

# **Refugees, Migrants and Law in Palestine**

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# Discussion Paper

## Refugees, Migrants and Law in Palestine

### I. Introduction

The topic of this paper is problematic due to the lack of shared understanding of its terms (refugees, migrants, law and Palestine). Research of such a topic, therefore, must be delimited as to prevent misunderstanding, misanalysis and misjudgement. The definition of one of these terms shall delimit and define the content of the others.

Unless specified differently, in this paper “Palestine” refers to the territories known as the Occupied Palestinian Territories (oPt), covering what was called before 1967 as the West Bank (including East Jerusalem)<sup>1</sup> and the Gaza Strip (for many Palestinians, this definition forms the territorial basis of a future Palestinian homeland). While the term “law” will refer to all legal norms enforced within Palestine, meaning all Palestinian Authority (PA) legislations, previously endorsed (Jordanian, Egyptian) laws and finally Israeli occupation “laws” as Israel is in complete control of borders, civil status register, issuing visas, permits of stay and the like. This research will not address international law or third states laws in terms of migration that may have an impact on Palestinian refugees and migrants. Although important, these laws go beyond the extension of this paper.

Finally, Palestinian “refugees” and “migrants” will refer to Palestinians living outside the West Bank and Gaza Strip (WBGS). Some Palestinian refugees, however, are living within the WBGS. This group is not treated differently in migration issues and shall not be treated aside here. Both groups of Palestinians (refugees within WBGS or outside it), furthermore, have lost their right of return to Palestine to some extent. Palestinian migrants differ from refugees, however, by their free departure,

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<sup>1</sup> However, including Jerusalem in this definition would be misleading as it was annexed by Israel. Even though migration policies and laws applied therein merit a detailed examination, the issue of Jerusalem is outside the scope of this research and will be excluded.

presumably by their right and will to return and time frame of their movement “in” and “out.” In the end, the terms “refugee” and “migrant” will be used in reference to *individuals* who, for some reason or another, left or were forced to leave their homeland; homeland meaning a specific *territory*. It must be noted however, the link between these individuals and the territory goes beyond geographical limits; this homeland is the country of origin or the country of nationality, according to the distinctive criteria one uses to distinguish those who emigrated from the rest of the co-nationals who continue to live in that same territory, to which migrants and refugees make reference.

In the Palestinian context, both the *territory* and the *individuals* have been objects of colonialism, fragmentation and dispersion. Law, furthermore, has been enacted by successive authorities in control of Palestine to subjugate the Palestinian people in an attempt to control their movement and access to rights. The objective of this paper is to examine this interaction between Palestine, Palestinians and the law in Palestine. First, the paper will historically follow Palestine’s reduction in both size and content. Secondly, it will analyze the impact of the various legislative frameworks under which the Palestinians are subjugated. Finally, the paper will present the current legal system of the PA and its legislative attempts on sectors related to migration. In conclusion, the research will attempt to prove that the main policy-maker, in terms of migration in the oPt, is the state of Israel, which bases its decisions on security and national interest. In this context, I shall observe that, despite limited territorial, functional and personal limitations, the PA continues to play a central role in the relationship with the Palestinian communities inside and outside of the oPt since it is the PA which entered in direct relationship to that portion of the Palestinian people still living in Palestinian areas (defined here according to armistice line of 1948). As Israel determines the migration policy of the oPt, the paper will, furthermore, show that refugees and migrants have failed to return to their homeland due to the continuous ‘matrix of control’ that Israel imposes on the Palestinians.<sup>2</sup>

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<sup>2</sup> Following the establishment of the PA in 1994, there was a change in the direction of migration (although this was temporary, since this trend ended with the eruption of the second *Intifada*) so that the Palestinian areas became, for the first time recipients of expatriates or returnees. (Hilal 2007, 31) However, the PA failed to attract expatriates to return to what remained of historical Palestine; the responsibility for that failure is not to be attributed to the lack of adequate legislation, policies and public actions. The reasons behind this failure are related to the overall context of instability, and, most

## II. What is Palestine?

Currently, there is no state called Palestine. Although the state of Palestine was declared by the Palestinian National Council in Algiers in 1988, it has never converted from a political aspiration to a legal reality. Before 1948, Palestine was under British mandate. Contrary to the situation under the Ottomans (Palestine was composed of several administrative units), mandatory Palestine was one political unit brought into existence for the purpose of realizing the Balfour Declaration; more precisely, at establishing a national homeland for the Jews. The British mandate endorsed several legislative acts in order to achieve this objective. For example, they enacted migration laws and policies which favoured reducing the number of Arab Palestinians while increasing the number of Jews. One such law, Article 7 of the Palestine Mandate of the League of Nations, specifically facilitated “the acquisition of Palestinian citizenship by Jews who take up their permanent residence in Palestine.”<sup>3</sup> The law, therefore, was used as a political tool which aimed at realizing colonial objectives.

