Yet, for the damages to create effective deterrence, as suggested in this Article, they must contain two elements: tort compensation for the damage caused and punitive damages.

3.1. *Deterrence by Making Victims Whole - Tort Compensation as Remedy*

Tort law can serve as an important tool for terror victims to receive compensation for the harm they endured, both physically and emotionally. This compensation may include not only pecuniary damages, for example, for medical expenses and loss of salary, but also non-pecuniary damages like pain and suffering. Victims who survived terror attacks frequently endure not only physical harm requiring long-term medical treatment but also emotional harm, such as severe psychological trauma. The families of the victims of terror attacks are also liable to suffer from psychological trauma, in addition to the loss of the financial support that had been provided by the murdered person.⁸ Tort lawsuits may provide injured parties with a means of receiving compensation for their harm. This incentive is especially important when government compensation programs are lacking or are or insufficient.⁹

I argue that the considerable deterrence achieved by tort law as a result of compensation awarded to the injured party is the main motive for initiating legal proceedings. The incentive of potential plaintiffs lies in the possibility of receiving compensation. In this way, tort law generates more plaintiffs who, in turn, increase awareness of the war against terror.

3.2. *Deterrence by Hitting Terrorists Harder - Tort Compensation as Sanction*

Tort law can impose not only tort compensation on terror operatives, but also punitive damages. The latter are accorded as part of the tort proceedings to punish the tortfeasor and deter others from perpetrating similar acts. This award to the injured party is intended to compensate the plaintiff for losses incurred as a result of the tortious conduct of the tortfeasor. In general, there is no place for the imposition of punitive damages in tort law because tort law aspires to generate optimal rather than maximum deterrence.¹⁰ Tort law does not

⁷ Neuer Hillel and Rovner Dina, “Alternative Report of United Nations Watch to the 99th Session of the Committee on the Elimination of Racial Discrimination for Its review of State of Palestine 7,” in *Unwatch.org* (July 12, 2019).

⁸ Restatement (Second) of Torts § 46 cmt. j (A.L.I. 1965), which recognizes an exception to the presence requirement for family members in cases of extreme and outrageous conduct.

⁹ See *infra* Section 4.5.

¹⁰ See also Wilcox Vanessa, “Punitive Damages in England,” in *Punitive Damages: Common Law and Civil Law Perspectives*, edited by Helmut Koziol and Vanessa Wilcox (New York: Springer, 2009), 7.

aspire to bring society to a situation of zero damages because it usually deals with accidents that are the outcome of socially desirable activities like driving, medical treatment, and manufacturing, whereas maximum deterrence is warranted only for behaviors intended to cause harm. From the deterrence standpoint, tortfeasors should be aware of the duration of the damage caused by them, and no more (to avoid overdeterrence), and injured parties know that if they endure harm, the compensation they receive will be the equivalent of the duration of the harm, and no more, no less.

By contrast, in tort lawsuits enacted as a remedy for terrorism, the situation is different because it deals with behavior aimed at intentionally inflicting severe harm.¹¹ Consequently, in such cases, the aspiration must be maximum deterrence because there is no danger of either overdeterrence of the tortfeasor (society aspires to prevent acts of terrorism entirely) or underdeterrence of the injured person (people are not interested in being murdered in acts of terrorism).

Moreover, in tort lawsuits initiated as a remedy for terrorism, punitive damages can serve as a deterrent in the following way: the essence of tort law is the awarding of compensation to the injured party. This compensation mechanism is essential because of the effective incentives it provides to the victims of terrorism to file tort lawsuits. According to this argument, the main advantage of tort law is the compensation of the injured party. Potential plaintiffs have an incentive because of the high compensation they hope to receive through tort proceedings, so tort law generates more plaintiffs who, in turn, bring about better deterrence of terror operatives. The component of significant punitive damages in tort law motivates injured parties to sue terror operatives, leading to more efficient deterrence. I suggest that deterrence is the only justification for awarding punitive damages,¹² without resorting to the punitive purpose.¹³

I argue that punitive damages can be awarded in tort law when the following two cumulative conditions exist: *first, there is no fear of overdeterrence of the tortfeasor.* As noted above, in tort lawsuits instituted as a remedy for terrorism, the tortfeasor is sued for behavior perpetrated out of ideological motives intended to inflict severe bodily harm. Therefore, the aspiration must be maximum deterrence to completely rid society of the tortfeasance. Therefore, there is no fear of overdeterrence of the tortfeasor. Concerns raised in the academic literature that punitive damages lead to excessive deterrence, the paralysis of industry, and loss of welfare do not apply in this case.¹⁴ *Second, there is no fear of underdeterrence of the*

¹¹ See *Philip Morris USA v. Williams*, 549 U.S. 346, 357 (2007), for a justification of punitive damages when the tortious event causes many damages to many injured persons, not all of whom are parties to the proceedings.

¹² See Galligan Jr. Thomas C., "Augmented Awards: The Efficient Evolution of Punitive Damages," *La. L. Rev.*, 51 (1990): 17, for an explanation of the deterrent purpose.

¹³ See Ghiardi James D., *Punitive Damages: Law and Practice* (St. Paul, Minn.: West Group, 2010), showing the need for both purposes together; Mitchell Polinsky Alan and Shavell Steven, "Punitive Damages: An Economic Analysis," *Harv. L. Rev.*, 111 (1998): 109 showing same.

¹⁴ See Sunstein Cass R., "Assessing Punitive Damages (with Notes on Cognition and Valuation in Law)," *Yale L.J.*, 107 (1998): 2084, for these concerns in the literature.

injured party. As noted, the awarding of punitive damages for harms resulting from the terrorist activity does not raise concerns of underdeterrence of the injured party because people do not seek to place themselves in danger of being murdered by terrorist activity. When these two conditions are met simultaneously, the conclusion follows that *the harmful activity is one for which optimal deterrence is maximum deterrence*.

