

## **Preliminary Research Findings**

*"Legal Reform and the Process of De-Colonization and State-Building in Palestine"*

### **Law and Society in Palestine**

The first concept paper about Palestinian Law and Society has illustrated that the natural interrelation between society and its law is flawed in the Palestinian context. As a result of several occupations, Palestinians have one of the most complex, multi-layered legal systems in the world. The legal layers include legislation enacted during the Ottoman Period, the British Mandate over Palestine, the Jordanian rule in the West Bank, the Egyptian rule in Gaza, Israeli military orders in the West Bank and Gaza, Israeli civil rules for East Jerusalem, and Palestinian legislation enacted by the PA.

Over time, Israel has (so far) issued approximately 1,400 military orders in the West Bank and enacted more than 1000 military orders in the Gaza Strip that effectively replaced existing laws in all significant areas. Israel effectively froze all legal development in the West Bank and Gaza, institutionally and doctrinally. In neither area did the law in any way reflect the changing needs of the society it served. The Israeli occupation has had a strapping impact on both the Palestinian society as well as its legal system. Occupational laws have strongly influenced people's everyday lives. They have reshaped their family lives, work habits, land ownership and way of handling conflicts. This (especially legal) colonialism has modified the notions of culture and consciousness, creating new conceptions of time, space, work, property, marriage and the family. Palestinians cannot build houses or buy property in certain areas of the Occupied Palestinian Territory (OPT), their freedom of movement is restricted due to curfews and checkpoints and the Wall is separating people from their work, communities, and families from one another. The territorial separation between Gaza and the West Bank as well as the division of the West Bank itself into various areas (north, central and south) has led to the creation of "enclaves", cut off from one another that have formed their own local identity, ways of live and conflict resolution. A classical, uniform and united Palestinian society as a whole seemingly does not exist. The occupation has managed not only to diversify and split up their legal system, but also their society and common identity.

### **Legal Reform, Decolonization and State-Building – A Theoretical Framework**

The paper on "Legal Reform, Decolonization and State-Building" attempts to provide a theoretical framework for our project. This theoretical framework is established as middle course between postcolonial and subaltern studies.

The approach is postcolonial in the sense that it is a critical approach of colonialism attempting to deconstruct its origins. However, post colonial studies by definition refer to contexts that are post-colonial; i.e. when independence has already been achieved. Since the Palestinian Territories are to this day occupied and colonized and thus still dependent on the colonial power Israel, it would be insufficient to examine the role of legal reform in decolonization and State building using solely the post-colonial approach.

Thus, in the light of lacking independence, this approach is further subaltern.

This mediate approach is based on three assumptions:

- De-colonization needs to be generated from within the colony itself
- The Process of Decolonization needs to acknowledge the existing colonial structures
- Law remains an efficient tool for the creation of social change

First of all, this approach objects those colonial discourses assuming that de-colonization of the colony or rather the establishment of their independence is a task for the colonial power that has created dependency in the first place.

This theoretical framework, however, assumes that any de-colonization attempts must come from within the colonized society. It is the colonized society that determines the profile of its freed society. This approach argues that all the de-colonization or emancipation attempts in history have failed. Be it Algeria, South-Africa or India, colonial heritage remains in language, distribution of resources or organization of institutions, nowhere has a total or comprehensive emancipation taken place. Thus a new – indigenous starting point needs to be found.

Secondly, the creation of genuine independence of the colony from the colonial power necessitates awareness of the existing colonial structures.

As Joseph Mas'ad rightly points out<sup>1</sup>, after gaining independence, a former colony treats its colonial heritage as national reality or as an originally given fact. More often than not, the former colony is accustomed with certain perceptions or facts imposed by the former colonial rule without being aware that these structures are not indigenous or "flawed" by colonial conceptions.

In a colonial context, when discussing social aspects like labour, education, health, culture, laws, immigration, sex, crimes, punishment, or poverty, the outcome will always imply colonial consciousness or perceptions. It is only by being aware of these structures and acknowledging them that we will be able to identify and deconstruct them. This will allow us to examine the efficiency of the tool of law as well as its challenges in deconstructing these alien structures and in promoting independence and state-building.

It is only by acknowledging the colonial context of Palestinian perception that we will be able to analyze the colonial structures independently of colonial discourses

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<sup>1</sup> Joseph Mas'ad, *Colonial Effects*, New York 2001, pp. 1 – 17.

Third of all, this approach argues that law has been a chief tool for colonial powers in implementing their alien regimes. Law is viewed as more than a mere text of social do's and don'ts. Law is a capable tool for creating major social changes.

The main question this approach attempts to answer is how the Palestinians society as a whole can react to the colonial and segregation system that subordinates them, in a way that encourages national de-colonization and state-building. In asking this question, the elaborated framework strikes a balance between postcolonial and subaltern studies by acknowledging the prevailing colonial structures within the struggle for de-colonization.