Following the 1947-1948 war, Palestine was divided into three territorial/political entities: 1) the state of Israel was created, having under its sovereign jurisdiction a territory that covered more than 78% of historic Palestine; 2) the Gaza Strip fell under Egyptian control; and 3) the West Bank fell under Jordanian control, and later (1950) united to Transjordan, forming the Hashemite Kingdom of Jordan. The war and the consequential creation of the above territorial/political entities had many consequences for the Palestinian people. In each case, law was used to realize political objectives.

In regards to the creation of the state of Israel, more than half of the Palestinians who left their homeland because of the war became refugees as Israel used nationality law

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importantly to the continuous colonial situation under which Palestinian territories and people are still subjugated to.

<sup>3</sup> ART. 7: The Administration of Palestine shall be responsible for enacting a nationality law. There shall be included in this law provisions framed so as to facilitate the acquisition of Palestinian citizenship by Jews who take up their permanent residence in Palestine.

to forbid these Palestinians from returning. Israel claimed that Palestinian refugees were not entitled to Israeli citizenship since they were not in Israel the day of the declaration of the state and thus did not fulfil conditions imposed by Israeli nationality law. Law, therefore, was used once again, in this case by Israel, to prevent Palestinians from returning to their homeland. On the contrary, law was used to grant Jews all over the world the right to Israeli citizenship; accordingly, law was used as a discriminatory tool for distributing rights based on ethnicity.

The Palestinians of the WB and GS were also affected by the war, yet these people were under the control of Jordan and Egypt. They too were subjugated under the code of law. Palestinians of the WB, including those refugees who were forced to leave their villages and cities of what became the state of Israel, became Jordanian citizens while Palestinians of GS remained *de jure* Palestinians, ruled under British mandate nationality regulations, while *de facto* became stateless. Law was used in Jordan to enhance the unity and the assimilation of both previous entities into the new state while in Gaza Strip under Egyptian control, law enhanced the *status quo*, aiming at preserving the Palestinian identity. In both cases, Palestinians had partial or limited access to legislative processes and the law did not necessarily fit in the overall Palestinian national interest. The Egyptian and Jordanian partition of the remaining portion of Mandatory Palestine coincided with the emergence of the PLO as a secular umbrella organization dedicated to the resistance of the occupation and the establishment of an independent Palestinian state (Hilal 2007, 31).

Following the 1967 war, Israel took control of the WB and GS and annexed East Jerusalem. The status of those territories under international law was not disputed: they are considered "occupied Palestinian territory" (oPt); Israel consider these territories as "disputed" and consider Israeli presence as control in the absence of other sovereign authorities on those territories. Israel used "law" (through military orders and declarations) to change the legal and judicial system, to expropriate lands, to build settlements, to control Palestinian markets and subjugate it to the Israeli economy. Law, again, was used by the occupation as a colonial tool, was rejected by the local population and was used as a tool for possible financial gains rather than by conviction of being just (Kelly 2006).

The PA, established after the conclusion of the Oslo Agreements, enjoyed the powers transferred to it by the Israeli Military Governor. The PA had practiced its power to legislate, sometimes in harmony with the agreements with Israel, while in others it deviated from the limits set by them, especially following the end of the interim period when the PA failed to join an agreement on final status issues, the commencement of the second Intifada and the collapse of negotiations with Israel.

The Oslo Agreement did not put an end to Israeli occupation; on the contrary, it institutionalized most of its structures, laws and practices. Israel kept complete control over borders; this includes the power to issue visas, permissions of stay in oPt and family reunification. The jurisdiction of the PA, moreover, did and does not cover Israelis living or passing through the WBGS; this group of Israelis, indeed, enjoy immunity, according to the agreements, from any Palestinian jurisdiction. The PA could issue passports, which is not, in any case, indicative of a states' sovereign power to issue passports to citizens. In fact, Israel accepted the issuing of PA passports only on the condition they include an ID number which is exclusively issued by an Israeli military governor. In the end, if a PA passport is issued without the ID number, it does not entitle its holder to enter the oPt.

### **III. Who are the Palestinians?**

It is difficult to determine the legal status of the Palestinian people as they have been fragmented and subjugated by an occupying power for decades. In order to help in this endeavour, this paper will attempt to distinguish between Palestinian refugees and migrants, by considering three features: 1) citizenship; 2) refugee status; and 3) place of residence.

#### *According to Citizenship*

*First*, some are stateless; Palestinian refugees of Lebanon, Egypt, Syria and some neighbouring Arab states make part of this category. Palestinians of the WBGS are also stateless, although this group can be distinguished by their physical location in the territories of historical Palestine, now qualified as oPt under international law, thus, being still *de jure* and *de facto* stateless.

