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The Legal Framework of Palestinian Economic (under)development

Asem Khalil and Jamil Salem¹

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¹ Asem Khalil, Assistant Professor, the Faculty of Law and Public Administration and at the Master Program in Democracy and Human Rights (Birzeit University). He holds a Ph.D. in Public Law from the University of Fribourg (Switzerland) and a Master in Public Administration from National School of Administration (ENA – France). Jamil Salem, researcher at the Institute of Law, a Ph.D. candidate in Law. This paper was presented in the International Conference organized by the Faculty of Law and Criminology, Vrije University Brussel on *Law and Economic Development: Towards Constructive Engagement in the Middle East* (22-23 February 2007). Initial analyses of the enacted PA laws were presented and discussed in an Intensive Thematic Session on Migrants' remittances and investments in countries of origin (Florence, 24-26 January 2007), entitled "**Legal Framework of Investment & Financial Regulations in Palestine**". The paper shall not take in consideration the developments that followed the second legislative elections on the economic sector and/or the legislative activity which have been facing a challenging situation. Special thanks for Chantal Thomas for revising this draft.

Part I: Introducing the Paper and the Topic

This chapter is about the relationship between law and development. More specifically, it is about statutory laws and economic development. The case study will be Palestine² after Oslo.³

Statutory laws are used, in contemporary states or proto-states, as is the case with the Palestinian Authority (*hereinafter* PA),⁴ to effectuate change. This paper shows that statutory laws intend to accelerate the process of socio-economic change, both through deliberate processes of legal reform and through emergency responses to crisis. The objective of achieving development through legal reform, however, does not necessarily hold. On the contrary, as shall be proven by the Palestinian experience since the establishment of the PA, and despite the economic developmental goals present in Oslo strategies and discourses, legal reform in the economic sector was paralleled by continuous deterioration and dependency of the Palestinian economy.

Immediately after the signing of the Declaration of Principles, optimism about the future of the Palestinian economy prevailed. This optimism has faded into oblivion.⁵ Despite the developmental goals integrally included in the peace process, and the huge amount of money injected directly or indirectly in the PA finance, by the international donor community, the PA economy remained below what have been prior to 1993.⁶

² Palestine, here, territorially speaking refers to oPt (occupied Palestinian territories), including the territories now under PA control and Israeli-annexed East Jerusalem, candidate to statehood. The state of Palestine was declared in Algiers in 1988, but many believe the "state of Palestine" is not a state and that the state called Palestine is still to be established in parts of historical Palestine, mainly in the territories occupied by Israel in 1967 (or at least part of them), i.e. WBGS. The analyses included therein, although studies on the light of the limited character of the PA, thus before statehood, serve to anticipate how the Palestinian economic legislations following statehood will look like.

³ The time-frame of this essay is 1994-2006, i.e. the year of the establishment of the PA until the second legislative elections which took place in February 2006 and the following measures taken by the international community against the PA because of Hamas on power.

⁴ Some prefer to use the Palestinian *National* Authority (PNA), as some of the authors cited here. The two terms are used in this paper to indicate the same thing.

⁵ D. Fidler, *Foreign Private Investment in Palestine Revisited: An Analysis of the Revised Palestinian Investment Law*, 31 Case W. Res. J. Int'l L. 300 (1999).

⁶ Anne Le More makes reference to a World Bank report of June 2000 (*aid effectiveness in the West Bank and Gaza*), in which it is estimated that if the growth rates were sustained, it would take a decade before real Palestinian GNP/capita reached its 1993 level. The same author cites a different MAS/World Bank report of 1999 in which it is stated that the real per capita expenditure was at its lowest level in 1999 for any year since 1980. A. Le More, *Killing with Kindness: Funding the Demise of a Palestinian State*, 81 *International Affairs* 984 (2005).

Part I will provide an introductory discussion of three questions: First, why legal reform in the economic sector? Second, how does legal reform emerge from statutory laws? Third, what is the relationship, if any, between statutory laws and economic development?

In Part II, the limitations on the PA's power to legislate, especially in the economic sector, are discussed. Two areas within the economic sector are addressed. The first one is investment promotion, which is vital for the development of economies. The second area is related to the financial regulations in the territories under PA control; this includes the banking sector, currency exchanges, and other financial transactions.

After having described the failures of legal reform in the economic sector (if economic growth and development are the criteria), Part III suggests a need to find the solution outside law. This paper shall argue that the PA had passed from *factual* dependency, reflecting the historical subjugation of the Palestinian land and people to foreign authorities, to *structural* dependency reflecting, on the contrary, the use of law and legal institutions to perpetuate this dependency in the existent Palestinian political, economic and social structures. If factual dependency is directly connected to foreign occupation, structural dependency concerns other actors, including those nationals (institutions and individuals) who maintain the current system, and the international community contributing indirectly through political and economic support.

Accordingly, legal reform, if intending to succeed, cannot be limited to changes in statutory laws. On the contrary, it must be a comprehensive process that includes the political level (ending the occupation), the developmental agenda (revising donors' role and strategies) and institutional (reforming the PA institutional and legal systems).

1.1. The Need of Legal Reform in the Economic Sector

In 1994, the year the Palestinian Authority (PA) was established, financial and commercial law in the occupied Palestinian territories (oPt) was still rooted in the Ottoman Empire, the British Mandate and the Israeli Military Orders in the Gaza Strip. As to the West Bank, legal sources dated back to the Jordanian period as well as to the Israeli Military Orders. These laws are, to large extent, still applicable.⁷

⁷ In fact, in 1948, West Bank fell under Jordanian rule then annexed to Transjordan in 1950, forming the Hashemite Kingdom of Jordan while Gaza Strip fell under Egyptian control. Jordan had undertaken a complete process of unification of existing laws, starting by adopting a new constitution (1952) which abrogates expressly the (British) Palestine Order-in-Council of 1922 and its amendments, a new Nationality Law (1954) extending the Jordanian nationality to West Bank Palestinians and those who have been

Reforming the financial and commercial laws constituted a priority for the PA upon its establishment, for at least three reasons: First, most of these enactments were outdated and needed adaptation to modern developments in the financial sector and international trade. The antiquated character of the laws resulted in part from the Israeli occupation, which had "left the Palestinian political and legal systems ill prepared for facilitating a modern, market economy."⁸ Second, by reforming the financial and commercial laws, the PA hoped to attract local and foreign investors to participate in the Palestinian economy. Third, the PA had undertaken a legal unification process aiming at harmonizing the varied legal systems in the West Bank and Gaza Strip (WBGs).⁹

Quoting the World Bank, Fidler considers legal and institutional reform as essential to enabling economic development and growth, encouraging foreign investment, and developing the private sector; accordingly, "legal reform and credible political institutions to implement the law are critical to the development of a modern Palestinian economy."

