

Strategic View:

LAWFARE PART 2

How Islamist Lawfare Tactics Are Targeting Free Speech

**By Brooke Goldstein
and Aaron Eitan Meyer**

LAWFARE IN EUROPE AND CANADA

Islamist lawfare is achieving a high degree of success in Canada and Europe because their judicial systems and laws do not afford their citizens, or American citizens for that matter, the level of free speech protection granted under the U.S. Constitution. With their “hate speech” legislation, liberal libel laws and virtual codification of “Islamophobia” as a cause of action, European and Canadian legislatures have laid down what could be called the ideal framework for litigious Islamists to achieve their goals.



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In February of 2006, the European Union and former UN Secretary General Kofi Annan issued a joint statement with the Organization of the Islamic Conference, in which they recognized the need “to show sensitivity” in treating issues of special significance for the adherents of any particular religion, “even by those who do not share the belief in question.”¹ In June of 2006, the Council of Europe hosted a “Programme of the Hearing on European Muslim Communities confronted with Extremism,” for which a ‘Point of View on the Situation of Europe’ was presented by none other than Tariq Ramadan.² Based on a draft resolution and the proceedings of June 2006, the Council of Europe recently released Resolution 1605, asserting widespread ‘Islamophobia’ and

calling all member nations to “condemn and combat Islamophobia.”³

Persons held accountable to the EU’s new legal standards include actress Brigitte Bardot, who was charged this past April, for the fifth time, with “inciting racial hatred” against Muslims and forced to pay a fine of twelve thousand pounds.⁴ At the time of her death in 2006, noted Italian author Orianna Fallaci was being sued in France⁵, Italy⁶, Switzerland⁷ and other jurisdictions by groups dedicated to preventing the dissemination of her work.

On May 13, 2008, Dutch police actually arrested a cartoonist using the pseudonym Gregorius Nekschot, “...for the criminal offense of publishing cartoons which are discriminating for Muslims and people with dark skin.”⁸

Over the past ten years, we have seen a steady increase in Islamist lawfare tactics directly targeting the human rights of North American and European civilians in order to constrain the free flow of public information about radical Islam.

ENGLAND

UK courts, because of their libel laws, are particularly friendly jurisdictions for Islamists who want to restrict the dissemination of material drawing attention to radical Islam and terror financing.⁹

A major player on this front is Khalid bin Mahfouz, a wealthy businessman who resides in Saudi Arabia and who has been accused by several parties of financially supporting Al Qaeda. A notable libel tourist, Mahfouz has sued or threatened to sue more than 30 publishers and authors in British courts, including several Americans, whose written works have linked him to terrorist entities. Faced with the prospect of protracted and expensive litigation, most of the parties targeted by Mahfouz have issued apologies and retractions, while some have also paid fines and “contributions” to his charities.

In 2007, when Mahfouz threatened to sue Cambridge University Press for publishing the book *Alms for Jihad*, by American authors Robert Collins and J Millard Burr, Cambridge Press immediately capitulated, offered a public apology to Mahfouz, took the book out of print, destroyed the unsold copies of the book, and made the outrageous demand that libraries all over the world remove the book from their shelves.

Shortly after the US publication of Rachel Ehrenfeld’s book entitled *Funding Evil*, Mahfouz sued Ehrenfeld for defamation because she too had written about financial ties between Mahfouz and terrorist entities. The allegations against Ehrenfeld were heard by the UK court despite the fact that neither Mahfouz nor Ehrenfeld resides in England, while the court asserted jurisdiction over her merely because approximately 23 copies of *Funding Evil* were sold to UK buyers

online via Amazon.com. Unwilling to travel to England or acknowledge the authority of English libel laws over herself and her work, Ehrenfeld lost on default and was ordered to pay heavy fines, apologize, and destroy her books -- all of which she refused to do.¹⁰

CANADA

Canada, with its “human rights” commissions, joins the list of countries whose laws are being used to attack the free speech rights of authors and activists. Section 13 of the Canadian Human Rights Act bans the electronic transmission of material that is deemed “likely to expose persons to hatred or contempt by reason of the fact that those persons are identifiable on the basis of a prohibited ground of discrimination,”¹¹ which prohibited grounds include both ethnic origin and religion.¹² Such vagaries in what was probably a well-meaning, yet democratically incompatible and short-sighted law, has enabled a wave of “human rights” complaints in the Canadian Human Rights Commissions (CHRC) against outspoken critics of radical Islam and their publishers.

