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On: 22 October 2014, At: 15:52

Publisher: Routledge

Informa Ltd Registered in England and Wales Registered Number: 1072954 Registered office: Mortimer House, 37-41 Mortimer Street, London W1T 3JH, UK



Terrorism and Political Violence

Publication details, including instructions for authors and subscription information:

<http://www.tandfonline.com/loi/ftpv20>

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Published online: 25 Jan 2007.

To cite this article: HILLEL COHEN & RON DUDAI (2005) Human Rights Dilemmas in Using Informers to Combat Terrorism: The Israeli-Palestinian Case, *Terrorism and Political Violence*, 17:1-2, 229-243, DOI: [10.1080/09546550490520709](https://doi.org/10.1080/09546550490520709)

To link to this article: <http://dx.doi.org/10.1080/09546550490520709>

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Human Rights Dilemmas in Using Informers to Combat Terrorism: The Israeli-Palestinian Case

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Using informers is a basic tool in preventing terror attacks and the nature of current terror threats makes it even more crucial. This use, however, often leads to human rights violations, both of the informers and by them, and to many problematic ethical questions. Drawing on the Israeli–Palestinian example—where a main strategy of Israeli intelligence activity in the Palestinian areas has been an extensive use of informers—this article presents the main human rights dilemmas in the field, divided into three stages: recruitment, operation and post-operation obligations, and also points to the possible counter-productive consequences of such a use.

Introduction

Using informers is a basic tool in preventing terror attacks. The lack of HUMINT (‘human intelligence’) on terrorist groups such as Al-Qaeda is considered to be one of the main failures of American intelligence prior to 11 September, as a recent report by a US investigative committee shows.¹ Thus, since the announcement of the ‘war on terror’, increased efforts are being made to recruit informers in various organisations and communities. The use of informers, however, often leads to human rights violations of and by the informers. It also brings forth many problematic ethical questions, for which international law currently supplies only partial answers.

This article will focus on the Israeli-Palestinian case, where using informers has long been one of Israel’s main strategies for intelligence activity in the Palestinian areas. After a short theoretical introduction and historical background on Israel’s extensive use of Palestinian informers, we will present key human rights dilemmas related to using informers. We suggest an analysis according to three stages: recruitment, operation and post-operation obligations. Before concluding we will also briefly touch on the potential counterproductivity of using informers to combat terror.

It is worth emphasizing that, naturally, we do not question the general need – indeed, duty – of governments to protect civilians from terror attacks, nor do we generally question as such the tactical tool of using informers to these ends. We do, however, wish to highlight the dangers in operating unregulated systems

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of informers and to point out the ethical dilemmas and human rights problems that are involved in these systems.

Setting the Framework

Informers: Definitions and Features

Informers – individuals that do not belong to law enforcement agencies but supply them with information² – are considered a main tool in fighting crime and terrorism alike. As an American police manual states, ‘From the dawn of our history, internal law and order has had to depend in greater or less measure on the informer’.³ Being members of groups and communities which are under surveillance allows informers access to information not easily available by other means of intelligence gathering.

Greer suggested distinguishing types of informers according to their relationship with the activities and people about whom they inform: insiders and outsiders, single-event informers and multiple-event informers. This typology is complemented by a second distinction, between criminal and political informers, while the political sphere is divided into violent and nonviolent political movements.⁴

The objects of this study are the informers who work in the political arena in what we define as ‘violence-related environments’. This definition aims to include political wings of violent groups, their welfare organisations (if they exist), their financial systems and their supporting communities, and is based on the lack of clear-cut dichotomy between violent and nonviolent organisations. They might be single-event or multiple-event informers, outsiders or insiders. Nevertheless, one should bear in mind that there is a spectrum between outsiders and insiders, and we would suggest the following subcategories, based on the actual work of counter-terror agencies:

- ‘The archetypal insiders’: people from within a political/terrorist group who were tempted or pressured to provide information about their colleagues.
- ‘The archetypal outsiders’: people who are merely casual observers and supply information voluntarily.
- ‘Outsiders who turned into insiders’: people with no connections to political/terrorist groups who are recruited by an intelligence agency and then sent to join such a group and provide information about it.
- ‘Inside-outsiders’: People who were recruited to be the ‘eyes and ears’ of the security services in their communities in general, and who are required to inform about anything which raises their suspicion as being connected to terrorist (or forbidden political) activity. These people are outsiders to the political group, but insiders in the community.

The Uniqueness of Counterterror Informers

The use of informers in current counterterror efforts differs from both anticriminal activity and interstate spying. Indeed, police intelligence units in the framework of their anticriminal activity have used all the above-mentioned types of informers. However, there are some differences which render the situation more complex and raise additional dilemmas. First, antiterror activity is most often carried out by secret service agencies, whose work is less transparent than that of police forces and is not usually fully legally regulated (or, in other cases, the regulations are internal and not

open to public scrutiny)⁵. Second, in many cases these agencies operate under 'emergency law' regimes, which give less weight – or suspend – basic human rights.

Third, the fact that terrorist organisations pose a greater threat, or are at least perceived to do so, plays a major role in allowing the agencies charged with combating them greater freedom of action. Another factor that makes counterterror activity more complicated than counter-crime work is the fact that, in the case of the western 'war on terror', the target groups are usually of different ethnic or national origin.