*Second*, others have obtained the citizenship of the state where they reside. This is the case of the majority of Palestinians living in Jordan and most Palestinian refugees who left for European countries and to the Americas. Palestinians who remained in the territories which fell under Israeli control became Israeli citizens. It shall be noticed that obtaining citizenship of the hosting country should not have an impact on their status as refugees, and thus to the right of return, which is related to the way those people have been forced to leave their country and places of origin.<sup>4</sup>

#### *According to their Status as Refugees*

*First*, some are refugees or Internally Displaced Persons (IDPs) or both at the same time. This group was forced outside their cities and villages during the 1947-1948 war and were not able to return back. Otherwise, they left WBGS following the 1967 war (some of them displaced for the second time) and fled mainly to neighbouring Arab states. Most of GS and parts of WB Palestinians are refugees or IDPs. Many of them are still living in refugee camps.

*Second*, others are not refugees; this applies to those Palestinians who remained in what became Israel (although some of them were internally displaced). This group, as mentioned before, became Israeli citizens. The majority of WB Palestinians and a minority of GS are also not refugees. Again, the distinction between WBGS refugees and non refugees is irrelevant for the purpose of this paper since both are "equally discriminated" under Israeli regulations of residence, and suffer the same restrictions of the Israeli occupation. These restrictions include leaving and returning the country, and family reunification procedures. This group is, however, treated equally under PA laws and enjoy similar rights, including the participation in political life.

#### *According to their Place of Residence*

*First*, Israel has treated Palestinians remaining in the oPt as residents, not as citizens. Regulations and restrictions, therefore, posed on them were similar to those applied to foreigners (Shiblak 1996, 31; Shkeir 1996, 89). Since the first *Intifada* in 1987, however, Israel started to apply a restrictive movement policy towards the

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<sup>4</sup> This second category is outside our consideration since, putting aside possible discrimination related to their origins, migration policies applied on those Palestinians are those of the state which they enjoy its citizenship.

Palestinians of the oPt. The peace process did not change the situation on the ground; on the contrary, restrictions of movement were aggravated through siege and curfews, mainly following the second *Intifada* in 2000, and permits to enter Israel were hardly ever granted. Most recently, the Israeli Supreme Court rejected a petition against the temporary order of 2003 (the Nationality and Entry into Israel Law, published on 6 August 2003) which prevents Palestinians from the oPt to enter Israel, thus forbidding family reunifications between Israeli and Palestinian spouses residing in the oPt (Al-Mukh 2006, 9).

*Second*, in regards to Palestinians residing outside of the WBGS, some are refugees and others have left voluntarily to find better living or working conditions abroad (Hilal 2007, 6). This leads to a distinction between Palestinian refugees and migrants. The concept of migrant is the larger concept that includes the refugee (who was forced to leave his country of origin) and the voluntary migrant who leaves his country of origin to look for better economic, social or political conditions in the destination country.<sup>5</sup> Some Palestinians, present in host countries, migrated to third states. They pass through very complicated processes, including obtaining a Refugee Travel Document from the hosting state or UNRWA, permission from the hosting state to assure return to the 'first refuge,' and a visa for the destination state. It is important to note that there is no unique and common legal standing for Palestinian refugees living in hosting states. According to Takkenberg (1997, 135), in many instances, a formal legal status under national law, codified in legal instruments, does not exist for Palestinians. The legal position of Palestinian refugees in individual Arab states depends largely on administrative practices, sometimes laid down in circulars that are subject to constant change.<sup>6</sup>

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<sup>5</sup> Individuals are at the center of interest in migration while groups are the center of interest in the case of refugees (Zreik 1998, 7). Another distinction is between Internally Displaced Persons (IDPs) and refugees, the first being a "refugee in their own country" because they do not pass an international border; this concept is often used to distinguish those Palestinians who fled from their homes following the 1967 war (Shiblak 1996, 29). For the purpose of this paper, I shall use the term refugee to distinguish it from voluntary migrants, the first concept, regardless of the legal definition (according to international law or organizations) shall include all those Palestinians who are not granted the right to return and settle in Palestine.

<sup>6</sup> For comprehensive presentation of legal status of Palestinian refugees in Arab states: (Takkenberg 1997, 153 ff., Khalil 2007a).



A common characteristic of Palestinian refugees in most host Arab states is the (almost total) absence of guarantees for basic rights. The status of Palestinians in hosting Arab states can be characterized by the following:

- **Work Policies:** some Arab states allowed Palestinian refugees to work; others have prohibited certain professions; this, in turn, encouraged Palestinians to resort to illegal work.
- **Governmental Services:** are sometimes restricted; the latest restrictions being, in some cases (Gulf States for example), applicable to all foreigners, including Palestinians (Takkenberg 1997, 174, Zreik 1998, 49).
- **Nationality Laws:** most Arab states' nationality laws are discriminatory against women concerning their right to transfer citizenship to their children (Zreik 1998, 42) and forbid dual Arab nationality. Cultural rights of minorities are also lacking in many Arab states (Hanafi 2001, 230).