### **State Typologies**

Important results have been achieved in the preliminary research conducted on the different possible typologies for a potential Palestinian state. After reviewing different types of states, the research has illustrated the adjacency of the PA to the client state and the satellite state. Their relevance lies in the fact that the Palestinian Territory is not only under Israeli occupation but the Palestinian economy is further dependent on the Israeli economy and foreign aid (donors). Determining the type of state that is closest to the Palestinian entity was thought to help determine the framework, aims and priorities of legal reform and its role in the democratization of that state.

It is however very difficult to determine what kind of state Palestinians themselves aspire. At different times during the Israeli-Palestinian Conflict, Palestinians have expressed different visions of the state they wish to establish.

One year after the 6-Day War of 1967, the Palestinian Liberation Organization (PLO) as representative of the Palestinian people favoured a one-state solution. Their aim was to establish one secular and democratic Palestinian state for all its citizens. The PLO thereby rejected the UN resolutions 242 and 338 which merely and vastly stipulated the need of dealing "with the refugee problem" as well as Israeli withdrawal from territories occupied in 1967, without further specification.

In 1973, Palestinians changed their vision of a Palestinian state, demanding authority over whichever determined territory from where they could establish a sovereign state on at least parts of historic Palestine awaiting a future solution for the rest of the territories that were violently taken during the 1948 war and demanding the right to return for the ethnically cleansed population during that war. Their demands exceeded self-determination and embraced the right to return as well as the establishment of Jerusalem as capital of a future Palestinian state.

Six years later, in 1979, the PLO came up with a 15-points program for a Palestinian state that no longer included a militant authority, but rather referred to an independent democratic Palestinian state. The most crucial precondition of the state was viewed in the right to return without which no Palestinian state would be established. The two second most important demands comprised the right to self determination and the establishment of an independent Palestinian state.

The year 1988 was significant in the aspiration of a Palestinian state in two ways:

First of all, the PLO had declared Palestinian independence (from Israel as well as Jordan) in Algiers that year – less than a year after the *First Intifada*. The declaration of independence comprised the stipulation of an independent Palestinian state on the borders of the territories occupied in the 67- War and the simultaneous acknowledgement of Israel's right to exist. The PLO, contrary to prior declarations, thus proclaimed the achievement of independence in a peaceful manner. Establishing one Palestinian state for all its citizens (including Jews) was officially no longer an option for the PLO as of that date.

The second significant occurrence in 1988 was the establishment of the Islamic Movement Hamas as an outgrowth of the Palestinian branch of the Muslim Brotherhood. As first opposition to the Fatah-dominated PLO, Hamas was challenging all prior approaches to state building; not only insisting on a state comprising all of Historic Palestine but also introducing the concept of Islamic Jihad for its achievement. Hamas argued that the division of Palestine as the Holy Land was forbidden by *Sharia* (Islamic Law). The liberation of Palestine through wide-ranging Islamic Jihad (comprising weapons, education and dialogue) was viewed as part of the liberation of the Arab world.

The Oslo Accords signed by the PLO in 1993 did not determine the contours of a future Palestinian state. It rather declared and postponed the question of borders (territory), capital and the right to return (population) as part of "final status negotiations". The sole result of these accords was the establishment of an interim government – the Palestinian Authority.

The vision of a post *Second Intifada* Palestinian state was illustrated by the PLC as well as by Arafat in 2002. The PLC – without determining the type of state – declared the need of Palestinians for a viable state which would first require comprehensive reforms (comprising administrative, economical, societal and legal reforms).

Arafat too declared in the same year the need for different reforms that would lead to transparency, enhanced performance and transparency of the executive, elections and the promotion of a Palestinian infrastructure.

It is only the Basic Law that was promulgated in the same year (and amended twice since; in 2003 and 2005) that talks about the type of state Palestinians aspire. The Basic Law composes the constitutional framework for the PA during the Interim Period and will remain in force until replaced by the constitution of the future Palestinian state. It determines the Palestinian government as parliamentary democracy based on the principles of pluralism, the rule of law, the independence of the judiciary and the separation of powers. The first amendment of the Basic Law allowed the establishment of the post of Prime Minister (who exercises shared powers with the President). The second amendment has permitted amendments of the

electoral system, from a comprehensive majority system to a system based on 50%-proportional and 50%-majority representation.

The Basic Law determines several key elements of the Palestinian government system including: democracy, the Basic Law as interim constitution, Jerusalem as Palestinian capital, the rule of law, a multiple party system, elections, Arabic as the official language, as well as a catalogue of rights, freedoms, and guarantees as stated in chapter two of the Basic Law. However, it does not specify the Palestinian population (citizenship) or the Palestinian territory (borders).

It is only the Palestinian Draft Constitution of 2003 which refers to the borders of a future Palestinian state and the Palestinian population. The borders refer to those of the 67-War and citizenship is granted for all Palestinians who left Historic Palestine during the *Nakba*; as well as their ascendants. The Draft Constitution further embraces the democratic principles of the rule of law, human rights and the guarantee of multiple parties.

The Roadmap to Peace introduced by the Quartet in 2004 acknowledges only temporary borders of a future Palestinian state under the precondition of ending terror and violence, building Palestinian institutions and "normalizing Palestinian Life".