Intelligence gathering in the framework of the 'war on terror' is also different from the type of espionage seen during the Cold War, or 'traditional' interstate espionage. The main difference is that 'traditional' espionage was generally limited to efforts to recruit informers among members of the diplomatic corps or the security services of rival countries. The elusiveness of the international terror networks, on the other hand, might cause intelligence services to apply surveillance methods, including operating informers on whole 'suspect communities', such as immigrant communities or religious groups.

The fact that these terror networks have no headquarters, bases or formal structures makes communications surveillance ('SIGINT') on them much more difficult. The nature of the target groups – small, closed, operating in remote areas and often fundamental – also makes infiltration by undercover agents very difficult: 'In the case of the Soviet Union, US spies shared some cultural and even physical characteristics, making it fairly easy to carry out operations on enemy turf. The typical American CIA agent, however, sticks out in places like the bazaars of Pakistan'.⁶

Hence the crucial role of inside informers. The persistent threat of mega-attacks by suicide bombers or by new methods not yet known makes taking preventive measures an urgent task.

Israeli Security Services and Palestinian Informers: Historical Background and Recent Developments

Fear of terror attacks has featured in the daily lives of Israelis since the mid-1960s, and more so since the occupation of the West Bank and Gaza in the war of 1967. Immediately after the war the Palestinian Fatah Movement (led by Yasir Arafat), as well as other Palestinian groups, tried to encourage popular resistance in the Occupied Territories in the form of guerrilla warfare and civil disobedience. Arafat and his aides infiltrated the territories and organised armed cells in various localities, and soon Israeli military and civilian targets came under attack.⁷

One of the main tools Israel used to combat these attacks was to establish a network of informers who would supply the Shabak, the Israeli General Security Service, with information about Palestinian underground cells and their activities. Based on former Jordanian secret agents and Palestinians who served Israeli intelligence prior to 1967, the foundations of the network were set up. Mass arrests of Palestinians, and strict Israeli military rule which employed the carrot-and-stick method, enabled Israeli intelligence officers to widen this network and to recruit activists from the rank-and-file of the resistance movement itself. Within a short period, an impressive intelligence network was created.⁸

Within the framework of Israel's security policy, which perceived the very emergence of Palestinian nationalism as a security threat, the role of informers (and collaborators in general)⁹ was not limited to combating terrorism. In fact, Israel has used its informer network to prevent the Palestinian population in the Occupied

Territories from consolidating around the Palestine Liberation Organization (PLO, which was defined by Israel as a terror organisation until the Oslo Accords in 1993), to block the reemergence of the Palestinian national identity (which was suppressed during eighteen years of Jordanian rule from 1949 to 1967) and to thwart the process of nation-building promoted by the PLO. Thus, informers were not recruited from circles of the armed wings of the PLO only, but from all spheres of public life. Institutions of civil society such as universities, trade unions or local councils were all infiltrated by Israeli security services by way of their informers. And since institutional and political contacts with the PLO were regarded as a violation of the law, people involved in such contacts were put in risk of prosecution. In this way Israel tried to control the political and social lives of Palestinians in the occupied territories, and at the same time to prevent terror attacks on its citizens. In addition, in the late 1970s Israel established a political (though armed) organisation, known as the Village Leagues, to contest the pro-PLO leadership in the occupied territories.¹⁰

The Israeli system of control, which was based on informers, political collaborators and Palestinians who served in the military governance and the civil administration, collapsed during the first *intifada*, which erupted in December 1987. Hundreds of informers and members of the leagues were killed by Palestinian militants, and many others recanted and surrendered their weapons. Most Palestinian policemen, tax collectors and other civil servants resigned their posts, and during the second year of the *intifada* Israel became 'eyeless in Judea', to use the apt term of Salim Tamari.¹¹ This was a crucial problem for Israel, especially due to the fact that the eruption of the first *intifada* coincided with the emergence of Hamas, the Islamic resistance movement, which became a second strong movement in the territories.¹² At this point, Israeli security services began to reorganise their network of informers and increasingly used prisoners as a main source of manpower. Israeli intelligence officers approached two populations: political and military activists of all Palestinian factions, and criminals. The reward offered for collaboration was some measure of reduction in the term of imprisonment.

It is hard to ascertain how successful Israel's recruitment efforts were in that period, since the coming years brought upheaval on the Israeli-Palestinian scene. In September 1993, the PLO and Israel signed a mutual recognition agreement for the first time, in the framework of what is known as the Oslo Accords. As a result of these agreements, the Palestinian Authority (PA) was established in parts of the West Bank and Gaza, and Palestinian security services deployed in those areas. For the first time in the history of Palestine, internationally recognised, overt Palestinian armed forces took control of security matters in the country. Israel declared its prerequisite for the establishment of these forces in the agreements: The Palestinians had to cooperate with Israel in its combat against terror. Nevertheless, Israel continued its independent intelligence activities within the PA areas and inside the PA apparatus. The main change was institutional; since the PA was a foreign entity, an additional Israeli intelligence service started to operate Palestinian informers in the Palestinian territories alongside the Shabak, namely Unit 504 of the Israeli military intelligence. The activities of both agencies were directed towards terrorist groups and PA security agencies, yet people who did not belong to either of these circles were also recruited as informers. This is due to the Israeli method of 'recruit as much as you can'.

