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Oslo and the shifting paradigms of the Human Rights Community in Israel and Palestine

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Abstract

Despite some improvement to the lives of Palestinians through human rights activism, this article will argue that the legal regime governing occupied territories, combined with a rigid legalized conception and application of human rights, limits the ability to achieve human rights protections for those living under prolonged military occupations. Drawing on a critique of liberal legalism and through an analysis of court cases and human rights reports in the case of the Israeli military occupation of the Palestinians, this article will identify four key barriers to change. It will trace the key shifts in the human rights organizations in Israel and Palestine, which seek to overcome these limitations in an effort to secure long-term human rights for the Palestinians.

Human Rights; Israeli Occupation; Law; Activism

Introduction

There is general agreement that human rights have become an integral component of the norms and discourse of the international system (Finnermore, 1996; Forsyth 2000; Gordon and Berkovitch, 2007). However, there is ongoing debate over whether these norms and discourse have translated into material change for those experiencing rights abuses. Quantitative studies tend to conclude that human rights have minimal impact (Cardenas,

2007; Davenport and Armstrong, 2004; Hafner-Burton and Ron, 2009). They show that few governments engage in real reform (Keith, 1999; Hathaway 2002; Neumayer, 2005), and whilst some governments might make small improvements, they often continue or intensify violations elsewhere (Hafner- Burton, 2008; Hafner-Burton and Ron, 2009).

Qualitative studies, on the other hand, identify the transformative power of human rights (Donnelly, 1989; Keck and Sikkink 1998; Risse, Ropp and Sikkink 1999; Sikkink, 2004, 2017). They show how the discourse of international human rights is imported to national settings where events are translated into the language of human rights, providing legitimate tools through which individuals and groups can seek to remedy their grievances (Donnelly, 1989; Forsythe, 2000; Keck and Sikkink, 1998). There is recognition that human rights successes are not inevitable and often partial (Gordon and Berkovitch, 2007; Ignatieff, 2003; Kennedy, 2004; Sikkink 2004), and that discursive change may be the only key success (Clark, 2001; Rajagopal, 2003). This article situates itself within the qualitative study of human rights impact through an analysis of the Israeli military occupation of the Palestinians.

Existing studies on human rights in Israel and Palestine have shown how the norms of human rights have been translated to the Israeli-Palestinian case. Gordon and Berkovitch (2007) identify a discursive shift triggered by the first Palestinian Intifada, whereby 'human rights' entered media discourse in Israel. Increasingly, a human-rights based discourse framed the response to the Israeli-Palestinian conflict (Gordon and Berkovitch, 2007; Fleischmann 2016, 2019; Hajjar 2001). There was a sense that the rapid deterioration in the situation in the West Bank and Gaza Strip required efforts be directed towards the protection of Palestinian human rights rather than focusing on a political peace agreement (Fleischmann 2019:26). In order to be seen as legitimate in both the national and international sphere, the human rights activists operated in the legalistic and depoliticized language of universal

human rights (Hajjar 2001, 2005), engaging in monitoring, documentation, advocacy and litigation, to "ensure Israel's accountability and respect for human rights" (ACRI n.d.).

There is debate over whether the organizations have had any positive impact. Some studies show that extensive documentation of human rights abuses, alongside advocacy, direct action, contribution to international investigations and litigation through the Israeli courts has resulted in improvements in the rights of Palestinians (Montell, 2016; Sfrad, 2018, Siman, 2021). Concerted efforts to silence and delegitimize the human rights organizations by the Israeli Government and civil society groups, through both public opinion and laws that seek to limit their work, including the shutting down of seven Palestinian NGOs in 2022, do suggest that they have had, or could have, impact that is detrimental to Israel's interests (Fleischmann, 2019: 104; Golan, 2014).

