

# Outsourcing violations: the Israeli case<sup>1</sup>

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Using the Israeli case as a point of reference, this paper suggests that the term outsourcing, borrowed from economic discourse, can serve as a powerful explanatory device that facilitates the conceptualization of existing processes pertaining to human rights violations. It allows us to draw a connection among several phenomena that are usually conceived to be independent and unconnected, while disclosing and capturing some of the predominant features characterizing the global violation of human rights. Demonstrating that outsourcing violations is an increasingly prevalent strategy used to mask power and thus abdicate social and moral responsibility, the author argues that its benefits are legal, political and economic. From a legal perspective, the employment of subcontractors is effective since it obfuscates the connection between Israel and the contravening act, making it extremely difficult to hold Israel legally accountable for violations it sanctions. From a political perspective, outsourcing is beneficial because even if the abuses are exposed, they are frequently presented to the public as having been perpetrated by someone else. Finally, the use of subcontractors is economically advantageous because it enables the violator to avoid legal prosecution and political embarrassment, both of which can have an unfavourable effect on capital.

## Introduction

... the extent to which any one of the many criminals was close to or remote from the actual killer of the victim means nothing, as far as the measure of responsibility is concerned. On the contrary, in general the degree of responsibility increases as we draw further away from the man who uses the fatal instrument with his own hands. (Hannah Arendt, citing the Supreme Court Judges in her book *Eichmann in Jerusalem*)

In *Mercenaries, Pirates, and Sovereigns*, Janice Thomson (1996) describes how Sea Dogs such as Francis Drake extorted large ransoms from Spanish colonial cities by wielding the threat to destroy them if they failed to pay up. The Sea Dogs were virtually indistinguishable from other pirates, except that they were acting under the auspices of the crown. The Queen orchestrated their so-called private campaigns and it was, in large part, due to these state-sanctioned ravages that by the late sixteenth century England gained navel superiority over Spain. Francis Drake was, in a sense, a subcontractor; Queen Elizabeth outsourced work, employing him and other Sea Dogs to execute certain tasks, which, according to today's parlance, constitute blatant violations of human rights.

The economic neologism 'outsourcing' denotes, according to the *Oxford English Dictionary*, 'the obtaining of goods or contracting of work from sources outside a company or area.' Replacing the word 'work' with the word 'violations' and adding the word government before company imparts a definition suitable for this paper: outsourcing is the contracting of violations from sources outside a government, company or area. Incorporating the term 'outsourcing violations' into the human rights discourse is important not because it describes a new practice – it does not – but because it can be used as a theoretical

tool that facilitates the conceptualization of existing processes pertaining to human rights. It is advantageous for three major reasons. First, outsourcing discloses and captures some of the predominant features characterizing the global violation of human rights. In so doing, it serves as a powerful explanatory device, and, in turn, can be helpful to those interested in developing strategies for the protection of rights. Second, it allows us to draw a connection among several phenomena that are usually conceived to be independent and unconnected. Finally, by accentuating the relationship between government and corporate practices, the neologism ‘outsourcing violations’ also helps uncover the limits of the state-centric paradigm, whereby the state is considered the major violator of rights.

Using the Israeli case as a point of reference, in this paper I argue that outsourcing violations is a prevalent strategy, which has been put to use primarily in order to abdicate social and moral responsibility. It accomplishes this objective by dodging legal prosecution and evading the ‘shaming technique’ utilized by human rights organizations worldwide. Following a brief historical description, I turn to discuss Israel’s violations of political and civil rights, showing that over the years the government has employed subcontractors to perpetuate abuses.<sup>1A</sup> Next, I examine the dramatic expansion of economic and social violations within Israel, demonstrating that outsourcing is widely used by government and corporations alike. Thus, one of the major features concatenating the violation of these two kinds of rights, which are usually discussed separately, is the employment of subcontractors. By way of conclusion, I briefly examine the relationship between the different violations, using Michel Foucault’s notion of power as a point of reference; I also mention some of the challenges that outsourcing engenders for the human rights community. Although my discussion is limited to the Israeli case, the trends disclosed are neither new nor limited to a geographical area and can surely be detected in other parts of the world.

## Historical background

The existing scholarly literature refers to political and civil rights – such as the right to life and the freedom from torture and administrative detention – as ‘first generation’ rights.<sup>2</sup> These rights are anchored in the liberal tradition of Western individualism, and are accordingly informed by the idea that the individual’s freedom pertains to the private sphere.<sup>3</sup> Economic and social rights are frequently referred to as ‘second generation’ rights and denote the right to education, adequate healthcare, housing, employment, etc. These rights are often secured through an act of intervention, indicating that the lack of government involvement in the individual’s life can amount to a violation of rights. Economic and social rights are based on the conception of the subject as a social creature who has duties and obligations towards other members of its species, and until recently they were emphasized more by socialist movements than by human rights organizations. The division between political and civil rights on the one hand, and economic, social and cultural rights on the other, is not so clear-cut however; e.g. without food and a decent education one cannot really enjoy the right to freedom of speech. This point was emphasized in the 1993 Vienna Declaration that states, ‘All Human rights are universal, indivisible, and *interdependent and interrelated*’ (article 5, italics added).

From a historical perspective, it is important to keep in mind that following the ratification of the 1948 Universal Declaration of Human Rights, the West underscored the significance of political and civil rights, while the East stressed the importance of economic and social rights. The ideological differences between the two blocs actually created an impasse, and until the mid-1960s the international community did not endorse any human

rights covenants. The deadlock was finally overcome in 1966 with the concurrent ratification of two covenants: the International Covenant of Economic, Social and Cultural Rights, and the International Covenant of Political and Civil Rights. Despite the approval of these covenants, tensions between the blocs remained intact, and while the West continued to criticize the Soviet Union, China and their satellites for the violation of such rights as freedom of speech and due process, the Soviet bloc accentuated economic and social rights and condemned capitalist countries for tolerating unemployment and for failing to offer universal healthcare. Ironically, with the demise of the Soviet Union and the so-called victory of free-market ideology, human rights organizations that had for years focused solely on political and civil rights began stressing economic and social rights as well, rights that in many respects contradict free market principles.<sup>4</sup> Thus, rights that were in a sense unacknowledged for many years, even by human rights organizations, have, in the past decade, begun to gain currency.