Those summoned to appear before the CHRC include Maclean’s magazine, award-winning author Mark Steyn, and noted Canadian lawyer and blogger, Ezra Levant. The complaints against Maclean’s and Steyn were initiated by the Canadian Islamic Congress (CIC) and based on Maclean’s’ re-publication of excerpts from Steyn’s book entitled *America Alone*, which details Europe’s capitulation to radical Islam, and projects America as potentially the last bastion of freedom, and which the CIC¹³ argued in its complaint is “flagrantly Islamophobic.”

Levant was likewise hauled before the Commissions on charges of “hate crimes” against Muslims after re-publishing the



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Danish Cartoon of Mohammad in the now defunct Western Standard Magazine. Though the charges against him were dropped the outcome could hardly be considered a “win” for free speech, as he details on his website.¹⁴

THE NETHERLANDS

The most frightening predicament of all is that of Dutch politician, filmmaker and outspoken critic of radical Islam, Geert Wilders. After releasing a ten-minute self-produced film entitled “Fitna,” Wilders has found himself wound up in a litany of “hate speech” litigation, one such suit filed by a radical Imam asking for fifty five thousand Euros in compensation for his hurt feelings. Ironically, the film’s narrative is primarily comprised of quotes from the Koran and scenes of an Imam preaching death to Jews.¹⁵ Most disturbing however, is the fact that the State of Jordan most likely acting as a stalking house for the Organization of the Islamic Conference (OIC) has issued a request for Wilders’ extradition to stand in Jordan for blasphemy, a crime for which Shari’a law declares the penalty to be death, though reports have emerged claiming that the maximum potential sentence would be three years.¹⁶

The Dutch parliament is taking the request very seriously, and has shut out Wilders from any multi-lateral negotiations. As a precaution, Wilders no longer travels abroad unless he can obtain a diplomatic letter from the destination state promising he won’t be extradited. At present, Wilders lives under looming death threats complemented by the threat that any day, Interpol may issue a warrant for his arrest at Jordan’s behest.

If Jordan succeeds in extraditing a democratically elected official to stand trial in a non-democratic country for speech made in the scope of his duties

while educating his constituents vis-à-vis their national security, all under the guise of blasphemy of Islam, what kind of precedent would be set? As much as the Islamists wish to punish Wilders, there is no question that his case is a dry run for bigger game. How long until some convenient court in an OIC nation decides to find another government official guilty of ‘blasphemy’ and demands their extradition?

After Italian Minister Roberto Calderoli publicly wore a T-shirt depicting Mohammad, he was forced to resign.¹⁷ Upon his re-nomination to Prime Minister Berlusconi’s reformed government, thinly veiled threats of “catastrophic consequences” emerging from Libya forced Calderoli to issue a full public apology for his wardrobe.¹⁸

THE INTERNATIONAL SCENE: MUSLIM ORGANIZATIONS & THE UNITED NATIONS

National lawfare efforts are being complemented with similar International efforts to outlaw blasphemy of Islam as a crime against humanity. Islamist organizations such as the Muslim World League are calling for the establishment of an independent commission to take action against parties who defame their Prophet Mohammed,¹⁹ and at the Dakar summit, taking legal action against parties who slander Islam was a key issue debated at length, with the final communiqué adopted by the Organization of the Islamic Conference denouncing the “rise in intolerance and discrimination against Muslim minorities, which constitute(s) and affront to human dignity.”²⁰ The Islamic Conference of Foreign Ministers at its thirty-fourth session in Islamabad, in May 2007, condemned the “growing trend of Islamophobia”²¹ and emphasized

“the need to take effective measures to combat defamation.” The Islamic Society of North America and the Muslim Public Affairs Council have both stated publicly that they are considering filing defamation lawsuits against their critics²² and CAIR has announced an ambitious fundraising goal of one million, in part to; “defend against defamatory attacks on Muslims and Islam.”²³

Most recently, Muslim states and organizations have successfully lobbied the United Nations’ Human Rights

What are the chances that this provision will be applied to those who behead journalists in the name of Islam, or to Palestinian terrorist groups that call themselves ‘Islamic Jihad’?

Commission to enact Resolution 7/19²⁴, a document that turns the concept of “human rights” into an instrument of Orwellian thought control. The Resolution makes reference to the Durban Declaration, and expresses the intent “to complement legal strategies” aimed at criminalizing the

defamation of religion. The Resolution “urges States to provide, within their respective legal and constitutional systems, adequate protections against acts of...discrimination,”²⁵ and prohibits “the dissemination of racist and xenophobic ideas.”²⁶ Note that it is *ideas* that are prevented here, not published words but

defamatory *thoughts* against Islam which the United Nations is banning.