The research has illustrated the difficulty in determining the type of a future Palestinian state. Major elements of a state are until today flawed: the number of the Palestinian population is unclear and the right to return is still subject to major conflict between Israelis and Palestinians. Additionally, the Palestinian territory is not finally determined (discrepancy about borders and capital) and the PA lacks full sovereignty over its territory and people (no self-determination).

### **Legislative Phases**

Another research has been conducted on the legislation of the PLC. A comprehensive list including all the laws that have been passed since the establishment of the PA was prepared. Subsequently, these laws have been displayed in a diagram according to their content and date of endorsement by the President. The endorsement by the President is the second last legislative phase before a law comes into effect through publication in the official Gazette.

On the content level, (depending on the area of regulation of each law) the laws were classified into three categories: economical, sociological and political laws.

The second variable of the diagram referring to the date of endorsement of each law comprises four periods based on important events in the Palestinian post-PA history. The first phase refers to laws endorsed between 1994 and 1996 (from the establishment of the PA until the creation of the PLC). The second phase includes laws signed between 1996 and the *Second Intifada* in 2000. Phase three comprises laws passed between 2000 and the death of Arafat in 2004. The last phase refers to the

laws endorsed since 2004 until the entering of Hamas into power in 2006. It shall be noted that since the arrival of Hamas, the PLC has not adopted any new laws.

The purpose of this division is to assess whether the legislative activity of the PLC was dominant in a particular legal area in different periods. The overall objective of this exercise embraces the attempt of tracking legislative trends and activities and to connect it to the local, regional and international context.

Though the time span of each of the four phases varies (from two to four years) and is therefore not a steady reference, some useful data could be retrieved from the diagram. The diagram for instance revealed that in all phases except for one, the endorsement of political laws dominated. Only between the establishment of the PLC and the *Second Intifada* has there been a relative equilibrium between political, economic and social laws. The most significant information revealed by the diagram is that in the forth phase of legislation – after the death of Arafat – the largest number of laws has been passed. 44 % of all laws passed since the establishment of the PA were signed after Arafat's death. This fact might be seen as indicator for Arafat's minimal involvement in legal reform. Arafat as a matter of fact has during his tenure not respected the 30 days delay for endorsement of suggested laws. Fattouh, during the 60 days interim presidency endorsed almost all pending legislations. Since then, Abbas has respected the time frame for endorsement.

The significant domination in the passing of political laws (mainly administrative laws followed by judicial laws and a small number of constitutional laws) might be an indicator for reform priorities.

The aim of the paper was to generate data on which later analysis could be based. It was also used to discuss several case studies of laws (from each category and phase) that will be used to examine to what extent PA laws have undermined or enhanced efficient state-building and decolonization in Palestine.

### **The Impact of Civil Society Institutions on State-Building**

The research about the impact of civil society institutions on state-building has revealed a development from a rather primitive "mujtama ahli" (community) to a modern form of civil society ("mujtama madani") after the establishment of the PA.

Prior to the PA establishment, the "community", fully supported by the PLO, has attempted a state-like role by providing basic services to the Palestinian people such as health, education and medical care. This "political" role of Palestinian society was not separated from its general civil service.

Over the years, Israeli interference in all aspects of Palestinian life<sup>2</sup> had pushed the Palestinian people to establish national institutions, popular committees as well as trade and labour unions as alternative base of power. The aim of this power base was to undermine the authority of the occupation until the PLO would be able to take over the power of the OPT. Although Israel exerted control over Palestinian civil society through the licensing as of labour-, professional- and women unions and by appointing Israelis to administer other institutions such as local councils; Palestinian NGOs have managed - through their own practices and internal regulations- to operate independently from the direct control of the Israeli authorities. These regulations are the kind of informal law making process in which local institutions drafted and agreed to abide by<sup>3</sup>. This law making process has significantly encouraged Palestinian efforts of state-building.

After the establishment of the PA, the role of civil society institutions in state-building has declined as many of its competences have been transferred to the PA who had adopted most of the bylaws implemented by the different community organizations and unions. Today, the PA seems to view itself as a state-like entity representing the Palestinian people- which have undermined the role of civil society institutions in this area.

After the *Second Intifada*, there has further been a change of priority in the legislative process of Palestinian civil society. Their priority has shifted from state-building efforts to the concentration on granting relief to the Palestinian people whose economic, health and social situation had strongly aggravated.

The research has further illustrated that modern Palestinian civil society – just as the PA - is subject to the conditions and limitations of donors. It has therefore not accomplished its role in state-building in a genuine manner. Instead of being close the society whose needs it is supposed to represent, Palestinian civil society institutions now represent to a large extent the aims and priorities that donors are eager to achieve.

### **South Africa and Palestine**

Additional research has been conducted on the relevance of the South-African segregation experience for the Palestinian Context.

