

International Law

Chapter Assignment 1¹

Ole J. Forsberg, Ph.D.

Creighton University

Bambi, a US citizen and exotic dancer, was traveling through the Middle East on vacation, visiting the holy shrines in Israel. As luck would have it, she was riding on a crowded public bus that was the target of a terrorist bomb attack. The bomb carrier left the bomb on the bus and got off at the next stop. Bambi died when the bomb exploded beneath her seat. She was not the only one to die in the bombing—nineteen other people died and sixty-eight were injured during that fateful rush hour in Tel Aviv.

The Kach group claimed responsibility. Rabbi Meir Kahane's Kach group maintains two primary foci: The first focus is the forced transfer of Arabs from the borders of Israel, including Israeli Arabs who do not accept the conditions of being a *Ger toshav* (a non-Jew resident alien in the land of Israel). The second focus is the establishment of an Israeli state for Jews inside the borders of *Eretz Yisrael* (the biblical land of Israel) ruled by traditional Jewish law (*Halakha*) as provided in the Torah.

The Kach group² consists of people who employ violent and terrorist tactics as political bargaining chips to influence the Middle East peace process, which is being negotiated by Israel, the Palestinian Authority, and various governments in the world. The Kach group seeks an Israel greater than the Israeli government agreed to in the 1993 peace accords signed in Washington.

Assume that the US Department of State is considering an Israeli plan in which the CIA, MI6, and Mossad jointly undertake a secret mission (that we know about) to go into whichever state necessary to find the Kach perpetrators, and to extract them. Any captured Kach members will be tried in Israel for their participation in this bombing.

You are the judge working at the US District Court of Nebraska in Omaha, located in the Roman L. Hruska Federal Courthouse. Bambi lived and went to school (Junior in the Political Science department) at Creighton University in Omaha. Brent, Bambi's brother from Bellevue, filed suit against the Kach group in your court. Not surprisingly, Kach does not respond to this suit. The US Department of State, acting on behalf of President Bush, files papers in this suit asking you to dismiss this case because of sensitive Department of State negotiations with Israel and the Palestinian Authority.

The essential US Department of State positions are as follows:

- a) The Political Question Doctrine requires dismissal of this case.
- b) The Act of State Doctrine is applicable, thus requiring dismissal of this case.

¹ Much of the information contained herein is from the MIPT Terrorism Knowledge Database, located at <http://www.tkb.org/>.

² The Kach group is on the US State Department's list of Foreign Terrorist Organizations.

c) The Department of State attorney says that if you deny the US government's request to dismiss this case, and the Kach bomber is captured and returned to the United States for trial, the perpetrator will have the legal standing to claim that your court cannot prosecute him. In other words, the US government's attorney argues that you will have to dismiss the case anyway.

How will you, as the judge, rule on each of these three claims? For each claim, what facts must exist for the State Department to succeed? Which of those facts are present?

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