

necessarily lead to a resolution of the conflict. Once the U.S. sat down with the Vietnamese in 1968 there were years of meaningless chatter that led nowhere until a series of changes in domestic politics forced the U.S. to change its position. Though U.S. diplomats believe that the very fact of negotiations would generate a new

psychological dynamic, it might actually generate a new pessimism and despair if negotiations become merely another vehicle to perpetuate the status quo. It may yet prove true that dealing with the underlying psychological dynamics is the most effective approach to bringing peace to the Middle East. □

THE PATHOLOGY OF THE OCCUPATION

Just Legal: Human Rights in the Territories

Dedi Zucker

For the first time since 1967, the topic of human rights has become a major theme in Israeli public debate. Israelis can no longer ignore the fact that human rights in the territories are being violated daily on a scale unprecedented in the country's brief history. Abuse of these rights, in an effort to put down the intifada, has served only to fuel Palestinian resentment and to strengthen worldwide support for the Palestinian cause. A vicious circle of abuse, rebellion, and further abuse has increased the death toll on both sides and is now threatening the moral foundations of Israeli society. And yet no end to the abuse is in sight. A sober examination of the human rights issue in the territories might bring us a step or two closer to the axis on which this vicious circle turns.

Realistic discussion of the human rights issue in the territories can, however, be carried on only in a broader context. We should remember, for example, that while a great deal of media attention has been paid to the issue, rights are being violated as a result of *national* conflict. A satisfactory answer to the political question is an essential prerequisite for any real progress on the human rights front.

We should also remember that debate over the issue of human rights takes place within the framework of overwhelmingly concrete security considerations. The number of participants, the high level of friction, and the intensity of the clashes between the Palestinians and the IDF define the events of the past eighteen months as a battle, not a series of disturbances, demonstrations, or even riots. Police terminology is no longer appropriate for what is happening in the occupied territories. Often

what appears to be a violation of human rights actually involves a confrontation characteristic of armed national struggle.

I should note at the outset that even the harshest violations of the Palestinians' elementary rights are permitted under the law, as it has stood in the territories since 1967. The validity of that law (which is based on the British Emergency Defense Regulations of 1945) is another matter. What needs to be stressed here is that the IDF's tactics are not rooted in the "private" policies of individual commanders or their units. The majority of the actions originate in decisions taken on the political level and executed by either civilian or military agents. Brutality constitutes a relatively minor element in the overall picture.

By shutting down the entire West Bank educational system for eighteen months, greater long-term damage was done than that inflicted by individual, insubordinate soldiers in hundreds of incidents at roadblocks. Shutting down the schools, colleges, and universities infringed upon the well-being of some 250,000 people daily for 540 days. This operation was essentially administrative; it involved no violence, required hardly any action on the IDF's part, and—the absurd truth be told—met the test of Israeli law.

Likewise, tens of thousands of Palestinians spend entire days waiting in lengthy, bothersome lines for driver's licenses or departure permits. The prohibition against working in Israel, leveled at the residents of Gaza in May of 1989, is clearly one of the harshest measures this population has faced since the uprising began. Again, it was a political decision, implemented in an administrative and relatively simple manner. In one stroke, the Israeli government temporarily deprived tens of thousands of Gazan breadwinners of their livelihood. Forty percent of Gaza's workers found themselves unable

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to provide food and other staples for their families.

While the deportation of sixty-three residents of the territories and the destruction of roughly two hundred houses (some one hundred other homes have been sealed for security reasons) provides a flashier and more photogenic form of punishment, administrative actions such as the ones detailed above harm more people for longer periods of time but are regularly overlooked.

PUNISHMENT IN ACCORDANCE WITH THE LAW

The situation in the territories illustrates how seriously the concepts "legal" and "just" may contradict each other. All administrative detentions in the occupied territories are carried out in accordance with the law, as adjusted by the military commander to suit "the needs of the hour." Parliamentary and public reviews are bypassed. Individual indictments and trials are dispensed with. It's all legal: the warrant, the officer's signature, and the detention procedure. But none of it is just. At the present writing, Israel has held approximately seven thousand persons for six months or more without trial.

That the Geneva Convention and other international agreements have not been incorporated into domestic Israeli law only makes life easier for the Ministries of Defense and Justice. Most of the punitive measures that entail revocation of the Palestinians' elementary rights are approved by the judicial authorities. Defense authorities encounter no resistance, for example, when they impose curfews as a means of punishment. One particularly turbulent refugee camp has spent some 170 days under curfew since the uprising began.

By refusing to incorporate international law into its own legislation, Israel has been able to employ a lengthy series of measures that show nothing but contempt for the enemy's most basic rights. Israel, for instance, has often exercised the right to keep villagers from harvesting their crops because local youth throw stones, put up PLO flags, and hurl petrol bombs; and while the Geneva Convention forbids the incarceration of prisoners within the occupying state's confines, Israel chooses to keep approximately six thousand of the eight thousand intifada detainees within the borders of Israel proper, along with all of the administrative detainees.

That said, it is important to note that the conditions of detention have improved perceptibly over the past several months. The facilities where the intifada detainees and prisoners are held are by no means brutal dungeons. They are under the control of the judicial authorities and are relatively accessible for public review.