This paper has compared the South African system of segregation (Apartheid) with the Israeli segregation policy towards the Occupied Palestinian Territory and its population. The assumption is that in case of similarities between the two systems,

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<sup>2</sup> Including the consolidation of authority over education, professions, land and economy.

<sup>3</sup> Feras Milhem, "The Origins and Evolution of the Palestinian Sources of Law", Virije Universiteit Brussel, 2004, p. 149 ff.

examining the South African experience in dealing with segregation through legal reform might be of benefit for Palestinian reform efforts.

However, the comparison has illustrated that –though some similar features do exist in both cases – fundamental differences remain. The elements of segregation that can be found in both cases include the division of territory (separation between Gaza Strip and West Bank and the concept of Bantustans for black inhabitants of South Africa). Both countries have experienced restrictions on movement including the requirement of visas and closures.

At the same time, South Africa as opposed to the two-state solution in Israel/Palestine was one state aiming at unifying two nations. Thus, the role of legal reform in the unification of two opposing groups within one unified state implies reforms that will vary from those of an independent and separate state in a status *nacsendi*.

Having said that; specific areas of legal reform might still provide useful examples of unification and ending segregation, such as reforms in the field of land and water.

### **Islamic Movements - A challenge for Palestinian State-Building**

Also a matter of interest was the question of whether the Islamic movements are a challenge for Palestinian State-building. This paper reflects on the political changes that have occurred since the arrival of Hamas into power in the PA-System. The research has revealed a crisis in the government system due to many different centres of decision making between the PA and PLO.

After examining the local elections and the legal and institutional reforms that have taken place in Palestine since the arrival of Hamas, it was concluded that contrary to prior expectations, the policies of Hamas have not deviated from the political directions of the previous governments. Though Hamas –in its election program- calls for change and reform, the research revealed that no real reforms have been conducted to date; Hamas has so far not adopted any new laws. The reasons for the lack of new legislations are diverse and reach from the imprisonment of numerous PLC-members, ongoing conflicts between Hamas and Fatah as well as an economical crisis due to the cessation of donor activity after the arrival of Hamas.

The Hams movement has (so far) not endorsed the islamization of the Palestinian Society.

### **Discourses of Palestinian Reform**

Further research has been conducted on the different discourses of Palestinian Reform. These discourses have pointed out that –though a recent matter of international pressure- the call for reform had initially been raised by the Palestinian people themselves who were discontent with the ability of the PA to meet the needs of their society.



Palestinians have viewed political reforms as means to obtain a more functional government that would be capable of defending Palestinians interests internally as well as externally. Israel as well as international actors on the other hand tend to view reform as a means of guaranteeing Israeli security. The different priorities of reform vary according to these dissimilar aims.

Moreover, the different discourses have revealed various internal as well as external obstacles to efficient legal reform in Palestine. Internal obstacles include the prevailing legal plurality in Palestine (complex digests of diverse laws), lack of experience in self-governance, prevailing neoptism and corruption, the lack of a clear legislative policy, a complex political situation and the dependency on external resources.

The major external obstacle and probably the most significant remains the Israeli occupation. Lacking sovereignty, freedom of movement, fiscal autonomy, and basic security render efficient legal reform difficult.

The research further revealed that many Palestinians dismiss the whole notion of reform as meaningless as long as Israeli occupation continues. The study also concluded that reform loses credibility when the only concerns of Israel and the U.S. seem to be Israeli security and immediate pay offs as opposed to genuine efforts to improve the situation of Palestinian society striving to build a viable independent state.

### **Reforms in the judicial field**

Another paper elaborated has illustrated that judicial reform has made significant progress in the past years. It has been encouraged by the PA, Palestinian civil society as well as the international community. Judicial reform is viewed as one of the most important and pressing areas of reform in Palestine. A strong, independent and functional judiciary is a precondition for a viable democratic state in which universal human rights standards are respected and implemented. Such a strong judiciary can further encourage Palestinian State-Building efforts: by controlling the actions of all state authorities, the judiciary supports the independence of the whole Palestinian government system.

All Palestinian authorities as well as civil society institutions have at various occasions stressed the importance of judicial reform. In the past years, various reforms in the judicial field have been conducted in Palestine. Among these achievements are the establishment of the Palestinian High Constitutional Court, the adoption of the Judicial Courts' Formation Law, the adoption of the Judicial Authority Law (JAL) and the statements on the independence of the judiciary in the Basic Law.

The provisions in the Basic Law call for the independence and impartiality of the judiciary and mandate the creation of an independent Higher Judicial Council (HJC).

The JAL regulates the Palestinian judicial system, including magistrate, first instance, appeal, and high court, as well as the office of the attorney general. It guarantees an

independent budget for the judiciary and entrusts the Higher Judicial Council with the power to nominate judges for appointment to the judiciary.<sup>4</sup>

The research has also identified the major impediments of judicial reform in Palestine. One "inherited" obstacle to judicial reform is the duality of the Palestinian legal system (different legal codes in Gaza and the West Bank) on the one hand and the presence of two completely different judicial systems within "one" territory: the Israeli military system and the Palestinian judicial system. This fact not only leads to the duplication and contradiction of many laws. It further makes it difficult for law-makers as well as citizens to know what laws are applicable in which cases and areas, which weakens the rule of law.