4. *Toward a Systematic Tort Law Regime against Terrorism*

This section outlines a preliminary blueprint for a tort law framework grounded in six foundational pillars: (a) challenging sovereignty: the case for extra-territorial civil jurisdiction in terrorism litigation; (b) liability in the shadows: stretching tort law's reach in terror cases; (c) bridging the evidentiary gap: tailoring civil procedure to combat terror through tort Law; (d) from judgment to payment: using legislative leverage to enforce civil liability in terror cases; (e) a two-tier approach: state compensation and cost recovery from the circles of terror; (f) building a global tort law front: legal cooperation as a weapon against terrorism.

4.1. *Challenging Sovereignty: The Case for Extra-Territorial Civil Jurisdiction in Terrorism Litigation*

Extra-territorial jurisdiction refers to the authority of a country to exercise judicial power beyond its territorial boundaries.¹⁵ In the context of tort lawsuits filed as remedies for terrorism-related harm, the expansion of extra-territorial jurisdiction entails allowing national courts to adjudicate claims and impose civil liability on individuals, organizations, or even foreign states that perpetrate, aid, or abet acts of terrorism – even when such acts occur entirely outside the forum state's borders.¹⁶ This expansion is especially significant when the targeted acts produce harm to that country's citizens or interests. The recognition and implementation of such jurisdiction reflect an evolving understanding that terrorist activity often transcends borders, and that traditional territorial limits on legal authority may be inadequate to address the global nature of this threat.

The adoption of extra-territorial jurisdiction can be pursued through a comprehensive, multi-faceted approach. For example, countries may enact domestic legislation explicitly authorizing their courts to assert jurisdiction over foreign defendants who engage in or support terrorism that causes harm to their nationals, regardless of where the act occurred. In addition, countries can work through diplomatic and multilateral channels to establish in-

¹⁵ As a rule, the jurisdiction of a country is limited to its own borders. International law, however, allows for extra-territorial jurisdiction as long as this is not prohibited, as in a situation of enforcement in another country's territory. See *S.S. Lotus (Fr. v. Turk.)*, Judgment, 1927 P.C.I.J. (ser. A) No. 10, at 44-45 (Sep. 7).

¹⁶ See *id.* at 45-46.

ternational treaties that confer reciprocal extra-territorial jurisdiction over terrorist offenses. These treaties can create a shared framework for addressing cross-border terrorism by obligating signatory states to recognize and enforce each other's civil judgments – particularly when the liable parties reside or hold assets within their territories. Such mutual recognition mechanisms enhance the enforceability of tort verdicts and reduce the risk that perpetrators or enablers of terrorism will evade financial liability by exploiting jurisdictional gaps.

In the U.S., legislation that regulates this issue consists of three laws: (1) The Foreign Sovereign Immunities Act (FSIA) (1976) constitutes the federal legal framework for understanding when and how tort claims against foreign countries can be filed in US courts.¹⁷ It grants immunity to foreign countries from lawsuits against them and it enshrines the basic principle, whereby a sovereign country is not subject to the jurisdiction of another and is immune from legal proceedings in another country, thereby preserving its sovereignty.¹⁸ But the law includes several exceptions through which a foreign country can be sued, including activities of a commercial nature.¹⁹ If a country controls a commercial company operating in the U.S., it can be sued for its activity. Other exceptions concern damage caused on U.S. territory,²⁰ and terrorist activity, allowing countries that have been declared by the U.S. Department of State to support terrorism to be sued for terror acts that caused damage to American citizens or their property.²¹ In sum, the FSIA provides the basis for determining whether a foreign sovereign state is immune from the jurisdiction of U.S. courts and sets the limits of sovereign immunity.²²

(2) The Anti-Terrorism Act (ATA) (1990) is a fundamental legal tool for managing the fight against terrorist activity using civil law.²³ It is intended to give American citizens the possibility to file tort claims against terrorist organizations and their supporters, including also against states and private entities that have been found involved in terrorist activities against Americans.²⁴ This law served as the basis for lawsuits against an enabling circle when banks and companies accused of providing financial support to terror organizations were

¹⁷ See Foreign Sovereign Immunities Act of 1976, 28 U.S.C. §§ 1602-1611 (1976).

¹⁸ 28 U.S.C. § 1604 (2016).

¹⁹ *Id.* § 1605(a)(2) (2016).

²⁰ *Id.* § 1605(a)(5).

²¹ 28 U.S.C. §§ 1605A-1605B (2016).

²² See, for example, *Owens v. Republic of Sudan*, 412 F. Supp. 2d 99 (D.D.C. 2006), which dealt with the bombing of the US embassies in Kenya and Tanzania in 1998. The lawsuit was filed under the authority of the FSIA for providing material support to the terrorist organizations that carried out the attacks. The court found Sudan responsible for providing support to al-Qaeda, which carried out the bombings, and imposed on Sudan an obligation to pay compensation to the victims and their families. Also see *Rubin v. Islamic Republic of Iran*, 2011 U.S. App. LEXIS 6758 (7th Cir. 2011), which dealt with a tort claim filed by victims of a suicide attack by Hamas in Jerusalem. American citizens who were seriously injured in this attack filed a tort claim against Iran in the Federal District Court in Washington, claiming that Iran had a hand in it with the training and support it provided to Hamas. In imposing liability, the court based its jurisdiction in this case on the FSIA.

²³ See Antiterrorism Act of 1990, 18 U.S.C. §§ 2331, 2333 (1990).

²⁴ *Ibid.*, § 2333(a).

sued based on it, including banks that transferred funds to terror organizations.²⁵ The law was also used in lawsuits against countries such as Iran, which was accused of supporting terrorism that harmed American citizens.²⁶ In conclusion, the ATA is intended to deter entities in the various circles of the terrorist world by giving American citizens the possibility to use private law and to file tort claims for damages caused to them as a result of international terror acts.