Indeed, the well-oiled machine of recruitment had to adjust itself only to minor changes. Contrary to widespread opinion, Israel has maintained its control over the

Palestinians in the territories after the establishment of the PA in many different ways. First, all access points to the PA from abroad are controlled by Israel. All entries and exits necessitate Israeli permission. Second, the PA consists of several enclaves inside Israeli-controlled areas and all movement between one area of the PA and another requires Israeli approval. In addition, Israel remains the sovereign power in more than half of the territories (areas 'C', in the Oslo terminology), with all the implications that has on the daily life of Palestinians. Another factor is that Israel has kept the right to detain residents of the territories, including those under PA control, for security reasons. All these means of control, and the fact that, up to the current *intifada*, tens of thousands of Palestinians made their living as commuting workers in Israel, helped sustain the pressure mechanisms which enabled recruitment of collaborators.

The claim that this system of control and the expansion of the Jewish settlements in the territories were the main causes for the eruption of the second *intifada*, known as the Al-Aqsa *intifada*, in October 2000, is beyond the scope of this article.¹³ However, the collapse of the Oslo peace process brought about an unprecedented wave of terror attacks, including dozens of suicide attacks in which hundreds of Israelis died. At the same time, the formal and semi-overt intelligence cooperation between the Palestinian intelligence apparatus and Israel ceased to exist. In the framework of its counterterror activity, which included targeted assassinations and reoccupying large parts of the PA, Israel intensified its intelligence gathering in Palestinian communities, using its network of informers extensively. The human rights dilemmas that characterized the use of informers during the years of direct Israeli occupation in the territories intensified as well.

Human Rights Dilemmas

There are numerous human rights dilemmas related to the use of informers. Here we will present the major ones as they relate to three stages: recruitment, operation and post-operation obligations.¹⁴ There are additional issues that will not be covered here: the use of '*agent provocateur*', a method about whose use in the Palestinian territories we do not have sufficient data;¹⁵ and the question of prosecutions based on informers' testimonies, which raises many questions regarding fair trials. The latter question was widely discussed in the literature about Northern Ireland,¹⁶ but is not of much relevance in the Israeli-Palestinian instance, since in cases in which evidence is based mainly on informers, Israel tends to hold the suspects in administrative detention, i.e., without trial.

Recruitment

In his autobiography, summarizing some thirty years of service in Israel's security apparatus, the former head of the Shabak, Ya'akov Pery, states unequivocally: 'we have never recruited an informer by pressuring him'.¹⁷ This is not true. More than anything, this statement illustrates the degree of denial of the ethical dilemmas involved in recruiting collaborators (in Israel/Palestine and elsewhere). As in other places, a small number of informers cooperate voluntarily, whether due to ideological reasons or other motivations; recruitment officers in the various intelligence services, however, pressure the vast majority of them into doing so. Indeed, the Shabak has attempted to pressure almost every Palestinian who comes into contact with

the Israeli authorities for his daily affairs to collaborate. As Palestinians are dependant on Israeli permits for anything from traveling abroad or between the West Bank and Gaza Strip working in Israel, the Shabak has ample opportunity to recruit collaborators in this manner. This practice has been used since the beginning of the occupation of the territories in 1967 until the present.

The testimony given by H., a resident of the town of Dura in the West Bank, to B'Tselem, The Israeli Centre for Human Rights in the Occupied Territories, illustrates this practice. H. was planning to study in a university in Egypt. In order to do so, he first had to travel to Jordan through the Allenby Bridge.

On May 15, 1992, I was at the Bridge, with an exit permit for studies in Egypt, but it was returned to me with no explanation. The next day I went to the Civil Administration at Dura, where the officer Fuad Halhal told me that everything was in order and that I could leave. Two days later, I was at the bridge again and was sent back without being told why. The officer at the bridge said it depended on the computer and that I should check with the Civil Administration, the *Shabak* or a lawyer. The next day I went to Attorney Muhammad Khalil, in Hebron, who submitted a request to the Civil Administration in Beit-El. On July 22 I received a letter stating that there was no obstacle to my going.¹⁸

H. tried once again to leave for Jordan. It was already August 26. He was sent back again. He went to the military governor of Hebron to inquire why he had not been let through. The governor called a Shabak agent who took H. to an interrogation room. Another agent that sat there said: 'No one can approve your departure except me. Your entire future is in my hands. You want my help now, and in return I want your help'.¹⁹

In this case H. declined the offer and decided not to turn into an informer. In many other cases people do accept the offers made to them by the Shabak.

Another example is the case of N. from a village in the southern West Bank. In 2002, N.'s son and daughter required medical treatment. His daughter, thirteen years old, had a large mole on her face, which made her feel unattractive and made her parents worry about her chances of getting married. The son, ten years old, suffers from a disability. In the summer of 2002, after a long wait, a charity in Jordan told N. that it would fund medical treatment for both children. N. was to accompany them to Jordan. When he went to obtain a permit to go to Jordan, he was directed to an intelligence officer, who told him unequivocally that if he wanted the permit he would have to collaborate with him.²⁰

Another severe form of pressure is imprisonment. Some have argued that one goal of the mass arrests of Palestinians in the current *intifada* is to recruit informers.²¹ Such claims are not new, but it is still difficult to determine their reliability. In one case, at least, a prisoner applied to a military tribunal through the Israeli human rights organisation, HaMoked: Center for the Defense of the Individual asking to be released. He argued that he was arrested because he refused to become a collaborator. The judge, a colonel in the Israeli Defense Forces (IDF), decreed that despite the proved attempts to recruit him, his arrest was unrelated to these efforts. The judge did state, however, that it would be illegitimate to arrest a person only in order to force him to collaborate.²² Nevertheless, there are some indications that this practice is used by the Shabak.²³