Generally speaking, Israel has not infringed upon the political and civil rights of its Jewish citizens any more than other Western democracies have violated the political rights of their citizens. However, the political rights of Israel's non-Jewish citizens, as well as those of the Palestinians living under its occupation, have been systematically and, at times, brutally violated since the establishment of the state in 1948.<sup>5</sup> In 1966, after the dissolution of the military administration charged with governing Israel's Palestinian citizens, there was a substantial improvement regarding the rights of the state's non-Jewish population.<sup>6</sup> Nonetheless, the Palestinians residing in Israel are still, in many respects, second-class citizens, who to this day do not enjoy the same rights as their Jewish counterparts.<sup>7</sup>

Following the occupation of the West Bank and Gaza Strip in 1967, and the establishment of a military government in these areas, violations of basic rights once again became an integral part of Israel's declared and undeclared policies.<sup>8</sup> The invasion of Lebanon, followed by the institutionalization of Israeli military rule, alongside the creation of a mercenary army – the South Lebanese Army – in the southern region, resulted in a dramatic increase in human rights offences (Amnesty International 1992, Human Rights Watch 1996, 1997). These developments have been well documented by human rights organizations, and there is no need to elaborate on them in this context.

A few notable changes have, however, occurred in the past years. In 1993, the Oslo Accords were signed, which led to Israel's withdrawal from parts of the Gaza Strip and West Bank and to the transfer of responsibility for all the civil institutions to the Palestinian National Authority.<sup>9</sup> Oslo appeared to initiate a substantial decrease in Israel's perpetration of human rights violations in the occupied territories; because Israel is no longer the sole authority in the territories, there seems to have been a sharp decline in *Israel's* violation of such basic rights as freedom of association, freedom of speech, and freedom of movement. In 1995, Israel signed a peace treaty with Jordan, and five years later its military withdrew from occupied South Lebanon, the South Lebanese Army (SLA) was dissolved and Al-Khiam prison dismantled, all of which have certainly ameliorated the human rights situation in the region. Moreover, Israel's High Court of Justice's 1999 ruling invalidated the interrogation methods previously authorized by the government – methods which allowed the use of physical force that constituted torture, and cruel, inhuman and degrading treatment. Taken together, all of these facts seem to indicate that we are actually observing a decrease in violations due to the peace processes, which until quite recently seemed to be progressing.

## Subcontracting political and civil violations

Despite regional political developments, current reports published by Israeli and Palestinian rights organizations, as well as information available in the local press, do not point toward a substantial decrease in violations: people are being executed, houses are still demolished, movement continues to be restricted, torture is still practised, newspapers are shut down, and dissident organizations are still being harassed. Regarding Israel's role as a human rights violator, it does appear that changes are being institutionalized. These changes, however, are complex and also cannot be described simply in terms of a reduction in the quantity of violations of political and civil rights. One trend is, nonetheless, apparent; namely, Israel's increasing use of subcontractors to commit violations. Subcontracting serves the Israeli government in a number of ways. Most importantly, it masks Israeli involvement and influence and thus becomes a mechanism that enables the government to abdicate responsibility for human rights violations.

The benefits of outsourcing violations are legal, political and economic. From a legal perspective, the employment of subcontractors is an effective device since it obfuscates the connection between Israel and the contravening act, making it extremely difficult to hold Israel legally accountable for the violations it sanctions. From a political perspective, outsourcing is beneficial because even if the abuses are exposed, they are frequently presented to the public as having been perpetrated by someone else; i.e. the subcontractor. In this manner, subcontracting violations helps a country deflect the 'shaming technique', which is considered by many to be the most effective tool employed by human rights organizations. From a slightly different perspective, in so far as one of the major roles of rights groups is to create norms that shape policies, identities and interests, outsourcing is used in order to conceal the state's breach of these norms (Risse *et al.*, 1999). Finally, the use of subcontractors is economically advantageous because it enables the country to avoid legal prosecution and political embarrassment, both of which can have an unfavourable effect on capital.

Outsourcing was utilized even before the establishment of the state of Israel through the employment of Palestinian collaborators, first inside the green lines and after 1967 in the occupied territories. Following the 1978 invasion of southern Lebanon, Israel founded the SLA and perfected its methods of using subcontractors to violate human rights.<sup>10</sup> The same technique was reconstructed in a much more refined way in the West Bank and Gaza Strip after Yitschak Rabin and Yasser Arafat signed the 1993 Oslo Accords. The following brief descriptions illustrate how outsourcing works in the latter two cases.

While mercenary armies have been employed throughout history, to the best of my knowledge no one has described them as subcontractors employed to violate human rights. Believed to have been composed of some 2500 men, in 1985 the SLA effectively took over the functions of the Lebanese government in a so-called 'security zone' or 'enclave' comprising about 10% of Lebanese territory. According to B'tselem, the Israeli Information Center for Human Rights, from 1982 until 2000 Israel controlled South Lebanon, while the predominant means of control was the SLA. Although the overall sum of money Israel allocated to the SLA is a state secret and consequently does not appear in the published annual budget reports, the State Attorney's Office revealed that, between 1995 and 1999, Israel transferred \$39.2 million to 'assist civilian population in South Lebanon' and an additional \$108.2 million to fund SLA salaries and equipment (Human Rights Watch 1999, Lein 2000).

The Al-Khiam prison was the SLA's permanent interrogation and detention facility. Amnesty International reports that prisoners were held in Al-Khiam 'outside any legal

framework. They [did] not appear to be regarded as prisoners of war and Amnesty International knows of no warrants, charges, court hearings or sentences, or any other form of legal process.' Torture was systematically practised in the Al-Khiam detention centre, and the methods employed included electric shock, suspension from an electricity pole, dousing with water, painful postures, beating with an electric cable, and sleep deprivation. Amnesty reports that torture in Al-Khiam caused physical injury and, on a number of occasions, resulted in the death of detainees (Amnesty International 1992: 19–27).