Various attitudes, not always consistent with each other, characterize approaches to legal reform. For example, the legal diversity between WBGs, easily accommodated in some legal systems through constitutional and administrative arrangements among constituencies, is presented in the Palestinian case as an undesirable foreign (or even a colonial) imposition rather than an authentic legal development. For this reason, the process of legal unification and harmonization is presented as an integral part of the overall Palestinian liberation project. The problem with such an approach is that it obscures the transitional character of the PA and conflates liberation and state-building. By contrast, at the other extreme is a position that negates *ab initio* the possibility of legal reform under occupation. According to this approach, it is impossible to realize legal reform before statehood. The problem with such an approach is that it confuses the

expulsed from Palestine and took permanent residence in Jordan. The new Jordanian parliament started a complete revision of the existing laws, approaching more to the civil law system. On the contrary, the Egyptian authorities did never try to annex Gaza Strip and this policy had reflected to their law-making approach; the Egyptian law does not extend to Gaza Strip and the Palestinian nationality remained *de iure* valid although Palestinians of Gaza became *de facto* stateless. The legal systems and enactments in Gaza Strip remained almost intact. When Israel, in 1967, occupied both WBGs, it unified both territories by applying same colonial policies although keeping existing legal separation between the two entities. Two parallel military governments and civil administration were formed and the military orders were adopted separately for both territories (although, often, with similar content). However, legal and judicial development was harshly blocked by the Israeli occupation since 1967 while Israeli military orders and Courts served as a tool for the realization of occupation interest, thus, changing progressively the existing legal system(s) of the oPt, violating Hague conventions which applies in time of war and occupation.

⁸ Fidler, *supra* note 5, 299-300.

⁹ The last objective, which can be considered as the overall objective of legislating under the PA, was expressly mentioned in the decree number 1 of 1994, issued in Tunisia by Yasser Arafat, (by then) nominated President of the PA.

process of legal reform with the objectives that are expressly or implicit in such reform. As a matter of fact, 'legal reform' through changes in statutory laws, is indeed taking place in the territories under PA control.

Beyond these philosophical differences, legal reformers faced several concrete challenges. First, the Israeli-Palestinian Agreements (*hereinafter* the agreements) had been enabling the establishment of the PA, governing the 'Autonomous Territories', which are the disconnected territorial entities making up the oPt; nonetheless and despite this nominal authority, the occupation persisted as a fact of government, in its structures, laws and courts. Second, although the PA was authorized to legislate, its legislative authority was expressly limited by the agreements.¹⁰ Third, the legislative process had not been always a coordinated and harmonized process of legal unification and reform. On the contrary, legislative initiatives and outcomes had been subject to different internal and external inputs, which had resulted in chaotic legal environment.

For Robinson there are three overriding obstacles to legal reform in Palestine: the divergence in the legal codes and traditions of the West Bank and Gaza Strip, unconsolidated lines of authority in the legal field, and overall lack of clarity of jurisdiction. For him, however, the first, legal diversity, is the single most important obstacle.¹¹

1.2. Legal Reform through Statutory Laws

The need for change, especially in the economic sector, in the post-Oslo period, and the establishment of the PA has been proven. Institutions, whenever existent, tend to change, but usually slowly, and not always in accordance with conscious planning.¹² In the Palestinian case, "national" institutions needed to be created *da capo*, and changing the laws through statutory legislation became the tool to immediately start the process of change and adaptation to the new reality.

This project of legislation-driven adaptation has yielded results. In fact, despite the anomalies related to its non-state character, the PA has enacted several laws pertaining to

¹⁰ It may argued that this was essentially the position of the PA before the end of what was to be the transitional period (1994-1999); this tendency was converted later on, especially following the second *Intifada*, the end of the transitional period without an agreement of final issues, and the reform process that was imposed on the PA.

¹¹ G. Robinson, The Politics of Legal Reform in Palestine 27 (1) *Journal of Palestine Studies* 54 (1997).

¹² R. Seidman, The Fatal Race: Law-Making and the Implementation of Development Goals, *Third World Legal Studies* 82 (1992).

the commercial and financial sector.¹³ Other regulations are under preparation.¹⁴ It may be questionable whether or not the enacted laws are compatible with international standards established by international financial institutions such as the World Bank and the International Monetary Fund. A generalized judgment may be misleading; rather, a case-by-case study is needed; however, such kind of analyses, although important, goes beyond the objectives of this paper.¹⁵ Notwithstanding such assessments, serious steps have been undertaken by the PA (although sporadic and dependent on political developments) in the direction of legal reform in the economic sector.

Contrary to what the concept of reform may suggest such change cannot occur through punctuated, surgical interventions, but rather only through a never-ending process. This is particularly true in the case of economic regulations where it is almost (theoretically and practically) impossible for the lawmaker to anticipate future contingencies.¹⁶ Accordingly, creating an enabling environment for economic through establishing adequate legal and institutional framework becomes a priority at the same time that simplistic concepts of discrete and limited reform will fall short.

Pistor *et al*, while analysing impact of transplantation on the corporate laws of six countries, have indicated why certain legal systems stagnate, and thus reject or only partially receive legal transplants.¹⁷ First, existing law could represent a perfectly adequate set of rules that requires no change; second, informal governance mechanisms may work sufficiently well to render law irrelevant; third, the state may direct economic activities through administrative rules and regulations; fourth, there may be little demand in a country for a particular set of rules where economic conditions are sufficiently different to render them unimportant.

