

Corrie v. The State of Israel

1. Summary

A civil tort lawsuit filed by Rachel Corrie's family against the Israel Ministry of Defense is scheduled for trial in Haifa District Court beginning March 10, 2010. Rachel Corrie, an American student activist and human rights defender from Olympia, Washington was crushed to death on March 16, 2003 by a Caterpillar D9R bulldozer while nonviolently protesting Palestinian home demolition with fellow members of the International Solidarity Movement (ISM).

On March 17, 2003, the day after Rachel was killed, Israeli Prime Minister Ariel Sharon promised President Bush a "*thorough, credible, and transparent*" investigation. In 2003, the Israeli military concluded that the two soldiers who operated the D9R Caterpillar bulldozer that killed Rachel did not see her, though eyewitnesses indicate she was clearly visible, wearing a florescent orange jacket. The case was closed, no charges were brought, and the State of Israel declined to release their investigative report. Subsequently, a small number of U.S. officials and Corrie family members were permitted to read the report.

When the State of Israel did not live up to Prime Minister Sharon's promise, the Corries lost the most logical means of finding justice for Rachel: a thorough, credible and transparent investigation and criminal prosecution of those responsible for her killing. To preserve their legal options, and at the suggestion of the U.S. Department of State, the Corrie family initiated a private lawsuit against the State of Israel and Ministry of Defense in March 2005. Now, five years later, the trial is scheduled to begin. Court sessions are set for March 10, 14, 15, 17, 21, 22 and 24 between 9:00-16:00. Presiding is the Judge Oded Gershon. The Corrie family is represented by Attorney Hussein Abu Hussein.

2. Corrie Family Efforts to Obtain Justice through Diplomatic Means

Since March 16, 2003, the Corrie family has worked diligently through diplomatic means to seek accountability for Rachel's killing. The family has held hundreds of meetings with U.S. Government officials in an attempt to obtain information and to encourage diplomatic efforts in support of a thorough, credible, and transparent Israeli investigation. The Corries, also, urged the U.S. Government to initiate such an investigation of its own.

On March 25, 2003, U.S. Congressman Brian Baird introduced House Concurrent Resolution 111 calling for the U.S. Government to conduct a full, fair, and expeditious investigation into the death of Rachel Corrie. Seventy-seven members of the House of Representatives co-signed this resolution before it expired in committee at the end of the 108th Congress.

On June 11, 2004, in response to a letter from the Corrie family, Lawrence B. Wilkerson, Chief of Staff to Colin Powell at the Department of State, wrote of the IDF report, "*Your ultimate question, however, is a valid one, i.e., whether or not we view that report to have reflected an investigation that was 'thorough, credible, and transparent.' I can answer your question without equivocation. No, we do not consider it so.*" On March 17, 2005, Michael G. Kozak, Acting Assistant Secretary of the Bureau of Democracy, Human Rights and Labor, testifying before Congress, reiterated this position.

In a March 14, 2008, letter to the Corrie family, Michelle Bernier-Toth, U.S. Department of State's Managing Director of Overseas Citizens Services, stated, "We have consistently requested that the Government of Israel conduct a full and transparent investigation into Rachel's death. Our requests have gone unanswered or ignored."

3. Corrie's Complaint

The complaint charges the State of Israel with violations of constitutional rights (right to life, dignity), anchored in international humanitarian and human rights law, as well as in Israel's Basic Law: Human Dignity and Liberty, for the intentional and unlawful killing of Rachel Corrie. Alternatively, the State of Israel is liable for the gross negligence of the Israeli soldiers and military commanders who acted recklessly, using an armored military bulldozer without due regard and due diligence to the presence of unarmed and nonviolent civilians, and who failed to take the appropriate and necessary measures to protect Rachel Corrie's life, in violation of their obligations under both Israeli and international law. The relief sought is damages, including special, general and punitive.

4. State's Response

The State of Israel argues that the case should be dismissed because the State is immune from such a lawsuit. This argument is based on the controversial legal theory that the actions of the Israeli army in the Occupied Palestinian Territories (OPT), including Rafah, should be considered an "Act of War" that took place in the course of an armed conflict in a closed military zone, thereby releasing the state from liability, even if there is use of excessive and disproportionate force or gross negligence. The State also argues that the killing of Rachel Corrie by the military bulldozer should be considered an "Act of State" absolving the soldiers responsible from any liability under Israeli law. Finally, the State claims that Rachel was responsible for her own death as she acted in reckless disregard of her life.