Between 1985 and 1988, Israeli intelligence and/or military officers were actively involved in the interrogation of detainees in Al-Khiam. However, Israel's role with regard to detentions in southern Lebanon extends beyond the direct presence of its personnel in the prison compounds. Amnesty divulges that 'people have been taken prisoner by the IDF [Israeli Defense Forces] in the "enclave" and then either transferred to a prison inside Israel or handed over to the SLA for interrogation and incarceration in Khiam'. All of which attests that Israel employed the SLA for its own purposes.

In response to appeals by human rights organizations, the Israeli government stated, 'since the completion of the IDF withdrawal from Lebanon in 1985, it has not been responsible for maintaining law and order in any part of Lebanon'. Amnesty adds that the Israeli authorities 'consistently denied responsibility for the Khiam detention center, and for the actions of the SLA in general, although on occasion they have suggested that they were working to ensure detainees in Khiam were treated humanely' (Amnesty International 1991: 9–16).

Israel has consistently refused to acknowledge its responsibility for this and other violations taking place in southern Lebanon. In April 1999, Israeli Defense Minister Moshe Arens told Israel's High Court of Justice, the 'IDF does not have effective control in civilian areas of the Security Zone, nor is the IDF interested in such control. Although the IDF has a unit that provides civilian aid to residents of the Security Zone, the said aid is very limited. Most of the civilian activity is performed by Lebanese government agencies.' Despite these and other claims made by Israeli officials, the UN Security Council took a different stance. It described the SLA as the IDF's 'Lebanese auxiliary' and claimed that through the deployment and use of the SLA as its surrogate, Israel maintained its occupation. Indeed, 'the IDF Liaison Unit to Lebanon, commanded by an Israeli military officer with the rank of brigadier general, reportedly direct[ed] Israeli and SLA military activities in the occupied zone' (Human Rights Watch 1999: 22, 8).

Despite the position voiced by the UN and several national and international human rights organizations, the difficulty in providing documentation demonstrating Israel's concrete financial and organizational support of the SLA makes it hard for rights organizations to sue the government in court.<sup>11</sup> Moreover, the Israeli public has been, generally speaking, unaware of the violations of human rights in southern Lebanon. There are several reasons for this, but certainly the fact that the violations are almost never publicized in the Israeli press – perhaps since they appear to be committed by the SLA and not Israel – is one of them.

Subcontracting violations to the Palestinians has been more complicated yet consequently more effective. Chairman Yasser Arafat does not take orders from the Israeli authorities in the same way as SLA commander General Antoine Lahad did. In contrast with the SLA, which was clearly a mercenary army and acknowledged – by the United Nations and international community, although not legally by Israel – to be a tool employed by the Israeli government, the Palestinian National Authority (PNA) is considered both politically and legally to be an autonomous entity by local and international parties alike. If in the southern Lebanese case it was difficult for human rights organizations to sue Israel

in court because the violations were subcontracted, in the Palestinian case it is even more difficult to embarrass Israel politically, much less to hold it legally accountable. The so-called autonomy of the PNA serves Israel because it obscures and elides its role in the violation of human rights within the West Bank and Gaza Strip.

Having said this, it is important to stress that the PNA is in many important respects autonomous and, as such, responsible for the human rights abuses it commits. For instance, the Palestinian government, not Israel, introduced capital punishment into the territories. B'tselem reports that, as of January 2001, Palestinian military courts had sentenced 34 people to death, and while four sentences have been commuted to life imprisonment, five people have already been executed. In addition, the PNA has employed torture during interrogations and has randomly detained dissidents; it has closed newspapers in order to quell freedom of speech and has restricted the movement of its residents. While it would be a mistake to absolve the Palestinian government of its responsibility for these and other actions, it is also crucial to keep in mind that at least some of the violations were committed as a result of Israeli pressure, if not directives. In other words, what follows is not an attempt to exonerate the PNA, whose practices *vis-à-vis* human rights are indeed contemptible, but to uncover some of the complexities characterizing the relationship between Israel and the PNA and to show how these affect human rights.

Frequently, in political relationships in which there is a power differential between the two sides, both parties have a vested interest in portraying the weaker regime as totally autonomous. Consequently, it is extremely difficult to disclose the exact pressures and directives used by the dominant regime to prompt the subordinate government into action. Two central aspects are worth emphasizing concerning these kinds of relationships. First, both sides, each for distinct reasons, do not wish to reveal this facet of their working connection. Second, the directives are rarely spelt out. Written policies or orders are uncommon, and even oral statements are often expressed in very slippery language, only insinuating expectations and demands. On one incident, however, former Prime Minister Yitschak Rabin was quoted as explaining to the Labor Party's political committee that Oslo is good for Israel; Palestinian forces will be able to control the population in the Gaza Strip without all the difficulties arising from Supreme Court appeals, human rights organizations like B'tselem, and all kinds of leftist fathers and mothers.<sup>12</sup> But Rabin's statement is a slip-up and as such an exception that proves the rule, indicating the difficulty in pinpointing the precise way in which violations are subcontracted.