¹³ 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, the Income Tax Law of 2004, etc. Those legislative texts were published in the Palestinian Official Journal and can be found on <http://muqtafi.birzeit.edu>.

¹⁴ Such as the Commercial Law, the Company Law, Secured Lending and Leasing Law, Accounting and Auditing Law. Those texts are still under discussion by the Palestinian Legislative Council (PLC) but the draft have been circulating to the general public.

¹⁵ However, the author shall refer, as much as needed and in the appropriate sections, to studies and analyses done on certain endorsed laws from the perspective of consistency to international standards.

¹⁶ K. Pistor *et al*, Evolution of Corporate Law and the Transplant Effect: Lessons from Six Countries, 18 (1) The World Bank Research Observer 108 (2003).

¹⁷ Legal transplant is a very common experience in developing legal systems and makes part of legal reform process. The same author had proven that legal transplant is not an easy (and certainly not a short-term) solution for countries with less developed legal systems.

In addition to these sources of resistance to legal reform, there is also a dynamic, not uncommon particularly in developing countries, whereby such resistance to smooth or orderly change may nevertheless be followed by sporadic bouts of radical legal change, in response to a crisis. In this pattern of resistance followed by sudden change, the legal reforms enacted tend to be more radical, and at times even erratic. In fact, although crises are important motors for legal reform, crisis-driven legal reform can mean that lawmakers overreact in a backlash fashion.¹⁸

This paper does not pretend to exhaust the topic of economic reform nor the legal and institutional changes to accommodate such a reform. On the contrary, this paper merely hopes to contribute to such efforts, through the analyses of selected statutory laws in this particular case study.

What is suggested by the foregoing is that the adoption of statutory law is not the end of the process, but a step forward (or backward, according to interpretation given to its provision). In fact, studying legal reform through statutory laws suffers from an analytic shortcoming because the study of legal reform cannot be exhausted through statutory laws, seen by the dichotomy between the law-on-the-books and the enforced law or law-in-action. However a look at statutory reforms, however limited, does provide insight into the larger reform process. Besides, it shall be admitted, in some cases, that the process itself of law-change is more important than the rules included therein. In other words, we use statutory law as a source for analyzing the timing and locus of legal change.¹⁹

This paper also suggests that such efforts of legal reform through statutory laws can achieve little in the absence of a positive policy environment and improved political conditions. In fact, the Palestinian economy has been suffering on the one hand from high dependency on international aid and lies under the direct domination of the Israeli economy,²⁰ and on the other, from several PA inadequate practices and mismanagement that hinder the establishment of a viable Palestinian economy.

Indeed the Palestinian legal reform experience is influenced and in different historical stages hampered by developments and pressures from international players and political

¹⁸ Pistor *et al*, *supra* note 16, p.108.

¹⁹ Pistor *et al*, *supra* note 16, p.91.

²⁰ For more details on the extent of dependency of the Palestinian economy, *see* E. Young, Palestinian Economic Dependence on Israel, Washington Institute for Near East Policy, IFC (23.03.2006).

events. These and other factors caused an unforeseen meltdown of Palestinian investment during a period of supposed peace and state-building, not only due to the internal obstacles and incompetence of Palestinian politicians, but it was inevitable that under-development will be the result of an unwise policy of trying to integrate the Palestinian economy in the global development without understanding the difficulties of reforming a complex entity in an in-conflict stage and prior to achieving perceptible results on the political level.

1.3. Statutory Laws and Economic Development

This paper, as the title may suggest, is based on three inter-related assumptions. First, there is a relationship between law and development; in fact, the importance of law and legal institutions for economic development is widely acknowledged.²¹ The recognition of a relationship between law and development does not suggest that it is possible empirically to conclusively establish the contribution of law and legal institutions to economic growth and development; it is even more difficult to establish a clear empirical relation between the quality of particular rules or statutes and economic development. However, some studies have shown that the perception data that measure effectiveness of legal institutions are positively correlated with the level of per capita GDP.²²

Second, in contemporary states development goals (considered mainly but not only in economic terms) legitimize and justify legal reform. In fact, given that development constitutes the process by which society attempts to overcome mass poverty and powerlessness,²³ and that law has played a crucial role in the modernization and industrialization of many countries,²⁴ law becomes a key determinant towards the realization of economic growth and prosperity.

Third, law making or changing, although becoming increasingly urgent, does not ensure *per se* the realization of development or even economic amelioration.²⁵ This fact is

²¹ Pistor *et al*, *supra* note 16, p.89.

²² Pistor *et al*, *supra* note 16, pp.92-93.

²³ A. Seidman, Participation and the Law, Third World Legal Studies 1 (1993).

²⁴ Pistor *et al*, *supra* note 16, p.92.

²⁵ Law making is not limited to enactments issued by the legislative authority in a country (laws) or the executive authority (bylaws, legislative decrees or decree laws) but extends to the administration in general and the judiciary. The administration in charge of executing the law in force, and represents the state authority vis-à-vis the citizens while the judiciary applies and interpret the law in force. However, legal "reform" considered as rational process of legal change aiming at adapting the law in force in coherence with certain objectives, is often put in force by state authority through legislative enactments; for this reason, this essay is limited to the analyses of law making through the PLC and by governmental bylaws.

explained, by some,²⁶ as resulting from the exclusion of the main target of development from the process of law making, ending up by causing poverty and powerlessness rather than resolving those problems.²⁷ For Robert Seidman, poverty and powerlessness result from institutions understood as patterns of behavior. The organized polity can most readily manipulate the law; some governments did not do so in ways that reduced poverty and powerlessness, but rather in ways that maintained and increased poverty and powerlessness. Law became not part of the solution but part of the problem.²⁸

Based on the law itself, others²⁹ explain the failure of law in achieving development goals for any of the following reasons: first, because they continue in force the received law (colonial legacy) thus did enact genuinely development-oriented laws. Second, the new laws fail to prevent inappropriate behaviours or induce appropriate behaviours. This happens because they did not take into account accurately the milieu within which the actors chose to obey or disobey the new law, or because the laws assumed that the implementing agencies specified in the law would behave in ways they did not.³⁰

As shall be shown by the Palestinian experience since the establishment of the PA, statutory law reform, although charged with development (and many other) goals, contributed to maintain existent colonial structures, laws and practices, which had characterized Palestinian economy and society as a whole during the Israeli occupation,³¹ and crystallized the PA economic weak performance.