These actions contradict the official position of the Arab League regarding the treatment of Palestinian refugees, which was expressed in the 1965 Casablanca Protocol.<sup>7</sup> It shall be noted, however, that part of the current treatment of Palestinian refugees by Arab states depends largely on the policies of hosting states vis-à-vis the Palestine Liberation Organization (PLO) (Takkenberg 1997, 135), which has been characterized by turbulence and mistrust.<sup>8</sup>

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<sup>7</sup> According to this protocol: first, Palestinian refugees shall be granted full citizenship rights without being naturalized by host Arab states; second, Palestinian refugees shall be granted a Refugee Travel Document (RTD) in order to maintain their refugee status. In other words, two principles characterized official Arab position: Arab solidarity and sympathy with refugees and preservation of Palestinian identity (Takkenberg 1997, 135). However, this non-binding document was often ignored and paralyzed by (most) Arab states reserves mainly with regards to equality in employment (Syria and Jordan are the exception); in other words, this document was simply a declaration of good intents (Zreik 1998, 40).

<sup>8</sup> The PLO indeed was forced out of Jordan by force in 1970-1971, and had had a role and impact on the civil war in Lebanon until total evacuation of its military forces in 1982 (Shiblak 1996, 40), while thousands of Palestinians were forced out of Kuwait and other Gulf states, following the end of 1991 Gulf war, as a retaliation against the PLO Chairman's position who supported Saddam Hussein. Some other five thousands Palestinians were expelled from Libya in 1995 following an economic crisis (Shiblak 1996, 41).

Since the establishment of the PA, WBGS Palestinians can travel abroad using PA passports, recognized (almost) all over the world as a valid travel document.<sup>9</sup> These passports, however, are no more than travel documents or ‘slightly upgraded Israeli identity cards.’ (Hammami and Johnson 1999, 317) Accordingly, granting a PA passport is not an expression of Palestinian citizenship (although it may be considered as its embryo). In concrete, only those Palestinians having an ID number are entitled to a PA passport; if the PA issues passports without the ID number, it may be recognized by third states, but will not entitle its holder to cross oPt borders. In the end, Israel remains in full control of Palestinian movement.

#### **IV. Legislation on Migration**

Legislation on migration covers the regulation of entry, residence and settlement, border-crossing and end of stay together with sanctions for the transgression of such rules, and at the same time the protection of migrants through the legal regulation of their rights, often proclaimed on the international level and sometimes incorporated in domestic law.<sup>10</sup> The legislative position of the PA is anomalous on both counts. First, the regulation of migration implies the sovereign control of borders, which the PA does not currently enjoy. Second, conformity with international standards on the status of migrants and refugees, and the issues of citizenship, presumes accountability and statehood, which the PA also does not enjoy.

Despite this basic legal anomaly, under the Agreements between Israel and the PLO, the PA exercises three limited forms of jurisdiction: 1) territorial jurisdiction over parts of the oPt; 2) personal jurisdiction over Palestinians of the West Bank and the Gaza Strip; and 3) functional jurisdiction in civil affairs, transferred to the Authority by Israeli military and civil authorities. Within these limitations, the PA exercised

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<sup>9</sup> Status of Jerusalemites is particular due to Israeli annexation of the city, and their treatment as permanent residents in the state of Israel. The issue of Jerusalem needs further analysis to assess Israeli laws and policies which favored reduction of Jerusalemites and increasing of the number of the Jews in the city. The time frame and the limits of our research topic does not permit further enlargement of the topic.

<sup>10</sup> ELMADMAD, Khadija, *La nouvelle loi marocaine du 11 novembre 2003 relative à l'entrée et au séjour des étrangers au Maroc et l'émigration et immigration irrégulières*, CARIM-AS 2004/01, p. 1. Available at: [http://www.carim.org/publications/CARIM-AS04\\_01-Elmadmad.pdf](http://www.carim.org/publications/CARIM-AS04_01-Elmadmad.pdf).

legislative authority through the "Council" nominated by the Executive Committee of the PLO, and then by the Palestinian Legislative Council (PLC) elected in 1996.<sup>11</sup>

However, it is not only the PA which produces legal norms in the oPt; in fact, according to the Interim Agreement, the Israeli Military Governor (IMG) will continue to legislate in sectors not transferred to the Council. In other words, the PLO and Israel agreed that the PA will be sharing legislative power with the IMG. 'Sharing legislative power' reflects perfectly the post-Oslo reality and the agreements themselves.