The Resolution further expresses its “deep concern at the attempts to identify Islam with terrorism, violence and human rights violations.” What are the chances that this provision will be applied to those who behead journalists in the name of Islam, or to Palestinian terrorist groups that call themselves ‘Islamic Jihad’?

To add insult to injury, signatories to the Resolution take the opportunity to “*emphasize* (emphasis not added) that everyone has the right to freedom of expression” but that this freedom may “be subject to certain restrictions” while stipulating that “the prohibition of the dissemination of *ideas* (emphasis added) based on racial superiority or hatred is compatible with the freedom of opinion and expression.” Signatories to UN HRC Res. 7/19 include China, Egypt, Indonesia, Jordan, Malaysia, Nigeria, Pakistan, Philippines, Qatar, the Russian Federation, Saudi Arabia and Sri Lanka, amongst others.

This Resolution 7/19 looks like an initial attempt to establish a body of international law to be used in the future against heads of state who speak out against radical Islam as a threat to national security. Hence, instead of Muslim states unilaterally seeking the extradition of a Geert Wilders – or perhaps, a Donald Rumsfeld – Islamists can now employ UN mechanisms to force politicians to abide by a standard of ‘sensitivity’ to Islam defined solely by Islamists themselves.

The European Center for Law and Justice, a not for profit public interest law firm submitted an engaging report to the UN High Commissioner arguing, correctly, that freedom of religion does not entail carte blanche freedom to practice your religion absent criticism. In fact, Resolution 7/19 is itself a violation of international law undermining the inalienable human right to free speech,

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especially on matters of important public concern such as religion and national security.²⁷

Yet what are the positions of the American Civil Liberties Union and the Center for Constitutional Rights (CCR) on this issue? Where is the international media? Why is this issue being met with virtual silence on their behalves while American citizens' basic human rights

to free speech are being trampled on? Perhaps the CCR is too busy with its suit against former Defense Secretary Donald Rumsfeld in Spain for alleged "war crimes" in Iraq, since the German case against him was dismissed.²⁸

CONCLUSION

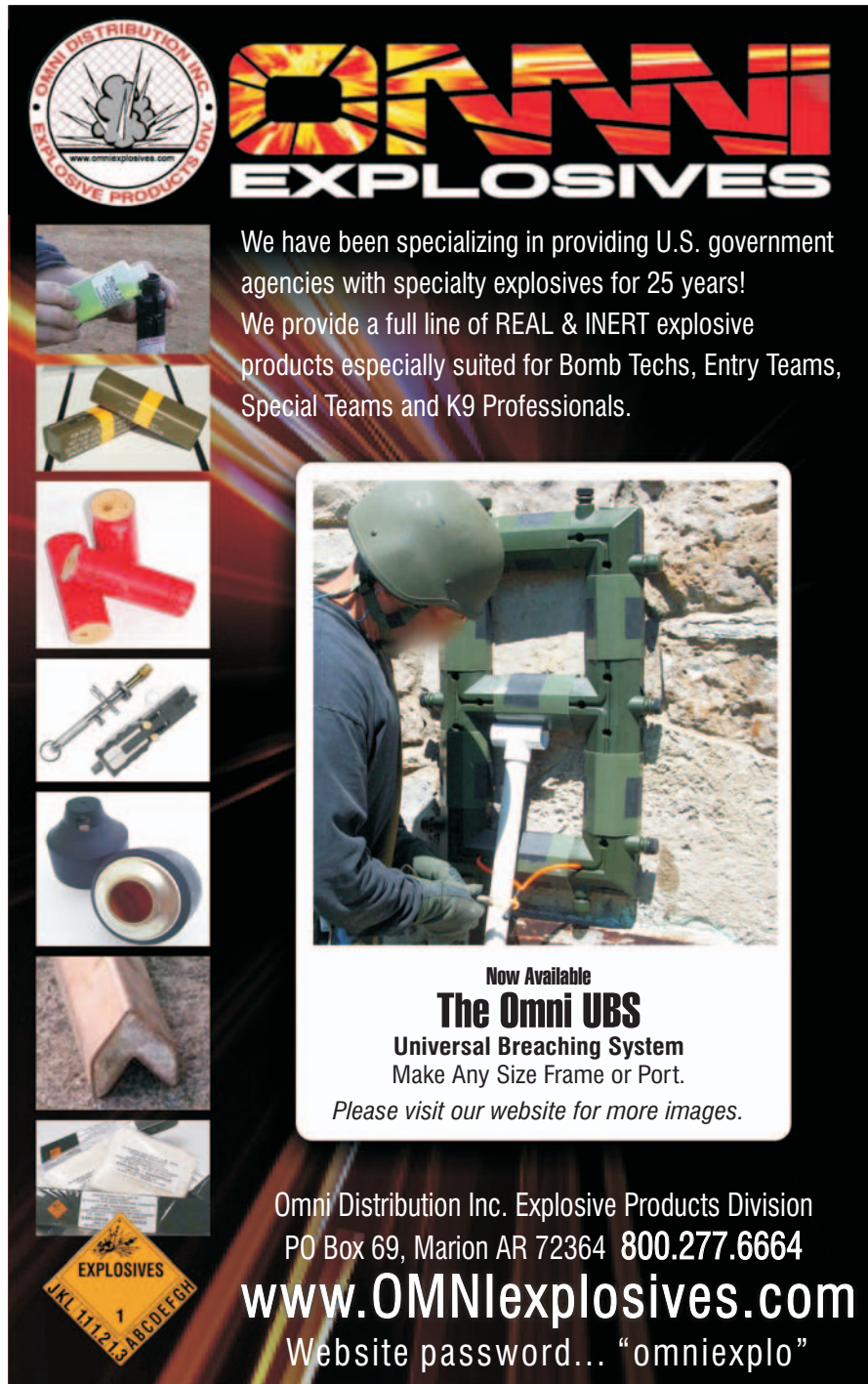
The war against Islamism is as much a war of ideas as it is a physical

