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**Birzeit Legal Encounters**

Anne Bourlond

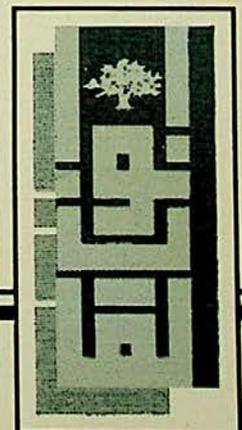
**TEACHING LAW  
IN PALESTINE**  
Strategies  
and challenges

**BIRZEIT UNIVERSITY**

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**LAW CENTER**



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Report made on the basis of the  
symposium held at Birzeit University  
on the 9th and 10th of January 1997

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**LAW CENTER**

# **TEACHING LAW IN PALESTINE**

## **Strategies and challenges**

**Anne Bourlond<sup>1</sup>**

### **FORWARD**

In 1995 the «European Consortium for Co-operation with Birzeit Law School» was created, composed of several European universities (Durham University, East London University, Free University of Amsterdam, Free University of Brussels (Flemish), Free University of Brussels (French), Gent University, University of Paris I and University of Paris II), with the aim of supporting the Birzeit University Law Center. During the second consortium meeting the issue of the development of law teaching activity in Palestine was debated including all the challenges and difficulties it implies and the idea of organizing in Birzeit a symposium on that issue was suggested.

As a result, a symposium was held at Birzeit University on the 9th and 10th of January 1997, bringing together Palestinian and European law

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<sup>1</sup> Expert of the French Community of Belgium in charge of the cooperation project with Birzeit Law Center

## INTRODUCTION

The symposium «Teaching Law in Palestine» was organized jointly by the European Consortium for Co-operation with Birzeit Law Center and the Law Center with the aim of addressing the various problems and challenges which Palestinian law schools have to face due to the political-legal situation in Palestine. Among these challenges are the following: the activity of teaching law is new; the students, who received their legal education abroad, are not aware of the peculiarities of the Palestinian legal situation; and finally there is not one Palestinian law to teach but rather a plurality of coexisting legal systems.

Teaching law in the framework of a law faculty did not take place in Palestine under the Israeli occupation, which was part of the paralysis of the Palestinian legal system (Israeli military control over judicial institutions, no Palestinian legislative activity, lawyers' strike...). With the peace process and the Oslo Agreements, Palestinian universities decided to create law faculties and teach law. The only prior teaching experience goes back to the "Palestine Law Institute" created in Jerusalem in 1922 and closed at the end of the British Mandate. There is thus no tradition of teaching law and no experience on which to develop the current teaching activity in Palestine. The establishment and development of a law programme amounts therefore to a substantial and difficult endeavour for Palestinian universities.

Also, due to this lack of legal education programmes in Palestine, to date law degree holders acquired their diplomas outside Palestine, mainly from Jordan, Lebanon, Syria, Morocco, Algeria and Egypt. Those registered at the Arab University of Beirut study by correspondence and stay physically in Palestine without any tutoring. The result is that when young Palestinians get their law degree, they know little about the specific characteristics of the legal system in Palestine (those coming back from Jordan know only the Jordanian component of the legal system in the West Bank). In addition, holders of a B.A. in Law are normally supposed to already have the methodological tools enabling them to tackle quickly and by themselves any legal system. But serious doubts can be raised about the analytical skills acquired by students in many Arab law schools.

Further, one cannot forget other problems which are more "structural". There is really no autonomous and unified Palestinian law to teach.

What exists is a set of laws and regulations, from Ottoman, British, Jordanian, Egyptian or Israeli sources, and which are in force in the West Bank and the Gaza Strip without being the product of Palestinian law-making. Furthermore, since the West Bank and Gaza strip have been exposed to different legal schools or regimes, the Palestinian legal context is now characterised by the coexistence not only of different legal rules but of two different legal systems (Common Law and Civil Law systems).

This situation, while presenting very serious difficulties for teaching law, constitutes at the same time a challenge if there is to be any academic contribution in the legal field when the time for Palestinian independence and Palestinian law-making arrives. The challenge today is how to design a course in any substantive legal area which will focus on methodology and on legal thinking, explaining for instance the logic of the civil law system predominant in the West Bank as distinct from the common law system prevalent in Gaza.

The first part of the conference was dedicated to the analysis of the various aspects and factors which characterise the law creation process -with a special focus on the situation in Palestine, which is an excellent field of study due to the transitional character of its legal system- and to which a particular emphasis will have to be given by law teachers in their teaching activity.

A second part was held in the form of a round-table discussion between the three law schools of the West Bank. After a presentation of their own teaching experience, a debate took place, intending to pinpoint and discuss the various practical problems and challenges faced by the Palestinian law schools in their teaching activity.

Attending the conference were the deans and various professors of the three law schools of the West Bank (Al-Quds University Law School, Al-Najah University Law Faculty, and Birzeit University Law Center), professors from different European universities members of the European Consortium (Free University of Amsterdam, Free University of Brussels, Gent University, East London University, and Durham University), Palestinian lawyers and judges as well as representatives of various international organizations and consulates. Unfortunately, Al-Azhar University Law Faculty, whose attendance would have enriched the debate -Gaza being characterised by a different legal

tradition based on legal continuity- was not able to attend the Symposium due to the Israeli closure.