Another impediment to judicial reform and independence is the interference of the government and the legislator in judicial affairs. The PLC as well as the government have in the past often interfered in the work of the judiciary; for example by refusing to implement certain laws or establishing state security courts. There is an ongoing power struggle between the President and the Hamas-dominated PLC. This conflict is seriously hampering the development and adoption of a legal framework that could provide clarity on the relations and division of power between key actors in the judicial system, such as the High Judicial Council, the Ministry of Justice and the PLC Legal Committee and the President.<sup>5</sup>

Problematic are further the insufficient resources of the Palestinian judiciary which lacks human as well as financial resources. Judicial employees are often under-qualified and short-stuffed.

The single most significant obstacle to efficient judicial reform however, remains the Israeli occupation. Restrictions of movement and closures prevent individuals from reaching the courts. Moreover, target killings prevent the judiciary from exercising legal protection over involved Palestinian citizens. Additionally, the Oslo Accords have led to the inability of the Palestinian judiciary to implement court decisions in Areas B and C and excludes Palestinians living in Jerusalem as well as settlers acting in the West Bank or Gaza from the jurisdiction of the Palestinian judiciary.

### **The Amendment of the Electoral Law as Part of Legal Reform**

Another paper has studied the amendments of the general election law and the local elections and their impact on the Palestinian society and their political system. The two key amendments in this field were the introduction of a women's quota in the election law and the transformation of a majority (district) system to a mixed-electoral system based on 50% proportional and 50 % majority representation.

The introduction of a women's quota in the election law has led to an increased participation of women in general politics. The amendment of the electoral system has encouraged various parties to enter the political sphere that – in a purely majority

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<sup>4</sup> Feras Melhem, Jamil Salem, "Building the Rule of Law in Palestine: Rule of Law without Freedom", University of Exeter, 2007 (to be published).

<sup>5</sup> Ibid.

system – would have been disregarded. The political monopoly of Fatah has thus been weakened.

### **The Political Environment of Legal Reform**

This inquiry raises the question of the political reasons behind legal reforms performed by the PA. The two most striking politically relevant reforms were viewed in the establishment of the post of Prime Minister in 2003 and the amendment of the election law in 2005; which were both "translated" into constitutional amendments.

As for the Prime Ministers office, the paper has pointed out that Palestinians themselves had desired the division of powers between the President and the Prime Minister. Nonetheless, the creation of this office was not materialized as a result of genuine recognition of the Palestinian political and legal needs but rather as a result of pressure exercised by the international community in fulfilment with the conditions imposed by the Roadmap in order to transfer power away from Arafat. This amendment was accompanied by an ambiguous provision that did not clearly identify the powers of the Prime Minister on the one hand and those of the President on the other hand.

The amendment of the election law from a majority to a mixed-proportional system - agreed upon by all the major Palestinian factions in Cairo in 2005 - also has a political background. This new system grants various (smaller) parties the chance to enter the political scene that in a purely majority-district system would have been disregarded. This transition thus weakens Fatah's political monopoly and enhances the democratic legitimacy of the PA, presenting various different parties and interests. Especially the introduction of the Islamic movement Hamas in the political sphere which found large support among the Palestinian people has renewed the legitimacy of the PA and generated approval among the people.

The new electoral system tends to produce a strong seat bonus even when the popular-vote totals won by various parties are close to each other. As a result of the 2006 parliamentary elections Hamas enjoys a large 74-to-45 edge in PLC seats over Fatah - a margin that expands if one count the four Hamas-aligned independents who won seats – Hamas's popular-vote victory was far narrower, 44 % versus 41 % for Fatah.

### **Legal Framework of Legal Reform**

Palestinian Legal reform is based on two major constructions which stipulate the legal framework in which legal reform can be accomplished. Intrinsic to the Palestinian legal system are the different legislative phases each law has to pass through until it comes into effect. The research illustrated that each of these legislative phases involves its own problems that undermine efficient and prompt legal reform. Common problems involve lacking time limits for the adoption or refusal of suggested laws or, in the case of available time limits, their disrespect.

More significantly, however, are the externally imposed legal conditions of legal reforms. The limited legal framework – predefined by the various agreements

between Israel and Palestine - in which legal reform can be effectuated in the OPT is viewed as foremost impediment to efficient legal reform<sup>6</sup>.

Following the Declaration of Principles, Israel and the PA signed the 1994 Agreement on the Gaza Strip and Jericho Area, and the 1995 Interim Agreement on the West Bank and Gaza Strip (the Interim Agreement)<sup>7</sup>. These Agreements have granted the PA the authority over 40 civil administration affairs (which had previously been under Israeli control). These affairs include agriculture, archeology, banking, trade and industry, taxation, education, electricity, environment, fishing, employment, forests, health, energy, insurance, land registration, legal affairs, telecommunication, tourism, transportation, finance and others<sup>8</sup>. Accordingly, the PA has taken the legislative, executive and judicial powers over most of the civilian aspects of the Palestinian people in the West Bank and Gaza.

