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Research Report

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SWP Comments, No. 36/2017

Provided in Cooperation with:

Stiftung Wissenschaft und Politik (SWP), German Institute for International and Security Affairs, Berlin

Suggested Citation: Asseburg, Muriel (2017) : Shrinking spaces in Israel: Contraction of democratic space, consolidation of occupation, and ongoing human rights violations call for a paradigm shift in Europe's policies, SWP Comments, No. 36/2017, Stiftung Wissenschaft und Politik (SWP), Berlin

This Version is available at:

<https://hdl.handle.net/10419/256468>

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Shrinking Spaces in Israel

Contraction of Democratic Space, Consolidation of Occupation, and Ongoing Human Rights Violations Call for a Paradigm Shift in Europe's Policies

Muriel Asseburg

Israel has always claimed to be the only democracy in the Middle East. Yet the current government coalition is dominated by right-wing, ultra-Orthodox and national-religious parties advocating illiberal policies and seeking Jewish dominance across “Eretz Israel” – Israel itself and the occupied Palestinian territories. Accordingly, the government is working firstly to emphasise the Jewish elements in Israel's identity. It is secondly pushing ahead with settlement-building in and de facto annexation of parts of the occupied territories. Thirdly, it is steadily shrinking the spaces for Israel's civil society and human rights organisations. Germany and the EU should press Israel to comply with international law, improve the human rights situation and preserve spaces for civil society to thrive. In their policies, working towards respect for human rights and international law should no longer come second to conflict resolution.

Israel attaches great importance to being regarded as the only democracy in the Middle East and the West's partner of choice. It does truly stand out from other countries in the region, offering its citizens regular free and fair elections, an effective division of powers, and functioning checks and balances. In recent years, however, the scope for civil society actors has shrunk considerably. Individuals and institutions who express critical positions on Israel's policies in the occupied territories, human rights violations, and the country's identity are especially affected by repressive legislation and massive defamation and intimidation campaigns.

In July 2016 the Knesset passed the so-called NGO Transparency Law requiring

non-governmental organisations that receive more than half of their funding from foreign state entities to report the origins of their grants and publicise the fact in various specified contexts. The legislation primarily targets organisations that criticise the Israeli government's occupation policies, argue for equality for Israel's non-Jewish citizens, and defend human rights, including those of refugees. The Justice Ministry published a list of 27 NGOs that receive more than 50 percent of their funding from foreign state entities. Right-leaning NGOs, think tanks, and media outlets as well as settler organisations, etc. are funded almost entirely through private donations and as such unaffected by the

law's provisions. Even though the legislation itself does not directly restrict freedom of expression and assembly, the debate accompanying the legislative process made it very clear that it is designed to stigmatise particular NGOs as agents of foreign interests.

The efforts to clamp down on critical voices in Israel continue. Various draft bills currently before the Knesset would further tighten the constraints on NGOs. Measures under consideration include charging the relevant NGOs for public information requests, banning particular organisations, requiring the NGOs to be labelled as “foreign agents”, and taxing funding from foreign state entities. In June 2017 Prime Minister Benjamin Netanyahu announced a draft bill that would prohibit Israeli NGOs from accepting any funding at all from foreign state entities.

Above all, aggressive campaigns against human rights organisations have proliferated in recent years. Right-leaning politicians, think tanks and NGOs (such as NGO Monitor and Im Tirtzu), as well as media close to the prime minister, have branded such NGOs traitors, terrorist collaborators, and foreign agents, and their staff have been threatened, in some cases massively. Such attacks have concentrated especially on those that cooperate with United Nations and International Criminal Court investigations into human rights violations and war crimes. It is above all these campaigns that are the most important impediment to the activities of Israeli civil society, peace movement and human rights defenders, as they are seriously delegitimising their work in the Israeli public sphere and burdening them with the costs of personal and IT security, legal response and defensive PR.