Attending the Conference as well was the Minister of Justice, Freih Abu-Middain, who underlined in his opening speech the need to integrate a historical and prospective dimension in the study of law and emphasized the role of the Law Center and other institutions in assisting the Legislative Council with its task of unifying the legal systems in Palestine.

This symposium was the first initiative launched on the topic and the first public debate involving the Palestinian law schools. This in itself was a significant development and will hopefully be the starting point for co-operation between the different Palestinian law schools.

## **PART I: LAW CREATING PROCESSES**

The classical and most common understanding of the sources of law amongst lawyers and legal academics is in the general and very restrictive sense (legislation, caselaw or custom). The symposium intended therefore to present a different approach of the issue and to address indirect or hidden, though extremely important, factors involved in the law creation process, especially in a transitional legal context such as the one prevailing now in Palestine. Among those factors are the issues of legal interpretation, the conflicts between different coexisting legal systems and the role of ideology as well as legal culture.

The idea was to emphasise the necessity for law teachers to take into account the Palestinian legal environment and address, in the framework of their teaching activity, the aspects of the law creation process to which the students were not exposed during their legal studies abroad.

### **1-Intertemporal and transitory law**

*(Lecture by Paul de Waart, professor at the Free University of Amsterdam.)*

The issue tackled in this paper, through an analysis of the Israeli-Palestinian conflict, was the question of the role and creative character of the process of legal interpretation.

Professor de Waart addressed in his paper the issue of intertemporal law (understood as the rules of law derived from international legal instruments as opposed to transitory law which is a matter of legislation) and underlined the necessity of taking into account the role of time in the interpretation and application of law, illustrating this idea with the example of international law in the Israeli-Palestinian conflict.

After explaining that, according to the Vienna Convention on the Law of Treaties, the interpretation of treaties must take into account the context and any evolution in the international law or state practice and that this is a general principle of interpretation which has to be applied

in any conflict of international law- including the field of state succession- the speaker applied this principle to the Palestinian case.

According to Professor de Waart, although the Oslo Agreements are always presented as the result of an agreed political process, they should be analyzed in the light of their intertemporal legal framework.

To reach a fair solution for the conflict, we have to take into account this legal framework including the Balfour Declaration, the Mandate for Palestine and UN resolutions, in their intertemporal interpretation.

Thus, all parties in the peace process should follow as guides for the interpretation of the agreements concepts such as respect for individual and collective human rights and the right of self determination of people which has become a general principle of international law and a universal human right. These are now the values underlying international law and according to which we have to interpret international rules and according to which democracy and human rights cannot be sacrificed for the security and self-interest of states.

The interesting aspect of this presentation is that it underlined the necessity for law teachers in Palestine to integrate the role of time in the legal interpretation process and to take into account, in determining the significance of laws in force, the present context as well as the context prevailing at the time of their adoption.

## **2- Conflicts of Laws in a single country**

### **The Palestinian Case**

*(Lecture by Ruba Shuaibi, researcher at Birzeit University Law Center)*

The speaker addressed the conflict of laws problems linked to the legal pluralism and to the transitional character of the legal situation prevailing in Palestine. Indeed, due to the coexistence of various legal systems in Palestine and the lack of clear option for one legal system or unification of the two systems, the situation is now characterised by an internal conflict of laws issue.

## A. Historical development of the Palestinian legal system

The speaker first reviewed the historical development of legal pluralism in Palestine.

The reason for the development of the legal pluralism prevailing now in Palestine comes from the succession of various authorities governing Palestine and their impact on its legal situation. Thus, the Ottoman Empire was responsible for the Islamic heritage of the Palestinian legal system but as well for the progressive development later of the principle of secularism of the state. The British Mandate authorities opted for the principle of statutory supremacy (the local Ottoman laws remained in force until replaced or amended) but influenced the legal system by introducing, in article 46 of the Order in Council for Palestine, the possibility of using the principles of common law and equity in case the court found a gap in the existing legislation. The consequence is the creation of a mixed legal system strongly influenced by the English system but not fully equivalent to it. The British Mandate had a great impact on the development of law in many fields especially with respect to commercial law but to the exception of administrative law.

After 1948, the Palestinian territory witnessed a new era characterised by its division into three different parts (Israel, West Bank and Gaza). The Israeli part continued to apply the Mandate's legislation except those in conflict with Israel's interests. Gaza continued in appearance to apply the Mandate's laws (the Palestinian Gazette and the Legislative Council were maintained) though actually the legal system was affected in its substance by the Egyptian legal system and culture (the Gazan lawyers being educated in the Egyptian schools of law). As for the West Bank, it was annexed by Jordan and subjected to the process of legal unification.

During the subsequent period (after 1967), Gaza and the West Bank were unified again under Israeli occupation. Though Israel maintained two different military governments and two different legal systems in the two areas, they adopted numerous military orders applicable to both.