The Israeli occupation remains the ultimate sovereign authority on the land within historical Palestine. This is why some authors prefer to talk about 'Israeli Palestine,' meaning that part of historical Palestine which is not within the borders of Israel but not yet Palestine (Hajjar 2005). The IMG, which is directly accountable to the Israeli Defence Minister, maintains sovereign control over most of West Bank and parts of Gaza Strip. Since 1967, Israel has unilaterally controlled the civil register of the Palestinian population, and has restricted movement in and out of the oPt for Palestinian and other non-Israelis (Hilal 2007, 4). Israel also completely controls the borders of the oPt, thus controlling family unification procedures (Abu-Mukh 2007) and issuing visas and permits of stay. In other words, Israel has the last word in matters of migration to and from the oPt. The IMG, moreover, maintains complete control of areas outside populated areas, and preserves the right of entry and exit for security reasons to any part of the oPt, including those under the jurisdiction of the PA. Finally, IMG retains the power to legislate and enforce the legislations through military courts.<sup>12</sup>

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<sup>11</sup> See [www.pal-plc.org](http://www.pal-plc.org) (in Arabic). The PLC is sometimes referred to as the Palestinian Parliament. The second legislative elections took place on January 2006 with the surprising victory of Hamas. This election was at the origin of generalized boycott of PA (excluded the Presidency) and the stop of foreign financial aid.

<sup>12</sup> It shall be noted that international law (Art. 43, 1907 Hague Regulations) sets limits on the occupying country's power to alter laws in force in the occupied country. It may only do so where this is necessary to maintain 'public order and civil life,' the welfare of the local population, or to ensure security. How Israel defines 'security' and interprets these limits may mean that a restriction imposed by the occupying authorities becomes an absolute extension of powers. Under military occupation, these powers may lead to limitations on freedom of movement. Restrictions imposed on occupants should be in accordance with the general obligation of states to respect a people's right to self-determination.

In regards to the situation in the Gaza Strip, the legal status of Palestinians there has remained unaltered, even after the unilateral Israeli withdrawal in 2005. As in the case of the occupied WB, Israel continues to be in complete control of borders; exits and entries remain within the hands of Israel. The occupation power and all possible Palestinian migration policies (refugees or migrants deciding to return to WBGS) remain dependent upon the will of an alien state, Israel, which imposes its own security over Palestinian national security, economy and rights.

The PA enjoys, however, the power 'transferred' to it by the IMG and provides basic services to most Palestinians. The PA has issued, until now, more than 120 laws covering different sectors (basic legislations, such as a unified penal code, are still to be endorsed). For the first time in Palestinian modern history, PA laws are enforced in both the WB and GS. Pre-PA legislation, moreover, enforced in the WBGS (including Israeli military orders) remained in force until abrogated by PA legislations.<sup>13</sup>

Some PA legislations, touch on issues related to migration. The Basic Law (2002/2003), for example, contains principles and frameworks for several PA legislations in terms of migration,<sup>14</sup> but is silent on basic issues such as the question of Palestinian nationality.<sup>15</sup> The PA had adopted several other laws which could have a potential impact on migration.<sup>16</sup> In a previous study (Khalil 2006), the content of such laws was scrutinized, arriving at the conclusion that they contained only

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<sup>13</sup> It is worthy noticing that the PA continued to legislate even after the end of what was the "transitional period" in 1999. More than that, most important PA laws (the Basic Law and the Judiciary law for example) were even endorsed in 2002. By doing so, the PA gives the impression that it is there to stay. It acts as a state. PLC members talk about themselves as parliamentarians. Many talk about 'president,' 'government,' 'ministers,' 'parliament,' red carpets, flags and national anthem. In brief, Palestinians acted as if they already had a state. This attitude was misleading to the factions, groups and individuals who were ready to fight against each others for that illusion.

<sup>14</sup> The Basic Law guarantees the basic human rights and freedoms (Art. 10); the reference to such enjoyment is individuals, citizens *and* foreigners: personal liberty (Art. 11), freedom of residence and movement (Art. 20), the right for detainees to be informed of the reasons for their detention in a language they understand (Art. 12), and the freedom of belief, worship and the performance of religious functions (Art. 18). It adopts a duality between *civil* and *shari'a* (religious) courts, where the latter has jurisdiction in matters governed by *shari'a* and 'personal status' (Art. 101).

<sup>15</sup> The Law does not deal with the question of Palestinian citizenship, but provides that it shall be regulated by a specific law (Art. 7), and confirms that: "No Palestinian may be deported from the homeland, prevented or prohibited from returning to or leaving it, deprived of citizenship, or handed over to any foreign entity" (Art. 28).

<sup>16</sup> Those laws are: Law of Encouragement of Investment in Palestine (No. 1/1998), Law on Charitable Associations and Non-Governmental Organizations (No. 1/2000), Traffic Law (No. 5/2000), Law on Civil and Commercial Procedures (No. 2/2001), Palestinian Child Law (No. 7/2004), Income Tax Law (No. 17/2004), Diplomatic Corps Law (No. 13/2005), General Intelligence Law (No. 17/2005), Insurance Law (No. 20/2005), Execution Law (No. 23/2005).

provisions related to the regulation of settlement and residence of foreigners, their integration and rights and the relationship of Palestinians of the Diaspora with their country of origin.

