

Attacking Democracy

Recent Israeli Attacks on Palestinian Democratic Institutions

Introduction

On Sunday, 29 January 2006, in the presence of representatives of the electoral lists, the Central Elections Commission announced the results of the internationally monitored elections for the Palestinian Legislative Council (PLC), the parliament of the Palestinian National Authority (PNA). The Change and Reform list, representing Hamas, obtained 74 seats; the Fatah Movement obtained 45 seats; the remaining 13 seats were won by minority parties.¹ The European Union - Election Observation Mission labelled the election “an open and fairly-contested electoral process,”² an assessment with which Al-Haq agrees, having itself monitored the elections.³ Hamas took control of the parliament and was sworn into office on 18 February 2006.

Since the election, Israel has deliberately undermined the ability of the PNA to govern effectively in the Occupied Palestinian Territories (OPT). Democratic institutions have been attacked and destroyed, and elected representatives have been threatened, arrested, or stripped of their basic human rights and denied the protections of the Fourth Geneva Convention. Finally, Israel has collectively punished the entire Palestinian population through debilitating economic measures against the PNA. The effects of these Israeli actions have been exacerbated by the cessation of aid to the PNA by major international donors. The justification offered for these measures is that the Hamas government is a “terrorist government,” regardless of its actions.

Attacks on Government Property

There have been a number of military attacks by Israel against government buildings in the Gaza Strip, severely diminishing the ability of the PNA to govern. On 5 July 2006, the Palestinian Interior Ministry in the Gaza Strip, previously attacked on 30 June, was destroyed by an air strike, with one wing of the building collapsing entirely, and the rest sustaining serious damage. Seven people, including four children, were wounded in the attack. The Palestinian Foreign Ministry was bombed on 13 July 2006, wounding 13 Palestinians, including six children. On 17 July 2006, it was bombed again, causing an eight-storey wing of the building to collapse and damaging four other ministries in the same compound. The Israeli military carried out the attack on the pretext that the ministry had been used for the “planning of terror attacks and general activity of the Hamas terror organisation.”⁴ The Finance Ministry in Gaza City was attacked by an air strike on 15 July 2006.

¹ Central Elections Commission, “The CEC announces the final results of the second PLC elections,” 1 January 2006. Full information on the elections is available at <http://www.elections.ps/english.aspx>.

² European Union - Election Observation Mission, *Statement of Preliminary Conclusions and Findings*, 26 January 2006, at <http://www.eueomwbq.org/default.asp?id=1&show=35&m=0>.

³ See Al-Haq, *Monitoring of the Palestinian Legislative Elections* (2006).

⁴ “Israeli air strike finishes off Palestinian Foreign Ministry; Attack wounds 9 residents of Gaza neighbourhood,” *Daily Star*, 18 July 2006.

Legal Analysis

Under international humanitarian law, Israel, as the Occupying Power in the West Bank, including East Jerusalem, and the Gaza Strip, is prohibited from attacking civilian objects. Only military objectives may be targeted. However, civilian objects lose their protection from attack if they are being used for military purposes and make an effective contribution to military action, but only for as long as they are being used for such purposes. In cases of doubt, civilian objects must not be attacked.⁵

Article 53 of the Fourth Geneva Convention prohibits “any destruction by the Occupying Power of real or personal property... except where such destruction is rendered absolutely necessary by military operations.” Even when a clear military objective has been identified, the civilian cost of an attack must not be excessive in relation to the “concrete and direct military advantage anticipated.”⁶ Furthermore, Article 147 of the Fourth Geneva Convention accentuates this prohibition by including “extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly,” within the definition of “grave breaches” of the Convention.

In the absence of absolute military necessity and since the attacked buildings did not make an effective contribution to military action at the time of the attacks, these were carried out in violation of the above-mentioned rules of international law.

ID Revocations in East Jerusalem

On 29 May 2006, Israel issued an ultimatum to four PNA officials – three members of the PLC, Muhammad Abu-Teir, Ahmad 'Attoun and Muhammad Totah, and the Palestinian Minister of Jerusalem Affairs, Khaled Abu-'Arafa. They were given 30 days to resign or face expulsion from occupied East Jerusalem.

The 30 day period expired at midnight on 29 June and, on 30 June 2006, the Israeli Interior Minister Roni Bar-On revoked the East Jerusalem residency permits (IDs) of the four Palestinian government officials. For Palestinian residents of East Jerusalem, losing residency rights under Israeli law prevents them from living in the city, and thereby benefiting from their property and accessing essential services. Israeli Housing Minister Meir Sheetrit said that as a result the four were illegal residents, and that “police now have the legal possibility to take them out of their houses and expel them.”⁷ Currently, the four Palestinian government officials are being held, among others, in Israeli detention (see below).