The measures described above must be seen in connection with other laws and initiatives that also aim at silencing critical voices in Israeli public life – voices that challenge the official self-image of the Jewish state and the dominant interpretation of its history. These measures include the Nakba Law of March 2011, which provides

for withdrawal of public funding from any organisation that concurs with the Palestinian narrative that Israel's struggle for independence was responsible for the forcible displacement of Palestinians, or participates in associated commemorations. The Expulsion Law of July 2016 enables deputies accused of incitement, racism or support of armed struggle against the state to be excluded from parliament by a qualified majority, while the Anti-BDS Law of March 2017 allows individuals who advocate a boycott of Israel or its settlements to be prevented from entering the country. Already in March 2014, before the last general election, the threshold for entry to the Knesset was raised from 2 to 3.25 percent to exclude those parties representing overwhelmingly Arab citizens. The manoeuvre failed after Hadash, Raam, Balad and Taal joined to form a single list.

Discrimination

Israel's self-image as a “Jewish and democratic state” has always been characterised by internal tensions, manifested above all in discrimination against non-Jewish sections of the population. In 2003, in response to demographic trends, Israel banned immigration and naturalisation of Palestinian spouses and family members from the occupied Palestinian territories and so-called enemy states on principle. While the government and the high court (which confirmed the law in 2006 and 2012) justify this discrimination on the basis of security concerns, this problematic argument places all Palestinians under blanket suspicion.

Non-Jews are disadvantaged in property matters too, with the Jewish National Fund (JNF), which owns about 13 percent of the land in Israel, leasing exclusively to Jews. The JNF also holds great sway over the decisions of the Israel Land Authority (ILA), which controls the state-owned land. Altogether about 93 percent of the land is publicly owned – including a considerable proportion expropriated from Palestinians. In many towns and communities local

selection committees ensure that property is only leased or rented to those regarded as “suitable”. Municipality-level budget data also reveals that the government privileges the development of Jewish communities, for example by classifying them as National Priority Areas. Arab communities are systematically disadvantaged in terms of budget funding and housing development. The treatment of the Arab Bedouins in the Negev Desert is especially problematic. Most of them live in unrecognised towns or villages that receive no or few public services and are frequently threatened or affected by housing demolition and forcible displacement.

The attitudes of the Jewish majority towards the Arab Palestinian minority who make up around one-fifth of the Israeli population have hardened over recent years, as the Israeli-Palestinian conflict drags on. Many Jewish Israelis regard Israel’s Palestinians as a “fifth column” on account of their identity and their relationships with Palestinians in the occupied territories and the rest of the Arab world. According to the *Israeli Democracy Index 2016*, 46 percent of Jewish Israelis believe that Israeli Arabs want the destruction of the state of Israel; 43 percent regard them as a security risk. As a consequence, parts of the Jewish majority feel it is increasingly acceptable to restrict the civil and political rights of Israeli Arabs. Although 70 percent of Jewish Israelis believe that Arab citizens should share the same rights in principle, 59 percent oppose allowing Arab parties to join the government. More than 52 percent in the survey said that anyone who refused to recognise Israel as the nation state of the Jewish people should lose the right to vote. A survey of Israeli youth by the German Friedrich-Ebert-Stiftung, published in Israel in April 2017, found that 39 percent of young Israeli Jews believe that Arab citizens should be denied the right to vote; only 35 percent support full political equality.

The current Israeli government is working to strengthen the specifically Jewish dimension of the country’s identity. In May

2017 the Knesset passed the first reading of a Likud bill proposing a Basic Law that defines Israel as the “nation state of the Jewish people” where the “right to national self-determination” applies exclusively to Jews and Arabic is demoted from an official language to one with “special status”.

Prolonged occupation

While the non-Jewish citizens of Israel – even if they experience discrimination – possess full political rights, Palestinians in the occupied Palestinian territories see their human rights regularly violated under the military occupation regime. After half a century, the occupation can no longer be regarded as temporary and justified by military necessity in the sense of the Geneva Conventions. Evidence includes the *de jure* annexation of East Jerusalem and the systematic appropriation of parts of the West Bank through settlement-building, spatial planning and resource use. Rather it has become obvious that successive Israeli governments have in fact been working to permanently change the status of the occupied Palestinian territories through means including a continuous transfer of Jewish citizens. There is thus a growing sense that the prolonged occupation itself violates international law – quite aside from the settlement policy, resource exploitation and other Israeli actions in the occupied territories.