The result is the development in Palestine of a legal landscape characterised by the coexistence of Ottoman, Mandate, Egyptian,

Jordanian and Israeli laws and the installation of three different legal systems: Common Law, Civil Law, and Islamic systems.

Through the Oslo Agreements, the Palestinian Authority has succeeded in having recognized the unity of the Palestinian territory, the unity of its authority over it and the unity of its administration. The main task of the Authority is now to solve the problems stemming from the contradiction between the theoretical unity of the Palestinian territory and the plurality of legal systems in force in the same territory (not to mention the absence of territorial and jurisdiction unity between Gaza and the West Bank as well as the division of the West Bank in zones A, B and C).

### B. Main problems linked to the Palestinian legal pluralism

After she presented a picture of the legal system prevailing in Palestine, the speaker pinpointed the main problems generated from this pluralism which Palestinian lawyers and judges face everyday.

At the **internal level**, the problem of legal pluralism is translated into three different kinds of problems:

#### -Duplication of laws

We can observe in several fields of law, such as the judicial authority and criminal law, a coexistence of different laws in the West Bank and Gaza regarding the same topic and thus a potential situation for a conflict of laws.

#### -Legislative lacunae

Another problem comes from the lack of clear legislation in some fields such as public administration, a situation of legal uncertainty, which confuses the government apparatus.

#### -Lack of clear strategy for Palestinian legislative policy

The Palestinian Authority has not developed until now a clear policy to guide the Palestinian legislative activity.

In the meanwhile, we can observe a tendency either to divide the two areas by considering the two legal systems alien to each other or to unify the two systems by giving supremacy to one over the other without any objective study of the consequences of such an approach.

The problem is emphasised by the total lack of active role of the community of the Palestinian jurists (lawyers, judges, civil servants,...) in trying to bring about a solution, as they have been effectively separated from each other.

At the **external level**, the problems regarding the conflicts of laws appear easier to overcome, as the legal relations with Israel are addressed in the Oslo Agreements. Israel and the Palestinian Authority attempted to resolve, through the Agreements, the problems that could arise from the coexistence, in the Palestinian Territories, of the Palestinian and Israeli legal systems as well as from the special legal status of Israeli settlers and settlements. In practice however, these problems are not easy to overcome.

### C. Suggestions

The speaker made some relevant suggestions to the various actors likely to be involved in helping to solve these conflict of laws problems, including the Palestinian Authority, the community of jurists as well as the legal academics.

Thus the speaker underlined the responsibility of the **Palestinian Authority** to adopt a clear legislative strategy and activate the unification process of the legal systems of Gaza and the West Bank, a process which should start with the unification of judicial systems especially at the procedural level.

With regard to **Palestinian jurists** (from Gaza and the West Bank), their responsibility should be to raise the general awareness of the two systems and improve the dialogue between themselves. Indeed no unification can succeed if the lawyers in Gaza and the West Bank continue to work in two entirely separate legal environments and cultures. This should be achieved by the unification of the bar associations.

The speaker also presented her suggestions regarding the **academic sector**, directly relevant for the attendants of the symposium.

The Palestinian universities, which have started recently to teach law for the first time in many years, play a major role in preparing qualified Palestinian jurists who will be well aware of the peculiar characteristics of their own legal system.

Therefore, the law schools should, especially in the transitional period, give particular importance to the teaching of the specific Palestinian legal heritage as well as to the comparative law approach. As for the research centres being created in the different law schools, they should develop Israeli legal studies (to follow what is happening within the Israeli legal system) as well as Palestinian legal studies, develop analytical and critical research in the field, offer documentation for this research, and come out with appropriate suggestions.

### **The Belgian Case<sup>2</sup>**

The Belgian case was presented by Professor Cogen as an example of a situation of internal conflict of laws as well as an efficient system to overcome it.

Belgium is characterised by the remarkable evolution of its constitutional structures, since its creation in 1830, from a united centralised government to a federal system, resulting from the hope of the Flemish people to see recognized their cultural rights and identity in the mainly French speaking Belgium. The outcome is a complex legal situation, Belgium being divided into three communities (Flemish, German and French) as well as in three regions (Flemish, Walloon and Bilingual Region of Bruxelles-Capitale). It is interesting to note here that Brussels is considered as a separate region with its own legal status, a situation that is often mentioned as being a parallel with Jerusalem.

In order to avoid the conflicts of laws which are likely to arise in such a complex system, the Belgian constitution opted for the principle of "exclusiveness of powers": all powers are, according to the constitution, attributed expressly either to the federal union or to the communities and the regions. There are though numerous exceptions to this rule and different aspects of a same competence can be split between the federal union and the regional authorities. The federal parliament and the communities and regional assemblies might therefore adopt laws in the same field, this situation creating a high risk of a conflict of laws.