Moreover, it is important to emphasize that the territorial and functional jurisdiction of the PA encompasses not only areas A and B but also includes Area C, under the full Israeli control, with regard to civil powers and responsibilities not related to territories. This expansion in the mandate of the PA is derived from the fact that Israel has connected or limited the jurisdiction of the PA in Area C to persons, excluding the most sensitive issues of land, territorial waters and subsoil. In contrast, that means that the PA has complete territorial jurisdiction (only) over areas A and B. For example, the PA has the exclusive right to exploit the gas over the shore of the Gaza Strip.

As for the enforcement of PA jurisdiction in Area C (which is under full Israeli control), Israel has allowed the PA to appoint civilian inspectors to monitor compliance with laws and regulations within the powers and responsibilities transferred to it in Area C. However, these inspectors are not allowed to conduct any activities, which involve arrests or detention of persons, seizure of property or any other activity involving the use of force. Moreover, they are not allowed to wear police or military uniforms nor carry arms<sup>9</sup>.

Consequently, Israel has retained the following: (i) all powers and responsibilities for land, territorial waters and subsoil in Area C, which represents 61 percent of the West Bank and Gaza; (ii) all powers and responsibilities not transferred to the PA such as foreign relations and security; (iii) Israeli citizens. To this end, Article XVII(4) of the Interim Agreement stipulated that the Israeli Military Administration (IMA) shall retain the necessary legislative, judicial and executive powers and responsibilities, in accordance with international law. This Paragraph confines the Israeli's legislative, judicial and executive powers to Area C and not areas A and B. For example,

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<sup>6</sup> Several agreements were signed between Israel and Palestine: the Declaration of Principles on Interim Self Government Arrangements (the Oslo Accords, 1993 and 1995) signed by Israel and the PLO. These Accords had many subsequent agreements including the 1994 Gaza-Jericho Agreement, the 1995 Interim Agreement, the 1998 Wye River Memorandum, and the 1999 Sharm el-Sheikh Agreement. The Oslo Accords however are the most significant agreements with regards to Palestinian legal reform as they have stipulated the structure, powers, and the jurisdictions of the PA.

<sup>7</sup> The text of all the Israeli-Palestinian Agreements can be found at the PA official Website.  
<http://www.pna.net/search/showindex.asp?DocCategory=1>

<sup>8</sup> For a complete list of all the transferred authorities see, Annex III, Protocol Concerning Civil Affairs, of the Interim Agreement.

<sup>9</sup> Article IV of Annex III, entitled Protocol Concerning Civil Affairs, of the Interim Agreement.

*“Military Order on Amending the Law of Selling Immovable Properties (West Bank), No. 1464 of 1999”*<sup>10</sup>, *“Military Order on Settlements Protection (West Bank), No. 1468 of 1999”*<sup>11</sup>, and *“Order concerning Security Instructions (West Bank), No 1455 of 1997”*<sup>12</sup>. These military orders are related to the issues of settlements, land and security, which are under the IMG jurisdiction. It is interesting to note that we could not find any military orders enacted by the IMG in the Gaza Strip after the entry into force of the Interim Agreement. This means that there is no IMG functioning in the Gaza Strip<sup>13</sup>.

However, the IMA has interpreted Article XVII (4) in contrast to the above. Until today, the IMA still enacts military orders in the West Bank in jurisdictional domains in fact transferred to the PA. For example, *“Military Order on Administration of Local Councils (West Bank), No. 1453 of 1997”*<sup>14</sup>, *“Military Order on Transportation (West Bank) No 1467 of 1999”*<sup>15</sup>, *“Military Regulation Amending the Jordanian Law of Income Tax (West Bank) of 1999”*<sup>16</sup>. These military orders are related to the issues of local councils, transportation and income tax, which – according to the agreements – are under the jurisdiction of the PA. Thus, Israel has de facto no legal right to regulate in these civil concerning matters.

Accordingly, the PA has the right to regulate all the civilian matters transferred under the agreements in the whole of the West Bank and Gaza. Legislation means any primary and secondary legislation including basic laws, laws, by-laws and other legislative acts. However, the PA right to adopt legislation is not exclusive. Any PA legislation, including legislation, which amends or abrogates existing laws or military orders, must be consistent with the provisions of the Declaration of Principles, the Interim Agreement or any future agreements; or else it will be considered null and void<sup>17</sup>. The President of the PA should not promulgate legislation adopted by the PA if it contradicts the above. For this purpose, all legislation must be communicated to the Israeli side of the Legal Committee. If the Israeli side considers that legislation inconsistent with the agreements, it shall refer that to the Palestinian side of the Committee for discussion.