Nonetheless, it is possible to provide a thumbnail sketch of the way in which Israel delegates violations to the Palestinian Authority. Consider an incident that took place in July 1995, in which two Israeli hikers were shot at close range while bathing in a spring at Wadi Qelt. A member of the Popular Front for the Liberation of Palestine (PFLP), a leftist movement opposed to the Oslo Accords, was suspected of committing the murders. According to B'tselem:

... on 3 August 1995, Jamal Al-Hindi, a PFLP member from the West Bank town of Qalqilya, was arrested and subsequently interrogated by the Israeli General Security Service (GSS). Al-Hindi initially admitted to taking part in the killings and implicated other PFLP activists in the killings: Shaher and Yusef a-Ra'i, two cousins from Qalqilya, and Khader Abu 'Abareh, from Bethlehem. Based on Al-Hindi's confession, the a-Ra'i cousins were arrested in Jericho by the Palestinian General Intelligence (mukhabarat) on 3 September 1995 and detained for ten days. On the night of 13 September, in what appears to be a move to prevent extradition to Israel, the State Security Court [of the PNA] hastily tried and convicted the a-Ra'i cousins

on vague charges and sentenced them to twelve years' imprisonment at hard labor, five of which were suspended. Jamal Al-Hindi later revoked his confession, alleging that it had been extracted under torture. Israel never charged him with the murders and subsequently released him. Shaher and Yusef a-Ra'i remain in prison. (Lein and Capella 1999: 6)

The two cousins were actually convicted of charges unrelated to the Wadi Qelt murders in a trial that, according to B'tselem, did not adhere to the most basic internationally recognized standards for fair trial. B'tselem concludes that their imprisonment is a grave human rights violation.

On the surface it appears that the PNA is solely responsible for the violation of the a-Ra'i cousins' rights. After all, the Israeli authorities did not arrest, interrogate or try them, and it is not holding them in prison. But if one examines the case more closely, as the B'tselem report does, matters become more complicated. Shaher and Yusef a-Ra'i, who maintain that they are innocent, are serving a 12-year sentence in a Palestinian prison, while their arrest is based on a confession made by a third party, who provided information under torture in an Israeli interrogation cell and later rescinded his admission. It is unlikely that they would have been arrested if it were not for this confession. Israel, one may add, has a vested interest in such arrests for it helps the government quell public protest against Palestinian terrorism. The fact that the people arrested may not be the criminals has little significance in this respect.

The a-Ra'i cousins were held for nine days in prison without access to a lawyer and without being told the reason for their detention. According to Shaher a-Ra'i on 13 September, they were taken at one o'clock in the morning to meet Colonel Muhammad al-Bishtawi, a military prosecutor. Colonel al-Bishtawi told Shaher a-Ra'i, 'You and your cousin killed the two Jews in Wadi Qelt!' Later the colonel revealed that Mustafa al-Hindi had implicated the cousins. An hour later, the State Security Court convicted the two cousins of 'damaging Palestinian interests, disturbing the peace process and distributing political pamphlets' (Lein and Capella 1999: 11–12). The PNA was not able to try the a-Ra'is for the Wadi Qelt murders, because the Cairo Agreement stipulates that the PNA lacks jurisdiction for crimes committed outside the autonomous areas.

The Wadi Qelt case uncovers what has been labelled the 'security cooperation' between Israel and the PNA, which is based on the 'zero tolerance for terror' policy spelt out in the 1998 Wye Memorandum Agreement. Article II(A)(1)(d) of the Memorandum states, 'The Palestinian side will apprehend the specific individuals suspected of perpetrating acts of violence and terror for the purpose of further investigation, and prosecution and punishment of all persons involved in acts of violence and terror'. Relying on this provision, B'tselem reports that Israel prepared a list of 30 persons suspected of having perpetrated acts of violence, and demanded that the PNA arrest them. The list includes the a-Ra'i cousins, who were described in the list as those who committed the Wadi Qelt murder, a description based on Jamal Al-Hindi's confession, which was obtained under torture.<sup>13</sup>

The security provisions made in the Wye Memorandum create a framework allowing, according to B'tselem, torture, arbitrary arrests and unfair trials. It is established on 'the complex relations between Israel, the Palestinian National Authority and the United States; one of its main characteristics, as apparent in this case, is the pressure exerted by Israel and the United States on the Palestinian National Authority to fight terror relentlessly. This has resulted in increased human rights violations by different organs of the PNA' (Lein and Capella 1999: 3).

To be sure, the cooperation between the Security Services of both Israel and Palestine

did not begin after the Wye Agreement. Already in 1994, Israeli military officers stated that they received orders to allow Palestinian Security Service men to carry weapons in an occupied refugee camp that was under Israeli authority. They were told that the Palestinian Security Services were 'friendly forces'. Put differently, in areas where Israel is, according to the official agreements, responsible for security, it almost totally refrains from taking any measures to prevent human rights violations committed by the Palestinian Secret Services or to try those responsible, 'even though in most cases the identity of the perpetrator is known' (Eid and Felner 1995: 33).

Moreover, Israel has more than once conditioned the resumption of peace negotiations and the implementation of troop redeployment upon proof of concrete actions taken by the PNA. The press has documented Israel's insistence that Arafat crackdown on the Hamas and Islamic Jihad and that he suppress Palestinian 'incitement'. Alongside random arrests and torture, the PNA has used censorship in order to appease the Israeli government. For instance, certain Palestinian textbooks have been banned by the PNA on pretence of incitement because they incorporate a map depicting Palestine on what is considered Israeli territory. On the other hand, the erasure from Israeli textbooks and school atlases of the green line demarcating the border between Israel and the occupied territories is not considered incitement.

Finally, it is important to mention briefly the outsourcing of violations to Palestinian collaborators. The Public Committee against Torture recently exposed a series of incidents whereby collaborators, employed by the Israeli Secret Services, were placed in Israeli prison cells with Palestinian detainees. These collaborators use methods of torture to intimidate and extract information from the detainees. The Committee is concerned that following the High Court of Justice's decision to outlaw torture, the Israeli Secret Services will expand its use of collaborators who torture prisoners.<sup>14</sup>

Once one accepts the notion that violations are outsourced, it is no longer clear that the Palestinian Authority is solely responsible for human rights violations taking place in the area under its jurisdiction; it is not obvious that Israel is not an accomplice to the violations perpetrated by the PNA. This also suggests that it is much more difficult to assess whether there are changes regarding Israel's human rights record. The practice of outsourcing violations engenders new challenges for the human rights community, but before discussing its implications in more detail, let us turn to examine how this strategy works *vis-à-vis* economic and social rights.