The Belgian approach to conflicts of laws and the way to solve them has witnessed great progress in the last century. Thus, it was one

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<sup>2</sup> Lecture by Marc Cogen, professor at Gent University

century ago quite rigid; Belgian lawyers had a very conservative view of judges and expressed distrust towards the capacity of the judicial system to resolve conflicts of laws which were supposed to be the competence of the politicians. The Court of Cassation itself denied its role to review the conformity of internal laws to the constitution.

In the second part of the 20th century though, the judges saw their role evolve towards a bigger role of arbitrator in political and social issues. This was actually a general phenomenon which could be observed in other countries and judicial systems such as the European Union's one, where the Court of Justice is dealing with politically sensitive questions, evolving thus towards a kind of "government of judges".

In Belgium the judges became more aware of their role in this matter, and the Court of Cassation ruled for the first time in 1971 that national acts of Belgium could be evaluated with respect to a treaty concluded by Belgium and in case of incompatibility the judge must give priority to the international agreement.

Furthermore, with the development of the power of the communities and regions to enact decrees and ordinances, and the resulting increase in the risk of conflicts of laws, it was decided to create a special court. Thus the Court of Arbitration has the power to decide whether a legislative rule has been enacted in compliance with the allocation of powers provided for by the constitution and thus secure the balance of powers in a multiform state (however, this court is not considered as part of the judiciary and is composed, due to the fear of having a government of judges, partly of senior professors or lawyers and partly of former members of Parliament).

Thus Belgium developed an interesting system to avoid and solve conflicts of laws arising in a multiform country. Apart from the principle of mandatory prior advice from the legislative section of the Council of State regarding the compliance of Government and regions' bills, decrees and ordinances with higher legal rules, a system of judicial review before the Court of Arbitration for legal rules having the force of law was also established. It has to be specified that this court has also a "concrete norm control", this is control in relation to an actual case pending before a court through preliminary rulings (if, in the course of a law suit, it is alleged that a legislation conflicts with higher rules, the courts must refer the question to the Court of Arbitration).

### 3- Meta-legal aspects and Ideology in Law

*(Lecture by Neri Sybesma, professor at the Free University of Brussels.)*

This lecture tackled the issue of the role of ideology in the law creating process in general and underlined the analogy between its role in international law development and in the law creating process in Palestine.

According to the speaker, the multiplicity and coexistence of the sources of the legal system prevailing in Palestine is indeed very similar to the social and ideological diversity which characterises the development of the international legal system, which involves a great pluralism despite its appearance of homogeneity and unity.

The speaker first defined the concept of ideology as the ideas at the basis of some economic or political theory system, or in a more restrictive sense the ideal representation of relations between those who are in power and those who are submitted to it, addressing important issues like the place of religion in the state and civil society.

Professor Sybesma then analysed the role of ideology in the development of international law, explaining how ideology has found translation through legal techniques in order to influence the development of international law and even to create new fields of international law. Thus, besides the "classical international law" born in the 19th century which was based on the principle of self-interest of states and "raison d'Etat", a new field of international law developed recently in order to address new international problems -such as the protection of the environment or peace and security- which present a global and common dimension and can not be solved by one state alone. This is the so called "international law of co-operation" (from which is derived the NIEO-New International Economic Order- for instance) created on the basis of the idea of solidarity between rich and poor nations and common good by opposition to "raison d'Etat" and self-interest of states.

Understanding the role of ideology in law creation is particularly important for Palestinian lawyers as the main characteristic of the Palestinian legal system is the coexistence of a diversity of sources

which were enacted in different geographical areas and which evolved through time in different socio-cultural and ideological contexts.

The law applicable to Palestine was influenced in its history by at least the Ottoman, British, Jordanian and Egyptian legal systems and Israeli military legislation, as well as by Christian, Islamic and Jewish points of view and finally by the League of Nations and UN regulations.

The coexistence, in the same system, of rules originating from so many different perceptions and values cannot help but create conflicts between particular rules. It requires thus a clear perception of the legacies from the past, clarification on what is really binding the Palestinian territory at present and what should bind it in the future.

The speaker finally underlined that the creation of law is not an "event" but an ongoing process in which are involved many different factors like ideology, legal culture, etc...Lawyers and law teachers need therefore to develop ongoing research, as well as historical and comparative analyses, of the different systems in force in Palestine, with a particular emphasis on the study of their roots.

They need as well, in order to be able to identify which is the best system for Palestine, to make ongoing research on what the Palestinian people want as a national identity for the future, the legal system being the translation or expression of the national identity.

### **Position of Raja Shehadeh, discussant**

Mr Shehadeh added that the existence of a legal system is in itself an ideological issue.

It is meaningful that the Palestinian people, as opposed to what happened in Israel, fully engaged in the political fight but underestimated the importance of the ideological and political stakes underlying the legal fight.

According to the discussant, questions like "Which law will be applied?", "Shall we have one single body of laws in Palestine?", "Shall we have a legal system?" are all issues which are ideologically and politically coloured. The fact for instance that the Legislative Council hasn't yet produced the body of laws we expected is very significant. It shows that it is not yet clear in the mind of the

Palestinian legislator that there must be one single legal system in Palestine.

