The Jurisdictional Politics of Israel/Palestine: The Case of Palestinian Workers in Israeli Settlements

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Introduction

Whilst the Oslo Peace Process may have collapsed in the violence of the second intifada, it has left behind important legacies in the ways in which the West Bank and Gaza Strip are governed. Not least are the ways in which, in the absence of clear territorial borders, the rights and responsibilities of Israelis and Palestinians are distributed. It is this division that makes the difference between access to the respective political, economic and military resources of the Israeli state and the Palestinian National Authority (PNA). This short article will examine one example of this division of rights and responsibilities, namely the labour rights of Palestinian and Israeli workers in Israeli settlements. The Oslo Accords have produced a situation whereby Israelis and Palestinians can do the same work in the same place at the same time, but in practice receive very different legal entitlements. This unequal distribution of rights is based on the legal category of “residence”, which is not a neutral geographical description, but an ethno-national distinction backed up by military force. The article concludes by examining how in the context of the economic and military legacies of the Oslo Peace Process, the law can be complicit in the production of inequality.

Jurisdiction under the Oslo Accords

The Oslo Peace Process deliberately did not create any clear territorial boundaries between the PNA and the Israeli state. Although the “territorial integrity” of the West Bank and Gaza Strip was maintained, the territories

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were also left with an ambiguous political and legal status. The PNA was given some autonomy in the large Palestinian towns and most villages. However, this autonomy was limited by the overall military control of the Israeli Defence Force.

In the absence of clear territorial boundaries, forms of personal jurisdiction were made the basis of the distinction between the Israeli state and the PNA. Palestinian identity card holders would be the responsibility of the PNA. Israeli identity card holders would be the responsibility of the Israeli state. This applied wherever Israeli identity card holders were in the West Bank.

Importantly, PNA laws, or their Jordanian and Egyptian predecessors, were said to be territorially in force in the West Bank and Gaza Strip. In the words of the Israeli Attorney-General:

> Israelis have a different law that applies to their legal person, this does not affect the territorial jurisdiction, as Israel has never annexed the territory and Israel has never applied law outside the official boundaries … It should also be noted that the Israeli legislator has made no extra-territorial determination of Israeli law.

Israeli law therefore followed Israeli identity card holders across the West Bank and Gaza Strip in a form of personal jurisdiction that ignored the territory on which they stood. Although PNA law was said to be territorially in force, it was in effect vetoed every time it could be applied to an Israeli.

This divided personal and territorial jurisdiction creates a number of legal problems when Israeli and Palestinian identity card holders interact in the West Bank and Gaza Strip. The proximity of Israeli settlements to Palestinian towns and villages, combined with the economic dependency of Palestinians on the Israeli economy and the presence of the Israeli military across the territories, means that there are thousands of such interactions on a daily basis. One particularly interesting example of this is the case of Palestinian labourers working in Israeli settlements. Before examining the legal issues raised here, it is perhaps worth very briefly examining the historical and political context of Israeli settlement in the West Bank and Gaza Strip.

**Political context of the Israeli settlements in the West Bank**

The Israeli settlements built in the West Bank and Gaza Strip after the 1967 occupation are perhaps the most controversial issue of the Israeli-Palestinian conflict. For some Israelis, the settlements were motivated by perceived security considerations, for others by a messianic return to the land, and for others still by the availability of cheap housing (cf. Chazan, 2000). Whatever the

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1 Declaration of Principles on Interim Self-Government Arrangements (DOP), Article IV.
2 DOP, Article VII and the Israeli-Palestinian Interim Agreement on the West Bank and Gaza Strip (Interim Agreement), Annex I, Article VI.3.
3 Interim Agreement, Annex IV, Articles I.1 and III.1.
4 Interim Agreement, Annex IV, Articles I.2 and III.1.
5 Before the creation of the PNA, laws that had the origins in the periods of Jordanian and Egyptian rule were applied in the West Bank and Gaza Strip respectively.