The most important migration issues have yet to be taken up by PA legislative actions. In those areas, pre-PA legislation are the laws of the land and are valid until substituted by PA laws, thus forming part of the current legal framework of migration in Palestine. Those legal documents from previous jurisdictions—Ottoman, British, Egyptian (Gaza), Jordanian (West Bank) and Israeli—are still theoretically in force, are often contradictory or overlap. The main task of PA institutions, in particular the PLC, is the harmonization of texts in the Palestinian legal system. Until the unification of laws, Palestinian judges apply existing laws according to their discretion. It shall be noted, however, that despite the plurality of legal text, the real obstacle is not the different legal texts applied in the Palestinian territories, but rather the legal culture that resulted from those different legal systems.

The above legislative texts, however, are rendered void because of the Israeli occupation. Israel, indeed, maintains regulatory authority in matters of border control and entry or termination of stay. In these areas, military orders remain in force.<sup>17</sup> Border-crossing and movement to and from and within the West Bank and Gaza were partially regulated by the Interim Agreements.<sup>18</sup> Many of these provisions, however, were changed in the wake of the second *intifada* when Israeli forces resumed complete control of the borders.

Any tentative Palestinian legislation in these domains, therefore, will be incapable of being enforced until the creation of the Palestinian state. Once the state is established, many issues related to migration will be able to be dealt with by Palestinian legislation, namely the question of Palestinian citizenship, the rights of foreign spouses and the status of the children of mixed marriages, the distinction in legal

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<sup>17</sup> Such as No. 5/1970 on the general entry permit for Israeli and foreign residents (in force in the West Bank), and its amendment in 1974, in which conditions of entry and stay are strictly regulated to and from territories under Israeli control.

<sup>18</sup> Which stipulate that: “Arrangements for coordination between Israel and the Council regarding passage to and from Egypt and Jordan, as well as any other agreed international crossings, are set out in Annex I.” (Art. XXX). Cross-border circulation is regulated in Annex I (Art. IX), while appendix 5 regulates joint Palestinian–Israeli border control.

status between citizens and non-citizens, entry and termination of stay, and the question of Palestinian refugees and their country of origin. Some of these issues will have to be resolved within a general framework of political compromise and a peace agreement, based on the ‘two states’ solution. Others will need to take into consideration international human rights provisions and national declarations that form jointly the basis of the Palestinian struggle for independence and statehood.

## V. The PA at the Centre of Debate

As a liberation movement, the PLO, the sole representative of the Palestinian people, enjoys legal status under international law. The only authority competent to sign ‘treaties’ are those subject to international law; the PLO, therefore, signed agreements ‘for the benefit of the PA.’<sup>19</sup> The PA thus began, mainly through its foreign ministry, to play a significant role in negotiating agreements with states and international organizations.<sup>20</sup>

The legal status and the socio-economic instability of Palestinian expatriates were at the centre of the PLO mission, structure and institutions. The PLO, in fact, played a decisive role in organizing Palestinian communities in both the *diaspora* and in the regions under occupation (Hilal 2007, 31). The establishment of the PA in 1994 meant the re-articulation of a new relationship between the Palestinians outside and Palestinian communities within Palestine, with the latter occupying the centre of political stage (Hilal 2007, 31). The role of the PLO, moreover, in subsidizing services and infrastructure was resumed by the PA following its establishment in 1994 (Hilal 2007, 16).

The PA was not created to replace the PLO as the sole legitimate representative (political entity and institution) of the Palestinian people both in the oPt and the Diaspora.<sup>21</sup> Despite the absence of discourse calling for the replacement of the PLO

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<sup>19</sup> A case in point being the Euro-Mediterranean Interim Association Agreement on Trade and Cooperation which came into force in 1997.

<sup>20</sup> The Council of Ministers’ Decision No. 81/2004, for example, that approved the European Neighbourhood Agreement, charged the minister of foreign affairs to continue the negotiation with the European counterpart.

<sup>21</sup> Few researchers have outlined the similarities in the way that the PLO and Oslo-envisaged Council separate power between the legislative and executive branches of government. If we compare Article 7

by PA institutions, certain facts on the ground suggest that the Palestinian leadership (regardless of their intentions) and the attitudes of the international community, have taken the PA in this direction.