battle, and therefore the dissemination of information in the free world is paramount. The manipulation of Western court systems, the use of western "hate speech laws" and other products of political correctness to destroy the very principles that democracies stand for, must be countered.

Unfortunately Islamist lawfare is beginning to limit and control public discussion of Islam, particularly as it pertains to comprehending the threat posed by Islamic terrorist entities. As such, the Islamist lawfare challenge presents a direct and real threat not only to our constitutional rights, but also to our national security.

Some have argued that the anti-Americanism of radical Islamists has little to do with anti-imperialism but reflects a profound contempt for the liberal social democratic society we have built and its emphasis on individual liberties and freedoms.²⁹ Freedom of expression is the cornerstone of democratic liberty - it is a freedom that Western civilizations have over time paid for with blood. We must not give it up so easily. The true imperialists are those who seek to impose their perception on others, through violent or legal means, and who seek to conquer and subjugate contradictory points of view.

The reality is that the Muslim community has nothing to gain from supporting the censorship of debate about Islam. If a cartoon with Mohammad is "hate speech" now, how much longer before the Koran gets the same treatment? As Jonathan Kay, National Post columnist, has aptly pointed out "human rights mandarins haven't gone after mosques or mullahs - yet," but it doesn't take much to recognize that two can play at the same game. The actions of CAIR and the CIC and others who engage in Islamist lawfare offer a great rebuttal to those who see Islamism as compatible with democracy. ●



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NOTES

¹ <http://domino.un.org/UNISPAL.NSF/fd807e46661e3689852570d00069e91848c61023cd19096f8525710e006df80b!OpenDocument918/48>

² <http://assembly.coe.int/Main.asp?link=/Documents/WorkingDocs/Doc08/EDOC11540.htm>

³ Adopted by the Council of Europe Parliamentary Assembly, April 15, 2008 <http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta08/ERES1605.htm>

⁴ <http://www.reuters.com/article/entertainmentNews/idUSL1584799120080415?feedT>; <http://www.dailymail.co.uk/tvshowbiz/article-1023969/Brigitte-Bardot-fined-12-000-racial-hatred-claiming-Muslims-destroying-France.html>

⁵ <http://www.secularism.org.uk/39371.html#oriana>

⁶ <http://www.cbc.ca/story/arts/national/2006/09/15/orianafallaci-obit.html>

⁷ <http://www.milligazette.com/Archives/01072002/0107200263.htm>

⁸ <http://www.brusselsjournal.com/node/3257>

⁹ Where, in the United States, with our First Amendment rights to free speech, libel plaintiffs not only have the burden to prove that the speech in question is false and defamatory, but where matters of public concern are at issue, the libel Plaintiff must also show that the speech was published with a reckless disregard for the truth. In England, on the other hand, the burden is in exactly the opposite direction: the offending speech is presumed to be false, and it is up to the defendant to prove that it is in fact true. While on the surface the difference may seem trite, UK libel jurisprudence, in direct contrast to US law and due process considerations, effectively operates to declare Defendants guilty before proven innocent and UK courts have become a magnet for libel suits that would otherwise fail miserably in the US. And so heavy is the burden of proof put on the defendant that the mere threat of suit in a UK court is enough to intimidate publishers into silence, regardless of the merit of their author's works.