As for the Palestinian obligations under the Accords, the following has been observed: The Palestinian Basic Law (hereafter BL) does not make reference to any of the limitations imposed by the Oslo Accords. Though excluded from the PA legislation, the capital of a future Palestinian state (Jerusalem) is determined in Art 3 of the Palestinian Basic Law. The Palestinian citizenship – also a matter of final status – is nonetheless mentioned in Art. 7 BL, which manifests that the citizenship shall be

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<sup>10</sup>Proclamation, Orders and Appointments, Issue no. 187, 1999, p. 2590.

<sup>11</sup>Proclamation, Orders and Appointments, Issue no. 187, 1999, p. 2600.

<sup>12</sup>Proclamation, Orders and Appointments, Issue no. 177, 1997, p. 2364.

<sup>13</sup>Some Lawyers have informed me that the IMG does exist in Gaza but it stopped publishing its orders in the official Journal (Proclamation, Orders and Appointments ) after the Interim Agreement

<sup>14</sup>Proclamation, Orders and Appointments, Issue no. 175, 1997, p. 2318.

<sup>15</sup>Proclamation, Orders and Appointments, Issue no. 187, 1999, p. 2598.

<sup>16</sup>Proclamation, Orders and Appointments, Issue no. 187, 1999, p. 2606.

<sup>17</sup>Article XVIII (4) of the Interim Agreement.

regulated by law. This Provision was inevitable for the 2006 parliamentary elections, which required a specification of those individuals entitled to vote.

Overall, the research has illustrated that the DOPs have limited Palestinian authority to a minimum framework within a limited territory, function and population and thereby undermine the ability of the PA to conduct efficient and comprehensive legal reforms.

### **(Colonial) Law and Social Change in Palestine**

The paper on Law and Social Change in Palestine has assessed the impact of Israeli Military orders (IMOs or MOs) passed between 1967 and 1993 on the Palestinian Society. The research has illustrated that virtually every aspect of the lives of the Palestinians under occupation is regulated and controlled through military regulations<sup>18</sup>.

Israeli Military orders have legitimized the expropriation of lands<sup>19</sup>, the control of natural resources<sup>20</sup>, and the prohibition of numerous transactions without permission from the military authorities.

These transactions include import and export<sup>21</sup>; the practicing of a variety of professions<sup>22</sup> the issuance of travel permits, the permission to open a bank, or start an insurance or publishing company, to establish charitable societies, or to apply for a Palestinian identity card<sup>23</sup>.

It is the Israeli Military who decides whether or not these permits will be granted. The power to grant or refuse permits is, therefore, a very powerful instrument in the hands of the military officers. This system of military control thus seems designed to give Israel full control of the Palestinians in the Occupied Territories. The tool that Israel - as last colonial power - relies on to manifest their alien and colonial regime, is the law; or more specifically, the Military Orders.

The depressing impacts of the MOs on the Palestinian society have been demonstrated using the case studies of agriculture and education. Severe restrictions on the movement of goods and people as well as restrictive policies in the field of water use, growth of plants and trees and academic freedom have hindered academic exchange and liberty on the one hand and have led to a severe drop of the performance of the agricultural sector on the other.

MOs have replaced Palestinian laws; reshaped work habits, family lives and practices of land ownership and have created new conceptions of time and space. These restrictive regulations have thus redefined Palestinian culture and consciousness.

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<sup>18</sup> Raja Shehadeh, *Occupier's Law* (1985), p. 117.

<sup>19</sup> MOs 108 and 321

<sup>20</sup> (MOs 58, 59, 92)

<sup>21</sup> For agricultural products see (MOs 47 and 49).

<sup>22</sup> (MOs 324 and 437) such as doctors, pharmacists, lawyers<sup>22</sup>)

<sup>23</sup> MO 1208 (amending MO 297 concerning identity cards) adds a new provision to Art. 11 of the original order whereby a child born to resident parents can be registered in the occupied area if he or she is under 16. A child born outside the area to resident parents can be registered only if he or she is not over 5 years old.

Like all colonized nations, Palestinians are striving for independence- for decolonization of their society. This struggle for independence has gained a new perspective since the establishment of the PA as state-like entity in 1993. Although Israel continues issuing MOs even after the establishment of the PA (1993); and although the PA cannot legislate colonial **facts** (the wall, settlements etc.) away, it is necessary to examine, to what extent it can **minimize** their colonial effects on the Palestinian Society until full Palestinian independence is achieved.

## **Palestinian Symbols from PLO Discourses to the laws of the PNA**

This paper discusses the relevance of Palestinian Cultural Symbols in the Palestinian society through the assessment of the discourses of the PLO and the laws of the PA.

During the *Intifada* Palestinians were unable to freely express themselves much less oppose the occupation be it in dialogue or writing. Palestinians were thus lead to use symbols to express their emotions, resistance or attitudes when referring to the occupation. Poems, newspapers and public speeches used symbolism as way of expressing Palestinian observations: the occupation was referred to as "the evil force", and a lost (confiscated) house was referred to as a key. Palestinian Symbolism has thus come to play an essential role in Palestinian culture.