Despite this, additional studies identify the barriers faced by human rights organizations, with specific attention to the limits of a recourse to the Israeli High Court of Justice (HCJ) (Allen, 2013; Hofstader, 2014; Kretzmer and Ronen, 2021). The overall assessment is summarized by Kretzmer and Ronen, who argue that "while the Court's review has enabled many individuals to receive a remedy, it has largely served to legitimize government policies and practices in the Occupied Territories" (2021). Others confirm that appeals to the domestic courts lead to the legalisation of discriminatory policies and actions that violate the rights of Palestinians (Golan and Orr, 2012; Gross, 2017; Kretzmer, 2002; Sfard, 2009). Without underestimating the efforts of the human rights organizations, this article will focus on the limitations of a human rights approach, drawing from and extending these existing studies, by arguing that the limitations are inherent to cases of prolonged military occupation.

In order to assess impact, the goals must first be identified. Human rights organizations face a number of dilemmas when deciding upon what course of action to take

(Dudai, 2014; Hofstader, 2014). One such dilemma is whether their role is to develop strategies to address the root causes of human rights violations. Some argue that this is beyond the scope of human rights organizations (see e.g., Brander et. al. 2020; Hary in Fleischmann 2019; Montell 2016; Wiseberg 2003). It seems plausible to argue that under a temporary occupation the role of the human rights organizations is limited to monitoring the occupying government and protecting the rights of the occupied populations in the short-term, until a political agreement is reached. However, the prolonged nature of the Israeli occupation, leads this article to argue that human rights impact should be assessed against the more fundamental goal of ending the military occupation of the Palestinians.

It is difficult to measure impact of human rights work, given other potential causal factors. However, tracing the work of the human rights organizations can identify contributions. Furthermore, this article shows that it is not the efforts of the organizations per se, but the context within which they operate, combined with a rigid legalized conception and application of human rights that limits the ability to create change. Evidence will be provided through up-to-date cases brought to the HCJ since 2000 and reports and publications from human rights organizations. Through an analysis of the laws governing military occupations, which necessarily pit the rights of the occupying force against those of the occupied population, and in assessing the evidence against a theoretical critique of liberal legalism, which promises that the liberal state can "make justice happen by means of the law" (Brown and Halley, 2002), this article will identify four key limitations of a human rights approach.

Firstly, violations of rights are justified and legalized through the laws governing military occupations on the basis of security. Secondly, discriminatory practices are rubber-stamped by the HCJ and third, the law enforcement system does not provide proper

oversight.[1] Through a discussion of these, a final limitation emerges; that human rights organizations that work within the system and do not address the fundamental structures that lead to human rights abuses, lend legitimacy to the military occupation, which can have the effect of prolonging it. This extends the existing literature by arguing that it is not only employing legal *tactics* that fails to secure rights, but that a conception of human rights that claims to be depoliticized is fundamentally limited in securing long-term protection of rights.

Not all human rights organizations in Israel and Palestine are subject to this critique and some have engaged in strategies which do address the structural foundations of human rights abuses. Furthermore, some of the human rights organizations have reflected on the limitations to their work and transformed their strategies and goals. The second part of the article will explore these shifts, providing an understanding of how the human rights community has transformed.

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Theoretical Framework

The theoretical framework is informed by those who are skeptical of the conception and practice of human rights as legal norms (Brown, 2004; Brown and Halley 2002; Hopgood, 2013; Koskenniemi 2008; McEvoy 2007; Perugini and Gordon 2015; Schick, 2006; Zreik 2004). Under the regime of liberal legalism, legal frameworks provide avenues for human rights activists to secure rights and challenge violations. However, liberal legalism denies that law is itself a politics, whereas critical scholars argue that the law does not transcend the political nor does it restrain it (Brown and Halley, 2002; Koskenniemi, 2008; McEvoy, 2007). In carrying a politics, legalism "incessantly translates wide-ranging political questions

[1] The law enforcement system in the West Bank is comprised of the Israeli Defence Forces (IDF), the Israeli Police, the State Attorney's Office, the Military Advocate General Corps and the courts of law, including the Israeli High Court of Justice.

into more narrowly framed legal questions" (Brown and Halley, 2002: 19). In doing so, the law does not contextualise human rights violations, nor the victims, but separates the law from the context in which it exists (McEvoy, 2007: 414). It thus fails to address or even see more fundamental issues of social power asymmetries (Brown and Halley, 2002; Gordon, 2008). This is particularly stark in cases of occupation.