Legal reform and statutory law change alone were not able to contribute to the de-colonization efforts. On the contrary exogenous and endogenous factors contributed as will be shown to the enhancement of the existent colonial structures, and reproduction of dependent socio-economic structures.

Accordingly, this essay does not suggest that there is necessarily direct causal or consequential relationship between law and economic development. On the contrary, it

²⁶ A. Seidman, *supra* note 23, pp.1-11.

²⁷ The author argues, that: "Law and the state cannot, however, simply legislate the imposition of measures designed by experts and expect development to occur." Seidman, *supra* note 23, p.2.

²⁸ R. Seidman, *supra* note 12, p.81.

²⁹ R. Seidman, *supra* note 12, pp.81, 83.

³⁰ R. Seidman, *supra* note 12, p.83.

³¹ For Robert Seidman every Third World country at independence initially continued in force the colonial legal order. *A fortiori* the PA, which is not an authority of an independent state but rather an authority which co-existed side by side (or even under the supreme authority of?) the Israeli occupation, continued inevitably the colonial legal order. R. Seidman, *supra* note 12, p.82.

intends to put Palestinian (de-developed)³² economy in its institutional and legal framework; besides, the paper shall present PA efforts to reform (through legislation) in the economic sector aiming at realizing development objectives.

PART II: The PA Legal and/or Statutory Reform

The PA had been facing challenges related to economic growth and development; as will be shown later on (Part III/section 3) this is not totally dependent on legal issues, but on the same structure and structural dependency of the PA. However, observers and experts have been advocating for the revision of existing legal framework, which was hindering growth and development.

For Brynen,³³ the legal context in the oPt, including the territories under PA control, is characterized by regulatory hurdles and a lack of legal transparency which increases the burden, risk, and confusion of doing business. In addition, he argues, the existing duality between Gaza Strip and the West Bank had been causing different economic advantages for foreign investment.

This chapter intends to present case studies of statutory laws that regulate investment and financial issues. However, the power of the PA to legislate constrained by many limitations, especially in the economic sector, which was regulated to the smallest details by Paris Protocol.

2.1. The Power of the PA to Legislate

According to the Declaration of Principles, the "Council" that shall be elected (only) by the Palestinians of the WBGS and shall be entitled to legislate, in coherence with the Israeli Palestinian Agreements (*hereinafter* the agreements). This governing body (later replaced by the Palestinian Legislative Council or PLC) was an important innovation of the agreements, and meant that "Palestinian laws" were now enacted by elected (WBGS) Palestinian representatives. It meant also, however, (and this was inevitable) that legislation would be limited to the powers "transferred" to the Council by the Israeli Military governor and by the Israeli civil administration and within the framework of the agreements between the government of Israel and the PLO, recognized as the

³² De-development is used by Sarah Roy to represent the systematic destruction of an indigenous economy by a dominant power. Cited in: S. Alissa, *The Economics of an Independent Palestine*, in: J. Hilal (ed.), *Where Now for Palestine? The Demise of the Two-State Solution* 140 (London: Zed Books, 2007).

³³ R. Brynen, *Buying Peace? A Critical Assessment of International Aid to the West Bank and Gaza*, 25(3) *Journal of Palestine Studies* 86 (Spring 1996).

representative of the Palestinian people. In many cases, even where the PA has legislated, its laws are rendered ineffective because of both de facto Israeli control on territories and de jure Israeli control of governing functions not transferred to the PA.

According to the Interim agreement (Article XVIII.4.b), the PA President shall not promulgate legislation adopted by the Council if in contradiction with the agreements. The Law n.4 of 1995 regulated the law-making process even before the election of the Palestinian Legislative Council (PLC) and remained in force after that event. This law institutionalized the predominance of the executive body (mainly the President) over the legislative body. It gives the President a veto right which enabled him to ignore for years several laws that were adopted by the PLC (including the Basic Law itself, which was adopted by the PLC in 1997 but was not endorsed by the President until 2002). Those are signs of the authoritative nature of the PA; it was in part a legacy of the centralized, secretive and patronage-based bureaucratic structure of the revolutionary PLO in exile the authoritarian nature of the PA regime; nevertheless, one shall admit that it was also a product of the peace agreements.³⁴

Following the first elections of the PA President and the 88 members of the PLC in 1996,³⁵ the new legislative actor (PLC) replaced the Council of the PA in the process created by the above Law. The By-Law of the PLC, adopted in 2000, regulated internal procedures at the PLC which contains several attempts of emancipation from President's predominance but remained ineffective in front of the mentioned law.

Following the adoption of the Basic Law in 2002, the legislative process went through a revolutionary change, one which was highly appreciated by those struggling for the rule of law. In theory, the PLC could bypass the President's refusal to endorse the Law according to Article 57 (and following amendments in 2003, Article 41): “*The President of the National Authority shall promulgate laws after being ratified by the Palestinian Legislative Council within thirty days from referring them to him...*”. In other words, the PLC now had all the legal instruments to bypass any possible Presidential disapproval of its legislation.³⁶

³⁴ Le More, *supra* note 6, p.985.

³⁵ In the 2006 elections, number of sieges at the PLC were extended to 132 members.

³⁶ Although this article passed also inobserved and several laws remained unendorsed by PA President for long periods.