(3) The Justice Against Sponsors of Terrorism Act (JASTA), 2016,²⁷ is a significant amendment to the FSIA and the ATA. Its purpose is to expand the ability of terror victims to file tort claims against foreign countries that sponsor terrorism, especially in the case of events that occurred on U.S. soil. A key feature of this law is its broad applicability. Whereas the FSIA provides immunity to certain countries from lawsuits in the US, as long as they are not on the U.S. State Department's list of countries that support terrorism, JASTA allows foreign countries to be sued even if they are not on that list. This is a significant expansion of the limits of tortious liability because it allows tort claims against countries for their support of terrorism without an official declaration by the American government.²⁸ In summary, JASTA reduces the scope of immunity granted to foreign countries and officials in cases of terror acts, allowing U.S. citizens to file tort claims against foreign countries that support terrorism even if they are not designated as state sponsors of terrorism by the U.S. government.

In Israel, the main law covering this issue is the 2008 Foreign States Immunity Law.²⁹ According to section 2 of this law "a foreign state shall have immunity from the jurisdiction of the courts in Israel",³⁰ but section 5 qualifies this immunity by stating that "a foreign state shall not have immunity from jurisdiction in a lawsuit due to a tort resulting in damage to the body or tangible property, provided that the wrongdoing was committed in Israel".³¹

²⁵ One of the well-known rulings is *Miller v. Arab Bank, PLC*, 372 F. Supp. 3d 33 (E.D.N.Y. 2019). The plaintiffs in this case were victims of American terrorist attacks and their families who claimed that the Arab Bank facilitated the transfer of funds to Hamas leaders and charitable organizations affiliated with Hamas, and that these funds were used to carry out and encourage attacks. The bank was accused of managing the accounts of known Hamas operatives, making payments to the families of suicide terrorists, and financing charities that were used for terrorism. A jury found the Arab Bank responsible for providing material support to Hamas. It was a significant case because it was the first time a financial institution was held liable under the ATA. Once liability was imposed, the Arab Bank agreed to settle the compensation amount as part of a compromise, the details of which remain confidential.

²⁶ See, for example, *Peterson v. Islamic Republic of Iran*, 2023 U.S. Dist. LEXIS 49039 (S.D.N.Y. Mar. 22, 2023), which dealt with tort claims by American victims of an attack that occurred in Beirut in 1983 against American marines. The court found Iran responsible for providing support to the Hezbollah organization, which carried out the attack, and awarded significant compensation to the injured.

²⁷ See 28 U.S.C. § 1605B.

²⁸ Based on this law, tort claims were filed by the families of the victims of September 11th and several thousand survivors against Saudi Arabia. The prosecutors claimed that Saudi Arabia aided the planners and perpetrators of the attack. See, e.g., *Ashton v. Kingdom of Saudi Arabia*, No. 1:17-cv-02003, 2017 WL 1056098 (S.D.N.Y. 2017).

²⁹ See Foreign States Immunity Law, 5768-2008 (Isr.).

³⁰ *Ibid.*, §2.

³¹ *Ibid.*, §5.

The possibility of filing tort claims against terrorist actors is more limited in Israeli law than in American law. Israeli law limits this possibility in relation to wrongs committed in Israel, whereas American law allows these lawsuits to be filed even for acts committed outside the U.S. Included amongst these are provisions that specifically allow lawsuits to be filed against certain designated countries that finance terrorism, regardless of where the terror act took place.³²

The expansion of extra-territorial jurisdiction faces challenges, however. For example, the implementation of the concept is liable to create tension between states for being perceived as harming national sovereignty. Moreover, the determination and expansion of jurisdiction over international cases can be inherently complex. Enforcement of rulings can be difficult, especially if it involves the seizing of assets held in other countries or extradition. Therefore, while extra-territorial jurisdiction can empower countries seeking to deter operatives engaging in terrorism by means of tort law, it must be part of a broad, multi-faceted approach to the war on terrorism. Such a strategy must include a combination of diplomacy, international cooperation, military activity, and intelligence-sharing, rather than only legal cooperation.

4.2. *Liability in the Shadows: Stretching Tort Law's Reach in Terror Cases*

In order for tort law to serve as an effective deterrence mechanism against terrorist activity, the traditional boundaries of tortious liability may need to be thoughtfully and deliberately expanded. Such expansion is necessary to allow the imposition of civil liability not only on the direct perpetrators of terrorist acts, but also on the broader circles of involvement, particularly enablers and dispatchers – those who facilitate, support, or orchestrate terrorism behind the scenes.³³ By stretching the contours of liability to encompass these indirect actors, tort law can target the infrastructure that sustains and enables terrorism, thereby increasing the deterrent effect at multiple levels of the terror ecosystem.

However, any such doctrinal extension must be approached with great caution. Expanding liability too broadly or without adequate safeguards may risk undermining legal certainty, triggering diplomatic frictions, or entangling courts in politically sensitive determinations. The challenge, therefore, is to craft legal standards that are both rigorous and flexible – sufficiently expansive to reach culpable enablers and dispatchers, yet grounded in

³² See 28 U.S.C.S. § 1605A (LexisNexis 2025). The National Defense Authorization Act (NDAA) is passed annually and reflects the priorities and challenges facing the U.S. military and the broader national security landscape at that time. The 2008 NDAA achieved considerable public acclaim for its focus on improving the treatment of combat-injured veterans and reforming aspects of defense procurement. See National Defense Authorization Act for Fiscal Year 2008, Pub. L. No. 110-191, §1083, 122 Stat. 3, 338 (2008). This amendment introduces a federal cause of action against foreign state sponsors of terrorism, allowing victims and their families to seek compensation.