In terms of international law, the fourth Geneva Convention²⁴ forbids an occupying power from such actions against protected persons. Article 31 states that ‘no physical or moral coercion shall be exercised against protected persons, in particular to obtain information from them or from third parties’, and the official commentary of the International Committee of the Red Cross (ICRC) elaborates that ‘the prohibition . . . is general in character and applies to both physical and moral forms of coercion . . . whether the pressure is direct or indirect, obvious or hidden’.²⁵ Furthermore, article 51 states that ‘the Occupying Power may not compel protected persons to serve in its armed or auxiliary forces. No pressure or propaganda which aims at securing voluntary enlistment is permitted’, and the official commentary adds that ‘the prohibition is absolute and no derogation from it is permitted’. The statute of the International Criminal Court (ICC) defines as a war crime the act of ‘compelling the nationals of the hostile party to take part in the operations of war directed against their own country’.²⁶

Notwithstanding this clear prohibition in international law, its applicability might be limited. Israel has not ratified the ICC statute, and its position regarding the Geneva Conventions is ambiguous, rejecting its applicability to the West Bank and Gaza (as these are not ‘occupied’) but promising to abide by the ‘humanitarian clauses’.²⁷ In other contexts, the prohibition – at least to some extent – would be limited to international armed conflict (in the case of the ICC), and to occupation status (in the case of the fourth Geneva Convention). In any case, security services would probably argue that they couldn’t base their counterterror intelligence operations on ideological volunteers and demand that the law make allowances for some degree of pressure to be applied when attempting to recruit informers.

If these demands were accepted, the question that remains is to what extent it is legitimate to use this power: Is there a difference between proactive and reactive measures? Should some forms of pressure (e.g., preventing medical care) be banned while others (e.g., preventing studies or travel for holiday) be permitted?²⁸

One should be cautious in sanctioning any form of pressure. It is clear that a sweeping policy of putting pressure on almost any Palestinian, whatever their background, is illegitimate.

In a more subtle analysis, one can argue that two parameters are relevant when determining what means of pressure are legitimate. The first one should be the degree of involvement of the would-be informer in terrorist activity. When there is reliable information that an individual belongs to a terrorist group, intelligence services should have more freedom in their efforts to recruit him: e.g., while it might be illegitimate to prevent a neighbour or a family member of a terrorist from studying abroad in order to recruit him, it might be legitimate to do it to a member of a terrorist cell. Using the subcategories of insiders-outsiders mentioned above, it might be legitimate to pressure an archetypal insider, but not another member of the community (inside-outsiders or archetypal outsiders).

The second parameter is proportionality: A clear imminent risk to human lives should be treated differently from an attempt to circumvent political activities (whether and how security services can be trusted with identifying clear and imminent danger is a separate issue).

A second dilemma regarding recruitment is the legitimacy of using minors. Cases where persons under eighteen, in some cases as young as thirteen, were operated by Israel were reported by Arab sources.²⁹ These reports were based on testimonies collaborators gave to Palestinian security services during interrogations. As in other

cases of confession under pressure, one should be cautious about these accounts' accuracy; nevertheless, the former head of Shabak has admitted that the organisation uses minors to gather information.³⁰

The use of children in hostilities has been an issue of concern in international law in the last decade. It is important to note that definitions of 'child soldiers' make it clear that these do not have to be gun-carrying combatants, but can also be those who participate in activities such as spying.³¹ The ICC statute defines 'conscripting or enlisting children under the age of fifteen years into the national armed forces' as a war crime.³² This wording shows that 'conscripting or enlisting' means that consent or volunteering is irrelevant; it is also sufficient that the accused was 'wilfully blind to the fact that the child was under fifteen years of age in order to establish criminal liability'.³³

In some cases recruitment of children under fifteen was indirect, i.e., the security service recruited an adult, who in turn used a child, usually his son or another minor relative. If the operator 'should have known' that this would be the result he might be liable under the 'superior responsibility' principle (see next section below).

With regards to children between the ages of fifteen and eighteen, matters are more complicated. There is a trend toward prohibition of their participation in conflicts. Currently, an optional protocol to the Convention of the Rights of the Child prohibits all participation of persons under eighteen in the armed forces apart from voluntary noncombat roles.³⁴ Israel signed this instrument but has not ratified it, and as it has not yet reached customary law status it is not binding.

However, even if this practice may be legal, it still raises ethical questions. It creates a psychological burden for the child and exposes him to physical danger. A child would be much more vulnerable to the types of pressures presented above. In cases where the informer is given power that has the potential to result in his committing human rights violations (see next section below), children are less likely to understand the limits of their power. Given that, any use of children should be limited as much as possible.³⁵

The categorisation of insiders-outsiders might be useful in the case of minors as well. To be more specific, recruitment of a high school student who is involved in violent political activity seems to be more justifiable than recruiting a nonactive student who happens to be in the same school with political activists. The parameter of proportionality should be applied here as well. There is a difference between recruiting minors who have access to information about nonviolent (though defined as subversive) activity and attempting to prevent suicide attacks. It should be noted when discussing this point that both informers' lives would be put at risk.

A third sensitive question arises from the profiles of the potential recruited persons. In 1995, after a series of scandals, the then head of the CIA, John Duetch, issued rules that required field officers to get headquarters' approval before recruiting anyone with a criminal or human rights – abuse record. Some argued that these rules hampered the CIA's efforts to infiltrate terrorist organizations and should, at least partially, be blamed for the intelligence failure on 11 September.³⁶ A US Congress investigation committee called for the reversal of the rule. The Israelis, on the other hand, recruited criminals quite frequently to serve as collaborators both inside and outside prisons.³⁷ When can it be justified to sacrifice the rights of the potential victims of the 'informer as criminal' in order to secure information from the 'informer as spy'?