### **Outsourcing economic and social violations**

Hiring subcontractors in order to avoid responsibility for violating political and civil rights is akin to corporate practices which are by now familiar. The ramifications of corporate outsourcing received extensive coverage in the mid-1990s when grassroots organizations led a number of campaigns against multinational corporations such as Nike, Disney, Heineken and Carlsberg. Human rights organizations, for instance, disclosed that Nike employs children in substandard working conditions that endanger their health; they also revealed that Nike's Southeast Asian employees receive a \$2-a-day salary, which cannot sustain them, let alone provide for their health and education. When first interviewed, Nike CEO and founder Philip Knight asserted that Nike was not responsible for the violations due to the fact that subcontractors committed them (Resnick 1998). It was later uncovered that Nike does not own any manufacturing companies and that all production is subcontracted to firms in countries like Thailand, Vietnam and Indonesia.

The interesting phenomenon revealed by the Nike campaign is not so much the exploitation of Third World populations and resources – a practice that can be traced back to the colonizers of old – but rather the widespread corporate practice of outsourcing the exploitation to subcontractors. It also suggests that the state-centric paradigm, which assumes that the state is the major violator of human rights, is no longer accurate, for this paradigm does not take into account the inordinate influence of transnational corporations whose revenues are often many times larger than domestic economies. The outsourcing practice characterizes the current evolution of globalization and has become an integral part of neo-liberal economics. The rationale for using subcontractors is usually presented in economic terms as advantageous. This assessment is accurate not only because outsourcing cuts production cost, but because it enables the corporation to avoid both legal prosecution and embarrassment, which can have an unfavourable effect on profits.

Whereas the employment of subcontractors sits well with neo-liberal economics, it often undermines basic economic and social rights. Although these rights have often been relegated to a secondary status, in the past few years scholars and human rights organizations alike have begun emphasizing the importance of economic and social rights.<sup>15</sup> Underscoring the dangers of current economic trends and the stressing the harmful implications of widening social gaps, they have argued that these group of rights are necessary for checking the detrimental effects of market forces and as such are indispensable. The importance of these rights also has to do with the fact that they allow the suffering population to reanalyse and rename ‘problems’ as ‘violations’, and, as such, something that need not and should not be tolerated (Jochnik 1999: 60).

The rise of neo-liberal economics has not left Israel untouched. If until the mid-1970s Israel was one of the most economically egalitarian countries in the Western world – with respect to its Jewish citizens – by the 1990s the gap between the rich and the poor became among the widest amid industrialized countries.<sup>16</sup> This change has far-reaching implications for the population’s economic and social rights, and one can trace the upsurge in violations pertaining to these rights to two intricately intertwined trends. The first involves Israel’s adoption of a neo-liberal economic programme, while simultaneously abandoning the state’s socialist underpinnings. The second has to do with the regional political developments.

Examining the second trend first, one notices that for decades Israel did not have political or economic ties with its neighbours, and subcontracted only a limited amount of work outside its territorial borders. It gained access to cheap labour by importing it, whether Palestinian workers from the occupied territories and more recently migrant workers from the Far East and the former Soviet Union. The peace agreements with Egypt and Jordan, alongside the establishment of close ties with Turkey, have engendered new opportunities. Following the publication of his widely acclaimed book, *The New Middle East*, former Prime Minister Shimon Peres became, in many respects, an authority on how the Middle East economy should develop within an era of peace (Peres 1993). Although Peres’s vision was not yet fully developed in the book, in his recent speeches he has managed to formulate some of his economic views more clearly.

Peres, to be sure, promotes cooperation between countries instead of aggression and war, and constantly stresses the need to improve the conditions of the Middle East’s underprivileged populations. Nonetheless, he advocates a free-market economy, stating that Israel should emulate the neo-liberal model informing US policies. Peres writes:

Most [US] business these days is located outside the United States, exploiting every advantage available in every corner of the world: (the size of markets, diversity of

taste, price of labor, talents), in order to reduce prices or to improve the products or services.<sup>17</sup>

In line with neo-liberal economics, Peres accentuates the importance of identifying and exploiting cheap labour and resources, which in practice means subcontracting work to companies in developing nations like Palestine, Jordan, Egypt, Turkey and, maybe in the future, in Lebanon, Syria and other Arab countries. This, one should note, is no longer a vision. For instance, since 1995, 70 textile plants have been shut down in Israel, while Israeli entrepreneurs have opened 25 plants in Jordan, Egypt and Turkey, including a few more in the occupied territories (Kemp 2000).

The Israeli business community has received Peres's plan with open arms precisely because it enables local firms to increase their profit margins. A textile worker in the occupied territories receives about six dollars a day, while a Jordanian worker is paid 150 dollars per month, much less than Israel's minimum wage. In addition, the PNA offers investors full exemption from taxes for the first five years and, according to the size of the investment, further tax reductions for subsequent years (*Ha'aretz* 2000). Thus, Israeli companies are already taking advantage of the cheap labour and tax holidays that the Gaza Strip offers. Moreover, Israeli employers are not held responsible when Palestinian subcontractors fail to comply with Western safety standards, deny basic benefits, employ children or pay unliveable wages.

The exploitation of labour forces in foreign countries also has direct repercussions for local employees. While local working conditions suffer as a result of the competition, the outsourcing of work in search of cheap labour and resources also creates unemployment. Israel's 'developing towns', most of which already have a double-digit unemployment rate, are experiencing further job cuts as companies relocate to industrial areas on the borders between Israel and the Gaza Strip and Jordan.<sup>18</sup> These developments have had a detrimental impact on the rights of Israeli wage-earners, a process that leads us directly to the first trend mentioned earlier.