The analogy of an iceberg is often used, whereby the tip of the iceberg reveals the symptomatic human rights violations of a conflict, such as torture, indefinite detention and physical violence. Yet, what is not visible is the "denial of human rights" as "embedded in the structures of society and governance, in terms of how the state is organised, how institutions operate and how society functions" (Parlevliet 2011: 382). Focusing on the tip of the iceberg diverts attention from the underlying structural conditions and can legitimize a situation that represents the denial of human rights abuses (Gross, 2017: 33). Thus, if human rights claims are to be effective, then they must be "rescue[d] from the grip of legalism to uncover the fundamental political conditions creating injustice" (Brown and Halley, 2002:20) and that their role is to "impel the state to reorganize power and, more precisely, to democratize it" (Berkowitz and Gordon, 2008).

The Claim of National Security

Detailing the laws and norms that govern the situation in Israel/Palestine provides an initial understanding of a human rights approach; how it serves to protect the rights of Palestinians and where it falls short. The West Bank and the Gaza Strip, until 2005, are defined as 'Occupied Territories' under International Law. Laws of occupation are drawn from the law of international armed conflict, as codified in the 1907 Hague Regulations and the Fourth Geneva Convention. They also draw on customary International Humanitarian Law (IHL) to

protect those living under occupation and to determine the obligations of the occupying force. Following two rulings by the International Court of Justice in 2004 and 2005, International Human Rights Law (IHRL) also became applicable to occupied territories (ICJ 2004, 2005).

Certain clauses within the laws also recognize the legitimacy of the occupying force to protect its own security against what is likely to be a hostile population (Hague Convention 1907: Arts. 42 – 56; Geneva Convention 1949, Arts. 27–34, 47–78). The rights of the occupied population are therefore balanced against the security of the occupying population, with authority to make judgements given to the occupying power. An IDF report confirmed that "judgement in Judea and Samaria [the West Bank] is characterized by increased activity involved in creating appropriate balances between security considerations and human rights" (IDF 2007: 2). The consequence is that the application of IHL and IHRL can allow for certain violations of rights to be justified in the eyes of the law (Benvenisti 2012; Gross 2017; Perugini and Gordon 2015; Sfard 2009, 2018). Two concrete examples provide evidence of this: house demolitions and administrative detention.

According to the Israeli Committee Against House Demolitions (ICAHD) over 50,000 Palestinian homes have been demolished in the West Bank, East Jerusalem and Gaza since 1967 (ICAHD 2020a). Three main justifications are used by the Israeli forces: enforcement of building regulations; for land-clearing; and as a punitive, counter-insurgency measure. Houses that are demolished due to building regulations in occupied territories, referred to as 'administrative demolitions', are prohibited under Article 53 of the Fourth Geneva Convention, unless "rendered absolutely necessary in the course of military operations" (Relief Web 2004). Demolitions conducted to clear land to create firing zones must also meet the criteria of 'security necessity', the assessment of which remains under the authority of the military commanders (ICAHD 2020b).