¹⁰ Instead, Ehrenfeld went on the offensive and counter-sued Mahfouz in a New York State court seeking to have the foreign judgment declared unenforceable in the United States. Ironically, Ehrenfeld lost her case against Mahfouz, because the New York court decided it lacked jurisdiction over the Saudi resident who, the court said, did not have sufficient connections to the state. Shortly afterwards and in direct response to the court's ruling, the NY state legislature, in an unprecedented show of cross party solidarity, unanimously voted to enact the Libel Terrorism Protection Act which prevents the enforcement of foreign libel judgments over American authors and provides the opportunity for the claim to be tried in the US, on its merits, and according to American principles of free speech. A similar piece of legislation has been introduced in Congress by Arlen Specter and Joseph Lieberman in the Senate and by Joseph King in the House of Representatives, along with several co-sponsors.

¹¹ What is particularly disturbing about Section 13 "hate speech" laws is that

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the court costs of any one Plaintiff who files a section 13 complaint are entirely subsidized by the government, while the defendants are left to endure the financial burden of litigation alone. This is a rule that, on its face, obviously encourages frivolous litigation. Moreover the CHRC has had a one hundred percent conviction rate on section 13 charges.

¹² As defined by Section 3 (1) of the Canadian Human Rights Act

¹³ The CIC, whose president Mohamed Elmasry once labeled every adult Jew in Israel a legitimate target for terrorists, has previously tried, albeit unsuccessfully, to sue publications it disagrees with in regular Canadian courts of law, including the National Post.

¹⁴ <http://ezrelevant.com/2008/08/punished-first-acquitted-later.html>

¹⁵ Fitna is available for viewing here: <http://video.google.com/videoplay?docid=-2949546475561399959&hl=en>

¹⁶ <http://jihadwatch.org/archives/2008/07/021595print.html>

¹⁷ <http://news.bbc.co.uk/2/hi/europe/4727606.stm>

¹⁸ http://thestar.com.my/news/story.asp?file=/2008/5/10/worldupdates/2008-05-10T052806Z_01_NOOTR_RTRMDNC_0_-335051-2&sec=Worldupdates

¹⁹ <http://www.arabnews.com/page=4§ion=0&article=77639&d=28&cm=12&y=2006>

²⁰ Final Communiqué adopted by the Organization of the Islamic Conference at its eleventh summit in Dakar (March 2008) OIC/SUMMIT-11/2008/FC/Final <http://www.oic-oci.org/oicnew/is11/English/FC-11-%20SUMMIT-en.pdf>

²¹ UN HRC Res. 7/19

²² <http://www.faithfreedom.org/oped/RobertKing50905.htm> and <http://www.frontpagemag.com/Articles/Printable.aspx?GUID={1E2DE909-C6F5-4A5F-B852-0D90BE4FEA9C}>

²³ <http://www.nysun.com/national/treasury-department-tars-alamoudi-founder-of/24211/>

²⁴ For the full text of Un HRC Res. 7/19 see http://ap.ohchr.org/documents/E/HRC/resolutions/A_HRC_RES_7_19.pdf

²⁵ UN HRC Res. 7/19 Section 9

²⁶ UN HRC Res. 7/19 Section 8

²⁷ ECLJ report can be found at: <http://www.meforum.org/legal-project.php>

²⁸ <http://jurist.law.pitt.edu/paperchase/2007/04/german-prosecutor-rejects-war-crimes.php>

²⁹ Tarek Fatah, "Triggering a State of Islam," The National Post, May 13, 2008.

ABOUT THE AUTHORS

Brooke Goldstein is a practicing attorney, an award-winning filmmaker and the director of the Legal Project at the Middle East Forum. The Legal Project is dedicated to providing pro-bono legal representation to authors, activists and publishers who work on the topics of radical Islam, terrorism and their sources of financing.

Aaron Eitan Meyer recently received his Juris Doctor degree from Touro Law Center, and is currently Assistant to the Director at the Legal Project of the Middle East Forum and Legal Correspondent to the Terror Finance Blog.

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