The participation of *Hamas* (who are not members of the PLO) in the PA elections gave the PA institutions an increasingly representative role in Palestinian politics. It shall be noted that political Islam presented itself as an alternative to the PLO. The rise of political Islam culminated in January 2006, with the electoral victory of Hamas and its formation of a government in March 2006 (Hilal 2007, 15). The process of transfer of centre of Palestinian political gravity from the PLO towards the PA has, indeed, started much earlier. Following the creation of the PA several international actors and organizations accorded special consideration to the PA, at the expense of the PLO.<sup>22</sup> (The PLO presence has become increasingly symbolic as a political convenience to be utilized as required and whose role is limited to the signing of agreements on behalf of, and for the benefit of the PA.<sup>23</sup>) The PA started to play a role similar to a state, rather than that of a liberation movement. The PA, considered as the ‘state in waiting,’ inevitably influenced and shaped the Palestinian political system and institutions.

The transference of most of the PLO institutions and leadership to the territory under PA control, initiated the gradual marginalization of PLO institutions as key

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and 13 of the PLO Basic System and Article III of the Interim Agreement of 1995 (Oslo II), one may note that Oslo’s image of the PA is closer to the PLO system than the PA that actually resulted from the Oslo Accords. This similarity may suggest that the Oslo agreements could have created (or was intended to create) a PA structure similar to the PLO. With such a PA being democratically elected, it would gain popular legitimacy, would localize the Palestinian cause (increasingly delimited to the West Bank and Gaza Strip) and could eventually replace the PLO. Fortunately (or maybe unfortunately) the PA did take another aspect.

<sup>22</sup> This change of attitude is expressed in two ways: through political and diplomatic recognition of PA and the opening of representative offices for foreign countries in Ramallah, enjoying a status similar to foreign ambassadors in the territories under PA control. Besides, most funds and aids passed through PA institutions which made PLO personnel and institutions dependent to PA money. Also, the attitudes of PA and its personnel towards itself changed. The case of the diplomatic law, presented in a previous section, is a good example. The arrival of Hamas to power has changed the attitude of the international community towards the PA.

<sup>23</sup> Four main trends have begun to take shape in the emerging system created in the oPt following the signing of the Oslo Accords: 1) a shift in the centre of Palestinian political life from ‘outside’ (i.e. abroad) to the oPt itself; 2) a growing conflict between the formulas governing Palestinian politics in exile and those appropriate to the ‘new’ situation inside the oPt; 3) a shift in the goal of demanding the right to a state on all of historic Palestine to the more ‘modest’ goal of recovering territory occupied by the Israelis since 1967; and 4) the end of the ‘revolutionary’ stage of the national liberation struggle and the political structures that accompanied it (Jarbawi 1996).

departments, such as the PLO Political Department, which remained outside the oPt. At the same time, the transition has seen a change of direction, from that of a national liberation struggle towards a process of state-building, a process that includes the administration of the population of the oPt. The Palestinian cause, which once centred on the rights of the entire Palestinian nation (including a geographically dispersed Diaspora) to self-determination, has increasingly been reduced to the question of autonomy and sovereignty over a limited territory and Palestinian population.<sup>24</sup>

The well-known analyst, Khalil Shikaki, (1997, 61) as early as 1997, suggested two areas of possible conflict between the PLO and PA (both relevant for our topic). *First*, the ‘ratification’ of treaties, such as the ‘Hebron Agreement’ of 1997, which the PLC asked to review but was refused by President Arafat who determined that it was a matter for the PLO. *Second*, the drafting of a ‘nationality’ law by the PLC, which had inevitable repercussions on the Diaspora, despite the fact that the Charter had already attempted to define “Palestinian.” Another possible conflicting domain between the PLO and the PA is the delegates' nomination to foreign countries.<sup>25</sup>

Other ministerial changes also took place within the PA that strengthened the role of the PA *vis-à-vis* the PLO. *First*, a Minister for Negotiations Affairs was created during the sixth government in 2003, led by first Prime Minister, Mahmoud Abbas. *Second*, the Ministry of Foreign Affairs and International Cooperation was divided into two separate Ministries, thus strengthening the position of the PA Minister for Foreign Affairs with respect to the role of the PLO Political Department. The fact that Hamas had nominated a minister for Refugees Affairs (10<sup>th</sup> government) was significant and expresses the orientation of this group towards the PLO and its institutions.

## **VI. Palestine Failed to Attract Palestinians**

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<sup>24</sup> This is perhaps what Azmi Bishara ("Back to Square One", in: *Al-Ahram Weekly* 839, 5-11/4/2007) calls the ‘privatization of the Palestinian cause’ which has marginalized the rights of the refugees.

<sup>25</sup> In fact, article 40 of the BL provides that the President is responsible for the appointment and termination of the services of the PA's "delegates to foreign countries, international organizations and foreign agencies" and "shall accept the credentials of foreign delegates" to the PA. This overlaps with various PLO priorities mainly in the Political Department. In the same spirit, the Diplomatic Law no.13 of 2005 was adopted.



