War on Terror and Human Rights Violations by Security Bureaucracies: A Reading of Some General Features and Israeli Securitocracy

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Abstract

This study proceeds from the thesis that the foundations of democracy and human rights have been eroded by a logic that prioritises security. It looks at the ascendency and pervasiveness of security bureaucracies and the implications for human rights, focusing on Western democracies and Israel, which as an occupying power is a particularly significant case. The paper draws on theories of governance by anxiety, the state of emergency, and mass surveillance to explain heightened security measures. Methodologically, the paper addresses the features of the exceptional security climate prevalent in the context of the war on terrorism and the violation of human rights resulting from the far-reaching capabilities of security bureaucracies, with special reference to the Israeli case. The paper concludes that human rights are in genuine peril; many long prevalent concepts are being overturned as a result of restrictive measures and the way digital technologies are deployed in the war on terrorism to turn individuals into potential terrorists. In particular, Israel is exploiting these trends to consolidate its occupation policies.

Introduction

The amplification of the threat of terrorism since the events of 11 September 2001 has had severe repercussions for the entire world. The global war on terrorism has assumed many forms, many of them involving military actions and a tightening of security measures with the aim of pursuing 'terrorists' and thwarting their plans. Western, largely democratic countries have made the threat of terrorism the focus of security policies and security and military cooperation with the rest of the world, thereby inflating the threat and ushering in additional restrictions on rights and freedoms through new legislation and novel counterterrorism measures. Although the focus is often on terrorist attacks in the West, in fact, the vast majority of these attacks take place in developing

countries.[1] Nevertheless, the exaggerated threat of terrorism in the West has entailed tighter security measures and political pressure on the countries of the Global South, which in turn have strengthened their security systems, often with adverse legal and moral consequences for human rights. The flow and circulation of information about terrorist acts in traditional and social media, as well as their occasional political use, has magnified feelings of shock and terror, fuelling a sense of threat and insecurity and thus making societies more accepting of security measures of all kinds as part of what can be described as governance through anxiety.

This paper attempts to address the complex relationship between the security imperative invoked by counterterrorism measures and the demands of human rights standards and democratic principles, diagnosing a tendency towards securitisation and a concomitant regression of human rights and classical democratic principles. By examining some of the ramifications of this relationship, it posits a dialectic aimed at understanding the extent to which the security approach to counterterrorism and the measures it entails reinforce a pervasive, unbridled security bureaucracy and the implications this has for the content and standards of human rights and democracy, which itself is threatened by the trend toward 'securitocracy'. The paper focuses on Western democracies as these illustrate trends in other countries, examining in particular how Israel, as an occupying power and a uniquely significant case, exploits the discourse and apparatus of the war on terrorism to justify stricter coercive security measures against the Palestinians and maintain policies aimed at consolidating and expanding its occupation and settlement enterprise by contextualising these as part of the war on terrorism.

In theorising the subject, the paper draws on philosophical approaches that examine the ethical frames of references for security behaviour in the context of the war on terrorism. It employs Michel Foucault's concept of biopolitics and the way it transforms the individual into a 'potential criminal', as well as Giorgio Agamben's theory of the permanent state of emergency and Shoshana Zuboff's concepts of surveillance capitalism and instrumentarian power. It also cites relevant legal and ethical positions, and opinions and assertions voiced by security professionals in both the West and Israel.

In its methodology, the paper examines many of the contradictions that expose security-based encroachments on human rights standards, which in turn creates an environment of exception for the enjoyment of these rights in the context of the war on terrorism. In doing so, it analyses the expansion of the authorities and capabilities of security bureaucracies in the West and Israel, made possible by the exploitation of a discourse of fear and anxiety that amplifies the threat of terrorism. It ultimately elucidates some characteristics of the sprawling securitocracy, including in the Israeli case, which seems to grants human beings rights through the prism of potential criminality.

Human Rights as an 'Exception' in Security Approach to Counterterrorism

The war on terror offered a generally accepted justification for exceptional security measures that often jeopardise the enjoyment of rights and freedoms. Indeed, these measures are creating a future where people are subject to constant surveillance and willingly sacrifice of some of their human

rights to enable the authorities to deter terrorist threats. Security ethics compatible with democratic standards are giving way to a defiantly realist perspective that links national security to vital state interests that transcend other 'less important' interests. In the case of Palestine, which is governed by the reality of the occupation, these attitudes form a basis for the conduct of the occupying power (Israel), allowing it to justify all manner of countermeasures against various forms of resistance on the grounds that they are 'terrorist' or 'supportive of terrorism'.

Towards securitocracy in war on terrorism: On what grounds?
In general, respect for human rights in contexts of the war on terrorism is determined by the latitude given to security actions, and thus to the political authorities, by society. Here, three philosophical views can be distinguished: realist, situational, and ethical.[2] In the realist view, national security is an end that justifies all means. A government that fails to take all necessary interventions to neutralise threats is thus in dereliction of its moral duty and its primary responsibility to its citizens, for without such measures it cannot ensure an effective defence. By this view, security officials should have a leadership that seeks to defend the nation. The theory of 'necessary evil' gained currency in the twentieth century in parallel with the common law's tendency to legitimise the 'state of necessity' and justify exceptional powers during crises.[3] Necessity came to outweigh the evil because the objective was more important than the dishonour of the means used to achieve it. This idea still enjoys some currency in the twenty-first century as a result of the fallout of 9/11, which also enhanced the credibility of this approach for an occupying power like Israel.