The human rights ramifications of Israel's adoption of the neo-liberal economic model manifests itself in numerous sites but, owing to lack of space, I mention only two: hiring workers through personnel agencies, and Israel's massive privatization process, which is, in a sense, also a form of outsourcing. In Israel's public sector, the use of personnel agencies to find and hire workers has become prevalent. Excluding cleaning and security subcontractors, the public sector employs about 100 000 workers through personnel agencies, comprising 15% of the public workforce. If we add to this number the 35 000 workers who are employed through personnel agencies in the private sector – 3% of the private workforce – and the 50 000 subcontracted cleaning and security jobs, the total number of workers employed through agencies reaches 185 000, that is, about 10% of all Israeli wage-earners. These workers, some of whom have worked for personnel agencies for well over a decade, do not receive social benefits such as seniority benefits and pensions, and can be randomly fired without compensation. Frequently, their salaries are extremely low, and it is not uncommon that menial workers receive less than the minimum wage.<sup>19</sup>

The privatization process, whereby the government is selling welfare services and public factories to private hands, has also contributed to the polarization of Israeli society. Growing up in Israel in the early 1970s, I do not recall encountering homeless people. The phenomenon did not exist. Today, unfortunately, Israel has its share of homeless people, and not a winter passes without some of them dying from the cold. This change is indicative of the transformation of the Israeli social landscape and is readily corroborated by empirical data.<sup>20</sup> While the following figures surely cannot be attributed solely to Israel's

privatization, it is important to note that Israel's monetary policies – including high interest rates and no capital gains tax – have been instituted and sustained due to the government's effort to attract private investors. If, in 1980, 8.1% of Israeli children lived under the poverty line, by the 1990s the figure was over 20% (Association for the Welfare of the Child 1999: 213). Moreover, there were over 6% more families living under the poverty line in the year 2000 than there were in 1980 (Swirski *et al.* 1999: 15). In addition, the current privatization process has also widened the economic gender gap. While in the public sector women earn 75 cents for every dollar men earn, in the private sector they earn 56 cents for every dollar (Israeli 1999).

The right to health and education are also being threatened by these developments. To be sure, the public health system in Israel compares favourably with those in other developed countries. Nonetheless, there is room for concern regarding its future. In the past few years, hundreds of thousands of patients have been asked to pay extra for medical treatment and medicine excluded from the government health benefits, even though many of these patients cannot afford the additional expense. As the health benefits offered by the universal system are slowly shrinking, those who can pay continue to enjoy adequate medical treatment by buying complementary insurances. Thus, a two-tier system is taking shape: the governmental health services continue to offer treatment to the population at large, while an additional health system providing services for the affluent is emerging. Israel's education system is experiencing similar corrosion.<sup>21</sup>

### **The difference between political and economic outsourcing**

Since the infringement on economic and social rights initially harms the weaker sectors in society, the situation of the non-Jewish population – Israel's Bedouins and Palestinian citizens as well as those living under occupation – and some poor Jewish senior citizens, women and children, who were always vulnerable, is worse today than it was 15 years ago. Yet, outsourcing has also generated a novel phenomenon. While in the past mostly Israel's non-Jewish population experienced abuses, currently an ever-increasing number of Jews are also suffering from economic and social violations. The difference in the populations suffering from political and civil rights abuses (predominantly non-Jewish) and those suffering from violations of economic and social rights (both non-Jewish and Jewish) suggests that the mode of government intervention in the market-place has changed. While in the past the government put much emphasis on the distinction between ethnic groups (Jew versus non-Jew) in determining monetary policies, it is now focusing much less on how the policies will affect lower class Jews. The decreasing importance of ethnic divisions has to do with the government's concentration on assisting big business. Tied to this trend is the rising clout of the corporate world in Israel and its increasing ability to influence government policy. Within a week of his election and before establishing a coalition government, Prime Minister Ariel Sharon invited 40 business leaders to his ranch in order to discuss their needs and expectations.

Other than the expansion of the population suffering from violations, there exists another crucial difference between the outsourcing of political and civil violations and the outsourcing of social and economic violations. Whereas the first form of outsourcing is often used to conceal existing violations (simply by replacing the perpetrator), it does not necessarily engender new kinds of violations. Instead of Israel torturing Hamas activists, the Palestinian security service tortures them. Neither the abused population nor the actual violation has dramatically changed. By contrast, the very practice of outsourcing social and

economic violations produces a range of new violations that previously did not exist. Unrestrained expansion appears to be the logic informing this form of outsourcing: it affects an ever-growing population while reintroducing forms of abuse that were common in industrialized countries in the nineteenth century.

Outsourcing economic and social violations is beyond doubt an essential part of globalization and cannot be understood in depth from within the limited perspective of the Israeli context. One needs to take into account the international political economy in order to comprehend the Israeli scene. Nonetheless, it is fairly obvious that the lack of strong legislation protecting workers' rights, including those working for subcontractors in other countries, is a certain ingredient for increasing violations both in Israel and elsewhere. In addition, an unchecked privatization process that fails to make substantial demands of business and that does not ensure the protection of the economic and social rights of all people is certain to be followed by widespread violations.

## Conclusion

Outsourcing violations is ubiquitous. Subcontracting economic and social violations can be traced back at least to the seventeenth century when 'outputting' became a widespread practice; more recently, rapid privatization programmes – also known as 'shock therapy' – implemented in the former Soviet Union have wrested from millions of people their basic economic and social rights. The *Financial Times* estimates that entry into the World Trade Organization will cost China up to 50 million jobs as state subsidies to 'inefficient enterprises' are cut off and import tariffs are reduced.<sup>22</sup> Most governments and transnational corporations, as well as international financial institutions like the International Monetary Fund and World Bank, employ the outsourcing technique to violate human rights. Along the same lines, political and civil violations are also constantly subcontracted around the globe; the Buthelezi government was armed and supported by the South African apartheid regime, not unlike the paramilitaries in East Timor who operated under the directives of the Indonesian military.

While the actual practice of outsourcing violations is by no means recent, applying the concept to the human rights framework is. Using it to describe a range of existing practices is helpful because outsourcing discloses and highlights some of the prevailing features characterizing the global violation of human rights, features that might otherwise remain concealed. I have already mentioned that once violations are described in these terms the legal, political, and economic benefits are readily exposed. I have also suggested that the term 'outsourcing' underscores the limits of the statist approach to human rights and discloses a connection between the strategies employed to violate political and civil rights, and those used to violate economic and social rights. It thus intimates that these phenomena, which may otherwise be conceived as unrelated, are, at least strategically, similar. By way of conclusion, I would like to briefly outline a number of important questions that my discussion of the outsourcing phenomenon raises.