Since May 2015, when Netanyahu’s fourth government was sworn in, the intensity of Israeli settlement-building and destruction of Palestinian homes and infrastructure (for lack of construction permits or as collective punishment) has been strongly stepped up in strategically important areas of the West Bank. A June 2017 report by the research services of the German Bundestag calls the Israeli actions in the occupied territories “acts of displacement” because they aim “deliberately and systematically” to create an “inhospitable and forbidding environment hostile to development” for the Palestinian population. The UN and the EU fear that the Israeli authorities’ measures in the

areas around Jerusalem (for example Zone E1), the South Hebron Hills and the Jordan Valley could even lead to forced displacement of the local population.

In February 2017 the Knesset opened the way for further de facto annexation of parts of the West Bank with the Law for the Regulation of Settlement in Judea and Samaria (Regulation Law). It paves the way to legalise settlement outposts, which had previously been illegal even under Israeli law. It provides for the expropriation of privately owned Palestinian land on which outposts stand and expands Israeli law to parts of the West Bank. However, in August 2017 the Regulation Law was blocked by Israel's high court. In March 2017 – for the first time since 1992 – the Israeli cabinet approved the construction of an entirely new settlement north of Jerusalem. Finally, in July 2017 Prime Minister Netanyahu gave his blessing to a draft bill to expand Jerusalem's administrative boundaries to incorporate settlements surrounding the city housing about 150,000 settlers (Gush Etzion, Efrat, Betar Illit, Givat Ze'ev and Ma'aleh Adumim). This would represent a de jure annexation of territory.

Grave human rights violations

Through its occupation-related policies, Israel violates the fundamental civil, political and economic rights of the Palestinian population in the occupied territories. While it generally justifies these violations in terms of the security of Israel and its citizens, they often stem in fact from a drive to preserve the occupation regime and appropriate land and resources.

A July 2004 advisory opinion of the International Court of Justice thus regards the separation barrier built by Israel since 2002 as contravening international law, because it stands largely within Palestinian territory, violates the right to self-determination of the Palestinians, appears to be intended to be permanent, and could as such serve a de facto annexation of territory. In conjunction with the settlement policy, the barrier

thus violates various economic rights of the Palestinian population, not least the right to freedom of movement. Freedom of movement is further hindered by the blockade of the Gaza Strip and the permit system for travel to East Jerusalem.

Israel also retains the final say on all significant decisions concerning spatial planning and resource use in most of the West Bank – the so-called Area C which accounts for about 60 percent of its extent (see also SWP Comment 24/2016). Here Israel regularly makes decisions not in the interest of the Palestinian population – which would be its duty as occupying power – but favours its own population, including the settlers. The Palestinians are also denied access to the gas reserves off the coast of Gaza. An October 2013 World Bank study describes in detail how the development of the Palestinian territories is obstructed by Israeli travel restrictions and other obstacles to resource utilisation and quantifies the boost to the growth of the Palestinian economy – more than 20 percent – that could be expected if the restrictions were lifted.

In addition, the lives of the Palestinian population in the occupied territories (unlike those of the Israeli settlers) are regulated by military decrees. Palestinian political activities are criminalised by the occupying power; the freedoms of assembly and organisation are restricted. When settlers attack Palestinians or Palestinian property the Israeli army often fails to intervene or the perpetrators go unpunished – as documented for example by the Israeli human rights organisation B'Tselem. And disproportionate force is frequently used against suspected terrorists and criminals and in clashes with demonstrators, leaving Palestinian civilians dead or seriously injured. Palestinians in the occupied territories who are accused of acts of violence stand little chance of seeing their rights respected in the Israeli military courts; conversely, Palestinian victims of violence rarely see Israeli perpetrators brought to justice.

Conditions for Palestinian prisoners from the occupied territories fall short of

international standards. Alongside the large number of detainees, problematic issues include the routine transfer of prisoners to facilities outside the occupied territories (in contravention of international law), the systematic use of administrative detention (without indictment or trial, with a six-month limit but indefinitely extendable), and the prevalence of torture and abuse during detention and interrogation. In fact Israeli law forbids the use of “physical pressure” except in cases of imminent danger. However according to Amnesty International more than one thousand official complaints of torture were lodged between 2001 and 2016. In none of these cases, Amnesty notes, was a judicial investigation initiated.