Whereas the first two dilemmas have to do with the human rights *of* informers, the last one concerns violations carried out *by* them. The next section, which analyses the actual operation stage, will also deal with these two types of questions.

Operation

A serious problem arises when informers are used to commit human rights violations that their operating agencies are themselves forbidden from committing. An important issue is the use of Palestinian informers to torture individuals suspected of terrorist activity.³⁸ A common practice in Israeli police, military and Shabak interrogation facilities is using informers, known as 'birds'. These informers introduce themselves to new detainees as activists and force them to prove that they are not collaborators by telling who they are, what they did and who were the people that sent them on their missions. Many young activists fall into this trap and give full details of their activities. Their confessions are recorded, or written, by the informers, and then brought as evidence during their trials. While this can be a legitimate means of deception, 'birds' also torture the detainees that refuse to disclose information.

The prohibition on torture is one of a few absolute prohibitions in international law, from which no derogation is allowed under any circumstances.³⁹ Use of torture by informers, whether ordered, solicited or merely tacitly approved, should clearly be banned.

In addition to the moral and public problems in using someone else to do the 'dirty work' while maintaining the state's clean image, it should be noted that state officials who are in charge of informers that apply torture could face legal challenges themselves. They could be liable under the 'superior responsibility' doctrine, a principle that puts liability on commanders, even if they did not order the crime – in some circumstances, even if they were not aware of it – if they failed to prevent it.⁴⁰ There are three requirements for this concept to be used: a superior/subordinate relationship; the superior 'knew or should have known' about the crime; the superior failed to take reasonable measures to prevent or punish the violations. It seems that all of these conditions are met in cases of torture by informers, and thus criminal responsibility may rest with their operators, even if they were not directly involved in the torture and even if they did not order it. The same principle may be applied to indirect recruitment of children (see above).

A second recurrent issue is the intrusion of privacy exercised by the informers, which in many cases is inherent in their work. Unlike the right to be free from torture, the right to privacy is not an absolute right; it is well established that in conflict with national security, for example, governments can derogate from this right and impose measures that will intrude on people's privacy. Such measures were common after 11 September, and some were approved by judicial bodies.⁴¹

However, while violating privacy may be tolerated in principle, there might be a need to define more accurate limitations on the actions of informers. State agents operate within legal guidelines. Phone tapping and secret surveillance inside Israel require the approval of a judge on a case-by-case basis. The potential of informers to violate privacy is almost unlimited, and stricter definitions are needed. Should the same legal limitations that are imposed on state agents be imposed on the informers themselves? Should the sanctioned violation of privacy be in proportion to the perceived threat? Who will determine the boundaries of this proportionality? As the actions of informers and the orders they get are secret, these questions often go unanswered. While the lines may be difficult to draw, there should at least be legal supervision and regulation of this aspect of informers' work.

Two other ethical issues arise from the specific nature of the relationship between informers, their society and their operators. The first relates to family

relationships. Is it legitimate to demand an informer to report on his family members' whereabouts and activities, knowing that this kind of activity affects family ties and loyalties, or should they be 'exempt' from spying against their own families? Such exemptions are often granted to regular police officers or judges, who are disqualified from dealing with cases that involve their relatives. In the case of inside informers, this principal would be difficult to apply, as access and intimacy are often the very reasons for their recruitment.

Another question is illustrated by the case of 'Alan Bani Odeh of the town of Tammun in the northern West Bank. Bani Odeh was a Hamas member who was recruited as an informer by the Shabak in February 2000. According to his testimony, the Shabak had revealed he was having an intimate relationship with a woman from his town and threatened to expose it. In November of that year, while in a meeting with his handler, Shabak explosives experts booby-trapped his car. Bani Odeh was then told to lend it to his cousin, who was active in the armed wing of Hamas. The following day, while his cousin, Ibrahim, was driving the car in Nablus, it exploded and Ibrahim was killed. A few days later, Bani Odeh turned himself in to the Palestinian police. He was brought to the State Security Court, and after a short trial was sentenced to death. He was executed in January 2001.⁴²

Putting aside the debate over the legitimacy of targeted assassinations, an ethical question rises from this case: the legitimacy of using unwitting collaborators. Alan Bani Odeh had no intention to kill his cousin and was involved in this operation without his knowledge. He was used not as a human being but as a tool of the security services. Moreover, such deceit can put the informer's life in danger, as was proved in the case of Bani Odeh. Though the informer may theoretically not be legally liable (as he was unaware of the plot), he would be exposed to revenge by his society. Such risks are the subject of the next section, which deals with the obligations of the state to the collaborators once they have completed their missions or been exposed.

Post-Operation Obligations

When caught by their 'own side', informers are faced with harsh punishment. Treatment of those considered 'traitors' would almost always be severe; many countries that have abolished the death penalty in general retain a special clause allowing its use for the offence of 'treason'. In war – or warlike – situations the chances of receiving a fair trial in these circumstances are usually very low.