House demolitions used as punishment for the actions of individuals linked to certain homes are deemed illegal under International Law, since punitive measures towards those who have not committed a crime are a form of collective punishment (GC IV 1949, Art. 33). However, the legal status of these measures in Israel is more complex due to the framing used by the Israeli military. It is claimed that these measures act as a deterrent for future attacks and therefore fall under the banner of military operations. At the height of the second Intifada¸ between 2001 and 2005, B'Tselem recorded 745 punitive house demolitions (B'Tselem, n.d.). This policy was suspended in February 2005, after the Israeli military committee chaired by Major General Udi Shani questioned the efficacy of house demolitions as a deterrent. In summer 2014, punitive house demolitions resumed, with the state arguing that given increased attacks, they were justified in employing the policy. Despite numerous petitions against house demolition orders, the HCJ, except on rare occasions, sided with the position that the demolitions are for deterrence rather than punishment. They also ruled that "it was not their role to interfere in the considerations of the security establishment," thus transferring authority to determine the status of house demolitions to the military commander (B'Tselem, 2017a).

Administrative detention is a further example of where the violation of rights is justified under the claim of national security. Administrative detention is where a person is held without trial and without having committed a crime on the presumption that they intend to break the law in the future. Whilst Israeli laws contain provisions to protect detainees and limit the use of administrative detention to only extreme circumstances, it has been used extensively by the Israeli forces (B'Tselem, 2017b). According to figures from the Israeli Defense Forces Spokesman, from the beginning of 2015 to the end of July 2017, 3909 administrative detention orders were issued. Whilst a judicial review is required, information

is notoriously opaque and in the 2015-2017 period, only 48 (1.2 percent) detentions were cancelled by a military court (B'Tselem, 2017b).

The high numbers of administrative detainees can be explained through the powers granted to military commanders by Israeli law to modify military orders relating to administrative detention for military necessary (Addameer, 2019). They are permitted under Article 285 of Military Order 1651 regarding Security Provisions in the West Bank and the Internment of Unlawful Combatants Law, which has been applied to residents of the Gaza Strip since 2005. International Human Rights Law also allows for some limited use of administrative detention in exceptional circumstances for 'imperative reasons of security' (GC IV 1949, Art. 78). Thus, the detention of Palestinians can be legitimized despite the violations it causes to their rights, such as the right to fair trial.

Exploration of further examples reach similar conclusions. In 2019, B'Tselem produced a report which analyzed four Supreme Court rulings on house demolitions, the rights of persons in interrogation, prisoners and their families, and the use of corpses as bargaining chips. They discovered that the HCJ often, "accepts the state's position and engages in legal acrobatics in order to sanction a severe violation of human rights" (B'Tselem 2019). An Al-Haq report reached the same conclusion whereby the Court, "tends to endorse the position of the Israeli military and government authorities through flawed and often politically subservient legal reasoning" (Reynolds 2011: 10). In scholarly work, Daphna Golan and Zvika Orr's assessment of legal avenues for defending Palestinian human rights concludes that judicial 'review' by the HCJ has been shown to "legalize harsh and continuous abuses and grant broad legal and public legitimacy to serious human rights violations in the Occupied Territories" (Golan and Orr 2012: 794). These claims reflect the position of leading human rights scholar, David Kennedy, who argues that "the legal regime of 'human rights',

taken as a whole, does more to produce and excuse violations than to prevent and remedy them" (Kennedy 2001: 118).

Legalism as a Rubber Stamp

That the state and the military require approval from the courts also creates the possibility for opposing these practices through legal avenues. Lisa Hajjar notes that "it was Israel's enthusiasm for law and the ornate legalism of official discourse that catalyzed and propelled the development of the local human rights movement, which served as the harbinger of legalistic resistance" (2005: 24). Thus, a large part of the work of the human rights organizations has been to litigate against human rights violations in the OPT, by filing petitions to the HCJ. Meir Shamgar, former Attorney-General during the formative years of the HCJ's jurisdiction over the OPT, instigated a policy whereby the Court would rule on petitions submitted by residents of the Occupied Territories. This was decided partly because it would "imply recognition of Israel by the petitioners, as well as political legitimization of Israeli rule of the Territories" (Kretzmer and Ronen, 2021: 19). According to former Director of B'Tselem, Jessica Montell, the Court "has played a central role in virtually every human rights achievement" (Montell 2016: 941). In some cases, the threat of legal action persuades the authorities to change their course of action (Kretzmer 2002: 440). Examples include preventing the demolition of a house or securing access to farmlands (see e.g., Ir Amim 2022; Sfard 2018; Trocaire 2020). Most notable examples of successful legal proceedings were the re-routing of the Separation Barrier around the Palestinian village of Bil'in in order that it did not separate the Palestinians from their farm land (HCJ 8414/05); and the 1999 ruling that interrogation methods that amounted to torture were illegal (HCJ 5100/94).

