Following the Money

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Two months ago, President Donald Trump returned from Saudi Arabia grumbling. Saudi-Aramco, the world’s most valuable company, would soon offer shares to the public, but not on American stock exchanges. The Saudis feared that hundreds of 9/11 victims might soon launch a barrage of lawsuits, alleging Saudi complicity in the attacks, and potentially seizing U.S.-based assets in restitution. The cause of that fear was the Justice Against Sponsors of Terrorism Act (JASTA), a law passed in the twilight of the Obama presidency that would make it far easier to sue state sponsors of terror in American courts.

Congress enacted JASTA despite President Barack Obama’s veto; it was the only override during his eight years in office. The sharp debate over its passage reflected clashing institutional priorities. Congress championed the victims of terror and the need for justice and accountability; the president warned about the diplomatic and economic effects of private citizens hauling foreign states into American courts. With Saudi-Aramco, the president’s fears became a reality.

Nitsana Darshan-Leitner and Samuel M. Katz, authors of “Harpoon: Inside the Covert War Against Terrorism’s Money Masters,” a new account of Israeli operations against sources of terror funding, have little patience for such diplomatic concerns. Katz is a writer who specializes in “inside” stories of Israeli and American counterterrorism. Darshan-Leitner is an activist attorney who, in 2003, founded Shurat Hadin-Israel Law Center, a controversial nongovernmental organization that uses litigation to “dry up the funding for the bullets and the bombs” of Israel’s enemies. (Shurat Hadin means “letter of the law” in Hebrew.)

Since then, Darshan-Leitner has made her name as a strategist and public spokesperson for litigation—mostly in American courts—targeting organizations, banks, and countries that have supported terrorism against Israel and the Jewish community. Last year, for instance, she won a $178 million judgment against Iran and Syria in D.C. federal district court for those countries’ role in funding Palestinian terror attacks in Jerusalem. (Since neither country showed up to court to fight the suit, it was an easy win by default. But since neither country has assets in the U.S., collection isn’t likely any time soon.)

Harpoon represents Darshan-Leitner’s attempt to place her legal work in a larger political context: She sees her legal crusade as a complement, and often a tool, of the work of a special counterterror-finance unit founded by the legendary, and recently deceased, Israeli spy chief Meir Dagan.
“Harpoon”—which borrows as its title the name of Dagan’s unit—consists of loosely connected narrative episodes: descriptions of individual terror attacks; brief sketches of financiers and banks that have serviced the PLO, Hamas, and Hezbollah; stories about Dagan’s life and the creation of his beloved “Harpoon”; thin accounts of covert Israeli operations; and, of course, a catalogue of Darshan-Leitner’s lawsuits.

As narrative, the book is cluttered and poorly drafted. The characters are under-described and simplistically presented. The treatment of Dagan in particular is irritatingly hagiographic. Anecdotes proceed haphazardly, resulting in a jumble of terror attacks, covert actions, and conference room debates, which feel only tenuously connected.

But the bigger problem lies in Darshan-Leitner and Katz’s blasé attitude toward the strategic and moral dimensions of the project they champion. This shortsightedness plagues their analysis of Dagan’s choices and Harpoon’s operations. It is also the fatal defect in Darshan-Leitner’s own legal work.

Consider Harpoon’s strike on the Palestinian banking system in 2004. Dagan, the authors relate, had grown increasingly frustrated with his inability to stymie a wave of bloody suicide bombing during the Second Intifada (the Palestinian uprising between roughly 2000 and 2005). In response, he planned and eventually ordered a large-scale, broad-daylight, armed raid on the Ramallah branch of the Jordan-based Arab Bank.

Arab Bank had long served as a conduit for Iranian support for Hamas and Islamic Jihad terror cells, and Dagan wanted to disrupt the supply of financing it was directing. But while it’s far from clear that the raid actually set back terrorist activities, undeniably there were profound strategic costs to Israel. Arab Bank was (and is) a financial pillar of the Jordanian economy, Israel’s crucial security partner. Images of Israeli soldiers, flanked by tanks and attack helicopters, incensed President George W. Bush, Israel’s essential supporter in its forceful crackdown on Palestinian terror.

Yet Harpoon’s authors are positively gleeful over Dagan’s bull-in-a-china-shop approach to the raid. Justifying Dagan’s decision against sending an adviser to Washington to plead Israel’s case in advance, they write, “There wasn’t time to shake hands and beg for permission.” Instead of raising questions about recklessness, the authors simply see decisiveness and moral clarity: “Dagan no longer cared about the repercussions”; “Dagan didn’t give a damn about the international outcry”; “he cared little for political fallout.”

Perhaps Darshan-Leitner and Katz are right that Dagan “didn’t give a damn” about any of these considerations. Unfortunately, that’s not the same as being right about the operation’s political prudence, legality, or morality. Rather than grappling with larger considerations, Darshan-Leitner and Katz brush them off. The fact of ongoing terror attacks, they assert, made this operation a necessity. “The most compelling argument was the fact that the bloodshed continued without letup.”

But by itself, the fact of ongoing terror attacks is not an argument for anything. It’s merely the opening premise of an argument about the appropriate response. It’s certainly not an argument for any particular response or, even more specifically, Dagan’s armed raid. To argue in favor of raiding Arab Bank would require making the case that doing so would be likely (among other political, strategic, moral, and prudential considerations) to reduce the bloodshed. The book makes no such arguments.