In contrast, the situational approach calls for a kind of moral proportionality between the selected objective and the means used. Theoretically, no action can be ruled out as intrinsically bad; rather, all actions are evaluated based on the facts of the situation. Nevertheless, proponents of this approach do not believe that all actions can be justified, and they stress some absolute prohibitions, especially torture, which is often used in the fight against terrorism. The ethical view considers some actions and security measures intrinsically bad and never justifiable because of the harm they do to basic human rights. The ethical approach is partly evident in the International Covenant on Civil and Political Rights, which asserts an absolute prohibition on infringements to some basic rights, such as the right to life and freedom from torture and cruel or degrading treatment.[4] In no case can violations of these rights be justified, whether we are talking about an upstanding citizen, an enemy, a criminal, or even a terrorist.

The two decades since 9/11 have seen Western democracies, and especially the United States, employ various controversial security practices, among them extrajudicial executions, clandestine prisons, the rendition of suspects to countries and political regimes that do not respect human rights, and torture and other cruel, inhuman, and degrading treatment, as well as mass surveillance, the violation of individuals' privacy and personal data, the restriction of freedoms through digital technology, and the enactment of strict legislation ostensibly to combat terrorism. This trend is wholly in accord with the realist approach, although some may find moral justifications for it. For example, covert operations, a security tool used by Western governments to combat terrorism—though some media consider them state terrorism, especially when they are associated with

assassinations—target specific individuals who are planning to kill as many innocents as possible. Such targeted operations do not typically result in collateral victims and only target a particular person who is most likely not innocent. Such reasoning posits a distinction between an indiscriminate, lethal attack and a surgical strike.[5] This view is complicated, however, when we consider Israel's practice, common long before 9/11, of assassinating leaders of the Palestine Liberation Organisation and other Palestinian, Arab, and pro-Palestinian foreign figures, both inside Palestine and in various other countries, as ostensible terrorists. At the very least, this raises the problem of distinguishing terrorism from the responses to aggression and resistance to occupation.

The thorny issue of formulating a precise, clear definition of national security is part of this same realist trend. Governments prefer to keep the balance between the requirements of national security and the protection of rights and freedoms an open question, in order to preserve their discretion and freedom of action. Earl Howe, a prominent conservative member of the British House of Lords, said when the chamber passed the Investigatory Powers Bill in 2017:

> It has been the policy of successive Governments not to define national security in statute…It is vital that legislation does not constrain the security and intelligence agencies in their ability to protect the public from new and emerging threats…I think the key point is that to define national security in statute could have the unintended effect of constraining the ability of the security and intelligence agencies to respond to new and emerging threats to our national security. [6]

The European Court of Human Rights took a similar stance[7] when it ruled that the secret surveillance of citizens, though characteristic of police states, was acceptable to the extent strictly necessary for the protection of democratic institutions. Legislation permitting the surveillance of correspondence, mail, and communications in order to confront 'an exceptional situation', the court said, is necessary in a democratic society in order to defend national security and maintain order.[8]

In Israel, where the prevailing broad security doctrine is governed by a Zionist ideology that espouses violence and racism towards Arabs and Palestinians,[9] all state institutions were recently required to comply with the imperatives of the Jewishness of the state. Security agencies are officially obligated to act to consolidate and defend this principle in the face of threats of any kind. Palestinian Arabs, even citizens of Israel, are denied the right of self-determination under the Jewish nation-state law and pursuant to discriminatory and racist measures in various areas of social life.[10] They are essentially seen as enemies and potential or covert criminals who must be approached with caution and treated with the necessary limitations, repression, and violence this entails—exactly like Palestinians in the occupied territories—given their potential to commit terrorist acts. When it comes to terrorism, there is no room for talk of ethics, according to Avraham Shalom, the former chief in the internal security service (Shin Bet).[11] In the view of Israeli security,

Palestinians, even citizens, are excluded from any clear legal provisions to protect them from the excessive curtailment or flagrant violation of their human rights.

Such structures, which at times may even seem rational, pose profound dilemmas for the democratic state. The basic principle that no one is above the law clearly requires the actions and conduct of security and intelligence agencies, even during the prosecution of the war on terrorism, to remain with the bounds of a clear, detailed law. In this regard, security agencies in most democratic countries operate in line with a specific legislative or statutory framework.[12] This is a basic attempt by the state to regulate them and limit infringements of fundamental rights and freedoms that may result from at times necessary measures taken to ensure national security.

Yet, there is a confusion between two very distinct issues: what constitutes a state's national security may appear to be static, while the manner in which national security is threatened is constantly evolving. No one would oppose the idea that the state should ensure that the security services are not unnecessarily constrained in their response to these emerging threats, (in the context of state regulation of these services), but that is the nature of the erosion of national security, not the nature of national security itself. Counterterrorism measures, which at times flagrantly transgress the legal limits imposed on security services, underscore this erosion by effectively turning national security into the state's right to do 'whatever is necessary' to remove, deter, and pre-empt the threat. The conventional outlook of an occupying power like Israel goes even further: Describing the nature of intelligence work, Isser Be'eri, the former chief of the Military Intelligence Directorate, known as Aman, said that 'at the moment an intelligence agency starts operating in accordance with the law, it ceases to be an intelligence agency'.[13]

In fact, in the case of a settler occupying power such as Israel, the entire debate constitutes an opportunity for it to double down on measures antithetical to human rights and its legal responsibilities in its capacity as 'that', in order to further securitise the activities and movements of all individuals and forces that it deems hostile to it and its occupation policies, all in the name fighting terrorism and legitimate self-defence against everything it deems terrorism and subversion. This raises yet again the oft-examined question about the nature of terrorism and the boundary separating it from resistance to occupation, which is legitimate and lawful under international law.