A mixture of the above (still in force) provisions shapes the legislative process³⁷ under the PA, which currently involves three phases: first, the initiation phase, which presupposes a legislative policy and an effective drafting of the proposed law;³⁸ second, the discussion phase, which includes the so-called "general discussion", followed by two (or three) sessions of debates concluded by the adoption or rejection of the draft law; and third, the endorsement and promulgation phase, which includes the endorsement of the President (or, otherwise, suggestions of amendments), promulgation in the Official Journal and the execution through by-laws. The actors and skills needed for each phase, as much as gaps and limitations, are various.³⁹

2.2. PLO-Israeli Agreements and Economic Governance Problems

The PLO-Israel economic agreement called "Paris Protocol" and the Washington Agreement signed between the PLO and Israel in September 1995,⁴⁰ set the framework for economic relations between the PA and Israel.⁴¹ Bilaterally, the Paris Protocol states the basic principle of free trade with Israel, establishes a quasi-customs union, and gives the PA the right to run its domestic affairs, such as the authority to impose direct and

³⁷ Here referring exclusively to procedures regulating Law making process, not secondary legislations.

³⁸ The legislative initiative is granted by the BL to the Council of Ministers and to any deputy of the PLC. Suggestions were made by experts to effectuate changes in this phase in order to give priority to bills presented by government (needed to realize public policies) from those suggested drafts from deputies. They also suggest to limit deputies' right to present draft laws to certain numbers of deputies and not to individual deputies.

³⁹ The legal and regulatory framework of the Palestinian legislative process has been the object of numerous studies and analyses by experts, some of which have documented the following interconnected gaps and limitations: **First, in the preparatory phase:** the absence of general legislative policy and planning; and the unclear regulations on the authority of the Cabinet concerning legislative priorities and decisions taken within. **Second, in the discussion phase:** the possibility of the PLC speaker holding on to proposed laws without detailing a timeframe for presentation and general discussion; the possibility for one or more deputies to present draft laws. There were calls for amendments to increase the number of deputies necessary to propose laws. The secondary role of the PLC committees and the possibility of proceeding without waiting for their reports. **Third, in the promulgation phase:** The unclear legal provisions concerning amendments that may be proposed by the President and the way the law is promulgated following the vote of the PLC. The complete control the Executive Branch of government has over the decision to publish laws in the Official Journal. The absence of strategic planning or (in some instances) political will needed to adopt the necessary by-laws required to enact the laws. This is not, however, the main issue here. The Institute of Law at Birzeit University has undertaken several studies on the different phases in the process of legislation. For more details, see the table in Annex II.

⁴⁰ The Declaration of Principles (DOP) on Interim Self Government Arrangements signed on 13 September 1993 between the PLO and Israel served as a basic text for subsequent agreements between the two sides. According to Article 1 of the DOP, an Interim Self-Government would be established for the Palestinian people in the WBGS. The DOP and especially the Interim Agreement of 1995 have laid down the structure, the powers, and the jurisdictions of the PA. For more details and the text of these agreements see http://www.palestinefacts.org/pf_1991to_now_peace_process_outline.php

⁴¹ For more details regarding PA legislative authority in economic and financial sector, see: S. Fares, S., *On the Road to Economic Integration with the European Union: Palestine's Legal Requirements* (Konrad Adenauer Stiftung, 2006).

indirect taxes, establish a monetary authority except the issuance of a Palestinian currency, set industrial policy and insurance issues.⁴² As for third party trade, it regulates the relation between the PA and the rest of the world regarding import taxes and import policy, monetary and financial issues, direct and indirect taxation, labour, agriculture, industry, and tourism.⁴³

The PA's monetary and financial powers are provided in Article IV of Paris Protocol. This Article has created the Palestinian Monetary Authority (PMA) acting as a Central Bank with limited powers.⁴⁴ According to this Article the PMA will serve as the PA's official economic advisor and it is responsible for licensing, supervising and inspecting banks, managing foreign exchange and foreign currency transactions, and it will have powers and responsibilities for the regulation and supervision of capital activities in the Palestinian territories, including the licensing of capital market institutions, finance companies and investment funds.

Nonetheless, the PMA's ability to act as a Central Bank is restricted by the absence of an own currency. According to Article IV of Paris Protocol "*the New Israeli Shekel (NIS) will be one of the circulating currencies in the Palestinian territories and will legally serve as means of payment for all purposes including official transactions*". The Jordanian Dinar (JD), the NIS, and United States Dollar (USD) are the main currencies circulating in the oPt.

In accordance with the Paris Protocol, Israel has transferred to the PA several powers and responsibilities relating to economic policy.⁴⁵ Hence, the PA has legislative powers over different activities, which include banks and other financial institutions, financial markets and insurance activities. However, Israel's economic policy prior and after the

⁴² According to Fidler, Palestinian goods were to move freely into the Israeli market. Such access to the significant Israeli market promised to eliminate the discriminatory treatment suffered by Palestinian goods during the period of occupation. The Economic Protocol did not, however, provide for free movement of labor between Israel and the Palestinian Territories. Fidler adds that the Protocol subjected Palestinian imports to the Israeli customs regime, with the exception of certain products that could be imported at tariff rates set by the PA. Although during the Economic Protocol negotiations the Palestinians pushed for a free trade arrangement that would allow them to set their own tariffs on imports, Israel wanted a customs union to avoid recognizing Palestinian borders as would be required under a free trade arrangement. Fidler, *supra* note 5, pp.298-299.

⁴³ A. Arnon and T. Weinblatt, Sovereignty and Economic Development: The Case of Israel and Palestine, 111 *The Economic Journal*, Blackwell 295-298 (2001).

⁴⁴ A. Arnon *et al*, *The Palestinian Economy: Between Imposed Integration and Voluntary Separation*, 138 (Brill, 1997).

⁴⁵ For more details regarding PA authority to legislate in the transitional period, see: A. Khalil, *Legislating for Migration, The Anomalous Case of the Palestinian Authority*, Analytical and Synthetic Legal Note (CARIM, 2006). Available online: http://www.iue.it/RSCAS/e-texts/CARIM-AS06_11-Khalil.pdf (accessed on 20 January 2007).

signature of the Protocol, was directed towards eliminating any form of a sovereign Palestinian entity and undermining the struggle of the Palestinian people for self-determination. Instead of laying “*the groundwork for strengthening the economic base of the Palestinian side*” as formulated in the preamble of the Protocol, it intensified former inequity and dependence on the Israeli economy.