The speaker finally underlined that these are tremendously important questions, the existence of a legal system being directly linked to the existence of a nation and a state and he emphasised the leading role of the law schools in finding answers to these questions.

#### **4- The creation of legal cultures by lawyers**

*(Lecture by Bernard Botiveau, professor at Birzeit Law Center and researcher at CNRS -French National Research Center-).*

The speaker emphasised in his exposé the necessity to include, in the framework of legal teaching activity, reflection on the meaning of legal culture in society.

All citizen use law in everyday life, though in a different way, be they jurists or laymen. This has an impact on the various law creation processes, especially judicial judgment, this one being the ultimate expression of social truth, understood as the truth that the citizen must accept in order for social peace to be guaranteed. Law students must be aware that objectivity in law depends on a consensus on legal application based on imposed law (written law) as well as on a "negotiated law" through which legal actors try to assert contradictory social interests and policies. In this process of legal interpretation, legal culture plays a very important role.

Legal culture, which has to be distinguished from other phenomena like legal thought, doctrine or science, is one component of social culture.

Cultural anthropology defines culture as a set of values and meanings shared by people in a given social community, this community being more or less integrated according to the number of persons recognising these values. Thus, various legal cultures can coexist in the same society. The points of view of experts, lawyers and judges, can vary from those of the public at large. Differences exist as well amongst experts who do not always inherit the same legal culture.

This is particularly true in Palestine where the jurists from Gaza and the West Bank were educated in different legal cultures.

Political history is indeed an important factor in the development of legal cultures. This is the case in France where a republican civil culture is very reluctant to create special rules for Muslim French citizens (regarding their personal status, freedom of religion...) in accordance with Islamic law. Another example was the civil codification in Egypt in the 1940s which highlighted the conflict between the two main legal cultures: positive and Islamic law. As far as Palestine is concerned, besides the distinct Gaza-West Bank legal cultures, the division and occupation of the territory gave birth to particular legal expressions: thus the paralysis of the Palestinian courts caused the development of alternative conflict resolution methods specific to some villages, areas, refugees camps etc.

We can thus address the relativity of legal interpretation, which depends on various human and social factors. In a positive law system, the role of supreme courts is precisely to harmonise the legal application activity. This activity often clashes though with the pluralist tendencies of the legal system. Jurists, especially in the French centralist tradition, have for a long time been reluctant to accept this legal pluralism even though they currently incorporate it in their law teaching programmes. This is even more important in a transitory situation like the one characterising Palestine at present.

The creation of law is the result of a long process, and so the question of temporality of law is an important element in order to understand legal pluralism. The question of non-retroactivity of laws for instance helps us to better understand the articulation between positive and Islamic law, particularly in the current Egyptian legal situation. Also, a serious chronology of international law applicable to Palestine should help us not to declare legal interpretations as obsolete too quickly. There are other examples in Europe now, among them the social conflicts linked to the economical difficulties, which brought about new approaches to criminal law due to the social consequences at stake in court decisions in such circumstances. A new approach of law is necessary, combining arbitration and negotiation in order to avoid the rigorous character of a law that could be inapplicable.

These reasons, among others, militate in favour of an anthropological approach to teaching law activity, which should include a comparative

historical dimension, discussion of competitive politico-legal doctrines, as well as a better understanding of the behaviour of the various actors in the legal system. This debate can apply to the type of education, the kind of degree and the legal experience of lawyers and judges, as well as to a lot of other questions which, by focusing on current as well as structural factors of legal culture, allow for a better understanding and application of the legal norm.

## **PART II: WHICH STRATEGIES FOR TEACHING LAW IN PALESTINE?**

Teaching activity in Palestine should develop on the basis of the considerations mentioned above and integrate these various factors and dimensions. Especially in a period of transition and new legislative activity, it is of major importance that law schools dedicate a significant effort to the analysis of the role of ideology and legal culture in the creation and interpretation of law. Besides, it should take into account the factual situation characterising Palestine, such as the plurality of legal systems and the internal conflicts of laws, with which many Palestinian jurists are not extensively familiar due to the fact that, until now, they have studied law abroad.

In fact, developing such a high standard of legal teaching in Palestine is not an easy task. As was mentioned before, teaching activity in the framework of a law faculty did not exist in Palestine under Israeli Occupation. The last such activity goes back to the British Mandate and the Palestine Law Institute, a high standard law school from which graduated, between 1922 and 1948, several famous Palestinian lawyers. Amongst those was Wasfi El Masri, who gave a presentation, in the framework of the Symposium, on his legal education experience. Although the Institute provided a very high standard of legal education, it focused on English law.

With the Oslo Agreements, the development of a new stage in teaching law in Palestine has begun. Indeed, with the end of the Israeli occupation, a truly "national" law teaching activity has started, and the main mission of law schools and legal research centers is now to contribute to the development of Palestinian law.

The period from the end of the British Mandate to the end of the Israeli occupation is characterised by a total discontinuity in various respects such as legal teaching activity, legal research activity (no legal production, no books or studies published in Palestine) and even in the field of legal practice (an important part of the Palestinian bar went on strike during Israeli Occupation).