The security approach to terrorism and the predicament of human rights

A brief explication of some phenomena that entail obvious diversion from guarantees for human rights can bring into view the predicament generated by the demands of the war on terror, especially in Western democracies. Some observers argue that the irregularities and deviations resulting from heightened securitisation, which is in turn driven by the demands of anticipating threats supported by vast technical capabilities, ultimately serve to render legitimacy devoid of any practical implication and thereby demonstrate the thesis of securitocracy. If this is the case in democratic countries, it seems quite likely that other states will see stricter security controls and disregard for human and people's rights as well, especially in the case of an occupying power such as Israel.

One of the most problematic aspects is what is known as operations against strategic human targets, or 'the intentional, premeditated and deliberate use of lethal force, by States or their agents acting under colour of law, or by an organized armed group in armed conflict, against a specific individual who is not in the physical custody of the perpetrator'.[14] As part of the fight against terrorism, the US and other countries, most notably Israel, resort to such strikes to liquidate alleged or suspected terrorists in multiple countries, from Afghanistan and Pakistan to Syria, Iraq, Palestine, Yemen, Libya, Sudan, Somalia, and more, ending the lives of individuals through non-judicial means. In short, these are essentially death sentences issued without trials or the right of defence, which amounts to an arbitrary deprivation of the right to life. In peacetime, the state's use of lethal force against individuals is generally incompatible with criminal laws and national and international instruments for the protection of human rights, even if such laws recognise the death penalty, unless an individual's criminal responsibility is established by an impartial, independent, legitimate court, or unless it is a case of legitimate self-defence.[15] Citing the legitimate right of self-defence, which is recognised by Article 51 of the UN Charter, Western and other countries have deployed lethal force against individuals on the grounds that they have been subject to an act of armed aggression. But an isolated series of low-risk terrorist attacks are insufficient to meet the necessary conditions for the use of force in self-defence.[16] Furthermore, attacks by irregular, non-state forces do not constitute armed aggression.[17]

In the case of armed conflict, combatants may be targeted with lethal force under the rules of international humanitarian law. The US and some of its allies, including Israel, sanction the elimination of 'terrorists' by arguing that such actions fall within the framework of the war on terrorism. But the term 'war on terror' does not entail the application of humanitarian law to its every aspect or action, but only to incidents that take place in the context of an armed conflict—only here can combatants be targeted with lethal force. Although it uses the word 'war', the 'global war on terror' is nevertheless a political rather than legal construct.[18] The US's claim that it is an armed conflict unfolding in several countries around the world therefore cannot be accepted in all cases. So drone assassinations of al-Qaeda members in Somalia, Yemen, and Pakistan over the last two decades, operations like the assassination of General Soleimani and the leader of the Popular Mobilisation Forces in Iraq, or Israeli attacks and assassinations against Iranian or Lebanese Hezbollah military field commanders in Syria for the purpose of protecting its national security—none of these operations can be construed as taking place in the context of an armed conflict, in contrast to past strikes in Afghanistan or past and current operations in Syria and Iraq against the Islamic State (Daesh).

Following the assassination of the chief of Egyptian intelligence in the Gaza Strip on the order of Ben-Gurion in 1956, Israel carried out a long series of targeted assassinations that continue to this day. In fact, it is one of the countries to make the most frequent use of special operations targeted against individuals—that is, assassination—on the grounds that such individuals are terrorists or a 'threat' to its security, whether in times of war, peace, or armistice. Israeli security and intelligence agencies are responsible for the assassination of dozens of Palestinian national leaders, foreign figures opposed to Israel's policies, and 'dangerous' scholars around the world,

from the Palestinian territories themselves to Lebanon, Jordan, Egypt, Iraq, Tunisia and the Gulf states and even further afield in Europe and the US.[19] There are countless examples of such operations. According to some estimates, Israel killed 239 alleged Arab terrorists in targeted operations from 2000 to 2010,[20] and it continues to mount such operations to this day due to the tense situation in Iraq and Syria, the most recent being the assassination of Iranian nuclear scientist Mohsen Fakhrizadeh in April 2020. This is not a new strategic trend, then, but rather it constitutes a systematic policy driven by the requirements and interests of the security bureaucracy governing Israel.

Another manifestation of the violation of human rights—one which sparked much controversy in democratic states— is security and intelligence services' use of what is euphemistically called 'enhanced interrogation techniques'. These practices are deemed necessary by the security apparatus—and meet little resistance from political leadership in democratic states—to 'extract' information from 'non-cooperative' suspects or detainees affiliated with alleged terrorist groups. In fact, such practices clearly qualify as torture, or at least inhuman, cruel, or degrading treatment.[21] Seeking to avoid criticism and embarrassment by the media or human rights organisations, Western democracies, US administrations in particular, also turn over suspects or convicted persons to countries that do not respect human rights or use these enhanced interrogation methods in their own secret prisons or detention centres. Commenting on such methods, British judge David Neuberger said: 'By using torture, or even by adopting the fruits of torture, a democratic state is weakening its case against terrorists, by adopting their methods, thereby losing the moral high ground an open democratic society enjoys'.[22] Torture, however it is euphemised, or the rendition of individuals to countries and security agencies that do not respect human rights, unquestionably besmirches the honour and reputation of the state that resorts to such methods.[23]

In contrast, John Sawers, the former director of MI6, the British intelligence agency, did not hesitate to point to the 'real, constant' dilemmas that his agency faced on a daily basis in the hunt for information to fight terrorism. MI6 cannot work only with countries that respect human rights, Sawers said, which necessitates tough decisions. If MI6 obtained 'credible intelligence that might save lives, here or abroad', it has a 'professional and moral duty' to act upon it. 'We can't do our job if we work only with friendly democracies', Sawers said. 'Dangerous threats usually come from dangerous people and in dangerous places. We have to deal with the world as it is'.[24] This same security logic justified the US military's use of torture in Guantanamo, Bagram, and Abu Ghraib and the rendition of suspects to Arab and other countries for ' harsh' interrogations.[25] As former President Obama said in July 2014, 'We did a whole lot of things that were right, but we tortured some folks'.[26]