Making matters worse, Israel heavily restricts access for Palestinian, Israeli and international human rights representatives, especially in the Gaza Strip. This makes it impossible to conduct independent investigations into human rights violations committed by the de-facto Hamas government and armed groups, nor into the grave war crimes of which militant Palestinian groups, the military wing of Hamas and Israel have been accused during the fighting in 2014. To date neither Israel (with a few exceptions) nor Hamas have conducted any serious investigations into war crimes. This raises doubts whether the authorities are willing and able to conduct credible investigations into war crimes. The answer to that question will be crucial in the International Criminal Court’s deliberations on whether to open an investigation. Since January 2015 it has been conducting a preliminary examination into war crimes on both sides and the breaches of law related to settlement and occupation policies in the West Bank and East Jerusalem.

Gaza crisis comes to a head

Despite Israeli assertions to the contrary, the Gaza Strip remains under occupation. Although Israel evacuated all its settlements and military facilities in late sum-

mer 2005, it continues to control Gaza’s land borders (with the exception since 2007 of the border with Egypt), its sea borders, its territorial waters, its airspace and its electromagnetic spectrum (including its cell-phone network). Additionally, the Israeli blockade – which was tightened in summer 2006 following the kidnapping of the Israeli soldier Gilad Shalit and again in summer 2007 after Hamas violently seized power – massively restricts the freedom of movement of Gaza’s approximately 1.9 million residents in a manner tantamount to collective punishment illegal under international law. And since the 2013 coup that brought General Abdel Fattah al-Sisi to power in Cairo, the border crossing to Egypt has been all but closed.

Sweeping import restrictions have prevented comprehensive reconstruction of the damage caused by the 2014 fighting. The greatest impediment to rebuilding is Israel’s classification of construction materials and spare parts as dual-use goods whose import is regulated very tightly – even within the Gaza Reconstruction Mechanism (GRM) established in September 2014. Cooperation with the GRM is problematic on principle insofar as it implicitly legitimises the blockade. The international community (represented by the United Nations Special Coordinator for the Middle East Peace Process, UNSCO) assumes a role in implementing the blockade, rather than concentrating on the needs of the population in the Gaza Strip and demanding the occupying power fulfil its duty to their well-being.

Although UNSCO reported in May 2017 that the reconstruction of public buildings and infrastructure has been largely completed – with the important exception of the fuel storage tanks at Gaza’s only power station – there are still about 40,000 internally displaced persons whose homes were destroyed or badly damaged in 2014. Even today, less than 60 percent of damaged private homes have been reconstructed.

At the same time, the UNSCO report stresses that physical reconstruction has

not led to a recovery of public services (still less to any improvement). Instead “de-development” and environmental degradation have proliferated, increasing dependency on foreign aid. Economic upturn is not on the cards, because Israel’s restrictive line on export permits and access to agricultural land and fishing grounds leaves the local economy no chance to grow. About one-third of Gaza’s agricultural land lies within the Israeli-imposed buffer zone and is therefore off-limits for farming. The fishing range, which the Oslo Agreements defined as twenty nautical miles from the coast, has been restricted to just between three and six nautical miles since 2006. Only occasionally does Israel grant nine nautical miles.

The upshot of all these factors is what has become a dramatic escalation of the humanitarian situation in the Gaza Strip: according to UNSCO unemployment is around 40 percent, and 60 percent among 20–24-year-olds. About two-thirds of the population are reliant on humanitarian aid. In summer 2017 electricity was available for only four hours a day on average, with grave repercussions in areas such as healthcare and water supplies. The discharge of untreated sewage causes massive contamination of the coastal waters. If the problems of resource depletion and environmental destruction are not addressed quickly, the UN believes that Gaza will be uninhabitable within just a few years.

