

The 'Bar-On Scandal':

Implications for the Netanyahu Government and the Peace Process

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Brief Analysis

Out of the four people recommended for indictment by Israeli police, only Aryeh Deri—head of the Shas party and former minister of the interior—will probably be indicted. Although the police had "tangible suspicion" of Prime Minister Binyamin Netanyahu and Minister of Justice Tzahi Hanegbi, there was not an "irrefutable proof of guilt," a standard that the prosecutors felt was necessary to indict government officials of the highest level. So far, the Likud-led coalition has weathered the scandal, there have been no resignations or withdrawals from Netanyahu's ruling coalition, and the possibility of a national unity government has faded.

The Facts

MK Aryeh Deri was in the midst of a three-year corruption trial when Attorney-General Michael Ben Yair resigned in 1996. According to the Israeli police, Deri saw in this event an opportunity to circumvent existing legal procedures to secure the appointment of an attorney-general who would offer him a plea bargain. The Shas party is a key member of Netanyahu's coalition, and with debate over Hebron redeployment raging within the Israeli government, Deri reportedly held out the threat that Shas would not support the agreement if his favored candidate for attorney-general was not appointed. Ultimately, Netanyahu chose Roni Bar-On for attorney-general, whom Deri apparently believed was amenable to a plea bargain arrangement. However, Israeli legal scholars loudly protested that Bar-On was unqualified for the position, and this backlash forced Bar-On to resign the following day.

As part of these machinations, Deri is accused of committing two separate criminal acts (in addition to his ongoing corruption trial): breach of trust and extortion. According to Israeli law, interfering in a top civil service appointment for personal gain is a breach of trust. Thus, any involvement by Deri in the appointment of the attorney-general constitutes a crime. Second, Deri has been accused of blackmailing the prime minister by threatening to withhold Shas support for the Hebron agreement if Netanyahu did not appoint Bar-On.

The potential charges against Netanyahu were that he appointed Bar-On to please Deri and permitted extortion to occur. Netanyahu claims that he appointed Bar-On to fulfill his pledge to choose an "outsider" to shake up the legal establishment. The evidence against Netanyahu is mainly hearsay, and, in particular, there is no compelling evidence that Netanyahu knew about and submitted to the blackmail scheme because no one has been able to prove that Netanyahu actually knew of Deri's threat to block the Hebron agreement unless his favored candidate was appointed.

The Legal Implications

The Bar-On affair demonstrated that the Israeli legal system works and it can move quickly, even though there may be a different standard of proof for ministers than for the general public. Indictment of a minister requires near 100 percent certainty of conviction, according to Attorney-General Eliyakim Rubinstein. Most Israeli legal experts did not believe that Netanyahu and Hanegbi had committed crimes, and it would have astonished the Israeli legal community if Rubinstein had decided to indict them. However, the case has revealed a gray area between politics and criminal behavior that many Israelis find troubling. Therefore several Israeli groups have appealed to the Supreme Court to request that the attorney-general review the case, but it is unlikely that any of these appeals will be upheld.

Although the scandal may be legally concluded for Netanyahu, the political ramifications are still potent. The Knesset could take action against the prime minister through a vote of no confidence—61 votes are needed to remove a prime minister from office and dissolve the Knesset or 80 votes to hold new elections just for the prime minister. So if 61 MKs have expressed a willingness to remove the prime minister, there is an incentive for an additional 19 MKs to join in to protect their jobs. Additionally, coalition members may demand greater concessions from Netanyahu. For instance, Minister of Trade Natan Sharansky has called for Hanegbi's resignation.

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Immediately after the announcement of Rubinstein's decision not to indict, Netanyahu boasted defiantly to the nation that he had been vindicated. He acknowledged that some mistakes were made, and vowed to clean-up the government, especially the appointment process. Although Rubinstein found that the original television reporting was grounded on reasonable evidence, Likud speeches still accused the "liberal" establishment of having tried to oust Netanyahu in a political coup d'etat against the will of the majority.

The Political Ramifications

In the aftermath of the Bar-On scandal, Netanyahu will launch a strong effort to conciliate the shakier members of the coalition—Yisrael B'Aliyah, Third Way, and particularly Shas. Shas, a Sephardic Orthodox party, has always felt that the Ashkenazi elites were discriminating against the Sephardic masses. When Aryeh Deri was originally charged with corruption, Shas party members complained that Ashkenazi politicians were not prosecuted for similar actions. If Deri is the only person indicted for the Bar-On affair, Shas fury will intensify. Although Shas will probably stick with the coalition, it will demand greater benefits, and Netanyahu will have to implement more of the promises outlined in his coalition agreement. For example, the prime minister will feel pressured to let the controversial conversion law now before a Knesset committee out of the "deep-freeze," despite promises to American Jewish leaders. So Netanyahu could get caught in a "meat-grinder" between American supporters of Israel—who vehemently oppose this law—and Shas.

Netanyahu will also have to convince Sharansky and other ministers that he will change his governing style. The prime minister assumed that Israel's new election law gave him greater authority over the cabinet and the Knesset, but he is learning that he is hardly an American-style president. His biggest priority now is to ensure that his coalition remains cohesive. Consequently, Netanyahu has to allow the cabinet to debate key issues, as befitting a

parliamentary-style cabinet, rather than merely rubber-stamping prime ministerial decisions. For the moment, Netanyahu seems to recognize this, but there is no certainty that these stylistic changes will endure.

A Future Labor/Likud Coalition?

Netanyahu still faces some serious political challenges. Once the backlash of the Bar-On affair subsides—probably within a month—the problems facing the coalition before the crisis will resurface. Netanyahu cannot risk further weakening the cohesion of his center-right coalition by giving in on issues like Har Homa. But at the same time, Netanyahu will want to seem more conciliatory to President Clinton. The prime minister may try to produce a package of confidence-building measures for PA Chairman Yasser Arafat on secondary peace process issues such as safe passage and the construction of a port and airport for the PA, but not on core issues involving Jerusalem.

However, the clock is ticking toward August 1997, when the second Israeli further redeployment (FRD) from the territories is scheduled. The Palestinians will not abandon their hopes for a more meaningful withdrawal than the first FRD. Netanyahu will have great difficulty convincing his cabinet to approve a second FRD, or persuading the United States to convene another Camp David to deal with final status issues. By the end of the summer, therefore, Netanyahu will have few options. At that point he may again look to the Labor party—with its post-Peres leadership—as a potential partner in a national unity government.

This Special Policy Forum Report was prepared by Rachel Ingber.

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