Legal Analysis

East Jerusalem is recognised by the international community as occupied territory, illegally annexed by Israel. On 22 November 1967, shortly after the Israeli occupation and *de facto* annexation of East Jerusalem in 1967, the UN Security Council passed Resolution 242, emphasising the inadmissibility of the acquisition of territory by war, and calling upon the Israeli armed forces to leave territories that it had occupied in the conflict, including East Jerusalem. Despite the fact that the UN General Assembly, the UN Security Council and the International Court of Justice have

⁵ International Committee of the Red Cross, *Customary International Humanitarian Law – Volume I: Rules* (2005), Rules 7-10, pp. 25-36.

⁶ *Ibid.*, Rule 14, p. 46.

⁷ “Israel Revokes Jerusalem Residency for Hamas Minister,” *New York Times*, 30 June 2006.

reiterated the illegality of Israel's annexation of East Jerusalem, Israel has refused to comply with international law.

Israeli Interior Minister Roni Bar-On, in a letter addressed to East Jerusalem resident and PLC member Ahmad 'Attoun, which he received on 28 May 2006 and transmitted to Al-Haq, stated,

Pursuant to [the *Law of Entry into Israel*], you are deemed to be a resident in the State of Israel. You are obliged to pay allegiance to the State of Israel. Nonetheless, your actions prove otherwise and indicate that your allegiance is paid to the Palestinian Authority.

This constitutes a clear and unquestionable violation of customary international humanitarian law, as reflected in Article 45 of the 1907 Hague Regulations, which provides, "It is forbidden to compel the inhabitants of occupied territory to swear allegiance to the hostile Power."

Moreover, the revocation of residency permits of East Jerusalem residents amounts to a form of forcible transfer prohibited by Article 49(1) of the Fourth Geneva Convention, which provides that "individual or mass forcible transfers, as well as deportations of protected persons from occupied territory to the territory of the Occupying Power or to that of any other country, occupied or not, are prohibited, regardless of their motive." Palestinian residents of East Jerusalem whose residency permits are unilaterally revoked have no other choice than to leave the city; to remain would lead to arrest, imprisonment and/or expulsion. Statements by several Israeli cabinet members and official spokespersons have demonstrated an intent to remove Hamas officials from East Jerusalem.

Arrests of Government Officials

On 27 June 2006, Israeli Infrastructure Minister Benjamin Ben-Eliezer declared that Israel had "no problem entering the Gaza Strip and kidnapping half the Palestinian government."⁸ On 29 June, the Israeli army arrested eight Palestinian cabinet ministers, 26 members of the PLC, and numerous Hamas political leaders throughout the West Bank. On 6 July, the Second Deputy Speaker of the PLC, Dr. Hasan Khreisha was arrested. On 19 August, the Head of the PLC, Dr. 'Aziz Dweik, and the Deputy Prime Minister and Minister of Education, Dr. Naser-al-Din al-Sha'er, were arrested. On 3 November, the Public Works and Housing Minister 'Abd-al-Rahman Zidan was arrested. A small number of the arrested officials have been released. Of those still in detention, the majority have not been indicted for any individual acts but merely for membership of Hamas or the Change and Reform list.

Muhammad Barghouthi, PNA Minister of Labour, described his detention and interrogation in the following terms:

Most of the discussion was political. Abu-Yousef [nickname of a Shabak officer] affirmed that the reason for my arrest was the kidnapping of the Israeli soldier by Hamas, and had the soldier not been kidnapped, I would not have been arrested. He placed the responsibility for the kidnap of the Israeli soldier on me as a minister

⁸ "Mediation efforts stumble as Israel prepares Gaza offensive," *Daily Star*, June 28, 2006.

of the Hamas government, saying that we encourage "terror operations."⁹

His testimony shows that the intention behind his detention was to compel others to secure the release of the abducted Israeli soldier, Gilad Shalit.

Legal Analysis

In the OPT, the civilian population, including government officials, are protected persons under Article 4 of the Fourth Geneva Convention. Article 34 of that Convention provides, "The taking of hostages is prohibited." Under customary international law, hostage-taking occurs where a person has been captured and detained illegally and the captors pressurise a third party, either explicitly or implicitly, to do or refrain from doing something as a condition for releasing the hostage unharmed.¹⁰ The testimony of the PNA Minister of Labour Muhammad Barghouthi indicates that his arrest constitutes hostage-taking as prohibited by international law.