³³ The American law allows imposing tortious liability on foreign countries even if they are not officially declared as supporting terrorism by the U.S. government. It also allows submitting tort claims against terrorist actors for acts committed outside the U.S. See *infra* Section 4.1.

clear principles of foreseeability, proximity, and causation. This calibrated approach ensures that tort law remains a credible and principled tool in the broader legal response to terrorism.

It will be recalled that the circle of enablers includes people or bodies that make it possible for terrorists to receive financial support. This may be done by means of direct financing, or indirectly by means of activities such as money laundering or the supply of resources.³⁴ As for the circle of dispatchers, this category includes all those who extend practical help to terrorists, such as offering those engaging directly in terrorism: a safe haven, training, logistic support, or help fundraising.³⁵

In Israel, Section 12 of the Torts Law Ordinance states that “[f]or the purposes of this Ordinance, any person joins himself or aids in, counsels, or solicits any act, or omission, done or about to be done by any person, or commands, permits or authorizes them, shall be deemed liable for such act or omission”.³⁶ Based on this Ordinance, the Supreme Court determined that the payments made by the PA to terrorists and their families amount to “ratification” and therefore, the PA was also responsible for committing an act of terrorism.³⁷

This being the case, the tort liability of these parties must be expanded, given that they had the ability to prevent an act of terrorism and did not do so. This category can also include security companies, building owners, and even government agencies, although the imposition of liability in this manner must be carried out carefully because it may be controversial.

To expand tort liability appropriately, several issues must be taken into account. First, tort legislation must clearly define what constitutes ‘enabling’ or ‘sponsoring’ terrorism, to ensure that these categories are not used for unjustified purposes, such as frivolous lawsuits or overdeterrence of innocent parties. Defendants must also have the right to a fair procedure, including the ability to appeal court rulings against them. When facing challenges in enforcing such a legal scheme for expanded liability, in particular with respect to tortfeasors located in other countries, international cooperation and mutual legal assistance are vital.

To summarize, expanded tort liability in lawsuits intended as a remedy for terrorism may constitute a deterrent by creating significant legal and financial risks for entities considering direct or indirect involvement in such activity.³⁸ At the same time, it must be ascertained that

³⁴ According to the ATA, banks and other financial institutions can be held liable if they knowingly provide financial services to organizations involved in terrorist activity. Section 18 U.S.C. §2333 of the ATA allows victims of international terrorism to claim civil damages in US courts. The provision has been interpreted to include secondary parties such as banks that may knowingly assist a terrorist organization by providing financial services.

³⁵ Thus, for example, a key section in JASTA, which allows countries to be sued even if they are not on the US State Department’s list of sponsors of terrorism, is Section 5, which amends the FSIA by adding a new exception to sovereign immunity in cases involving acts of terrorism in the U.S.

³⁶ Israeli Tort Law Ordinance, 5728-1968, SH 541 1 (Isr.).

³⁷ CivA 2362-19 A v. Palestinian Authority (Apr. 17, 2022) (Isr.).

³⁸ The expansion can also be done through the identity of the victim. See, for example, cases that dealt with non-citizen victims, such as *Peterson v. Islamic Republic of Iran*, 264 F. Supp. 2d 46 (D.D.C. 2003), which dealt with a lawsuit filed by the families of U.S. Marines who were killed in the 1983 attack in Beirut, Lebanon. *Id.* at 48. In this attack, which occurred during a peacekeeping mission of international forces, 241 U.S. Marines

the basic principles of justice and effective deterrence are respected.

4.3. *Bridging the Evidentiary Gap: Tailoring Civil Procedure to Combat Terror Through Tort Law*

This section addresses the procedural challenges unique to tort litigation arising from acts of terrorism. Given the complexity and opacity of terrorist operations, and the often-transnational character of such cases, it may be necessary to adapt certain rules of civil procedure – particularly those governing evidence and testimony – to ensure the effective functioning of tort law in this domain. Such adaptations must simultaneously promote access to justice for victims and safeguard the defendants' fundamental right to a fair trial.

Evidence and testimony are central pillars of any tort proceeding. In terrorism-related claims, the burden of proof lies primarily with the plaintiffs – typically the victims or their families – who must establish the liability of the alleged tortfeasors. However, this burden is often rendered extraordinarily difficult due to the clandestine nature of terrorist activity, the use of proxies or front organizations, and the lack of transparency in state or non-state actors who support terrorism. To address this evidentiary gap, the following procedural tools and reforms may be considered: Lenient Standards of Evidence: Courts may adopt more flexible evidentiary standards, allowing the admission of indirect or circumstantial evidence that, while not conclusive, can help construct a coherent factual narrative. Such an approach recognizes the inherent difficulty in obtaining direct evidence against terrorist operatives and their enablers; Use of Classified or Sensitive Information: Terrorism-related litigation may involve intelligence materials or state secrets. Courts may need to authorize the partial or conditional use of classified evidence, such as allowing a claimant's counsel to review sensitive documents in camera or under protective orders, without compromising national security or public safety; Expert Testimony on Terrorism: The appointment of expert witnesses specializing in terrorism can provide critical context to judicial proceedings. Such

were killed when a suicide bomber detonated a truck full of explosives near their residence. *Ibid.* at 48, 56. This case included family members of different nationalities, who represented the multi-national composition of the forces stationed in Beirut at the time. *Id.* at 49. Most of the victims were Americans, but they also included French, Italian, British, and other forces. The court ruled that Iran and Hezbollah supported and participated in the planning and execution of the attack. *Id.* at 58. According to the court decision, compensation of approximately 2.65 billion dollars was awarded to the victims and their families. These claims are also relevant in the case of mass disasters. See *Havlish v Islamic Republic of Iran* [2018] EWHC (Comm) 1478 (Eng.) (dealing with a lawsuit filed by family members and victims of the September 11, 2001, attacks). The plaintiffs claimed that Iran and other parties actively supported and assisted al-Qaeda in planning and carrying out the attacks. In 2011, the United States District Court for the Southern District of New York accepted the lawsuit and ruled in favor of the plaintiffs. The Court found that there were connections and coordination between elements in Iran and al-Qaeda, including training received from terrorists in Iran. As part of the verdict, the court demanded that Iran pay billions of dollars in compensation to the families of the victims. However, as in many cases of judgments against Iran, there is great difficulty in enforcing the compensation and obtaining the funds from the defendant country.