5. State's Security Certificates and Disclosure

Since filing the lawsuit, the Ministry of Defense, responsible for the army activities in the OPT, submitted security certificates, which block the release of evidence, primarily relating to the identities of soldiers involved in the bulldozer operational activities. A motion was submitted seeking, at minimum, the disclosure of the personal details of the D9R bulldozer operator, but the Judge Gershon of Haifa District Court dismissed the motion.

In 2008, a petition was filed to the Israeli Supreme Court seeking the declassification and disclosure of army and civil manuals of the D9R bulldozers. These two documents outline the steps a bulldozer operator should take in order to prevent harm to civilians and persons in the vicinity during bulldozer operations. Sections of the manual reveal that operations should cease immediately if civilians or persons in the vicinity are at risk of harm or injury.

6. State's Investigation and Autopsy

Following Rachel's killing, the military police investigator submitted an application to the Magistrate Court in Rishon LeZion seeking to carry out an autopsy on the body. The Court sought a response from her family about the autopsy. The military police contacted the U.S. Embassy in Tel Aviv; the U.S. Embassy contacted Rachel's U.S. Congressman, Brian Baird in Washington DC, who in turn communicated with the Corrie family. The family agreed to the request for autopsy on two conditions: 1) a representative from the U.S. Embassy be present 2) a civilian physician conduct the autopsy. The Court granted the order for the army to carry out autopsy under the two conditions stipulated by the Corrie family. Though the original Israeli investigation report stated that a representative from the U.S. Embassy was present for the autopsy, Corrie family inquiries to the U.S. Department of State later confirmed that the autopsy was conducted without a representative from the U.S. Embassy present, in defiance of the order of the Israeli Court.

In September 2008, following disclosure of the manuals, and the breach of court order in respect of the autopsy, the complaint was amended to incorporate the newly revealed facts.

7. Corries' Witnesses' Entry Issues: Eyewitnesses and Doctor

On February 22, 2010, following diplomatic pressure, four eyewitnesses to Rachel's killing were granted entry visas to testify in Israel. However, Israeli authorities have refused to allow the Palestinian doctor from Gaza, who treated Rachel and confirmed her death, to enter Israel to give testimony. Alternatively, the Corries' legal team seeks to have the doctor testify via video-conference; however, the State argues that he should not be permitted to testify remotely due to difficulties in supervising the procedure. As of March 3, 2010, the Court has not decided upon this request.

8. State's Delay

The State of Israel filed a motion seeking to postpone the issuance of its witnesses' affidavits until after hearing all of the testimonies of the Corries' witnesses. On March 1, 2010, the Court granted this unconventional motion, allowing the state to submit its affidavits up to 30 days after the testimonies of the Corries' witnesses are heard. The State will then have opportunity to present its case before the court at some, currently unscheduled, future date. The Corries, therefore, must present their entire case without any knowledge of the State's witnesses, and considerable extra time is provided to the State to organize and mount its defense after hearing the Corries' witnesses.

9. Trial: Haifa District Court

Between March 10 and 24, the judge will hear the Corries' witnesses, including four eye-witnesses and Craig Corrie, Rachel's father. An expert witness, who believes that the bulldozer operator acted recklessly and negligently, will also testify. Professor Yehuda Hiss, the physician who carried out the autopsy on Rachel, has been summoned, as well as individuals from the army unit who conducted the investigation. At an undetermined later date, the State's witnesses will testify. The judge will establish whether the State of Israel is responsible under Israeli and international law for the intentional or negligent killing of Rachel and whether the circumstances of her killing amount to an "Act of War," and covered by the "Act of State" immunity.

10. Legal Actions in the U.S.

In *Corrie v. Caterpillar*, a U.S. federal lawsuit, parents of Rachel Corrie and several Palestinian families took action in 2005 against Caterpillar, Inc. for aiding and abetting war crimes and other serious human rights violations in the OPT. The suit was brought on the grounds that the company provided bulldozers to the Israel Defense Force (IDF) knowing they would be used to demolish innocent civilians' homes and to endanger civilians, in violation of international law. On September 17, 2007, the Ninth Circuit Court of Appeals affirmed the lower court's dismissal of the case. It found that to let it go forward would intrude upon the political branches' foreign policy decisions, noting that the U.S. gives substantial military aid to Israel, which is in turn used to purchase the bulldozers.