With regard to the Palestinian case, numerous reports indicate that the Israeli occupation authorities systematically subject a broad set of Palestinians allegedly involved in acts harmful to Israeli security to various forms of inhuman, cruel, and degrading treatment and torture during interrogation. Although Israel ratified the Convention Against Torture, it hasn't enacted any legislation that criminally penalises torturers. Ironically, the Israeli Supreme Court condemned the use of torture, referring to the interrogation techniques used by the security services against

Palestinian detainees suspected of criminal acts.[27] In the same ruling, however, it allows security personnel who resort to torture in the context of 'immediate danger' to invoke a defence of necessity that exempts them from all criminal responsibility.[28]

The narrowing boundaries of privacy and erosions of some individual liberties are yet another controversial manifestation of the retreat of human rights, perhaps even more serious than others given its breadth and on-going nature. Security policies are now materialised through the establishment of enormous international and national databases that contain vast amounts of information used in counterterrorism. State authorities rely on, transfer, and exchange personal data on national security grounds as part of their commitment to fighting terrorism and organised crime. This data is circulated and systematically deployed within the framework of national measures, international cooperation agreements, or specialised security systems and programs.[29]

Given the obsessive concern with security and counterterrorism, the process of creating government records and collecting personal data has escalated, acquiring increasingly control-oriented dimensions with the use of technology; this process has been coupled with measures and laws that prioritise security at the expense of basic personal rights and freedoms.[30] Some parties have expressed concerns about the trend towards securitisation and the requirements of international counterterrorism cooperation and their tendency to curtail protections for rights and freedoms,[31] amid efforts by security bureaucracies to become professional organisations for the exchange of information about everyone, be they innocent, suspects, or criminals. The Edward Snowden leaks in 2013 made clear the cruel and painful lack of laws to protect citizens, as well as the shortcomings and obvious weaknesses in the application of existing laws.[32] This suggests that laws have been superseded by a system of overwhelming mass surveillance, as what some call 'algorithmic governance' has supplanted democratic government in the era of surveillance capitalism.[33]

For its part, Israel benefits from the production of personal data by technology companies. Outside the scope of basic legal requirements, the occupying power has systematic, unlimited access to available data and data processing via the services of private contractors, which collect extensive data absent any specific grounds for suspicion.[34] The unavoidable conclusion is that these capabilities will be dedicated to the mass surveillance of Palestinians and relevant activities. A security logic that promotes the idea that Israel is permanently under threat from its neighbours—that is, anyone suspected of hostility to Israel or Jews—and portrays this as terrorism and anti-Semitism, gives sanction to any method that gives the security bureaucracy more control over acts opposing the reality of the occupation that it seeks to perpetuate.

The predicaments of balancing human rights principles in democratic countries with the security requirements dictated by the fight against terrorism have similarly adverse repercussions for the human rights situation in less democratic countries, such as an occupying power like Israel or Arab countries. The dilemma points to that remarkable transformation and evolution of the operations, powers, and capabilities of security bureaucracies and the network of 'security management professionals' whose field of action, concern, and expertise is the whole world.

Sprawling Securitocracy

As Western democratic governments scrambled to confront the threat of terrorism at the beginning of the third millennium, they steadily expanded the powers and scope of action of security bureaucracies, which in turn charted a new course fuelled by a discourse of fear and anxiety over an exaggerated terrorist threat. This had repercussions for the way public space and the individual are viewed. In addition, mass surveillance, made possible and efficient by digital technologies, became an objective fact. In this way, power is constituted on the basis of 'biopolitics' and surveillance is transformed into a dynamic form of capital that establishes human rights through the prism of potential criminality. This reality, worrying in its totality, assumes a special character for Israel, which constantly markets its own particularity as especially vulnerable to terrorism.

The pervasive security bureaucracy: securitisation and governance through anxiety
Terrorism constituted a complex array of challenges for security and intelligence agencies.[35] They had to adapt to the dynamism of terrorism and the seriousness of its objectives and rediscover the importance of the technical, integrated collection of information to ensure the immediate availability of data and intelligence that could help to detect and anticipate terrorist acts. They also had to adapt their cooperative methods to the nature of terrorist objectives, erasing the borders between domestic and foreign security, and find a way to understand terrorism at the strategic level, intensifying reliance on open sources and exploiting the capabilities offered by technology and communications to do so. And all this had to be accomplished within a comprehensive geographical approach enabling action, response, and continuous follow-up and helping to envision an integrated strategy that could preserve their moral image as ostensible protectors of the democratic system.

In this context, Western and other security agencies saw a remarkable expansion in the structures and human resources dedicated to counterterrorism.[36] Interest in the Arab region increased, and counterterrorism practices and measures were dramatically and rapidly scaled up. Operational activities were adapted, centres and divisions for coordination and information exchange were established, and cooperation was institutionalised to share intelligence and coordinate security action on the international level.[37] In short, in the name of fighting terrorism, Western security and intelligence services were radically restructured in the years following 9/11, and many countries around the world followed suit. However, the tightening of these national security regimes is now viewed negatively, in particular by human rights defenders, as a disproportionate response. The integrated counterterrorism system requires reconciling the effective containment of the threat of terrorism with the need to preserve rights and freedoms and allay the fears of society and individuals. Moreover, the fight against terrorism has become, in many cases, an intelligence-led policy, demonstrating the degree to which prevention or an obsession with security has become characteristic of democratic societies. Aside from being unrealistic, such a degree of preparedness raises legal and ethical problems with respect to human rights guarantees. The situation has also raised the fear of the emergence of an all-encompassing

counterterrorism order, led by a network of professionals managing cases of insecurity based on a discourse of intimidation and fear, and operating independently of the national political authority.[38] Some observers even believe that states have turned fear—its arrangement, management, and adaptation—into a self-contained policy.[39]