Palestinian law schools suffer therefore from a lack of historical perspective on which to develop their teaching activity.

The second part of the symposium, consisting of a round table between European and Palestinian law schools, aimed at identifying

and suggesting solutions for the main problems and challenges which Palestinian law schools face in their teaching activities.

Attending the round-table were the following law schools:

- Al-Najah University Law Faculty
- Jerusalem Law School-Al-Quds University
- Birzeit University Law Center
- Amsterdam University Law Faculty (Holland)
- Durham University Law School (UK)
- East London University Law School
- Gent University Law School (Belgium)
- Free University of Brussels Law Faculty

### **1-Palestinian legal teaching experiences**

Law teaching activity in Palestine developed following different patterns in Palestine.

#### **Al-Najah University Law School<sup>3</sup>**

At Al-Najah University, legal teaching activity developed on the basis of the various existing legal courses offered by the other faculties of the University.

The two first legal courses were offered in 1978 (administrative law and financial law). Following that, various law courses were added in the mid 1980s in the programmes of the departments of economics, political science and journalism. By the late 1980's, students of the political science department could take an option in legal studies and students who chose 33 credit hours of legal courses received a Minor in law. The objective of this programme was to give the students an introduction to the legal culture and legal needs of the Palestinian society so as not to depend on importing external legal cultures.

In 1995, a separate law faculty was created in the University, where the students can complete their BA in law.

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<sup>3</sup> Presented by Ahmed Moubaraq El Khaldi, professor at Al-Najjah University

The speaker mentioned that the different objectives for the development of a law faculty include the training of qualified jurists for Palestinian institutions such as the judiciary and the contribution to the development of law in a stage of state building. He underlined as well the necessity to make the Palestinian people, whose legal culture has been previously oriented to resisting law in the context of resistance against occupation, more aware of the role and necessity of law in a democratic state.

### **Al-Quds University Law School<sup>4</sup>**

Jerusalem Law School's strategy was to start teaching law directly with a complete BA programme, without being based on any previous legal courses offered in other departments of the university. The law school, the first one to be created in Palestine in the beginning of the 1990's, developed as a separate entity, distinct from Al-Quds University, but had to join Al-Quds University in 1995 however, according to the Palestinian Higher Education Ministry's policy.

The law school was created in order to meet a national Palestinian need, and the objective of the legal education programme is to help students understand and find legal solutions to social problems. In its teaching activity, the school stresses the importance of Islam as a part of Palestinian legal culture as well as the necessity to adapt and take into account international developments and the need for international co-operation.

The university started with 70 students in 1991. It developed very quickly in the subsequent years and has now 300 students taking day and evening classes.

The teaching staff includes 14 jurists, 10 of them having Ph.D.s, coming from different European and Arab legal cultures.

The programme was developed on the basis of the following choices. Besides the traditional subjects, the law faculty decided to insert in the programme new topics such as "History of Law", "Palestinian Constitutional System", "Islam and Human Rights", "Personal Status of Non-Muslims" as well as "Environmental Law". Secondly it

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<sup>4</sup> Presented by Ali Khashan, dean of the Law School

emphasised the practical aspect of education, whose objective is to reduce the gap between theory and practice and to help the students in their career choices. The programme includes, for instance, a practical traineeship (minimum 2-month traineeship in a law office or tribunal) and compulsory attendance at legal symposiums. Third, the programme includes a compulsory language course in English or French (12 credit hours) and an elective Hebrew course (3 credit hours).

Finally, it introduces students to information technologies.

As far as the teaching method is concerned, it focuses on interactive learning as well as on comparative study.

### **Birzeit University Law Center<sup>5</sup>**

The legal education activity started at the Birzeit University Law Center in September 1996.

Birzeit University Law Center decided to start its law teaching activity with a master's programme instead of a BA in law and with a limited number of students (around 20), as that is the educational programme best suited to the objectives which the Center tries to achieve.

The Law Center's main objective is to contribute to the rehabilitation of the legal professions in Palestine by providing the society with more qualified lawyers. The programme thus tries to make the students, who until now have obtained their BA's in law from other countries, more aware of the specific characteristics of the legal situation of Palestine, and to harmonise their legal approaches. Furthermore, the Law Center aims at developing critical analysis skills rather than simply increasing the students' theoretical legal knowledge.

The programme includes 30 credit hours of seminars as well as the presentation of a dissertation (either a theoretical thesis, or report of a traineeship in a law office or court). The programme focuses in its first year on business law, which was seen as the priority need of the Palestinian legal community in this period where Palestine needs to strengthen its economic structures. The Centre plans to offer other

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<sup>5</sup> Presented by Fawz Abdel Hadi, student in the Law Center's Master of Laws programme

specialisations in subsequent years such as international law and public law.

Apart from the specialised courses the students choose (commercial law is the only option from 1996 to 1998), there is a core of general compulsory subjects that all students have to take. Thus, students have to take the course "History of the Legislation in Palestine" which consists of an historical and comparative study of the legal systems which have been applied in Palestine since the Ottoman period until present. Further, there is a compulsory course entitled "Applied Legal Methodology" which aims to develop the legal research skills of the students.