The quasi-customs union gave Israel the right to collect import taxes and VAT. Article III of Paris Protocol stipulates a so called “revenue clearance system,” which provides that levies on goods that are destined for the WBGS should be transferred to the PA. Israel utilized this right to hold and/or delay these revenues, as a mean of pressure and punishment. Closures, checkpoints, movement restrictions, bypass roads for settlers and a separation wall, are further tools to isolate Palestinians from one another and from the rest of the world. Trade with other countries should be handled according to the Protocol through Israeli ports or through Israeli controlled borders between the oPt with Jordan and Egypt. The use of prolonged border closures constitutes a real threat to the Palestinian economy and makes it impossible for the Palestinians to create long term investments.⁴⁶

The Protocol was intended to serve Israeli-Palestinian trade during the interim period, which ended on May 1999, and the Protocol is still *de facto* applicable, in the absence of a breakthrough on the political level. The experience of the last years has shown that agreements with unbalanced distribution of power will not be effective and sustainable, if people are denied economic freedom to control their own land and resources.

Fidler notes that the Economic Protocol has, from the Palestinian perspective, collapsed because of the Israeli border closures and other security measures prevailing Israel's security over Palestinian need for economic development. Besides, the modified customs union arrangement has not worked well for the Palestinians. Given all these factors, it is hardly surprising that the nature of the Israeli-Palestinian economic relationship structured in the Economic Protocol is being critically questioned.⁴⁷

2.3. Promoting Investment

After recovering a part of the territory, the Palestinians have commenced a new era; it was natural that the new stage of political activity under the PA be accompanied with a

⁴⁶ Arnon *et al*, *supra* note 44, p.138.

⁴⁷ Fidler, *supra* note 5, pp.301-303.

new epoch of economic activity. On the one hand, the PA would aim to use and develop resources and cooperate as well as integrate with other states in the fields of planning and social and economic development on the other hand. For those reasons, the PA could not wait until the election of the legislative and presidential elections in 1996 to adopt a law related to investment promotion. In fact, the President of the PA had endorsed Law No. 6 of 1995 Concerning the Promotion of Investment.⁴⁸

Between the Declaration of Principles in 1993 and the adoption of the original Investment Law in 1995, the legal structure for investment in the oPt was judged inadequate.⁴⁹ A modern and unified investment law became a must,⁵⁰ as was largely recognized in early years of the peace process. In fact, an investment promotion law can rightly be considered as one of the most important economic laws. It exerts a direct effect on economic growth by attracting capital to invest in production and enterprises that propel the economic wheel in the Palestinian territories. Since the Palestinian territories have already suffered from an unstable economic situation, the PA was interested in creating an economic environment that attracts investors to the PA controlled territories.

When the Palestinian Investment Law was adopted, it was a disappointment.⁵¹ For Brynen the Investment Law sought to attract external investors by offering tax exemptions but did little to resolve the more fundamental obstacles to private sector development.⁵² For Fidler, PA efforts to address the needs for legal reform have not always been successful. The Investment Law is a case in point.⁵³

In response to criticisms, the PA engaged in extensive studies and consultations seeking advice on how to improve the law. It was natural that a number of modifications be introduced to investment methods and controls in order to produce more facilitation in

⁴⁸ Promulgated on April 30, 1995 and published in Issue No. 5 of the Palestinian Official Gazette, June 5, 1995, p.6. To notice that, contrary to most other laws, the Palestinian law concerning investment promotion is not derived from any other piece of legislation, which has been inherited from past legislative periods.

⁴⁹ Fidler, *supra* note 5, p.309.

⁵⁰ Brynen, *supra* note 33, p.86.

⁵¹ Fidler, *supra* note 5, p.310. The same author refers criticisms made by intergovernmental and academic experts (World Bank, MAS...) on the law in question, considering it as an inadequate legal response for Palestinian economic development.

⁵² Brynen, *supra* note 33, pp.86-87.

⁵³ For Fidler the revised Investment Promotion Law of 1998 did not resolve that issue neither. For him, many factors have combined to create low levels of private investment, both domestic and foreign, in the Palestinian Territories. Fidler, *supra* note 5, p.303-307.

the procedures as well as tackle obstacles, which hinder investment progress. The Law of Investment Promotion No. 1 of 1998⁵⁴ has been enacted in order to replace the original one.⁵⁵ The adoption and revision of the Palestinian Investment Law form part of the PA's attempt to create the proper legal enabling environment for investment.⁵⁶

Different arguments and interpretations can be given to the changes effectuated in the 1998 Investment Promotion Law. Some see in the new law not only an absence of reform, but even a regression in certain areas. For Fidler,⁵⁷ the Revised Investment Law is perhaps the classic example of how the PA has not done what is considered necessary to reform its law to accommodate businesses in the global era. However, he adds, even if the PA had adopted a revised law that conformed to all international standards and practices, the success of this law would remain hostage to the effective reform of Palestinian commercial, trade, and tax laws.

For Robert Seidman almost invariably, the early Third World political rhetoric called for radical change, usually using a socialist vocabulary. The laws enacted, mainly facilitated not the transition to socialism, but the continuation of growth of state capitalism.⁵⁸ Fidler, however, examined the provisions of the Revised Investment Law and explored ambiguities, questions, and problems that a reading of the text reveal. For him, the Revised Investment Law does not adhere to international standards and practices incorporated in the World Bank's Guidelines on the Treatment of Foreign Direct Investment and bilateral and multilateral treaties dealing with the treatment of foreign investment, including the proposed Multilateral Agreement on Investment being negotiated under the auspices of the Organization for Economic Co-operation and Development.⁵⁹

This disappointment some analysts⁶⁰ of the law when compared to international standards and practices in protecting foreign investment was related to the fact that it confuses the scope of the principle of non-discrimination and the expansion of the areas in which the PA can exercise discretionary incentive powers. For Fidler, the

⁵⁴ Palestine Gazette (Palestine National Authority), Issue No. 8.6.1998, p. 5.

⁵⁵ The 1998 Investment Law was also amended by the Amending Law No. 2 of 2004.

⁵⁶ Fidler, *supra* note 5, p.309.