In Israel, under the interagency agreement known as the Magna Carta, responsibility for the surveillance of Palestinians was transferred from the Shin Bet to Aman, an indication of the ostensibly heightened danger Palestinians pose to security. Unit 8200, a subdivision of Aman, is staffed by some 5,000 people involved in digital intelligence gathering and the extensive surveillance of individuals, most importantly, Palestinians.[40] The Shin Bet maintains a special department for Arab affairs responsible for combating terrorism and monitoring Palestinian factions and movements, in particular the armed wing of Hamas. In 2013, a new branch of the apparatus was established to monitor and track the activity of jihadist movements in the Sinai desert, in coordination with Egypt. In addition, the Mossad's prerogatives to undertake special operations, including physical liquidation, were strengthened, and the agency further coordinates on the fight against terrorism with governments that do not have diplomatic ties with Israel.[41] The Counterterrorism Office, a main coordinating centre for various security and intelligence services, performs analysis and security assessments that political leaders can rarely afford to ignore or underestimate.[42] In 2011, the National Cyber Office, subordinate to the prime minister, was created to specialise in digital information gathering.

Since 9/11, all this has been coupled with a rising discourse that associates terrorism with Palestinians. Security and intelligence measures taken against Palestinians—which include both declared and undeclared goals geared primarily to consolidating the occupation through the use of the same terrorist propaganda—include the construction of the separation wall, which violates various provisions of international human rights law and laws related to occupation, according to the advisory opinion of the International Court of Justice.[43]

On the whole, amid threat and danger, and regardless of how objective the category of terrorist may be, security logic morphs into an offensive logic based on suspicion, emergency, and the constant anticipation of the worst-case scenario. Today's world has come to live on a massive exaggeration of the sources of potential threat to society, an exaggeration that may be intentional or unintentional, and may be based on objective foundations and facts or on mere illusions and flimsy justification. It is the globalisation of perceived threat, which has evolved into a genuine obsession among societies, states, governments, and security services in particular. Positioned under the banner of 'suspicion and security', the latter work assiduously to produce a discourse of fear, which automatically justifies aberrations from legal and moral values, and policies that attempt to gain mastery over various types of interactions within society.

In presumably democratic countries, this discourse of fear leads to a complex duality: on one hand, it distorts the truth by exaggerating the threats confronting society, individuals, and groups, at the expense of a discourse that adopts a more suitable understanding of the complex nature of the various manifestations of insecurity; on the other hand, this discourse continually calls for stiffer security measures and community surveillance at the expense of individual freedoms.[44] As

a result, a sort of bifurcated reality has become more and more evident in these countries: liberal when it comes to economic policies but authoritarian in their security policies. Israel, which the West has always classified as a democracy, has found an opportunity to further consolidate its occupation and brand every Palestinian act of hostility as terrorism, promoting a discourse of anxiety at home and abroad and continuing its settlement policy. High levels of anti-Palestinian Jewish extremism and a marked decline in the popularity of the Israeli left are the outcome of these policies.

In systems ostensibly based on the rule of law, security and intelligence services nevertheless operate independently absent any scrutiny.[45] This has reduced trust in the state, which seems less to be a tool for collective security than an entity captured by security, its authorities and institutions lacking any independence. This situation generates authoritarian security policies. This applies to the Israeli occupation state in particular, as a security-led entity that perceives constant, sustained threats. This is the securitised intelligence community displacing and supplanting the information society.[46] Here there is no need for transparent state institutions, but rather transparent individuals who are always already suspect.

The consequences of such a situation lead to the creation of what Giorgio Agamben calls a 'permanent state of emergency', which has become a persistent practice of the contemporary state.[47] The state no longer simply instils feelings of suspicion and generalised anxiety through its use of the rhetoric of fear of unknown threats. Security itself has come to be based on aberrant violations of human rights in the name of necessity and on instilling fear in order to expand, strengthen, and generalise surveillance powers and secure the state at the expense of individual freedoms. This fact is indicative of the policy shift resulting from the reconfiguration of many states' security doctrines to gear them towards controlling effects instead of addressing causes.

The rights of humans as potential terrorists

Suspected terrorists are subjected to an array of practices that violate legal and ethical standards. All this is rendered justifiable, acceptable, and at times even necessary by the discourse of anxiety adopted by democratic governments, and behind them their security bureaucracies. Though this discourse resonates differently depending on the society, in all cases societies are being prepared to accept that the individual or ordinary citizen, from the point of view of the authorities, could be or may become a 'criminal' or 'terrorist'. Michel Foucault spoke of the shift from the concept of the criminal to the potential criminal, who, in the eyes of the authorities, is a potential danger. These people, he said, are 'virtually all individuals in this world, directed by an institutionalised set of systems of control,[48] involving security bureaucracies and private bodies, to indicate the transformation of the human being into a dangerous being'.[49]

Of course, the potential criminal will not enjoy the same content and concepts of rights and freedoms traditionally known in democracies, but will always exercise his human rights as a potential criminal, monitored and made visible due to his potential dangerousness. In the case of Israel, as an occupying state seeking to perpetuate its occupation, the potential for danger comes from terrorism, as a common global challenge, as well as from acts that resist or reject the

occupation, as a natural response. In this case, the Palestinian is the potential criminal or, perhaps more accurately, the criminal and potential terrorist. In this way all ostensible universal rights and freedoms are gradually and increasingly eroded for individuals that Israel deems hostile to it.