Another characteristic of the Law Center's programme, due to the fact that it is not exclusively an academic institution, is the participation of the students in the Center's other ongoing activities and their work on practical projects which directly address Palestinian legal needs. Thus, the students work this year on projects including "The Official Gazette", a model of training for lawyers, and on various law drafts.

Finally, the programme aims at improving the practical skills of the students, such as information technology and language skills.

Regarding its teaching method, the Center opted for an interactive method, requiring the students to participate actively in the courses. Thus each course takes the form of a seminar in which each student has to do some research on a specific topic and present a paper in class.

Another characteristic is the comparative dimension of the teaching, involving interaction with the international community through the visit of foreign teachers, mainly from European universities.

## **2-Main Challenges**

Due to the lack of a teaching tradition in Palestine, the law schools are faced with real challenges. They have to teach the Palestinian legal situation, with its plurality of legal systems and its internal conflicts of laws, without any Palestinian books or textbooks covering these matters, without a substantial caselaw in some fields (such as administrative law) and without any research activity to support their efforts. Also, they have to work in a legal culture which has been for many years oriented towards resisting law.

To be able to contribute to the development of high quality law teaching activity and therefore to the rule of law in Palestine, the Palestinian law schools have to address the following challenges.

#### A. Development of legal libraries and pedagogical support

One of the priority needs of the law schools is the development of infrastructure and library facilities. Indeed, it is the necessary basis on which can develop all activities expected from law schools such as a high quality teaching or legal research activity.

Besides the general need to acquire more books, particular effort should be made to acquire books in foreign languages or at least translations of foreign books. Indeed, this is a necessary condition for a high quality teaching activity based on a comparative approach. This is of major importance in Palestine, where the legal systems were strongly influenced by the French and English systems, and which therefore need to be studied thoroughly.

Another major problem which are facing the Palestinian law schools is the total lack of Palestinian legal textbooks.

Currently there is no Palestinian legal textbook and teachers have to use Jordanian and Egyptian legal books (based on Jordanian or Egyptian legislation and caselaw). The need to create specific Palestinian textbooks was therefore highlighted by numerous professors during the debate.

One of the obstacles to the publishing of textbooks, as underlined by one of the participants in the debate, is the small size of the market due to the small number of students. The Palestinian law schools should therefore co-ordinate their efforts in that field and produce legal textbooks together.

#### B. Teaching methods

It was generally agreed that teaching should not focus only on increasing the students' legal knowledge but should aim as well at improving critical analysis and legal reasoning capacities. This is particularly important in a legal situation, such as in Palestine, characterised by great complexity and plurality of systems.

Understanding the various legal systems, their interaction as well as the advantages of one or the other with the objective of harmonising the legal systems, requires a strong understanding of the various legal systems and a strong critical analysis capability. This has therefore to be taken into consideration in law teaching programmes and methods.

This implies, firstly, a good balance between theory and practice or between a focus on legal professionalism and on legal academia in the distribution of courses as well as in the framework of each course. Thus, besides lectures, legal programmes should plan workshops focusing on practical issues and calling for students to take active participation in the class. These workshops should for instance analyse judicial decisions (even though in some fields like administrative law Palestine suffers from a lack of substantive caselaw).

Further, in order to promote the development of a critical legal approach, it was suggested during the debate that in the law teaching programmes some kind of pluridisciplinary approach be developed, based on the introduction of not strictly law courses into the law curriculum, such as anthropology and sociology of law (reflection on the meaning of law in general, the various values it is supposed to promote and reasons lying behind the different legal systems).

It was agreed also that law programmes should offer language courses in order to develop further the comparative approach in teaching.

These are of course major objectives, yet not easy ones to reach. Therefore, in order for these law programmes to be effective, it was suggested to limit the number of students attending the class. Further, it was noted by some of the participants that an improvement in teaching quality implies that teachers need to be well trained to teaching methodology and pedagogy.

### C. Development of legal research

The necessity to develop legal research in law schools was highlighted as one of the priorities needs despite the severe lack of funding available for that purpose.

In fact, the development of legal research in law schools is of major importance in this transitory period as far as it will lay the groundwork for Palestinian legislative activity.

Also, some participants emphasised the need for universities and especially law schools to become more involved in public life and for legal research to be more oriented towards the needs of society. Thus the law schools should participate more actively in the debate concerning major social and political issues: they should for instance propose critical analyses of the work of the Legislative Council (Basic Law, Law on Investments, etc..) and as well of the judicial system. If efforts have already been made in that sense, they should be increased further.

In addition, law schools should develop applied research; that is research studies on specific topics requested by the government ministries (Ministry of Justice, Economy, or Foreign Affairs for instance) or by the private sector (banks, insurance companies, etc...).

Regarding that point, some participants emphasised the need for the ministries and other public institutions to rely more on the work of law schools and consult them more often. Indeed, it is not sufficient for law schools to develop such activities (like El-Quds Law School which created a legislation center), the ministries and authorities have to consult them as well.

