

CONOR GEARTY

The attempt to arrest Israel's former foreign minister Tzipi Livni on a visit to London, for alleged crimes committed by Israeli forces during last year's military operation in Gaza, continues to have an impact on British politics. The arrest warrant was sought too early, with Ms Livni cancelling her trip before it could be executed, but the Israel political establishment was given quite a shock and has devoted much of its famed diplomatic and political energy in recent months to preventing any repetition of what for it would have been a potentially catastrophic intervention in its affairs. This seemed to have paid off last week when the Prime Minister's name appeared below an article in the *Telegraph* announcing a consultation on changing the law so as to force applications for warrants like these to go through the office of the Director of Public Prosecutions rather than to be available (as at present) to be brought to a magistrate by any private person, regardless of their standing. Mr Brown announced his 'full intention to legislate as soon as possible', despite which – the very next day – the Justice Secretary Jack Straw was making clear that there would be no parliamentary action this side of an election: the man whose career in office began with Pinochet's arrest clearly has no stomach for ending it as the destroyer of a procedure so similar to that which brought such joy to so many Labour supporters, and anti-fascists everywhere.

But surely Livni and Pinochet are not in the same category? Answering this question is determined by the view one takes of what is entailed in committing oneself to the protection of international human rights. In one corner is the lawyer-activist who believes in the generality of the prohibition of egregious abuses of human rights and who wants all allegations of such abuses to be investigated by an independent judicial authority. This is the position that has the upper hand in the UK at present. If we find someone on our territory suspected of grave breaches of the Geneva Conventions or the Convention against Torture (including – perhaps even especially – commanders and political leaders behind such actions) then we have to try them if we do not want to or cannot extradite them somewhere else for trial or send them to the international criminal court. The thinking behind this is that there should be no safe haven anywhere for suspected war criminals and torturers, even where they have no connection with Britain and regardless of how 'important' or 'distinguished' they allegedly are. On this account the facts on the ground giving rise to the allegations are all that matters – the colour of the shirt of the alleged war criminal or torturer (are they for or against us?) is neither here nor there. The lawyer-activist is driven by facts: witness statements, pictures, statistics of killings, confessions of wrongdoing, the kinds of data-collection that made the Goldstone mission into Israel's actions in Gaza so powerful but also so explosive.

The opposite position is exemplified by the line taken by the Israeli authorities and echoed by its supporters in the press. The emphasis is not on detail but rather on the scandalous partisanship of the process. International law is being abused by forces hostile to Israel whose efforts to arrest the former foreign minister are being driven by a political rather than a legal agenda. To those who hold this view, action of this sort against Israelis acting in the interests of their state (as defined by the Israeli government) would appear to be always wrong, whatever it is the Israelis under scrutiny are alleged to have done. At the same time these same people often call for strong action against terrorism, they push for international agreements to counter terrorism and justify their support for military action by reference to terrorist atrocities. On this account Israeli

military and quasi-military action (against a Hamas official allegedly murdered by Mossad in Dubai, for example, or an Iranian nuclear scientist, as well as the Gaza operation) is right because it is aimed at those who wrongfully kill or threaten to kill Israelis. There are good guys and bad guys and the rules of international criminal law apply only to the latter.

It is now largely forgotten how Pinochet's arrest initially provoked exactly the same kind of supportive responses as those that have greeted the proposed arrest of Ms Livni. There was much talk of his stout resistance to communism and of his having been a good and honourable soldier with whom Margaret Thatcher enjoyed the occasional cup of tea. It was said that the judicial process had been turned against an old and feeble man by a demented extremist magistrate from Spain, supported and protected by new Labour rights' extremists. The atmosphere changed when the moral iniquity of Pinochet gradually drowned out the noise of his partisans: he returned to Chile a broken and despised figure. As a result Britain is no longer a safe place for cold war despots to retire or even to visit, even if they were on 'our side' in the old days. The Israelis are rightly terrified that something similar will happen to them, that an arrest of a leading figure like Livni will lead to a full judicial scrutiny of exactly what went on in Gaza, and that this in turn will cause such a wave of public revulsion that it will fast become apparent that it is not eccentric but rather entirely obvious that Israel's political and military leadership should be called to account.

The Prime Minister's proposal for change did not go as far as the Israelis would have liked but it did suggest the introduction of a new control on the process, in the form of a restriction on the power of private individuals seeking such warrants. The plan is to have everything sent through the Director of Public Prosecutions who is expected then to check if there is a 'credible case' before applying for a warrant. The lawyer-activists smell a rat here: it is within the grey area of the law officers' discretion that principle collides with pragmatism. It is this kind of discretionary power that allows us to pretend we are committed to human rights while ensuring that our integrity is only ever aimed at our foes not our friends. The recent controversy over the decision by an analogous functionary (the director of the serious fraud office) to drop an investigation into bribery and corruption within BAE relating to an arms deal the company had concluded with Saudi Arabia is a reminder of what happens when official discretion is allowed to trump the law in this way. It is sufficiently recent for the government not to feel able to motor ahead with confidence in the field of war crimes: none of us (and especially backbench Labour MPs) like to have our double standards rammed down our throats.