Attacks on Government Officials

There have been various threats from Israeli ministers to target Hamas' leaders. Israeli Prime Minister Ehud Olmert stated, "I have instructed the security establishment and the military to increase the strength of their actions in order to pursue these terrorists, those who dispatch them, their ideologues and those who sponsor them. Nobody will be exempt."¹¹ The defence minister, Amir Peretz, warned that if the crisis in Gaza continued Israel would go after "higher calibre targets", said by his aides to refer to senior Hamas officials in the OPT and in exile.¹²

Legal Analysis

Under Article 27 of the Fourth Geneva Convention, Israel is obligated to treat protected persons humanely at all times, and to protect them against all acts and threats of violence. Moreover, international humanitarian law requires that parties to a conflict distinguish at all times between civilians and combatants. Civilians may only be targeted for such time as they take part in hostilities.¹³

The Israeli policy of targeted assassinations violate the fundamental principle of the protection of civilians enshrined in international humanitarian law. Civilians remain protected persons as long as they are not taking a direct part in hostilities. If they do take a direct part in hostilities, they may only be legitimately targeted, injured, or killed during the period of their participation. However, once direct participation has ended, they may no longer be made the object of attack, but may be arrested for having participated in fighting.¹⁴

In parallel, Article 6 of the International Covenant on Civil and Political Rights protects the fundamental right to life, establishing that "No one shall be arbitrarily deprived of his life." Article 14 of the same Covenant further guarantees the right to due process of law for persons suspected of having committed crimes. Israel's policy of targeted assassinations is in clear violation of these fundamental norms.

⁹ Al-Haq Affidavit No. 3118/2006, at <http://tinyurl.com/sto2t>.

¹⁰ See *The Prosecutor v. Blaskic*, Case No. IT-95-14-A, Appeals Chamber, Judgement, 29 July 2004, para. 639.

¹¹ Chris McGreal, "Israel threatens to target Hamas leaders," *The Guardian*, 3 July 2006.

¹² *Ibid.*

¹³ *Supra* note 5, Rule 1, p. 3, and Rule 6, p. 19.

¹⁴ *Ibid.*, Rule 6, p. 19.

Economic Sanctions

Each month the PNA requires 165 million USD to function as a government, of which 60% is used to pay salaries. Over 150,000 people are employed by the PNA, and their salaries support approximately 1,000,000 people or 25% of the Palestinian population. PNA employees operate 62% of primary health clinics, all the major hospitals except one (which is run by UNWRA) and 75% of primary and secondary schools (the rest being run by UNWRA and the private sector).¹⁵

In addition to the cessation of aid to the PNA by major international donors since the constitution of the current government, Israel has ceased to respect its obligations under the Paris Protocol to transfer taxes and customs duties collected on behalf of the PNA, resulting from Israel's control of Palestinian borders. In 2005, the PNA received approximately 60 million USD per month in taxes and customs duties. Since February 2006, Israel has illegally stopped transferring these funds to the PNA.

This has resulted in the more than 150,000 civil servants not receiving their full salaries since March 2006. The consequences have been increased unemployment and poverty levels among the Palestinian population, decreased financial assistance to destitute families and limited access to health services, medicine and sufficient food, particularly for those relying on income from the PNA. Stocks of medicine have been depleted and a number of essential drugs have become unavailable. Public hospitals and health clinics suffer from a lack of funds, medicine and equipment maintenance.

Civil servants, including in the education and health sectors, have been engaged in a general strike since late August / early September 2006. An estimated 60-90% of the work of these institutions has been halted throughout the OPT. Most governmental schools stopped work and refused to admit students at the start of the new school year. Governmental hospitals and health clinics have stopped providing services except in emergency cases. The Palestinian courts are not functioning and the police are not carrying out their duties. This has led to a breakdown in law and order, thereby encouraging vigilante behaviour.

Legal Analysis

Israel's withholding of Palestinian tax revenues is a blatant violation of its duty as an Occupying Power to ensure the welfare of the civilian population in the OPT. The sanctions imposed on the Palestinian population furthermore represent a form of collective punishment, prohibited under Article 33 of the Fourth Geneva Convention, and constitute an attack on the exercise of the right to self-determination of the Palestinian people, guaranteed under common Article 1 of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social, and Cultural Rights.

¹⁵ United Nations "Assessment of the future humanitarian risks in the occupied Palestinian territory," 11 April 2006, at http://www.ochaopt.org/documents/Assessment_of_the_future_humanitarian_risks_oPt_En.pdf.

Conclusion

Attacks on Palestinian democratic institutions have severely restricted the ability of the PNA to carry out its essential functions in the OPT. Military operations have resulted in the destruction of government buildings and ministries. Arrests of ministers and the confiscation of IDs prevent from carrying out their governmental duties. These operations have serious repercussions for the civilian population of the OPT. Without a properly functioning government, public services such as health, education and law-enforcement deteriorate rapidly, restricting or eliminating the access of the population to these vital services.

The actions of the Israeli government breach international humanitarian law and constrain Palestinians' efforts to exercise their right to self-determination. Without being given the opportunity and support needed for it to flourish, the PNA will suffer and fail. The faith of the Palestinian people in democracy will be broken, diminishing the ability of any elected leadership to guarantee the rule of law in the OPT, including fundamental principles of human rights and humanitarian law and the UN Charter. International law must be complied with, and democratic choices must be respected, in order to achieve a just and durable resolution to the conflict.