⁵⁷ Fidler, *supra* note 5, p.348.

⁵⁸ R. Seidman, *supra* note 12, p.83.

⁵⁹ Fidler, *supra* note 5, pp.309-310.

⁶⁰ Fidler, *supra* note 5, p.343.

disappointing Revised Investment Promotion Law raises deeper questions about the nature of the reform of Palestinian law.⁶¹ For him, there are two possible interpretations of the process that produced the Revised Investment Law, which diverge dramatically and which tell very different stories about Palestinian law reform. The harsher interpretation focuses on the question from a philosophical angle, considering that the rejection of certain standards and practices is related to existent political opposition. The more lenient stance centers on more pragmatic problems facing the reform of Palestinian laws. The same author presented various arguments against the first approach, considering it contradictory to the developmental agenda of the peace process itself while at the same time considering that: "the politics of the peace process and the politics of the PA may have shattered the liberal vision of Palestinian economic development constructed in the Oslo process".⁶² On the contrary, the pragmatic perspective did not see in the Revised Investment law a rejection of liberal philosophy but another step in the overall process of Palestinian law reform.⁶³

2.4. Financial Regulations

2.4.1. Banking Sector

Until the establishment of the PA, Banks were not allowed to operate in the WBGS. Two Israeli military orders⁶⁴ instructed the closure of all financial institutions working in the West Bank and the Gaza Strip and replaced them by Israeli banks.⁶⁵

In 1994 and after the signature of Paris Protocol, the PA took the responsibility of regulating the financial sector. In accordance with Article IV of Paris Protocol the Palestinian Monetary Authority (PMA) was established in 1994 and the Palestinian Monetary Authority Law was promulgated.⁶⁶ The PMA began its efforts to revive the

⁶¹ Fidler, *supra* note 5, p.344.

⁶² Fidler, *supra* note 5, pp.344-345.

⁶³ Fidler, *supra* note 5, pp.346-347.

⁶⁴ Military Order concerning Prohibition of Trading and of Monetary Transactions (Banks) No. 7 of 1967, Proclamation, Orders and Appointments (West Bank), Issue no. 1, 11/08/1967, p.27 and Military Order concerning the Closure of Banks in the Region No. 18 of 1967, Proclamation, Orders and Appointments (Gaza Strip), Issue no. 1, 14/09/1967, p. 65.

⁶⁵ In late 1980s, as a result of winning a case in the Israeli High Court, the Bank of Palestine and the Cairo-Amman Bank had re-opened their branches in Gaza Strip and the West Bank. For more details regarding banking sector regulations, see: Fares, *supra* note 41, pp.90-91.

⁶⁶ Palestine Gazette, Issue no. 21, 31/01/1998, p. 5. For more details about the development of the banking system in Palestine, see the official website of the PMA, <http://www.pma-palestine.org/bankenvi/bankenvi.html>.

banking sector with limited capacities. The objective of the PMA is to secure monetary stability, the soundness of the banking system and encourage economic growth.⁶⁷ The PMA has most the powers of a Central Bank and according to Article IV (7) Paris Protocol is empowered to supervise, regulate and license banks, to hold its foreign currency reserves and to regulate foreign exchange dealers. Further, it is responsible for regulating and supervising banking and money changers' activities. The PMA is the executing agency for the Monetary Authority Law, the Banking Law and the Money Changers Law, pursuant to which it issues regulations on a regular basis. The PMA's abilities are though restricted and it is not able to achieve its objectives in the absence of a national currency.

From the establishment of the PMA until now, the PA has experienced a boom in the banking sector. The PMA has so far licensed 23 banks national and international banks in the West Bank and the Gaza Strip.

The PA enacted "the Banking Law No. 2 of 2002".⁶⁸ The Banking Law applies to "*all banks and financial institutions engaging in banking activities in Palestine*" (Article 2). The PMA is the "*sole agency authorized to execute the provisions of this law and to issue rules and instructions to implement its requirements*" (Article 3.2). Pursuant to these provisions, the PMA periodically issues "rules and instructions" to regulate and supervise banks. The scope of the Banking Law is not clearly defined. Article 2 establishes that the Banking Law shall apply to "*all banks and financial institutions engaging in banking activities,*" but then banking activities and financial institutions are not defined.

The Banking Law text should be more precise when addressing issues like the various types of bank reserves that the PMA may require, registration, licensing (including refusal appeals), confidentiality, mergers, inspections and liquidation, "management contracts", means of payment vs. means of credit (cheques and debit/credit cards), and focus on other issues often addressed by international legislation like insurance protection for depositors, fiduciary responsibility of bank officers and electronic banking.

⁶⁷ Article 5 of the Palestinian Monetary Authority law No. 2 of 1997.

⁶⁸ Palestine Gazette issue no. 41, 06/06/2002, p. 5.

2.4.2. Financial Transactions

After the occupation of the West Bank and the Gaza Strip, Israel imposed its own currency as the sole legal tender⁶⁹ in an attempt to control and integrate the Palestinian economy into that of Israel. With regard to financial transactions, Israeli military orders prohibited Palestinians from transferring and bringing banknotes, coins, credit cards, etc. into the WBGS without permission from the Head of the Israeli Civil Administration.⁷⁰ Furthermore, Israel made all transactions subject to a strict licensing system and imposed high charges on them. For example the “*Military Order concerning Charges on Imported Services and Foreign Assets No. 1182 of 1986 in the West Bank*” obliged Palestinians to pay 15 % of the total value of the service if they engage in such transactions.⁷¹

After the establishment of the PA and according to Art 4 (6) of Paris Protocol, the PMA has taken partial responsibility for the regulation and supervision of capital transactions. Nonetheless, the PA has ignored, abolished and repealed all Israeli controls and military orders restricting the free movement of capital to and from the Palestinian territories.⁷² In addition, the PMA has left all restrictions enforced by the Bank of Israel on banking operations. Palestinian individuals can open bank accounts without any limitations and they have the right to transfer any amounts without any limitations.⁷³

With such provisions, the PA has tried to regulate and liberalize financial transactions by ignoring in practice Israeli military orders that restrict the free movement of capital. Nonetheless, such efforts are limited and are not able to totally separate the Palestinian financial policy from the Israeli direct controls. The PA still has limited powers to facilitate the inflow of capital, which means that the PA cannot draw its own capital

⁶⁹ Military Order No. 76 of 1967 concerning Instituting Israeli Currency as a Legal Tender replaced the Jordanian Dinar in the West Bank. Proclamation, Orders and Appointments (West Bank), Issue No. 5, 15.11.1967, p. 191. The Egyptian Pound in the Gaza Strip was replaced by the Military Order No. 40 of 1967 concerning Israeli Currency as Legal Tender. Proclamation, Orders and Appointments (Gaza Strip), Issue No. 2, 1.11.1967, p. 121.