The crisis arising from the terrorist threat therefore constitutes a variable that can transgress legal and ethical values in a way that undermines the enjoyment of rights and freedoms.[50] Telecommunications companies and government agencies are continually coordinating to surveil and track vast groups of people around the world using advanced programs that draw on geolocation technology, communications data, metadata from social networking sites, and more.[51] Integrating all personal data and then linking it to other databases gives one the means to anticipate potentially threatening behaviours. Accordingly, mass tracking, photography, and geolocation, and its extension to the public space, gradually but tangibly transforms the nature of that public space, turning it into a halfway space somewhere between the public and the private. These transformations indicate a trend towards biopolitics, meaning that the exercise of state authority will not be confined to a geographical region and populace, but rather will be focused on the 'body' through a set of disciplinary mechanisms based on surveillance and intelligence, the goal of which is to 'correct and tame the body', cementing the transparency and visibility of the individual's every action and activity.[52]

The general anxiety that prevails in this technological context, inflamed by the Snowden leaks in 2013, is illustrative of the shift from the selective surveillance of specific individuals to the possibly illegitimate and unlawful mass surveillance of everyone. The implications will be undoubtedly more serious when it concerns the relationship—a relationship with profound security and moral repercussions—between the authorities of an occupying state and all those who oppose it.

Likely in cooperation and coordination with the Israeli Ministry of Defence, the NSO Group, a firm specialising in cyber security technologies, produced the Pegasus spyware program, which enables remote, undetectable access to smartphones and personal computers, and all data they contain.[53] According to the official statement, the program is used for the purposes of combating terrorism and crime, but in reality it has been used to target citizens, journalists, and human rights defenders. Arab and other countries have also acquired the program,[54] most likely under official Israeli license, in order to monitor political figures, journalists, dissidents, and employees in specific institutions. It is also likely that Israel has used the program against Palestinian leaders, members of political groups, lawyers, journalists, and jurists 'suspected' of nationalist activities, as well as civil society forces defending human rights in Israel itself. In an illustration of the pervasiveness of the Israeli securitocracy, all lawsuits filed in Israeli courts against the NSO Group and the Ministry of Defence by the victims of the information breach, including Amnesty International, were denied on the grounds of national security and counterterrorism considerations. Amnesty International officials have accused the Israeli judiciary of ignoring mountains of irrefutable evidence, helping the Ministry of Defence justify deplorable human rights violations, and allowing the NSO Group to abuse information technology and enabling its repressive state

clients to do the same, with the aim of seriously infringing human rights on the pretext of combating terrorism and crime.[55]

These various manifestations of surveillance were not, in fact, latent in the digital revolution, but grew out of it due to specific political trajectories, the threat of terrorism being one of the main drivers. In 2013, former CIA Director Michael Hayden admitted that his agency could rightly be accused of militarising the internet.[56] It is this cooperation between security services and telecom companies that made mass surveillance the harbinger of what Shoshana Zuboff calls 'surveillance capitalism'. Driven by the exigencies of the war on terror, and interested in taking advantage of the capabilities of private sector companies to possess, process, and exploit an infinite store of data, power is made 'instrumentarian', capable of replacing the uncertainty or doubt arising from social interactions with an automatically generated certainty, as decisiveness and certitude supplant the ambiguity and contingency of social facts. Despite the substantial, enjoyable, and also deceptive advantages and possibilities this system holds for individuals, their freedom is being confiscated for the sake of the knowledge of others.[57] The ever-present demands facing the state, first and foremost the exigencies of combating terrorism and other security challenges, lead surveillance capitalism to intensify its production of instrumentarian power, expressed in the growth and complexity of the 'Big Other'[58] as a preferred solution to the social deterioration embodied by suspicion and distrust.[59]

Because of necessity and exception, there is currently no democratic oversight of mass surveillance, even within democracies. It is therefore an assault on individual sovereignty that contributes to an unprecedented concentration of power, clearly securitocratic in nature, with the capacity to direct human behaviour. It is the model of a society that makes few concessions to democracy and legitimacy when it comes to solving problems, relying instead on 'asymmetric knowledge' and instrumentarian power to impose its homogeneity on society. The question now is how far this power, largely created by the repercussions of the war on terrorism, will extend its surveillance and control and what will remain of human rights and democracy. What can restrain an occupying power like Israel from exploiting this digital reality to consolidate its occupation and tighten its grip on every action resisting the occupation and working to end it by means sanctioned by international law and all moral legitimacy? What will stop Israel from cooperating with Arab regimes that, on the pretext of fighting terrorism and crime, are ever seeking to cement their security grip through the surveillance of their citizens and the pursuit and suppression of their opponents?

Finally, it is worth noting that despite all this cutting-edge technological development, Israeli security and military services still fail to detect the military strategy of the asymmetric opponent.[60] Throughout Israel's wars against Hezbollah in Lebanon (2006) and the Palestinian resistance factions in the Gaza Strip (2008, 2012, 2014, and most recently 2021), these 'terrorist' forces have continued to possess and even develop their missile capabilities, which can now penetrate the Israeli home front in a way unknown in previous wars with the Arabs. The intensive targeting of West Jerusalem, Tel Aviv, and other cities seen during the latest war on Gaza and the suspension

of air traffic at Ben Gurion Airport, in addition to the direct casualties caused by Palestinian rockets, are all indications of that failure.