Palestinian informers who are caught are exposed to extremely harsh treatment. Since the outbreak of the current wave of conflict, dozens of informers have been killed in acts of 'street justice'. Others have been prosecuted in the Palestinian Authority State Security courts, which often violate basic fair trial standards.⁴³

While a government would do everything in its power to rescue its own agents in such circumstances, it seems not to be the case with regards to informers. For example, one can assume that if the Palestinian Authority announced that it was going to execute a Jewish-Israeli soldier, Israel would have used all means available to prevent this. Yet, Israel took no action in the weeks between the sentencing of Bani Odeh to death and his actual execution, or after the verdicts of other collaborators had been announced. The question is whether they should get the same treatment as state agents and soldiers: What are the government's legal and moral obligations to them?

This question relates in general to all informers who complete their operations. Even if they are not caught, quite frequently one hears them claim that Israel has abandoned them, especially when they are deemed less 'valuable' by the security services. In fact, since the Oslo Accords in 1993 hundreds of collaborators were relocated from PA-controlled areas into the state of Israel and given financial aid for resettlement. Nevertheless, many of them argue that they do not receive enough support to enable them to live in dignity. In addition, many others argue that they have not received Israeli citizenship despite the fact that they assisted the Israeli security agencies.⁴⁴

With regards to compensation, an official in the Israeli Ministry of Justice told the Israeli newspaper *Ha'aretz* that the Israeli authorities distinguish between 'spies' i.e., Israeli Jews, and Palestinian collaborators. Although sent on similar missions, 'spies' are entitled to a variety of rewards, while 'collaborators' are not.⁴⁵ Moreover, an Israeli court decided that relatives of collaborators are not entitled to compensation when their family members are murdered, since the law of remuneration to victims of terrorism refers only to Israeli citizens, and, in the territories, only to Jews.⁴⁶

Treating informers differently from a country's own agents, i.e., as meriting lesser obligations, is tantamount to viewing them as lesser people or mere tools, and will inevitably result in violating their human rights. Legal contractual obligations might be hard to ascertain in these circumstances, though regulating the relationship between informers and their operators along the guidelines of an employer/employee relationship may not be implausible. But even without it, there is a strong moral case against leaving these people to their fate.

Abandoning informers may also be counterproductive, from the intelligence services' point of view, as it adversely affects the efforts to recruit new ones. The next section will briefly touch on larger counterproductive implications of the policy of using informers in general.

Counter-Productivity? The Long-Term Consequences

Whereas the previous analysis presented dilemmas based on the assumption that using informers is an efficient tool to combat terror attacks (and thus the dilemmas concern the need to balance the security 'gain' with the human rights 'loss'), here we briefly want to note that in the long run, and especially during a peace process, the efficiency as such might also be dubious.⁴⁷

The Israeli policy of recruiting and using informers, carried out in large numbers and over a long period of time, created a culture of suspicion, which is a well-known phenomenon in societies which are under political surveillance. In addition, it affected the building of a civil society.⁴⁸ This culture of suspicion also hampered the emergence of groups and individuals who genuinely pursued moderate agendas, as they were immediately branded as 'collaborators'.

The possibility of Israeli-Palestinian security cooperation (which was a central component of the Oslo Accords) was also adversely affected by the decades of operating Palestinian informers by Israeli intelligence officers. Not only did some Israeli officials treat Palestinian officers as no more than informers (as a previous head of Shabak has admitted),⁴⁹ but also Palestinian opposition groups constantly identified Palestinian security forces as traitors. This identification was widely accepted in Palestinian political discourse, and has caused many members of the Palestinian security forces to want to 'clear their names'. When the Al-Aqsa *intifada* broke

out in October 2000, they took the opportunity to halt security cooperation with Israel against Hamas, and join Hamas in its fight against Israel.⁵⁰

This can be the counterproductive result of creating a culture of suspicion. In general, it was this culture of suspicion that stood in the way of creating accountable and independent Palestinian institutions – the very institutions that could have helped stop the terror. This consequence could be attributed to Israel's blindness to the long-term effects of its policy, or to the fact that these were indeed the 'hidden' goals of this policy – not only to combat terror but also to create a system of social control.

While the various dilemmas presented above could be evaluated vis-a-vis the immediate results of intelligence received through informers, these long-term effects should also be taken into account.

Conclusions

As with many other counterterrorism measures, such as detention without trial, the use of informers poses grave challenges to governments who must take into account the need to protect civilians from terrorist attacks on the one hand and the obligation to protect human rights on the other. The global 'war on terror' has resulted in an erosion of human rights standards on local and international levels⁵¹ and the justified need to protect lives has too often been used to violate the human rights of individuals and communities. While most other measures come under some public scrutiny and judicial examination, this aspect of intelligence work is usually conducted far from the public eye. Some of the activities presented above, like torture by proxy, should be banned outright. Others present ethical dilemmas that stem from the need to balance individual rights and public security. Thus, it is imperative to develop a regulating framework that would provide the appropriate ethical and legal guidelines in this field. Such a framework should be created by means of an informed and open debate. It should be as transparent as possible, and should aim at retaining accountability even in this clandestine aspect of law enforcement. When the potential for abuse is left unattended it will almost always be fulfilled, and the possibility of having counterproductive results should also not be ignored. When American and British security services are seemingly about to embark on an effort to create such informer networks, whether in Muslim countries or in their own Muslim communities, the lessons from the Israeli-Palestinian experience must be acknowledged.