The PLO was a central institution in building bridges and linking Palestinian communities abroad and in encouraging links between these with the home society; hence, only a state can achieve that mission effectively. The PA, however, failed to attract expatriates due to the impossibility for them to return to the territories without Israeli approval. The PA was incapable, moreover, of absorbing the influx of repatriated labour. This failure was not due to an inherent flaw of the PA. The PA faced an economy, rather, that had been deteriorated by a regime of settler colonialism. Labour was made redundant by the Israeli policy of closure (Hilal 2007, 11, 22, 25). The failure of the PA to attract expatriates, therefore, can be attributed to this situation.

According to Hanafi (2001), the relevant factors in determining the return of (Palestinian) businessmen and investment are: the political and economic situation in the West Bank and Gaza; the kind of relationship that exists between the PA and the country hosting the Palestinian community; and the socio-economic structure of the Palestinian communities in the *diaspora* (cited in: Hilal 2007, 24). In other words, while making analyses of PA laws in the following paragraphs, one shall always put those laws in their socio-political and economic context.<sup>26</sup>

By 1994, the sources of legislation for financial and commercial laws in the oPt were originated in the laws of the Ottoman Empire, the British Mandate and the Israeli Military orders in the Gaza Strip. The West Bank sources, furthermore, originated from the Jordanian period as well as the Israeli Military Orders. These enactments are, to a large extent, still applicable in the West Bank and Gaza Strip today. Most of these sources are old and in need of adaptation to modern developments in the financial sector and international trade. Reforming the financial and commercial laws constitutes a priority for the PA. By realizing this priority, the PA hopes to attract local and foreign investors to participate in the Palestinian economy. With the unification of laws and regulations, coupled with efforts to modernize the

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<sup>26</sup> In fact, economic laws and financial regulations were willing to attract foreign and expatriate investments and capitals and they did so although in a very limited and modest way. However, those same laws have had much less impact following the eruption of the second *Intifada* in 2000.

infrastructure, the PA is beginning to build the foundations of a national economy (Hilal 2007, 22).

The PA has enacted several laws pertaining to the commercial and financial sector, such as the Palestinian Monetary Authority Law of 1997, the Investment Promotion Law of 1998, the Cities and Free Industrial Zones Law of 1998, the Arbitration Law of 2000, the Labour Law of 2000, the Banking Law of 2002 and the Income Tax Law of 2004. Other regulations are under preparation, such as the Commercial Law, the Company Law, Secured Lending and Leasing Law, Accounting and Auditing Law. Most of the enacted laws are compatible with international standards established by international financial institutions such as the World Bank and the International Monetary fund. Such efforts, however, can achieve little in the absence of a positive policy environment and improved political conditions. The Palestinian economy has been highly dependent on international aid and lies under the direct domination of the Israeli economy. The Palestinian economy is extremely frail. Production, services and markets are all severely fragmented. Movement of goods and people is completely beholden to the whims of Israel. Many Palestinians, moreover, who lost their jobs due to the closures and constant Israeli pressure have established informal businesses to compensate for lost business.

## **VII. Conclusion: Policies and Legislation Needs**

Migration may be a source of (socio-economic) development on the individual and national level; it is, however, paralleled by difficulties and risks. For Hilal, migration as a whole has had a conservative impact on Palestinian society in the WBGS. This is the product of the almost continuous impoverishment of the 'cultural capital' of Palestinian society in the WBGS. This meant that the deprivation of more innovative and dynamic members of society enhanced, and led to the resistance to social change. Besides, the author assesses that the fact that Palestinian refugees and migrants are not absorbed by hosting states, through citizenship and permanent status (mainly in Gulf states), they risk to form a community that is almost self-enclosed within which they develop patriotic feeling, generosity, special culture and within which they also form a "ghetto." (However, he admits that "it is futile to discuss the impact of migration on

Palestinian society in the WBGs without situating the society in its historical, regional and international setting." [Hilal 2007, 27-31])

All these risks necessitate comprehensive policies and legislations on migration. They necessitate first of all, clear division of responsibilities and separation of institutions between the PLO and PA in issues related to migration. The determination of the role of the PLO in issues of foreign affairs could, therefore, be clarified, especially if the state is to be established.

Only with statehood, however, can the Palestinians efficiently tackle issues related to migration. Only a state could attract expatriates and link them to the communities living inside Palestine. Only a state could negotiate agreements based on reciprocity of treatments with third states. Only a state could legislate and enforce migration laws that are compatible with international standards but also national interests.

It must be remembered, however, that policy making and regulations on migration do not depend exclusively on the PA; the Israeli role in facilitating or rather complicating movement of Palestinians outside the borders of the oPt is crucial. The PLO and/or the PA, however, shall develop bilateral agreements with neighbouring states, mainly those used as transit for Palestinians of WBGs (Jordan and Egypt) in order to facilitate passage through their territories.

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