Indeed, for all the praise the book lavishes on Dagan, the authors never actually evaluate—in strategic, tactical, or frankly any other relevant policy terms—any of the highly controversial operations he ordered. The Arab Bank raid was only one of many. During the bloody 2006 war with
Hezbollah, for example, Dagan persuaded the Israeli air force to bomb Lebanese banks and even the home of one of Lebanon’s prominent banking families. Darshan-Leitner and Katz say nothing about whether the operation weakened Hezbollah’s capacity or will to resist. This is strange. Israelis, after all, widely perceive the 2006 conflict as a strategic failure.

Given this perception, the author’s decision not to mention the operation’s anticipated or actual costs—human, diplomatic or economic—is simply astounding. (One U.N. estimate put the Israeli bombing campaign costs to Lebanon at some 22% of its annual GDP.) What’s more, given Darshan-Leitner’s self-description as a human rights attorney, it is more than a bit bizarre that she has nothing to say about the legality or morality of bombing banks as a tool, as Harpoon puts it, for turning “Hezbollah into a pariah that the Christians and Sunnis of Lebanon could rally against.”

Even more concerning is the contempt the authors display for those who did evaluate the effects of Dagan’s untraditional methods. Harpoon describes an episode where Dagan, with support from U.S. Justice and Treasury Department officials, urged the placement of the Lebanese Canadian Bank on a Treasury Department blacklist. The designation could have destroyed a core Lebanese banking institution: The State and Defense Departments warned such a move could lead the vulnerable nation to the “brink of collapse.” Darshan-Leitner and Katz deride the hesitant U.S. officials and diplomats as “Bow Ties.” They quote an anonymous retired U.S. Diplomatic Security Service agent for the insight that U.S. diplomats “never understood the security implications of some of their actions and the policies they pursued” and were “all about the handshakes and smiles.”

This lack of concern with larger consequences is also the core problem with Darshan-Leitner’s own legal work. Since founding Shurat Hadin (at Dagan’s urging, the book reveals), she has marshaled lawsuits against Arab Bank, Western financial institutions, and the Palestinian Authority itself. Shurat Hadin has initiated legal action against Twitter and Facebook (for carrying jihadist content). It has even sought to seize Iran’s “.ir” domain name—to the horror of pretty much anyone who cares about a free internet. As with her book’s evaluation of Dagan’s operations, these lawsuits—and Darshan-Leitner’s manner of talking about them—reveals a disturbing absence of strategic reflection.

Consider, for instance, Darshan-Leitner’s most prominent (if temporary) legal victory: Sokolow v. PLO. In February 2015, after seven weeks of trial, a federal jury in New York City found the Palestinian Authority liable for a series of terror attacks between 2001 and 2004. By providing money to the perpetrators of attacks in which American citizens were killed, the jury determined, Palestinian leadership had run afoul of the Anti-Terrorism Act. Victims and their families were awarded $655.5 million. Darshan-Leitner declared the judgment a victory over terror. But the jury award was nearly 20% of the Palestinian Authority’s annual budget, much of which was earmarked for security operations, which Israel and the U.S. rely heavily on to combat terrorism and maintain order in the territories. American and Israeli leaders—those actually responsible for the safety of people in the region—scrambled to contain the damage of Darshan-Leitner’s crippling victory. The Palestinian Authority requested that it pay only a small bond while the case was appealed. Declaring her intention to bankrupt the Palestinian Authority, however, Darshan-Leitner encouraged plaintiffs to oppose the move. The U.S. government rushed into court urging a low bond, expressed to the court through a special “statement of the interests of the United States.” Demanding a large sum, the State Department warned, would “severely compromise the P.A.’s ability to operate.” (The Israelis likely had
similar concerns; earlier this month, Israeli Prime Minister Benjamin Netanyahu delicately signaled his opposition to President Trump’s proposed immediate cuts to the U.N. fund for Palestinian refugees.)

Eventually, an appeals court threw out the judgment for lack of personal jurisdiction. But the episode is revealing. In “Harpoon” and throughout her career, Darshan-Leitner has promoted her legal advocacy as a tool for making war, a “new dimension in which terrorism can be fought and vanquished.” “A ruling in a U.S. courtroom,” she approvingly quotes an Israeli intelligence operative, “could be more lethal than a squadron of Israeli Air Force F-16 fighter bombers.”

When waging war successfully, however, actions are taken with an eye toward strategic imperatives. Territory is seized and targets are eliminated for the purpose of establishing a favorable political conclusion. It is unimaginable, for instance, that a prudent general in the midst of an armed conflict would destabilize an allied country or terminate funding for a helpful security force—for no greater strategic purpose than finding money to compensate victims.

Crime, punishment, and compensation are the language of courts, not geopolitics. Judicial process is backward-looking, aimed at redress; politics and war are forward-facing, aimed at strategic objectives. Often the interests of justice and the national interest will conflict—as they likely did in the Sokolow case. In a democracy, elected leaders control the tools of warfare and diplomacy, carefully calibrating them to achieve national goals. Private plaintiffs shouldn’t enlist the courts in pursuit of a personalized foreign policy.

Congress jeopardized this division of roles when it passed JASTA over the president’s veto. And today, as the Supreme Court continues to deliberate in the Jesner v. Arab Bank, it wrestles with the limits of precisely the same principle.

Each lawsuit that seeks to move the war on terror into the civil courts deals an additional blow to the possibility of a coherent foreign policy. Yet in their analysis of Dagan’s work, the authors blithely suggest that strategic coherence is not a priority. And by making these assaults on coherence her life’s work, Darshan-Leitner and her allies are playing with fire. One might have hoped that she at least realizes the dangers before her. “Harpoon” demonstrates she does not.

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