Notes

1. See House Permanent Select Committee on Intelligence and the Senate Select Committee on Intelligence, *Report of the Joint Inquiry into the Terrorist Attacks of September 11, 2001* (2003). The report stated that: 'Prior to September 11, 2001, the Intelligence Community did not effectively develop and use human sources to penetrate the Al-Qaeda inner circle. This lack of reliable and knowledgeable human sources significantly limited the Community's ability to acquire intelligence that could be acted upon before the September 11 attacks' (p.93).

2. As such, they are distinguished from 'undercover' law enforcement agents.

3. Quoted in Gary T. Marx, 'Thoughts on a Neglected Category of Social Movement Participants: The Agent Provocateur and the Informant', *American Journal of Sociology* 80/2 (September, 1974) p.402.

4. Steven Greer, *Supergrasses: A Study in Anti-Terrorist Law Enforcement in Northern Ireland* (Oxford: Clarendon Press 1995) pp.1–26. For other theoretical definitions see Justice, Madeleine Colvin, *Under Surveillance: Covert Policing and Human Rights Standards* (London:

1998) p.41; and Daniel Nsereko, 'Police Informers and Agents Provocateurs: Accomplices or Handmaidens of the Law?', *Criminal Law Forum* 9 (1999) p.151.

5. For example, the new Israeli General Security Service (Shabak) Act 2002 does not refer to informers and the legal questions related to their recruitment and handling at all. The internal regulations are classified.

6. Abraham McLaughlin, 'A Matter of Ethics for the Cloak and Dagger Set', *Christian Science Monitor* 5 Oct. 2001.

7. Shlomo Gazit, *The Stick and the Carrot: The Israeli Administration in Judea and Samaria* (Tel Aviv: Zonora-Bitan, 1985) pp.282–84.

8. David Ronen, *The Year of the Shabak: Deployment in Judea and Samaria – The First Year* (Tel Aviv: Ministry of Defense Press, 1989); Yaakov Pery, *Strike First* (Tel Aviv: 1999).

9. The informers were the cornerstones of the Israeli control system in the territories, but there were other types of collaboration, such as land selling, which enabled Jewish settlement (and spatial control); political collaboration whose goal was to weaken the mainstream national movement; and distributing pro-Israeli propaganda; for the origins of these categories in the 1917–48 period see Hillel Cohen, *An Army of Shadows: Palestinian Collaborators in the Service of Zionism* (Jerusalem: Ivrit, 2004) [in Hebrew].

10. Salim Tamari, 'In League with Zion: Israel's Search for a Native Pillar', in N. Aruri (ed), *Occupation: Israel over Palestine* (London: Zed Books, 1984) pp.377–90.

11. Salim Tamari, 'Eyeless in Judea: Israel's Strategy of Collaborators and Forgeries', *Middle East Report* 164/165 (May-August 1990) pp.39–45.

12. For a detailed analysis of the emergence of Hamas see Ali Jirbawi, *The Intifada and Political Leaderships in the West Bank and Gaza Strip* (Beirut: al-Tali'ah 1989) pp.102–30.

13. See, for example, Edward Said, 'The End of Oslo', *The Nation* 30 Oct. 2000.

14. For ethical questions in using informers in a counter-crime context, see Paul Cooper and Jon Murphy, 'Ethical Approaches for Police Officers When Working with Informants in the Development of Criminal Intelligence in the United Kingdom', *Journal of Social Policy* 26/1 (January 1997) pp.1–20; Colin Dunnighan and Clive Norris, 'The Detective, the Snout, and the Audit Commission: The Real Costs in Using Informants', *The Howard Journal* 38/1 (February 1999) pp.67–86.

15. As is well known, the Israeli Shabak used such an agent in the radical right wing in Israel (named Avishay Raviv) who was later prosecuted for not informing the Shabak of the plans to assassinate Israeli premier Yitzhak Rabin. On the question in other contexts see Greer (note 4) and Nsereko (note 4).

16. See Greer (note 4); P. Taylor, *Provos: The IRA and Sinn Fein* (London: Bloomsbury 1998) pp.254–65.

17. Pery (note 8) p.259.

18. Yizhar Be'er and Saleh Abdel-Jawad, *Collaborators in the Occupied Territories: Human Rights Abuses and Violations* (B'Tselem, The Israeli Information Center for Human Rights in the Occupied Territories, Jerusalem, 1994) pp.35–6.

19. *Ibid.*, and see there for other examples of recruitment using this practice. See also Gershon Gorenberg, 'The Collaborator', *New York Times* 18 Aug. 2002; and Yehezkel Lein, *Forbidden Roads: The Discriminatory West Bank Road Regime* (Jerusalem: B'Tselem, The Israeli Information Center for Human Rights in the Occupied Territories, 2004) p.33.

20. This information comes from firsthand knowledge. A family member of N.'s asked Hillel Cohen to help N., and was subsequently put in touch with a human rights organisation that successfully handled the issue. Another case of making medical treatment conditional on collaboration is mentioned in Be'er and Abdel Jawad (note 18).

21. For example, see the claims by Saleh Abdul Jawad, a prominent Palestinian scholar on informers; see Catherine Taylor, 'How Israel Builds Its Fifth Column', *Christian Science Monitor* 22 May 2002.

22. Megido Military Court, Files AMM 793/98 and 392/98, *Ahed Abu Sbeih v. The IDF Commander in the West Bank*.

23. A number of released detainees told one of the authors that they were not interrogated during their detention but were made the offer to become collaborators.