The internal Palestinian power struggle also bears a degree of responsibility for Gaza’s plight. For example, Israel further restricted electricity supplies in June 2017 at the request of the Palestinian Authority (PA), which reduced its respective payments. Other measures taken by the PA since spring 2017 also seek to exert pressure on Hamas, whereas the brunt of their effects is borne by Gaza’s population. Otherwise the competing governments in Ramallah and Gaza City have both increasingly clamped down on political freedoms and in the process committed gross human rights violations. They can no longer be described as democratic regimes.

Policy options for Germany and the EU

The narrowing of space for critical voices in Israel has been accompanied by a worsening of discrimination against the non-Jewish population and an entrenchment of the occupation of the Palestinian territories. The international community bears a portion of blame in these developments, above all for pursuing an approach to Israel (and the other parties to the conflict) that has prioritised the search for a negotiated settlement over insistence on human rights and international law. The failure to punish human rights violations and breaches of international law by Israel, the PA and Hamas or to prosecute suspected war crimes is tantamount to inviting the conflict parties to continue to break the law. Instead of creating the basis for peaceful coexistence, this deepens the rifts within and between the societies. In any case all states and international actors are legally obligated to deny recognition to internationally unlawful acts and to work for compliance with international law.

Accordingly the foremost political objectives for Germany and the EU should be to see international law respected, the human rights situation in Israel and the Palestinian territories improved and spaces for the articulation of civil society’s criticism and political opposition preserved. Fulfilling those demands would in no way distract from a negotiated settlement: in fact they would be preconditions for it to be sustainable.

Upgrade of relations only if progress is made: Respect for human rights and democratic principles is an essential element of the June 2000 Association Agreement between the EU and Israel (Article 2). This offers the EU and its member states an opening to make discriminatory legislation and the narrowing of space for Israel’s civil society into central issues in their political dialogue with the Israeli government. An upgrade of the relationship, as agreed in principle in 2008, should be made conditional on tangible progress in the areas of democracy, human rights and international law.

The EU and its member states should also cease undermining such a conditionality through a de facto deepening of cooperation.

Support for civil society, human rights advocates and investigators: Germany and its partners in the EU should insist that Israel grant access to human rights organisations and UN special rapporteurs and investigators to conduct in situ investigations without hindrance, and that Israelis and Palestinians who cooperate with such investigations suffer no negative consequences. Given the deteriorating climate, Germany and its European partners should offer consistent diplomatic and financial support to those defending human rights in Israel and the Palestinian territories.

Consistent differentiation: In line with Security Council Resolution 2334 of December 2016, the EU and its member states need to distinguish more consistently than to date between their dealings with Israel and with the settlements in the occupied territories. Concretely this would mean banning imports of settlement products (rather than merely labelling them), monitoring the implementation of differentiation measures, and preparing a code of conduct for European businesses that also tackles investments and ventures indirectly linked to settlement activities.

In connection with development projects in Area C of the West Bank, Germany and its partners in the EU should rethink their cooperation with the Israeli Civil Administration, which lends legitimacy to Israel's permit system for Palestinian construction projects, ongoing restrictions on Palestinian rights and the occupation regime as such.

In addition to consistent differentiation, EU member states should also urgently discuss which positive and negative incentives are required and appropriate in order to influence the cost/benefit calculations of the Israeli government and counteract the maintenance and entrenchment of the occupation.

A new paradigm for Gaza: Given the escalation of the humanitarian situation in

Gaza and the acute danger of renewed violence, Germany and its EU partners should not abandon conflict management to the regional actors once more. Instead, beyond alleviating the current crisis, they should press for an end to the blockade. This will require a paradigm shift. It will not be enough to make the GRM less susceptible to corruption. Instead the rights of Gaza's population to protection and development must be given priority over the security interests of the occupying power. In addition to the negotiation of a long-term ceasefire, an arrangement that allows for movement of persons and goods and serves the needs of the population must be found if the situation in the Gaza Strip is to be lastingly improved. Gazans must also be granted unrestricted access to Gaza's agricultural land and coastal waters. This will mean pressing the occupying power to fulfil its responsibilities, committing the PA to pursue constructive policies towards Gaza, and involving the de facto government in concrete arrangements.

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ISSN 1861-1761

Translation by Meredith Dale

(English version of
SWP-Aktuell 61/2017)