experts can assist the court in understanding organizational structures, funding mechanisms, and logistical networks associated with terrorist entities, thereby aiding in the attribution of liability; Remote Testimony Mechanisms: To accommodate witnesses located in foreign jurisdictions – or those unable to travel due to security or logistical constraints – civil procedure rules may permit testimony via videoconferencing or other secure digital platforms. This flexibility is especially pertinent in cross-border litigation involving international terror networks; Witness Protection Measures: Given the risks involved, particularly in lawsuits targeting violent extremist organizations, it is imperative to implement witness protection programs. These may include anonymity orders, relocation assistance, and psychological support for witnesses and their families to encourage their participation in legal proceedings; International Evidentiary Cooperation: Effective litigation may require evidence gathering from multiple jurisdictions. Mechanisms such as mutual legal assistance treaties, joint investigation teams, and shared intelligence databases can facilitate the cross-border collection of admissible evidence, including financial records, communication logs, and travel documents.

While these procedural accommodations are essential for ensuring that tort claims arising from terrorist acts are both viable and meaningful, they must be carefully balanced against the rights of defendants. Fundamental principles such as the right to confront witnesses, to access and challenge the evidence presented, and to appeal judicial findings must remain intact. The overarching goal is to ensure that the pursuit of deterrence and accountability through tort litigation does not come at the expense of procedural justice.

4.4. *From Judgment to Payment: Using Legislative Leverage to Enforce Civil Liability in Terror Cases*

Efficient collection mechanisms are needed to enable securing the restitution from the tortfeasor and its transfer to the injured party.³⁹ Below, I describe a mechanism adopted in the

³⁹ On the challenge regarding the execution of the judgments, see *Rubin v. Islamic Republic of Iran*, 33 F. Supp. 3d 1003, 1005 (N.D. Ill. 2014) (dealing with an attempt by victims of terrorism to expropriate assets of the State of Iran located in the US to receive compensation). In this case, the plaintiffs were victims and families of victims of an attack in Jerusalem. *Id.* at 1006. The plaintiffs won damages from the state of Iran in U.S. federal court but faced difficulties in collecting the funds because Iran held no available assets in the US, with the exception of some artwork on display at the University of Chicago. *Ibid.* The question raised before the Supreme Court was whether the art collections at the University of Chicago could be used to pay the damages. The Supreme Court ruled that the art collections are not considered assets that can be redeemed. Another example of enforcement difficulties, in the United States is *Flatow v. Islamic Republic of Iran*, 67 F. Supp. 2d 535-37, 542 (D. Md. 1999) (involving Alyssa Flatow, an American student, who was killed in a hit-and-run action when the bus she was traveling in collided with a van loaded with explosives). The U.S State Department determined that the Islamic Jihad carried out the attack and that it was Iran that provided material support and resources to the Islamic Jihad to carry out this attack. The court held Iran responsible for the attack in light of its material support for the Palestinian Islamic Jihad and awarded the Flatow family 247.5 million dollars in damages and punitive damages. The appeals court confirmed the finding of the lower court that Iran was responsible for the attack but referred to a number of issues related to the enforcement of the judgment against Iran. The court discussed the challenges related to the collection of the judgment from the assets of a foreign country.

US and Israel, which in certain circumstances can meet this challenge.

The U.S. is among the countries extending financial aid to the Palestinian Authority. Since 1993, the U.S. has transferred \$41 billion in international aid to the West Bank and Gaza Strip.⁴⁰ In a terrorist attack in Tel Aviv in 2016, an American army veteran, Taylor Force, was killed while vacationing in Israel with his wife, who was also wounded.⁴¹ Force's death reverberated throughout the U.S. His family revealed that the terrorist who perpetuated the attack was receiving a stipend for the murder from the PA, which was receiving American financial aid.⁴² Thus, the financial aid to the PA, funded by American taxpayers, was paying Force's murderer for his act.

This discovery shook Force's family, who decided to rally broad support to change the legal reality in the U.S. As a result, in July 2017, Congressman Doug Lamborn introduced the Taylor Force Act in the American Congress.⁴³ Following the legislative process, it was signed into law by President Trump in March 2018.⁴⁴

The Taylor Force Act limits the power of the US President and Secretary of State, vested in them by virtue of Chapter 4, Part II of the Foreign Assistance Act,⁴⁵ to extend special international assistance exceeding the limit determined in Chapter 32, Part I⁴⁶ for development in special cases that are justifiable for economic, political, or security reasons serving American interests. When the US President decides this is indeed the case, the Secretary of State is responsible for its implementation and for determining the policy with regard to the selected countries.⁴⁷

The Taylor Force Act directs that the U.S. Secretary of State has the power to approve such federal assistance, as determined in Chapter 4, Part II of the Foreign Assistance Act,⁴⁸ to the PA, the Palestine Liberation Army, or any other entity demanding it, limited to situations meeting the following four cumulative conditions: (a) the entities that are candidates for assistance are adopting concrete steps to put a halt to terrorist attacks in their jurisdiction against Israeli and American citizens⁴⁹; (b) the entities have halted all payments to all persons concerning whom it was determined, subsequent to a fair proceeding, that they perpetrated

⁴⁰ "West Bank and Gaza Aid: USAID Generally Ensured Compliance with Anti-terrorism Policies and Addressed Instances of Noncompliance," *U.S. Gov't Accountability Off.*, Gao.gov (December 7, 2023).