In some cases, despite the High Court of Justice ruling in favor of the claimants, the unintended consequence is a rubber-stamping of discriminatory practices on the ground, such that human rights violations are legitimized (Ayoub 2004; B'Tselem 2019; Reynolds 2011). A pertinent example is that of Highway 443. It is a highway that connects Jerusalem and Tel Aviv and runs through the OPT. During the second Intifada, Palestinian drivers were not allowed to use the road, based on the claim that the Israeli authorities needed to make it safe for Israeli traffic. Thus, it became a segregated road. The case was taken to HCJ on the basis of discrimination. The court ruled in favor of the claimants and the military commander was not authorized to ban travel to Palestinians on the highway (B'Tselem 2009; Fleischmann 2019: 47). Some proclaimed this a victory for the claimants (Bronner, 2009). However, while the ruling limited a so-called security provision in favor of the rights of Palestinian drivers; on the ground, the highway continued to be segregated. The road was very rarely opened for Palestinian traffic. Yet, this still upheld the court order. The ruling had stated that "the military commander doesn't have the authority to completely – *highlight completely* – ban the road to Palestinians traffic" (Surrusco 2013). The language used meant the Court legalized the ability of the military commander to legitimately ban Palestinian traffic on all but rare occasions; thus, rubber stamping a discriminatory practice.

An Ineffective Law Enforcement System

A further limitation of a human rights approach can be identified in the inability of the law enforcement system to hold abusers of human rights to account. The flaws in the law enforcement system and overall lack of accountability in the West Bank have been documented in annual reports by Yesh Din (e.g., Yesh Din 2011, 2018). In 2006, they produced a report monitoring the Israeli Defense Force's treatment of violence by Israeli

civilians against Palestinians. They identified a "systematic evasion of applying the law on Israeli civilians who harm Palestinians in the West Bank", both at the stage the offence was committed and at the stage of filing complaints (Yesh Din 2006). In a 2017 report tracing over 1,200 investigations opened since 2005 in the West Bank, Yesh Din found that only 8.1 percent of the investigations monitored by the organization led to indictments. For those cases that did lead to an indictment, 18.1 percent ended with no conviction, despite a guilty finding. This compares with 5.3 percent of cases dealt with by Israel's Magistrates Court within the pre-1967 boundaries (Yesh Din 2018).

B'Tselem presents a similar picture. They focused specifically on how the law enforcement system deals with complaints against Israeli military personnel or civilians for injury or killing Palestinians (see, e.g., B'Tselem 2010, 2011, 2016a). Between 2000 and 2017, they demanded investigations into 739 incidents of solider harm towards Palestinians. They found that in 25 percent of all complaints filed to the Military Advocate General (MAG), no investigation was launched. In almost 50 percent of incidents, the investigation was closed with no further action, and in only 3 percent were charges brought against the soldier (B'Tselem, 2016a: 16). Similarly, the Public Committee Against Torture (PCATI) identified that between 2001 and 2009 no criminal investigations were launched for complaints of torture and ill-treatment, despite 600 complaints (PCATI 2009).