One apparent question involves the precise relationship between outsourcing economic and social violations and outsourcing political and civil violations. Whereas the first form of outsourcing appears to be structurally motivated by the configuration of the global economy, the second form, at least offhand, does not seem to have a systemic component. An economist could persuasively argue that the global market is organized in such a way that big corporations are driven to cut costs and constantly look for cheap labour in order to remain competitive. Meanwhile, it would be much more difficult to show that an

overarching structure propelled Israel to employ the SLA or the Palestinian Authority in order to violate human rights.

One should not, however, write off in advance the possibility that certain kinds of structural incentives also influence the practice of outsourcing political and civil violations. Using a Foucauldian analysis, I would like to suggest that power employs the outsourcing technique in order to sustain itself. More specifically, the distinct way in which power operates instigates the use of outsourcing. While I have already argued that outsourcing is employed as a strategy to help the perpetrator abdicate responsibility for the violations it authorizes, it also appears that outsourcing assists the aggressor in maintaining a respectable aura in the public's eye. It is not Israel that tortures in Al-Khiam, but the SLA; it is not the transnational corporation that neglects the health of its employees, but its subsidiary in Thailand. The state and transnational corporations use subcontractors in order to conceal pernicious practices, because power's success, as Foucault convincingly argues, 'is in proportion to its ability to hide its own mechanisms' (Foucault 1990: 86). Thus, at least according to Foucault, outsourcing should be considered to be a technique employed by power in order to conceal its own mechanisms. It is motivated by power's unwavering effort to endure, to remain in control. In this sense the violation of political and civil rights is also systemic.

Because power is tolerable only in so far as it manages to mask part of itself, it presents hierarchical, exploitative and oppressive relationships as if they are normal or natural, that is, beyond politics. Put differently, power employs a range of strategies and techniques in order to display social relationships that are upheld by power as if they were devoid of power. On the one hand, outsourcing is employed to mask power, that is, oppression and the violation of rights. But on the other hand, the outsourcing technique itself is frequently presented as necessary, as is evident in many economic discourses, where we are told that the corporation *must* cut production costs if it is to survive and therefore outsourcing is inevitable, necessary, predetermined. Along the same lines, cuts in government expenditure on health and education, as well as outsourcing work through personnel agencies and privatizing public services and companies, is presented as necessary, unrelated to power relations, beyond politics. Thus, the outsourcing technique masks power, but is also an outcome of a prior concealment of power, one that depicts outsourcing itself as necessary. In other words, the idea that the outsourcing technique is necessarily driven by the configuration of the global economy is also a manifestation of power.

From a different perspective, it is also clear that there are compelling forces that induce governments and corporations to employ subcontractors. Adopting this practice is surely not simply a result of a subjective decision, thus suggesting that Israel's decision to employ subcontractors in order to violate political and civil rights is motivated by multiple forces. While an in-depth study investigating the precise relationship between the two forms of outsourcing is beyond the scope of this paper, such research is extremely urgent. Even the strategy and policy of human rights organizations will, I believe, benefit from this kind of research. If, for example, outsourcing political and civil violations is influenced not only by local forces but also by international forces (i.e. similar to the impact the global economy has on outsourcing economic and social violations), then a political response that focuses solely on changing the local sphere is insufficient.

This leads directly to a second issue, namely, the new challenges that outsourcing generates for the human rights community. If the party carrying out the act is not the only culpable entity, then the process of identifying those responsible becomes much more complicated. Moreover, identifying the agent employing the subcontractor is only the first step in a long and arduous struggle against violations, since it often remains extremely

difficult to prosecute or to effectively employ the shaming technique. Consequently, human rights organizations need to develop new strategies and to promote the introduction of clear directives within international law that take into account this phenomenon and can aid in holding governments, corporations and other international institutions accountable. Some international agreements and treaties providing a legal framework from which to begin addressing these violations already exist. The Maastricht Guidelines on Violations of Economic, Social and Cultural Rights is but one example, indicating, for instance, that:

. . . states are responsible to ensure that private entities or individuals, including transnational corporations over which they exercise jurisdiction, do not deprive individuals of their economic, social and cultural rights. States are responsible for violations of economic, social and cultural rights that result from their failure to exercise due diligence in controlling the behaviour of such non-state actors. (Article 8)

Along the same lines, the Guidelines oblige states to protect economic, social and cultural rights by influencing the policies of international financial institutions.

Finally, the Israeli case exposes what has by now become common knowledge, i.e. the economic polarization characterizing globalization has far-reaching implications for economic and social rights, which are often violated by employing subcontractors. I am not merely referring to corporate outsourcing but, just as importantly, to governments that subcontract services to corporations (like the privatization of prisons, education, health-care, as well as public firms). The fact that these practices are rarely confronted by human rights organizations within Western countries has to do with Cold War politics and the emphasis these countries have put on free-market principles. As mentioned at the outset, economic and social rights were, to a large extent, unacknowledged in the West – even by human rights organizations – until the demise of the Soviet Union, and only recently have begun to gain currency. Accordingly, the mandate of rights organizations and the strategies they employ, as well as the expertise of the personnel they hire, have been structured to deal primarily with the violation of political and civil rights.

Confronting the outsourcing of social and economic violations requires a major reassessment of how human rights organizations should be constituted. Rights organizations need, I believe, to begin presenting an alternative to the neo-liberal discourse disseminated by governments, corporations and the mass media. After all, this hegemonic discourse ignores the existence of economic and social rights and assumes that businesses must be given maximum leeway to operate. The underlying assumption informing my suggestions is that the objective of human rights organizations is not only to struggle against specific violations, but also to create a space and a discourse, which empowers oppressed populations and enables them to struggle for their basic rights. Thus, the very introduction of the outsourcing technique into the existing discourse on rights may even assist in the struggle against human rights violations in their broadest sense.