Another important aspect of legal research which was relatively underestimated was the development of research on Israeli law.

Legal research centers should develop further documentation and research on Israeli law and keep track of its developments.

#### D. Development of legal publications

Enhanced legal research would bring about the development of Palestinian legal publications.

Thus, it was suggested that the law schools create a half yearly or quarterly law review analysing some complex legal issues and exchange these law reviews with foreign universities. The legal publications should in that perspective be published in two languages (Arabic and English or French).

Currently there is no university legal review in Palestine; Al-Quds Law School is however planning to publish the first issue of a law review, which will contain articles, reviews of caselaw and comments).

## CONCLUSION

In a period of state building and significant legislative activity, teaching law in Palestine is of major importance for developing a legal culture characterised by the rule of law. Indeed, Palestinian society needs highly qualified jurists and lawyers to contribute to the development of efficient and sound legislative activity, to develop an independent and well-organised judicial system, as well as to provide the Palestinian Authority with a qualified body of civil servants and diplomats.

Yet this task is particularly difficult in Palestine. First, legal teaching has to develop without any tradition to build upon and in a legal culture still marked by resistance to the law of the occupier. Second, the Palestinian legal situation is characterised by great complexity and pluralism. A strong understanding of the Palestinian legal system requires therefore a historical and comparative approach to the legal issues taking into account the role of ideology and legal cultures in law creation process. Finally, this has to develop in an environment, which is characterised by a lack of legal materials and research activity.

Therefore, in order to achieve a high quality of legal teaching activity, further co-operation with European and Arab universities, as well as among the various Palestinian universities themselves, should be encouraged, as it was emphasised during the debate.

Indeed, instead of having competition between the different law schools in relation to activities such as counselling the Legislative Council and the training of lawyers, there should be enhanced co-ordination and co-operation amongst the Palestinian law schools.

In fact, the symposium was a first step in that direction and the Law Center is pleased to see that all the participants share this objective.

ANNEX

SYMPOSIUM

TEACHING LAW IN PALESTINE

BIRZEIT UNIVERSITY LAW CENTER

EUROPEAN CONSORTIUM for COOPERATION

WITH BIRZEIT LAW CENTER

9-10 JANUARY 1997

KAMAL NASSER HALL

OPENING

9 January 1997- 9.00 a.m.

Prof. Ahmed Bakr, Vice-President of Birzeit University

His Excellency Freih Abu Middain, Minister of Justice

Dr. Gabi Baramki, Representative of the Minister of Higher Education

Prof. Marc Cogen, European Consortium for Co-operation with  
Birzeit Law Center

Prof. Camille Mansour, Birzeit University Law Center

## **PART I: LAW CREATING PROCESSES**

10.00 am

"Intertemporal and Transitory Law"

Paul de Waart (professor, Free University of Amsterdam)

11.30 am

-"Conflicts of Laws in a Single Country"

Facilitator: Abdallah Abu Eid (professor, Al-Najjah University)

Ruba Shuaibi (researcher, Birzeit University Law Center)

Marc Cogen (professor, Gent University)

14.00 p.m.

- "Meta-Legal Aspects and Ideology in Law"

Facilitator: Anwar Abu Aisha (professor, Al-Quds University Law School)

Neri Sybesma (professor, Free University of Brussels)

Discussant: Raja Shehadeh (lawyer, Ramallah)

15.30 p.m.

- "Creating Legal Cultures by Lawyers"

Facilitator: Othman Takrouri (professor, Al-Quds University Law School)

Bernard Botiveau (researcher, CERMOC, Amman - professor,  
Birzeit Law Center)

## **PART II: LAW SCHOOLS ROUND TABLE**

10 January 1997: 9.00 a.m.

- Teaching Law in its Historical Context

Facilitator: Ghassan Faramand (lawyer, professor, Birzeit University Law Center)

Wasfi El Masri (lawyer, Nablus)

- Presentation of the various Palestinian Law Schools' Experiences

Facilitator: Ibrahim Abu-Lughod (director of the Palestinian Curriculum Development Center, Ramallah)

**Awni Badr**

**Dean, Al-Najah University Law School**

**Ali Khashan**

**Dean, Al-Quds University Law School**

**Fawz Abdul Hadi**

**Student, Birzeit University Law Center, Master of Laws Program**

**-Debate between Palestinian and European Law Schools**

**Facilitator: Sari Nuseibah (President, Al-Quds University)**

**. Systems and Methods of Teaching**

**. Research in Law Schools**

**. Writing Text Books**

**. Training of Practicing Lawyers and Judges**

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## **BIRZEIT LAW CENTER**

Birzeit Law Center, in accordance with Birzeit University's academic mission, aims at contributing to the modernization of Palestinian legal structures, while building human capacities both at the academic and the professional levels. The objectives of the Law Center consist of training legal professionals through regular seminars, conferences and workshops; conducting applied research; offering a master's program in legal studies; establishing a specialized library and a modern documentation center and a computer database of present and future legislation in force in Palestine.

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