⁴¹ Wootliff Raoul, Ari Gross Judah and Staff Tol, "Jaffa Terror Victim Was U.S. Army Vet, Vanderbilt Student," in *Timesofisrael.com* (March 8, 2016).

⁴² Press Release, Sens. Ted Cruz, Tom Cotton and Colleagues, Senators Introduce Taylor Force "Martyr Payment" Prevention Act to Target Palestinian Terror Payments, in *Cruz.senate.gov* (April 6, 2017).

⁴³ H.R. 1164, 115th Cong., in *Congress.gov* (2017).

⁴⁴ Cortellessa Eric, "Trump Signs Into Law Bill Slashing PA Funds Over Terrorist Stipends", in *Timesofisrael.com* (Mar. 23, 2018, 10:57 PM).

⁴⁵ Foreign Assistance Act of 1961, 22 U.S.C. § 2346.

⁴⁶ 22 U.S.C. ch. 32, pt. 1.

⁴⁷ 22 U.S.C. §2346(b).

⁴⁸ *Ibid.*, §2346.

⁴⁹ Taylor Force Act, Pub. L. No. 115-141, § 1004(a)(1)(A), 132 Stat. 347, 1143-47 (2018) (codified as amended at 22 U.S.C. § 2378c-1(a)(1)(A) (2018)).

an act of terrorism against an Israeli or American citizen, or have halted all payments to the family of the person who perpetrated such an act of terrorism and was killed in so doing⁵⁰; (c) the entity cancelled or took action equivalent to canceling all injunctions and laws regulating a payment policy according to which a stipend is paid to persons based on the length of time they were under arrest for perpetrating an act of terrorism⁵¹; and (d) the entity publicly condemns acts of terrorism perpetrated by its members and takes concrete steps to investigate such deeds and apprehend collaborators.⁵²

Such a tort scheme has a few exceptions. According to the Taylor Force Act, the limitations on foreign aid do not apply to hospitals in East Jerusalem, to water and sanitation services, or to any program designated to vaccinate children.⁵³ So, the purpose of the law is not to punish innocent people in desperate need of assistance, but rather to exert external, international pressure with the aim of creating incentives to change a policy that harms innocent American and Israeli citizens.

Israel has adopted provisions similar to those in the Taylor Force Act. For example, Section 1 of the Israeli Law on Freezing Revenues Designated for the Palestinian Authority determines the following with regard to money paid by the latter to fund terrorism-related activity⁵⁴:

The purpose of this law is to reduce terrorist activity and to eliminate the economic incentive for terrorist activity by setting provisions for the freezing of funds paid by the Palestinian Authority in connection with terrorism, out of the funds transferred by the Israeli government to the Palestinian Authority according to the provisions under implementing laws.⁵⁵

This law determines that at the close of each year, the Minister of Defense will present, to the cabinet for ratification, data on the total amount of funds transferred by the PA to finance terrorism-related activity during that year, as well as data on the effects of freezing such funds on the strength of this law in that year as it concerns Israeli national security and external relations. On the basis of this data, and following ratification by the cabinet, a percentage of the tax money transferred by the Israeli government to the PA, equivalent to one-twelfth of the total amount of funds passed on by the latter to fund terrorism-related activity in the previous year, will be frozen each month.⁵⁶ If the data presented by the Minister of Defense to the cabinet shows that in the year in question, the PA did not transfer funds to support terrorism-related activity, the cabinet is entitled to decide to transfer the frozen funds to the PA.⁵⁷

⁵⁰ *Ibid.*, §1004(a)(1)(B).

⁵¹ *Ibid.*, §1004(a)(1)(C).

⁵² *Ibid.*, §1004(a)(1)(D).

⁵³ *Ibid.*, §1004(b).

⁵⁴ See §1, Law on Freezing Revenues Designated for the Palestinian Authority Due to Payments Linked to Terrorism, 5778-2018 (Isr.), which reflects a law freezing money transferred by the Israeli government to the PA and allocated by the latter to fund terrorism-related activity.

⁵⁵ See *ibid.*

⁵⁶ *Ibid.*, §4(a).

⁵⁷ *Ibid.*, §4(b).

4.5. *A Two-Tier Approach: State Compensation and Cost Recovery from the Circles of Terror*

To ensure that terror victims indeed receive the damages awarded to them, governments can set up funds for the compensation of victims of terrorism. Funds of this kind may be specific to a particular terrorist incident⁵⁸ or may be general and relevant to all terrorist acts.⁵⁹ Such funds may be financed through general tax revenues or through more specific sources such as fines and punishments to be imposed on the various circles of the terrorist world. Terror victims or their families will therefore be able to submit a claim to the fund, when they present proof of their damages, and the costs incurred because of these damages. The fund can then assess these claims and provide compensation accordingly.

In the next step, the fund may file a claim for participation to be reimbursed from the relevant terrorist actors. This claim can be filed against the circle of perpetrators, of dispatchers, and of enablers, as stated in Section B above. The existence of such a fund may even result in better preventive measures against potential terrorist actors because they may be required to pay into the fund even in the event of a terrorist act that was unsuccessful and caused no damage.

Why would the victims of terrorism prefer compensation from the terrorist entities over rewards offered to them by the state? It may be argued that the state pays relatively quickly and there are no difficulties in collecting on a claim for damages caused by terrorism. According to the model proposed in this Article, methods that established government compensation funds would obligate these funds to submit reimbursement claims against the relevant terrorist actors. In this way, both the goals of compensating the injured party and of charging the tortfeasor are achieved.