Before Oslo, the sole representative of the Palestinian people was the PLO who did not have any legislative powers. The only way for the PLO to protect the nationality, heritage and culture of its people was by stressing their importance through the use of cultural symbols. As the PLO was unable to transfer from a liberation organization to a national state, it consistently used the different elements a state usually comprehends in its speech. It regularly referred to Jerusalem as Palestinian capital, the Palestinian Flag, the future Palestinian State as well as the prominent political figures and leaders as symbols for the Palestinian cause and identity.

These elements of a state were expected to be converted into sovereign facts after the establishment of the PA in 1993. The legal and political competences transferred to this authority were anticipated to factually resist the occupation and create a sovereign Palestinian state were the symbolically protected elements could be translated into reality.

The lacking sovereignty of the PA however has prevented it from fulfilling these aspirations. Nonetheless, the PA has continued the attempt to (at least symbolically) protect the Palestinian identity. It has for instance adopted a law declaring Jerusalem as Palestinian capital. Even though the PA is de jure as well as de facto unable to actually implement this law, it acknowledges the symbolic and mental value of such a provision for the Palestinian people. The PA has further adopted a law determining and protecting the Palestinian flag as symbol for Palestinian unity and identity. The PA unable to execute sovereign government powers has thus at least symbolically

guarded these cultural emblems (flag and capital) as crucial elements of Palestinian culture.

## **Palestinian Economic and Financial Laws**

This study examines the economic and financial laws passed by the PLC between 1994 and 2007 in order to assess the role of these legislations in building Palestinian state institutions as well as in the liberation of the OPTs.

The paper has dealt with the historical evolution of the economic and financial laws. It has also examined the determinants of legal regulations of the Palestinian economy and the legislative policies supporting the adoption of these legislations.

The most relevant textual inconsistencies of these legislations have been revealed in order to identify the existing challenges and reasons for not fulfilling the expected legislative goals of encouraging state-building and decolonization.

The research has revealed that several laws repeat competences granted by another law to a different individual or body; thus making it difficult to understand jurisdictions and implement relevant administrative measures.

The paper has further stressed the relevance of the Basic Law as well as the Paris Protocol which constitute the legal framework in which Palestinian economic and financial laws can be formulated. Both documents seem to benefit the public sector more than the private sector. The Paris protocol further regulates the amount of the Palestinian Value Added Tax (VAT). The PA is obliged to impose taxes in accordance with the Israeli VAT from which it can only slightly deviate.

The paper stressed a further challenge for efficient reform of financial and economic laws which is viewed in the financial dependency of the PA on international donors. Palestinian legislation often reflects the priorities of the international donor community and rather than national ones.

Local challenges to the efficient implementation of financial and economic laws are viewed in unconsolidated lines of authorities and an overwhelming bureaucracy.

The paper concludes that the random legislative policy of the PA causes incompatibilities among the examined laws. This fact renders the application of economic and financial laws less fruitful and weakens the economic as well as political role in promoting state-building and decolonization. According to an initial assessment it seems as if the laws are not always formulated to benefit Palestinian individuals and/ or institutions. Particular financial laws for example seem to privilege big companies and projects, neglecting small enterprises; or foreign investments and banks over local ones. Furthermore, the insurance law seems to be formulated in favor of the insurance companies rather than the insured individuals.



## **The laws of the PA between Dependence and Independence Calls**

This short paper is an initial assessment of the extent to which the Palestinian legislator has abided by or diverged from the obligations imposed by the different treaties signed between Israel and the Palestinians since 1993.

To date, the preliminary observations that have been made can be summarized as follows: The Palestinian legislature has respected and implemented its obligations imposed by the Oslo accords (hereafter Oslo) in several cases. The Basic Law, for example is designed as a preliminary document in accordance with the agreements which determine the adoption of a basic law for the interim period. The PA president – just like Oslo stipulates – is elected directly by the Palestinian people. In other areas the respect of the accords is shown by the absence of PA-legislation in certain areas. The accords stipulate for example that any matter that is subject to final status negotiations can not be regulated by (Palestinian) law. In compliance with their obligations, the PA has not adopted any laws regulating the issues of borders, nationality or refugees.

However, in other areas, the PA drafts and adopts its legislation independently of the mentioned agreements. Even though the election of the PA president was arranged according to the agreements, the competences transferred to him in many areas exceed the competences conceded to him by the agreements. Accordingly, the PA is not allowed to pursue any kind of diplomatic or foreign relations. Nonetheless, Art. 40 of the Basic Law grants the PA-President the right to appoint PA representatives in foreign countries.

Additionally, regardless of the above mentioned prohibition to legislate any matter regarding final status, the PA adopted the capital law in 2002. This law declares Jerusalem as Palestinian capital. Despite the inability to actually implement this law, it has an important symbolic meaning and mental value for Palestinians in and outside of the OPTs.

The initial conclusion of this study is the apparent inconsistency of the Palestinian legislature. The PA does not seem to pursue a clear – cut line when it comes to its contractual obligations.

Rather, it seems like Palestinian legislation randomly refers to the Oslo agreements in some cases and disregards them in others. The reasons for this inconsistency and the legislative priorities are yet to be assessed in future research.