Conclusion

The securitising tendencies of Western democracies in the war on terrorism produced a number of aberrations that undermine conventional human rights concepts and democratic principles and ethics. This was accompanied and framed by the growing sway of security bureaucracies, which became able to impose their agendas on political decision-makers and had no qualms about resorting to extrajudicial killings, torture, and invasions of individual and personal privacy. All of this naturally affected the human rights situation in other states elsewhere in the world. If some observers see the scope and dangerous implications of mass surveillance leading to a system in which the individual and their behaviour is rendered wholly transparent to security networks, then a generalised uncertainty and anxiety will come to surround human rights and liberal democracy, as the latter becomes a type of capitalism that works to intensify the surveillance of individuals and direct their actions in the framework of algorithmic governance.

At the present time, security properly construed, both in language and practice, is to be found in resisting these securitocratic trends and the prevailing discourse that seeks to spread fear in order to convince individuals of the need for rule by necessity and exception and to make them accept their transformation into suspects. Nevertheless, this quasi-authoritarian development can be understood as a clear expression of the weakness of the state authority and its inability to take the measures necessary to confront threats while preserving democratic principles. Countering the terrorist threat requires promises and practical programs to achieve security, and not through a governance by fear likely to undermine societal values. All societies may therefore need to create a field of solidarity that can neutralise the permanent contradiction that exists in the collective imagination between security and freedoms. An oppositional social movement must be created to stand against any deviations from human rights standards on the pretext of necessity and to render obsolete all authoritarian practices and measures based on constituting the individual as a potential criminal.

But is it truly conceivable that security bureaucracies will simply cede all these privileges, even as they are coming together into a powerful global network of professionals possessed of influential means of instrumentarian power? Will it really end with the war on terrorism? These thorny issues may be worthy of more extensive academic research.

Regarding Israel, which is a democracy in the view of the West, the biggest challenge will remain the discourse and resistance or response, with an additional and greater focus on opposing the discriminatory and racist intelligence measures it uses to consolidate its occupation, all framed by the dominant security bureaucracy as a form of self-defence against the forces of terrorism and anti-Semitism. Responses to this can be supported through redoubling political, media, and legal action aimed at exposing these practices. In a precedent, a report prepared by the United Nations Social and Economic Commission for Western Asia described Israel as establishing 'an apartheid

regime against the Palestinians'.[61] During the recent war on Gaza, chinks in America's solid unconditional support for Israel appeared for the first time in the US media. These facts, however modest, are examples of the impact efforts to shape and broaden the response to Israeli securitocracy may have.

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[1] For example, in 2016, nearly three-quarters of total deaths from terrorism occurred in just five countries: Iraq, Afghanistan, Syria, Nigeria, and Somalia. See the speech by UN Secretary-General António Guterres, 16 August 2018, https://www.un.org/sg/ar/content/sg/speeches/2018-08-16/combating-terrorism-and-human-rights.

[2] Denécé, Eric (2015) 'Gouvernance et éthique dan les activités du renseignement', in Patrick Klaousen and Thierry Picheven (eds.) *Renseignement et ethique* (Panazol: Lavauzelle Graphic), pp. 209 ff.

[3] Dewerpe, Alain (2000) 'La République a-t-elle besoin d'espions', in Marc Olivier Baruch and Vincent Duclert (eds.) *Serviteurs de l'État* (Paris: La Découverte).

[4] Born, Hans, and Aidan Wills (2007) 'Intelligence Ethics: A Complete Cycle?' European Consortium for Political Research conference, Pisa.

[5] Denécé, p. 218.

[6] CCBE (2019) 'CCBE Recommendations on the Protection of Fundamental Rights in the Context of "National Security"',https://www.ccbe.eu/fileadmin/speciality_distribution/public/documents/SURVEILLANCE/SVL_Guides _recommendations/EN_SVL_20190329_CCBE-Recommendations-on-the-protection-of-fundamental-rights-in-the-context-of-national-security.pdf.

7 European Court of Human Rights (2019) 'Surveillance de masse', thematic paper, February (Strasbourg: Media Unit).

[8] This opinion does not impact the court's distinguished reputation for defending human rights in most of its opinions.

[9] For the Zionist ideology of violence and a review of relevant research, see Rashid, Fayez (2015) 'Aydiyulujiya al-Qatl wa-l-'Unf fi al-Fikr al-Suhyuni' [The Ideology of Killing and Violence in Zionist Thought], *al-Quds al-Arabi*, 26 August.

[10] See the Basic Law: Israel as the Nation-State of the Jewish People, ratified by the Knesset on 19 July 2018; the law cements discrimination, legitimises settlement, and licenses a degree of intransigence towards Palestinians.

[11] Moreh, Dror (2012) 'The Gatekeepers', documentary film, cited in Cousseran, Jean-Claude, and Philippe Hayez (2015) *Renseigner le démocraties, renseigner en démocratie* (Paris: Odile Jacob), p. 194.

[12] See for example the 2016 law on the investigatory powers bill (UK), the law on intelligence and security services of February 2002 (Netherlands), and the intelligence law on 24 July 2015 (France).

[13] Cited in Cousseran and Hayez, p. 291.

[14] Alston, Philip (2010) 'Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions', report to the UN Human Rights Council, 20 May, A/HRC/14/24, paragraph 1.

[15] Kuwayz bin Alal, Anas (2019) *al-I'damat Kharij Nitaq al-Qada' Bayn Mawqif al-Qanun al-Dawli wa-Istratijiya Ajhizat al-Istikhbarat* [Extrajudicial Executions: International Law vs. the Strategies of Intelligence Services] (Cairo: Egyptian Institute for Studies), p. 3.

[16] Institut de Relations Internationales et Stratégiques (2013–2014) *Aspects juridiques et éthiques des frappes à distance sur cibles humaines stratégiques*, accessed 16 April 2017, https://theatrum-belli.com/iris-cicde-aspects-juridiques-et-ethiques-des-frappes-a-distance-sur-cibles-humaines-strategiques/.