This concept faces some challenges. For example, the damages awarded to the injured parties may be very high, taking into consideration the harms caused by terror attacks. Moreover, the process of litigating and calculating damages is likely to be a long, complex process, necessitating a significant administrative mechanism, and in turn, involving operating expenses.

To summarize, although a damages fund for victims of terrorism can provide important support for victims, set tort proceedings in motion, and function to a certain extent as a de-

⁵⁸ See, e.g., “VCF 2023 Annual Report,” *September 11th Victim Comp. Fund*, in *Vcf.gov* (February 12, 2024). The September 11th Victim Compensation Fund (VCF) was established by the U.S. government to provide compensation to victims of the terrorist attacks on September 11, 2001, and to people who later developed health problems as a result of exposure to waste and toxic conditions at the attack sites. Initially, this fund operated between 2001 and 2004 but it was reactivated in 2011 to provide compensation for new cases and to continue support in view of ongoing health problems related to the attacks.

⁵⁹ In the U.S. see, for example, the fund established to compensate victims of state-sponsored terrorism under the Justice for United States Victims of State Sponsored Terrorism Act, 34 U.S.C. §20144; see also in the U.S., the Office for Victims of Crime (OVC), which is relevant to victims of terrorism because it administers various programs that assist victims of terrorism and mass violence, *Ovc.ojp.gov* (last visited Oct. 23, 2024). For Israel, see, for example, Victims of Hostile Actions (Pensions) Law, 5730-1970, LSI 24 131 (1959-60) (Isr.); Fallen Soldier’s Families (Pensions and Rehabilitation) Law, 5710-1950, LSI 4 115 (1949-50) (Isr.).

terrent, it is unlikely to be sufficient. A comprehensive approach to the deterrence of terror operatives must also include enforcement by the other branches of law, joint intelligence efforts, and international cooperation.

4.6. *Building a Global Tort Law Front: Legal Cooperation as a Weapon Against Terrorism*

International cooperation is widely recognized as a cornerstone in the global effort to combat terrorism, particularly given the inherently transnational nature of terrorist threats. No single country, operating in isolation, possesses the full capacity to prevent, deter, or respond comprehensively to the multifaceted challenges posed by terrorism. This holds true not only in the realm of criminal enforcement, but also in the civil dimension – specifically, in the development of tort-based remedies for victims of terrorism.

A coordinated global legal response can take shape through the establishment of an international framework for tort litigation against terrorists and their enablers – what may be conceptualized as an emerging ‘*international tort law*’ for terrorism. This would require close cooperation among states to align legal standards and procedural mechanisms, thereby enabling more effective and harmonized civil litigation across borders.

One of the central instruments in achieving this goal is the negotiation and ratification of international treaties that define shared legal principles and standards for tort liability in terrorism cases. Such treaties could address several key components: Unified definitions of tortious conduct in the context of terrorism, including standards of liability for direct perpetrators, dispatchers, and enablers; Recognition of extra-territorial jurisdiction, allowing courts in one jurisdiction to hear claims involving terrorist acts or entities connected to other territories; Exceptions to sovereign immunity, enabling lawsuits against state sponsors of terrorism under clearly delineated circumstances; Mutual recognition and enforcement of judgments, whereby court rulings rendered in one signatory state would be acknowledged and enforceable in others.

This harmonization can be pursued either through the amendment of existing treaties – most of which currently focus on cooperation in criminal matters – or through supplementary protocols to broader anti-terrorism conventions that include provisions for civil remedies. In addition, bilateral or multilateral agreements could be established among like-minded states committed to expanding the legal front against terrorism.

A further avenue for cooperation lies in the sharing of intelligence and evidentiary materials. Access to data regarding the operations, affiliations, and financing of terrorist organizations can be invaluable in building civil claims. However, such cooperation must be carefully structured to safeguard classified information, protect sources and methods, and preserve the procedural rights of defendants – particularly the right to confront and challenge the evidence against them.

Despite the promise of international legal cooperation, this path is fraught with institutional and normative challenges. Legal systems across the globe differ substantially in their

doctrines, evidentiary rules, standards of liability, and procedural safeguards. These differences may complicate the effort to reach consensus on core principles of an international tort regime. Moreover, divergent political interests, geopolitical alignments, and variations in states' institutional capacities may further hinder the implementation and enforcement of such norms.

Nonetheless, the strategic importance of legal cooperation cannot be overstated. In the civil sphere, just as in criminal enforcement, a fragmented and insular approach is inadequate to meet the scale and sophistication of contemporary terrorism. Building a cohesive legal infrastructure for civil accountability represents not only a means of providing justice to victims, but also a powerful tool of deterrence against those who plan, support, or profit from acts of terror. An international tort law front – though ambitious – may prove indispensable in the broader campaign to suppress and delegitimize terrorism through law.

4.7. *Concluding Remarks*

To conclude, this *infra* Section has explored the foundational question of how tort law can be designed and structured to serve as an effective deterrent against terrorism. Recognizing the evolving role of civil liability in the broader legal arsenal against terror, we have proposed a preliminary, integrative framework – a tort-based deterrence scheme composed of six interdependent pillars. Together, these elements form a comprehensive legal architecture intended to enhance the deterrent capacity of tort law vis-à-vis terror operatives and their support networks.

Each of these six pillars addresses a distinct facet of the challenge: from jurisdictional reach and evidentiary adaptations, to the recalibration of liability rules and the mobilization of international cooperation. While this Article has outlined their basic contours, each pillar warrants deeper, independent exploration, both doctrinally and normatively. Future research may further refine this structure, test its feasibility in different legal systems, and evaluate its practical implications for courts, victims, and policymakers alike.

Ultimately, the development of a coherent tort-based strategy against terrorism offers not only a path toward justice and redress for victims, but also a means to alter the calculus of those who perpetrate, enable, or finance terror. As such, tort law – properly adapted – holds significant untapped potential in the global fight against terrorism.