The inefficiency and ineffectiveness of the system has meant that neither soldiers nor Israeli civilians who harm Palestinians are held accountable for their actions and others are not deterred from doing the same (B'Tselem 2016a). Consequently, there is a reluctance by Palestinians to file complaints (Yesh Din 2017). The human rights organizations have concluded that the failure to investigate and prosecute military and police personnel is based on 'systemic and fundamental' issues (Yesh Din 2019). As a consequence, B'Tselem made

the decision to stop working with the MAG. In a 2016 report, it stated that “B’Tselem will […] no longer help a system which serves as a whitewash mechanism" (B’Tselem 2016a).

Legitimizing the Occupation

The prolonged nature of the occupation requires us to go beyond the three limitations discussed thus far: the tension between security interests and human rights; the barriers faced through recourse to the courts; and the ineffective law enforcement system in the West Bank. A final, more fundamental barrier to change emerges and reflects the critique of liberal legalism: engaging the law enforcement system, employing litigation tactics for short-term protection and working on the false assumption that human rights are depoliticized has the effect of normalizing the system, which can act as a barrier for fundamental change.

As stated by a 2016 B’Tselem report,

> Appearances also help grant legitimacy – both in Israel and abroad – to the continuation of the occupation. It makes it easier to reject criticism about the injustices of the occupation, thanks to the military’s outward pretense that even it considers some acts unacceptable, and backs up this claim by saying that it is already investigating these actions (B’Tselem 2016a: 38).

By filing cases to the High Court of Justice, the human rights organizations play a role in assisting the court system to retain its legitimacy. Engaging the law, “‘anesthetizes’ the liberal public […] into believing that the court is following standards of law and justice and is guaranteeing that the occupation be sufficiently human” (Golan and Orr 2012: 794). By occasionally overruling the military commanders following petitions from the human rights organizations, there is a perception that the HCJ is independent and neutral and that there is a

legal system operating as it should (Shamir 1990). Taking legal action thus "empower[s] the regime and contribute[s] to its sustainability" (Sfard 2018: 37). The consequence is that the underpinning structural problems are not addressed and therefore any sense of immediacy or even necessity in ending the occupation is obscured. The acceptability of the HCJ "will undermine the moral and political significance of the fact of the occupation, even diminishing the urgency of bringing it to an end" (Koskenniemi 2008: 13). Other strategies to protect human rights, which do not challenge underlying oppressive structures can have a similar consequence. They may treat the symptoms of a situation, but treating symptoms alone, "will allow the disease not only to fester but to seem like health itself" (Kennedy 2004: 25).

Paradigm Shifts in the Human Rights Organizations

Former Director of B'Tselem wrote in a 2016 article analyzing the achievements of the human rights organizations, that "human rights organizations operate at their best when they understand their role within this system" (Montell 2016: 962). Specifically, she argues that the human rights organizations are not political and must serve to protect the rights of Palestinians living under occupation until a political peace agreement is reached. Golan and Orr identify in 2012 that most organizations took this stance, insisting on working solely to protect human rights and ensure Israeli government complies with its obligations (Golan and Orr 2012: 806). Whilst this position may have made strategic sense when there was a political peace process and a belief that the occupation was temporary, the same argument no longer holds. Since 2000 there has not been a serious political peace process, the occupation has become further entrenched, and since the establishment of the 20th Knesset, there has arguably been a transition to de-jure annexation of the West Bank. In recognition of this and

of the limitations identified above, some of the human rights organizations have altered their strategies and goals.

A group of lawyers first questioned whether to pursue human rights protections through the courts in 2007. They acknowledged that whilst some remedy might be achieved for individual clients, on issues of principle or policy change, the Court rarely sided with the human rights organizations (Sfard 2018). Some victories in policy change have been secured, such as the case against torture. However, this has not secured full protection for interrogees (Duke 2019; PCATI 2020). When it comes to regime change, the group acknowledged that the Justices will not make decisions that might change the character of the occupation. Thus, 'ending the occupation' will not happen through the courts (Sfard 2018: 442).