### **Acknowledgements**

For their comments and suggestions I would like to thank Catherine Rottenberg, Jacinda Swanson, Joseph Buttigieg, George DeMartino and the HRR's anonymous reviewer, including the participants at the International Political Science Association Executive Committee Conference, Ben-Gurion University, Israel, 23–24 February 2000, at which an

earlier version of this paper was presented. I would also like to acknowledge the financial assistance received from the Minerva Center for Human Rights at Hebrew University in Jerusalem.

## Notes

1. This paper was completed shortly after the eruption of the second Intifada and therefore some of its empirical statements are no longer accurate. Nonetheless, the theoretical argument still stands and provides a powerful explanatory device.
- 1A. I employ the terms subcontracting and outsourcing alternately in order to denote the same phenomenon.
2. The distinction between the different generations of rights underscores the historical character of rights as opposed to their natural, ahistorical character. Consult Donnelly (1985). Other than the two generations of rights that I mention, the existing literature refers also to 'third-generation' rights, that is, to the defence of cultures, indigenous peoples and ecological resources.
3. In some respects I agree with those who have argued that political and civil rights are not merely individualistic and do not lead to an atomistic society devoid of communitarian solidarity. Heiner Bielfeldt (1995: 591), for example, convincingly claims, 'human rights always imply a social dimension; because human freedom can unfold only in relation to fellow persons. A purely individualistic concept of religious liberty, for instance, would almost amount to a contradiction in terms, because religious is hardly conceivable outside of religious communities.'
4. For a discussion about Human Rights Watch's need to expand the struggle for economic and social rights, consult Gordon *et al.* (2000).
5. I will abstain from directly discussing the consequences that the Jewish character of the State and the 'Law of Return' have on the rights of non-Jews. For those interested in this issue consult Kretzmer (1992).
6. For a good description of how the human rights of Palestinian citizens of Israel were violated under military rule during the period between 1948 and 1966, consult Jiryis (1969).
7. Consult Kretzmer (1987). A recent report published by the Association of Civil Rights in Israel, states that Palestinian citizens of Israel continue to suffer from widespread discrimination to this day. For example, Palestinian citizens hold less than 5% of government jobs, although they comprise about 20% of the population. Since the establishment of the state of Israel, not one Palestinian citizen has been appointed director general or deputy director general of a government office (Yeshuvi 1999). Also consult the reports published by Adalah, The Legal Center for Arab Minority Rights in Israel, at <http://www.adalah.org>.
8. Literally hundreds of reports and books have appeared discussing Israel's violations of human rights in the occupied territories. A few important ones include Human Rights Watch (1993, 1994); Golan and Cohen (1991); Bash (1994); Mazali *et al.* (1992); and Gordon and Marton (1995).
9. It is important to note that despite pressure by human rights organizations, the issue of human rights has not been incorporated into any of the agreements signed between Israel and its neighbours.
10. Following Israel's invasion, UN Security Council Resolution 425 was adopted calling upon Israel 'to cease its military action against Lebanese territorial integrity and withdraw forthwith its forces from all Lebanese territory.' Twenty-two years later Israel withdrew its forces from Lebanon.
11. In 1999, after 14 years when SLA had been running Al-Khiam as Israel's proxy, two Israeli rights groups – HaMoked and the Association for Civil Liberties in Israel – finally had enough evidence to file a suit against the Israeli government for its involvement in the prison. The fact that Israel transfers some US \$30 000 a month to cover the salaries of jailers at Khiam Prison was presented to the court as part of the incriminating evidence. HCJ 1951/99, *Ramdan et al. v. Minister of Defense*.
12. Cited in Chomsky (1996).
13. Wye Memorandum of 23 October 1998, Security Actions (II/A/1/a). Lein and Capella (1999), 14–17. The security cooperation began immediately following the Oslo Accords. According to Israeli media reports, in response to a question posed at a Cabinet meeting on 18 September 1994, former Prime Minister and Defense Minister Yitshak Rabin stated that the Israeli and Palestinian secret services operate in cooperation with each other.
14. Israeli daily, *Yediot Ahronot*, 4 February 2000. Some of those arrested following Israeli pressure were also tortured during interrogation. Chairwoman of the Israeli group the Public Committee against Torture, human rights lawyer Leah Tzemel, noted after the High Court decision outlawing torture that one should keep in mind the close cooperation between the Israeli and Palestinian secret services. Tzemel suggested that the Israeli secret service might soon begin transferring detainees to its Palestinian counterpart in order to extract information, because the latter is still permitted to employ torture during interrogation. Interview in Hebrew in the Israeli magazine *Mizad Sheni*, October 1999, 8.
15. By sharp contrast with scholars like Chris Brown, who are to say the least uncertain about the status of economic and social rights, other scholars and activists stress the importance of these rights. Consult Brown (1999); Jochnick (1999); Stammers (1999); Alston (1997); Chapman (1996); Leckie (1998); Muzaffer (1993).

16. Israel's Gini Index (the most widely used measure of inequality) is currently among the highest in relation to other industrialized countries (World Bank 1999).
17. Shimon Peres, 'Regional Economy', speech given on 13 September 1999. Translated from Hebrew by the author.
18. 'Developing towns' were founded in the 1950s by the Israeli government in order to absorb the Jewish community from northern Africa and other Arab countries like Iraq. Since their establishments, these towns have been economically depressed. Consult S. Swirski (1997), B. Swirski (1995).
19. Interview with Hagar Efroni, economic journalist for Israel's daily, *Yediot Ahronot*, 7 February 2000.
20. While in the beginning of the 1970s the income of Israel's top decile was about four times the share of the bottom decile, by 1996 the top decile's income increased to 10.6 times the bottom decile (Swirski *et al.* 1999).
21. Whereas 60 000 teenagers between the ages of 17 and 18 do not matriculate, middle- and upper class teenagers receive extra-curricular courses in a wide variety of subjects. It is also important to add that in Israel's affluent communities, 6% of 17-year-olds drop out before their senior year; but in the largely Mizrahi Jewish development towns, 21% drop out, and in Arab localities, 42%. Swirski *et al.* (1998), 19.
22. Cited in Prasad (2001).

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