Perhaps the most disturbing aspect of the legal situation in the territories concerns the Supreme Court. For years the Supreme Court served to check the defense

establishment. These reins, which worked reasonably well for many years, are no longer effective. The Supreme Court has done little to limit army activity during the uprising, and knowledge that harsh measures will ultimately gain the High Court's seal of approval has penetrated deep into the consciousness of military decision makers. (The Court's recent unanimous decision granting Palestinian detainees the right to an appeal prior to the

Human rights in the territories are being violated daily on a scale unprecedented in the country's brief history.

demolition of their houses provides a notable exception to standard procedure. Previously, soldiers either blew up or bulldozed the homes of suspects within several hours of arrest. Household members were typically given less than an hour to gather their belongings.)

In short, the Israeli judicial system, like other bureaucracies in the country, has become schizophrenic. While "legal" and "just" typically coincide in Israel proper, in the occupied territories these terms are less consonant.

INEFFECTUAL PUNISHMENT

Israeli policymakers expect punishment to change the Palestinians' behavior. In the case at hand, however, many of the punitive measures meted out by the defense establishment are aimed less at specific suspects than at the entire population, which is perceived as criminal through and through. More often than not, such punishment involves the revocation of rights (as with the closing of schools). It should be clear by now, nineteen months into the uprising, that the arbitrary, collective, and long-term suspension of rights, in a context of national struggle, has questionable effect on the level of violence and on Palestinian civil resistance. The Palestinians' willingness to pay a steep price for freedom renders Israel's punitive measures largely irrelevant. If Israel's leaders are to be believed, the intifada should have died out several times over by now, for whenever Israel metes out a new set of punishments, the public is promised that "[t]his time the intifada will die down to a 'tolerable level.'"

There is in fact no realistic basis for arguing that Israel must accept being portrayed as a repressive state if it wants to maintain relative order and security. On the contrary, one can cite many instances in which punitive actions involving blatant violations of elementary rights only encouraged the resistance and pushed Palestinian violence to yet higher levels. It can be shown, for

example, that blowing up houses fails to pacify population groups in the vicinity. In fact, the demolition tends to recur in the same villages and towns, and at relatively brief intervals, this despite the severity of a punishment that leaves entire families homeless in its wake.

THE JUDICIAL SYSTEM

Since the uprising began, approximately 45,000 persons have been arrested. The resources of the army's judicial system, however, have not been augmented at all. Small wonder, then, that most of the detainees have not been tried, that many have been released from detention without trial, and that others have had their confinement extended until the end of legal proceedings, waiting months just for their trials to begin. Faulty organization, general disorder, and delays in bringing witnesses (soldiers) to the trials have caused thousands of detainees to remain incarcerated for months longer than necessary. The logistical improvements of the past few months have not changed anything. Detention is used as a way not only to complete an investigation, but also to administer punishment without having to establish guilt. As the capacities of the incarceration facilities increase it will be possible to punish additional thousands of detainees before trial.

PUNISHMENT AND HUMAN RIGHTS ABUSES: A VICIOUS CIRCLE

When we analyze Israel's punitive measures and the grave human rights violations attendant to many of them, we find that the punishments are cyclical and, therefore, predictable. Every few months, Israeli policymakers sense that their efforts to put down the uprising have failed; they then decide on new measures. The Palestinians suffer initial shock, and the level of violence in the territories falls off. But as the Palestinians recover, everyone adjusts to the new status quo—until the next battery of punishments is brought on.

In sum, the number and severity of human rights violations since the uprising began have forced the human rights issue to the fore so that it is no longer treated as an exclusively political matter that will "solve itself" as a political solution is found. It is, rather, an issue of substance that will demand its place in our private and public lives for as long as the uprising

Suppression on the West Bank

Deaths Since the uprising began in December 1987, 502 Palestinian residents of the occupied territories have been killed—482 by Israeli soldiers and 20 by Israeli civilians.

470 of the deaths were by shooting; among the dead were 22 children aged 12 or younger, and 76 children aged 13–16.

32 Palestinians died from other causes (beatings, burns, etc.); among these fatalities were 3 children aged 12 or younger.

Another 71 people died shortly after exposure to tear gas, including some 30 infants. (From a medical point of view it is difficult to determine that exposure to tear gas is the direct and sole cause of death in a given instance.)

Casualties There are no definitive statistics regarding the number of Palestinians wounded during the uprising; the UNWRA estimate—69,000—is probably inflated.

Detainees As of July 12, 1989, 8,682 Palestinian residents of the occupied territories were in detention centers, according to the IDF spokesperson. Of these, 1,847 had been tried and sentenced, 1,449 were awaiting trial, and 3,432 were in the midst of adjudication. An additional 1,954 Palestinians were being held in administrative detention.

Deportations 53 Palestinian residents of the occupied territories have been deported during the uprising—31 from the West Bank and 22 from Gaza.

Demolition of Houses According to the IDF spokesperson, 227 houses were demolished and 102 houses were sealed in the occupied territories through July 4, 1989.

—Information supplied by B'Tselem.

continues. For the first time, the government of Israel senses pressure from within as well as from without, pressure demanding that Israel modify its behavior.

It would be erroneous, however, to believe that the issue of human rights has become a decisive consideration in the decision-making process in Israel. While sensitivity to the issue on a large scale has altered Israel's political vocabulary, Israeli society has yet to internalize the profound duty to safeguard human rights. □