The group therefore questioned whether their work to improve the conditions for individual victims was compatible with the goal of regime change. They were unable to conceive of a remedy for the victims whilst avoiding granting legitimacy and positive publicity to the occupation. Therefore, they concluded that all organizations should not "submit High Court petitions against policies that violate human rights in the Occupied Territories over the next year, and redirect our efforts towards other courses of action" (Sfard 2018: 24). However, ACRI, who was the first to engage in litigation to secure civil rights for Israelis, did not follow this recommendation and ultimately no changes to the methods employed by the human rights activists were made at that time.

Towards the end of the second Intifada, the question of whether to engage in the law resurfaced amongst the human rights community. In particular, concern arose over the effectiveness of the law enforcement system. Some of the human rights organizations, particularly Al-Haq, B'Tselem and Yesh Din, began focusing not only on documenting human rights abuses, but on investigating the law enforcement system, including what happens inside the courts. Their research informed the section above, which showed that the

law enforcement system has been ineffective in holding the abusers of human rights to account.

In 2005 Women in Black and Yesh Din began to question the more fundamental strategy of "not doing politics" and "not calling an end to the occupation" (Golan and Orr 2012: 27). Efforts shifted from not only documenting human rights abuses, but to calling out the occupation itself. Much of this work has taken place on the international stage, particularly in addressing the United Nations. B'Tselem has been at the forefront of this shift in strategy, by engaging in a "paradigm shift from calling an end to human rights abuses under occupation to calling for an end to the occupation, itself a human rights abuse" (B'Tselem 2014: 2). In 2014 Hagai El-Ad replaced Jessica Montell as Director of B'Tselem and the work of the organization shifted away from a rigid legalized conception and application of human rights. In 2016 and 2018, he addressed the United Nations Security Council, condemning Israel's 'crimes of occupation' and calling for international action against Israel (B'Tselem 2016b, 2018). Continuing this strategy, in 2021 B'Tselem defined Israel's system of governance from the Jordan River to the Mediterranean Sea as one of 'Apartheid' (B'Tselem 2021). They were not the first human rights organization to do so, with Al-Haq and the Palestinian Council for Human Rights Organizations making this claim in 2009 and 2012 respectively (PCHRO, 2012). Calling out apartheid on the international level and providing evidence for taking legal action before the International Criminal Court is the focus of the larger human rights organizations operating in Israel and Palestine in 2023. In doing so, they have moved away from only addressing the symptomatic human rights violations, to engaging in the political work of reframing and challenging the fundamental structures that enable and cause the violations.

Conclusion

Whilst successive Israeli governments have introduced more and worse rights abusive policy over the years, which can account for some of the limitations in achieving fundamental change in the human rights situation for the Palestinians, and the situation may have been worse had the human rights organizations not tackled the short-term human rights abuses, these do not negate the claim that for human rights to secure long term positive change, they must address the root causes and structures that underpin human rights violations.

This article has shown that inherent to the legal regime of human rights is the potential to uphold underlying structures that enable or cause human rights violations. This is reinforced in cases of military occupation, due to the international laws that govern. In the case of Israel/Palestine, whilst unearthing the human rights abuses has been integral to shifting the discourse on the conflict, revealing realities that had previously been hidden and improving the lives of Palestinians in the short-term, this article has argued that working within the system has can have the effect of legitimizing the occupation and thus, removing any sense of immediacy or necessity in its cessation.

Tracing the shifts in some of the human rights organizations identified alternative strategies that are being employed to overcome the problematics of their work, including not working through the Israeli courts; refusing to engage with the military advocate general; and calling for international action to ‘end the occupation and practices of apartheid’. Whilst it is too early to judge the impact of these strategies, two potential consequences can be drawn. Firstly, in ceasing with working with the law enforcement system, the human rights organizations can avoid rubber stamping discriminatory policies and legitimizing an unjust system. Secondly, in reframing the situation to one of Apartheid, which is defined as a crime against humanity, and in operating at the international level, external pressure may be applied on the Israeli government, which could bring about the long-term rights of the Palestinians.

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