24. Geneva Convention Relative to the Protection of Civilian Persons in Time of War, 1949.

25. <http://www.icrc.org>

26. Rome Statute of the International Criminal Court, Article 8 (2)(b)(xv), 1998. For commentary see Auto Triffterer, *Commentary on the Rome Statute of the International Criminal Court: Observers Notes, Article by Article* (Baden Baden: Nomos Verlges 1999) pp.235–7.

27. Israel's position has been widely contested by other governments and experts. See, generally, B'Tselem, *Israeli Settlement in the Occupied Territories as a Violation of Human Rights: Legal and Conceptual Aspects* (Jerusalem: Yuval Ginbar, 1997) pp.4–9.

28. It should be noted that offering rewards—or bribes—in exchange for information (such as the price on the heads of Udai and Qussai Hussein that apparently led to information about their whereabouts) could be a legitimate exercise.

29. *Al-Quds* 18 July 1995; based on an article published earlier that month in *Al-Sharq al-Awsat*.

30. In his memoirs, Pery, the former head of the Shabak, recounts the case of a high school student he recruited who was later murdered by Palestinians, see Pery (note 8) p.52. It is worth noting that many high school students are active in violent political activity, hence the desire of the Shabak to recruit informers in schools.

31. Triffterer (note 26) p.261.

32. Rome Statute of the International Criminal Court, Article 8 (2)(b)(xxvi), 1998. A similar prohibition appears in The First Optional Protocol to the Geneva Conventions, (1977) Article 77. While Israel has not ratified the ICC statute nor the protocol, this prohibition has reached the status of international customary law, and is therefore binding on all states.

33. Triffterer (note 26) p.262.

34. Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, 2000.

35. For the use of minors in counter-crime activities, see Justice (note 4) pp.42–3.

36. See the July 2002 report of the House Permanent Select Committee on Intelligence (HPSCI), Subcommittee on Terrorism and Homeland Security 'Counterterrorism Intelligence Capabilities and Performance Prior to 9–11' (Washington, DC 2002) p.99.

37. B'Tselem, (note 17) p.37–9.

38. See information by B'Tselem, at http://www.btselem.org/english/Collaboration_Suspects/index.asp

39. Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, 1984. See also Steven Ratner and Jason Abrams, *Accountability for Human Rights Atrocities in International Law: Beyond the Nuremberg Legacy* (Oxford: OUP 2001) pp.117–9.

40. Ilias Bantekas, 'The Contemporary Law of Superior Responsibility', *American Journal of International Law* 93/3 (July 1999) pp.573–95.

41. Electronic Privacy Information Center (EPIC), Privacy and Human Rights Survey Report, <http://www.privacyinternational.org/survey/phr2002>

42. *Haaretz* 8 Dec. 2000; *Al-Ayam* 14 Jan. 2001.

43. 'Alan Bani Odeh was among the first sentenced to death and executed, see the Palestinian daily *Al-Ayam* 14 Jan. 2001. Dozens of suspected collaborators were killed by militants with no judicial process during the *intifada*. See Associated Press (AP) report, 'Suspected collaborator executed in public square', <http://www.smh.com.au/articles/2003/05/19/1053196527247.html>. The same article reports on an execution that took place in a public square in Nablus and on the responses of the members of the public. On treatment of collaborators by the Palestinian Authority before the Al-Aqsa *intifada* see The Palestinian Human Rights Monitoring Group, *Human Rights and Legal Position of Palestinian 'Collaborators'* (Jerusalem:2001), <http://www.phrmg.org/monitor2001/jul2001.htm>. Regarding their treatment during the *intifada* see Human Rights Watch, *Justice Undermined: Balancing Security and Human Rights in the Palestinian Justice System* (Washington DC: 2001) pp.22–5, 37.

44. Dozens of collaborators applied to the Israeli Supreme Court of Justice asking to receive compensation for their services, mainly Israeli identity cards. See, for example, the petition of *Unnamed and Others v. The Prime Minister and Others*, 1972/97; *Abraghit v. The Government of Israel* 9007/96.

45. Baruch Kara, 'Jailed for Seven Years in an Enemy Country; The State: They Are Only Collaborators', *Ha'aretz* 27 Dec. 2001.

46. Moshe Reinfeld, 'The Court: No Compensation for Collaborators whose Family Member was Murdered as Suspected Collaborator', *Ha'aretz* 9 June 1998.

47. This still relates only to the tactical sphere, without touching on the more strategic solution, political settlement, as the best way to reduce terror.

48. For studies on the influence of life under surveillance on the citizens of the USSR see Merle Feinsod, 'Controls and Tensions in the Soviet Union', *The American Political Science Review* 44/2 (June 1950) pp.266–82; Paul Hollander, 'Research on Marxist Societies: The Relationship between Theory and Practice', *Annual Review of Sociology* 8 (1982) pp.319–51; Donna Bahry and Brian Silver, 'Intimidation and the Symbolic Uses of Terror in the USSR', *The American Political Science Review* 81/4 (December 1987) pp. 1065–98; Louise Shelley, *Policing Soviet Society: The Evolution of State Control* (London: Routledge, 1996).

49. Pery (note 8) p.254.

50. See Hillel Cohen, 'The Palestinian "Treason Discourse" during the Oslo Period (1993–2000) and the Failure of the Palestinian-Israeli Security Coordination', (forthcoming).

51. For example, see Human Rights Watch, *In the Name of Counter-Terrorism: Human Rights Abuses Worldwide*, <http://www.hrw.org/un/chr59/counter-terrorism-bck.htm>; Liberty, *Anti-Terrorism Legislation in the United Kingdom* (London: 2002).