5. *Money Can't Buy Fear? Tort Law in the Face of Terrorist Motivation*

This section examines the central challenges facing the proposal to harness tort law as a deterrent mechanism against terrorism and offers initial responses to each. As argued in Section C, tort law holds the potential to generate effective deterrence by imposing hefty monetary sanctions on individuals, entities, or states found responsible for committing acts of ter-

rorism or for directly or indirectly supporting such acts. However, one significant challenge stems from the fact that not all terror operatives – particularly those within the perpetrator circle – are motivated by financial interests. Terrorism is a complex and multifaceted phenomenon, driven by a wide range of ideological, psychological, socio-economic, and political factors that often resist rational, cost-based deterrence strategies. These underlying motivations include, among others: Individual beliefs: Many terrorists are motivated by deep-set religious or political ideologies. They are convinced that their ideal is just and essential, even if it results in causing harm to innocent people; Psychological factors: Certain people are more susceptible than others to ideas promoting violence and terrorism. This susceptibility may arise from feelings of alienation, a desire for identity, or a need to belong to something greater than themselves. Some may also have personal characteristics that make them more prone to violence; Socio-economic factors: Poverty, inequality, lack of education, and unemployment can make certain people more susceptible to extremist ideologies. They are liable to view terrorism as a way of expressing their frustration and achieving a certain degree of control over their life circumstances; Political factors: Certain people are motivated by political defiance, objections, or resistance. They may feel downtrodden by their government or perceive a wrong that in their opinion can be rectified only by violent means; Identity and belonging: Belonging to a terrorist group may give a strong sense of identity and belonging, especially for people feeling alienated and excluded from local mainstream society; Exposure to violence: People growing up in environments where violence is rampant are liable to view acts of violence and terrorism as legitimate means for solving disputes or achieving goals; Propaganda: Terrorist organizations often have sophisticated propaganda systems intended to enlist supporters. The Internet and social media have made it easier for these groups to reach potential recruits; Peer pressure and social dynamics: Once people are involved in a group, they can be pressured or persuaded to participate in activities they might not have considered independently.⁶⁰ Additionally, many terrorist organizations are skilled at hiding their assets, making it difficult to collect damages from them. Moreover, legal and practical obstacles may be encountered in attaining legal jurisdiction and enforcing court rulings against certain plaintiffs, in particular those residing abroad. In such an event, it may be difficult to enforce court rulings against terrorists and countries financing terrorism. In light of all this, the effectiveness of financial remedies to generate deterrence may be fairly questioned.

My response is that, nevertheless, significant monetary sanctions can serve as a deterrent even at the implementation level. The proof is that at times, the incentive to perpetuate acts of terrorism is the money itself, so the implementation level itself is affected by monetary considerations.⁶¹

⁶⁰ On policy documents of countries and international organizations relating to countering radicalization, see Directive 2017/541, of the European Parliament and of the Council of 15 March 2017 on Combating Terrorism and Replacing Council Framework Decision 2002/475/JHA and Amending Council Decision 2005/671/JHA, 2017 O.J. (L 88) 6 (EU).

⁶¹ A Hamas terrorist admitted under investigation that monetary incentives also led Hamas members to

Furthermore, tort laws can produce an effective deterrent against other circles in the world of terrorism, especially the enablers, which include banks, corporations, and governments. The understanding of the organizations in the circle of dispatchers and enablers as social actors, characterized by external attribution and intent, leads to the conclusion that they attach great importance to not being found and labeled to have behaved negligently in support of terrorism, and were charged by the law. This threat can deter them, direct their behavior, and may counteract many failures caused by greed. Although the operator may aspire to act inefficiently, he will find it difficult to realize these ambitions because the deterred organization is encouraged not to allow it.

7. *Summing up and looking ahead: Civil Liability in the Fight Against Terrorism*

This Article explored a fundamental question: how can tort law be designed and deployed as an effective legal mechanism to deter terrorism and hold accountable those involved in its execution, support or facilitation?

Although terrorism has traditionally been addressed through criminal law, international legal instruments, and dedicated anti-terrorism statutes, this Article argues that tort law – properly structured and innovatively applied – can play a vital and underutilized role in the broader deterrence architecture.

To that end, the Article develops a preliminary framework for a comprehensive tort-based response to terrorism, grounded in six interdependent pillars: (a) The granting of extra-territorial jurisdiction, enabling domestic courts to assert authority over foreign terror actors whose actions cause harm beyond their own borders; (b) The expansion of the boundaries of tort liability, so as to include not only direct perpetrators but also dispatchers, funders, and enablers operating in the shadows; (c) Adapted evidentiary rules, which would allow civil proceedings to overcome the unique challenges of proving liability in complex terrorism contexts; (d) Robust enforcement mechanisms, aimed at securing the actual collection of monetary damages awarded in tort judgments; (e) A statutory compensation fund, to ensure timely redress for victims while enabling cost-recovery efforts to be pursued independently by the state; and (f) International legal cooperation, essential for information sharing, cross-border enforcement, and harmonization of tort-based counter-terrorism measures.

The Article concludes by calling for future research to focus on the doctrinal refinement and practical implementation of this proposed tort framework. In addition, empirical study of its deterrent effect – especially *vis-à-vis* different categories of terror actors – will be cru-

commit the October 7, 2023 massacre against Israeli civilians. According to him, they were promised 10,000 dollars each if they brought back hostages. Zeiton Yoav and Turgeman Meir, “I shot her body. Whoever Brings a Kidnapped Person Gets an Apartment and \$10,000: Documentation from Terrorist Interrogations,” in *Ynet.co.il* (October 10, 2023).

cial in assessing its viability and improving its design. As long as terrorist activity persists, the development of innovative legal tools, including tort law, remains a moral and strategic imperative.