[17] International Court of Justice (2005) 'Case Concerning Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda), paragraph 146.

[18] International Committee of the Red Cross (2011) 'The Relevance of IHL in the Context of Terrorism', accessed 26 August 2021, https://www.icrc.org/en/doc/resources/documents/faq/terrorism-ihl-210705.htm.

[19] Elkaïm, David (2017) *Histoire des guerres d'Israel de 1948 à nos jours* (Paris: Tallandier).

[20] Cousseran and Hayez, p. 189.

[21] Most national legislation and the 1984 UN Convention Against Torture (ratified my most states) prohibit torture and other cruel, inhuman, or degrading treatment. Under Article 15 of the convention, confessions obtained under torture cannot be used as evidence in any legal proceeding.

[22] Cited in Denécé, p. 206.

[23] Born and Wills.

[24] Ibid.

[25] Arboit, Gérald (2015) 'Sévices secrets: une éthique de l'interrogatoire dans le contexte du recueil du renseignement', in Patrick Klaousen and Thierry Picheven (eds.) *Renseignement et ethique* (Panazol: Lavauzelle Graphic), pp. 135 ff.

[26] Eustache, Thomas (2014) 'Les propos d'Obama sur la "torture" diversement appréciés par la presse américaine', *Le Figaro*, 14 August, accessed 15 June 2016, https://www.lefigaro.fr/international/2014/08/04/01003-20140804ARTFIG00248-les-propos-d-obama-sur-la-torture-diversement-apprecies-par-la-presse-americaine.php.

[27] Israeli High Court of Justice ruling (1999) in Public Committee Against Torture v. Israel, HJC 5100/94, accessed 26 August 2021, https://versa.cardozo.yu.edu/opinions/public-committee-against-torture-v-israel.

[28] As such, any suits filed by Palestinians against Israeli security agencies in Israeli courts will not result in a conviction or recognition of responsibility for torture or inhuman treatment.

[29] Paye, Jean-Claude (2003) 'Lutte antiterroriste et contrôle de la vie privée', *Multitudes* 1 (11), pp. 91–105.

[30] Ibid, p. 103.

[31] Farshian, Marine (2015) 'Quand la réalité de la surveillance massive tend à dépasser la fiction orwellienne', *La Revue des droits de l'homme*, May, accessed 17 March 2017, https://journals.openedition.org/revdh/1300.

[32] Ibid.

[33] Zuboff, Shoshana (2019) *The Age of Surveillance Capitalism: The Fight for a Human Future at the New Frontier of Power* (London: Profile Books).

[34] Ibid, p. 17.

[35] Cousseran and Hayez, p. 183.

[36] Ibid, pp. 181 ff.

[37] Ibid, pp. 176–177.

[38] In Bigho Walker's formulation, cited in Cousseran and Hayez, p. 183.

[39] See for example Virilio, Paul (2010) *L'administration de la peur* (Paris: Textuel).

[40] Cousseran and Hayez, p. 156.

[41] Elkaïm.

[42] Elkaïm, David (2017) 'Le Renseignement israelien entre processus de pais et sécurité de l'Etat hebreux', interview with Ghayyoum Fourmon, *Majallat al-Sharq al-Awsat* 36 (October–December).

[43] International Court of Justice (2004) 'Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory: Advisory Opinion', 9 July.

[44] Belgaid, Mohammed Amine (2018) 'L'antiterrorisme une gouvernance de peur', *L'Homme & La Société* 3 (208), pp. 319–338.

[45] Laurent, Sébastian (2009) ''État secret, les « services » et le faux-semblant du contrôle parlementaire', *Questions Internationales* 35 (January–February), p. 42.

[46] Dubreuil, Claude Hériard (2012) 'Un monde sous surveillance?' *Revue Projet* 2 (327), p. 7.

[47] Agamben, Giorgio (2010) *State of Exception* (Chicago: Chicago University Press), pp. 12 ff.

[48] Foucault, Michel (1999) *Les anormaux: cours au Collège de France* (1974–1975) (Paris: Seuil), p. 23.

[49] Ibid.

[50] Chopin, Olivier, and Benjamin Oudet (2016) *Renseignement et sécurité* (Paris: Armand Colin), p. 144.

[51] These programs include Tempora in the UK; the Prism program, whose details were leaked by Edward Snowden; Canadian intelligence programs; SORM and Uniform Registry programs in Russia; and China's internet censorship and surveillance program (the Great Firewall), as well as internet surveillance measures undertaken by numerous states.

[52] Blanchette, Louis-Philippe (2006) 'Michel Foucault: Genèse du biopouvoir et dispositifs de sécurité', *Lex Electronica* 11 (2), pp. 4 ff.

[53] Al Jazeera (2020) 'Partners in Espionage', documentary program, 20 December, accessed 8 June 2021, https://youtu.be/P7PMoEhEi_4?t=70.

[54] Ibid., which notes that the UAE has pumped millions of dollars into the development of Israeli espionage programs as part of its close security cooperation and coordination with Israel.

[55] Ibid.

[56] Zuboff, p. 174.

[57] Zuboff, p. 560.

[58] A riff on the phrase 'Big Brother'.

[59] Zuboff, pp. 560 ff.

[60] Elkaïm, Histoire des guerres d'Israel, p. 67.

[61] ESCWA (2017) 'Israeli Practices towards the Palestinian People and the Question of Apartheid', 15 March, accessed 7 October 2021, https://www.unescwa.org/news/escwa-launches-report-israeli-practices-towards-palestinian-people-and-question-apartheid.