⁷⁰ Article 2 of the Israeli Military Order No. 973 of 1982 Concerning Money Entering into the West Bank, Proclamation, Orders and Appointments (West Bank), Issue No. 55, 5.5.1983, p. 5, as amended by Military Orders No. 1070 of 1983, No. 1218 of 1988, No. 1243 of 1988, and No. 1272 of 1989.

⁷¹ Proclamation, Orders and Appointments (West Bank), Issue No. 76, 12.9.1990, p. 7.

⁷² See for example “Decision No. 20 of 1998 concerning the Revocation of some Israeli Military Orders in the Gaza Strip,” that explicitly repealed all Israeli military orders restricting the free movement of capital to and from the Gaza Strip. Palestine Gazette, Issue No. 23, 8.6.1998, p. 60.

⁷³ M. Zavadjil *et al*, *Recent Economic Developments, Prospects, and Progress in Institution Building in the WBGS* 29 (Washington DC: IMF, 1998).

import policy. Accordingly, the PA must follow the Israeli military orders and all transactions must be reported to the Bank of Israel.

Further limitations on the transfer of capital into the Palestinian territories can be drawn from international obligations in accordance with UN Security Council resolutions. The Security Council adopted unanimously UNSC Resolution 1373 (2001) in an attempt to protect and suppress the financing of terrorism. According to Article 2 of the resolution, member states are obliged to take all necessary measures to freeze the fund and economic resources of natural and legal persons, groups or entities engaged in terrorist actions. The Resolution was adopted under Chapter VII of the UN Charter, and is therefore binding on all UN member states.

The European Union has signed an interim Association Agreement with the Palestinian Liberation Organization in February 1997, entered into force in July 1997, under the umbrella of the Euro-Mediterranean Partnership.⁷⁴ Article 3 of the Agreement stipulates a progressive liberalization of current payments and capital movement. This statement matches the European Council's common strategy regarding such payments in the Mediterranean region.⁷⁵ The Agreement allowed the contracting parties to limit financial transactions for balance of payment reasons (Article 29 of the Agreement) and national and international security reasons (Article 68 of the Agreement).

After open, democratic, and fair elections, the Islamic Movement, Hamas, won the majority of the seats of the Palestinian Legislative Council. In reaction to this unpredicted victory, the Quartet (United Nations, United States of America, European Union, and Russian Federation) announced on 30 January 2006 that "*all members of a future Palestinian government must be committed to non-violence, recognition of Israel, and acceptance of previous agreements and regulations*".⁷⁶ The Quartet decided on 29 March 2006 after the formation of the new Palestinian government to freeze all donor contributions until the Hamas led government commits to the Quartet's three conditions.⁷⁷ Recently, the

⁷⁴ Official Journal L 187, 16.7.1997, p. 3-135.

⁷⁵ Common Strategy of the European Council of 19 June 2000 on the Mediterranean Region (2000/458/CFSP), Official Journal L 183, 22.7.2000.

⁷⁶ Statement of Middle East Quartet, 30.01.2006, available at: <http://domino.un.org/unispal.nsf/current!OpenPage>.

⁷⁷ Quartet Statement on New Palestinian Government, 30.03.2006, available at: <http://domino.un.org/unispal.nsf/current!OpenPage>.

Quartet endorsed the continuation of the economic sanctions for a three month period till the 22 March 2007.⁷⁸

Israel on its part, denied transferring revenues and fees collected as a duty on imports as well as VAT on Israel merchandise and services for the Palestinian territories. According to the World Bank “*the impact of the suspension of clearance revenue transfers and restrictions on movement and access would be much greater than the impact of reduced aid flows*”.⁷⁹ According to the same source, these revenues amounted to USD 740 million, two-thirds of PA revenues. It is worth mentioning that the suspension of the transfer of these revenues constitutes a breach of Paris Protocol.

The measures taken by the Quartet and Israel have catastrophic effects on the economic situation in the Palestinian territories. According to the World Bank, the Quartet decision has a direct impact on approximately 172,000 unpaid employees of the PA and a million other Palestinians, or approximately 30% of the population in the WBGS, who survive on public sector salaries.⁸⁰

A direct impact on the operation of transferring money and fund through banks into the Palestinian territories had the decision of the Office of Foreign Assets Control at the US Treasury Department, to prohibit transactions with the PA. According to this decision “*US persons are prohibited to engage in transactions with the Palestinian Authority unless authorized*”.⁸¹ Banks that refuse to comply with this act risk having their assets frozen and access to US markets denied.

2.4.3. Currency Exchange

A special importance characterizes legislation on currency exchange due to its relation to the security of the national economy and its direct relation to the monetary and banking system operative therein. Moreover, in the PA as in other developing economies, vital remittances from abroad come usually through the offices and storefronts of money changers.

⁷⁸ Quartet Statement on Extension of Mechanism to Fund Palestinian Authority, 22.12.2006, available at: <http://domino.un.org/unispal.nsf/current!OpenPage>.

⁷⁹ West Bank and Gaza-Economic Update and Potential Outlook, World Bank, 15.03.2006, p. 1.

⁸⁰ The Impending Palestinian Fiscal Crisis: Potential Remedies, World Bank, 7.05.2006, pp. 3-4.

⁸¹ Office of Foreign Assets Control at the Department of the Treasury: <http://www.treas.gov/offices/enforcement/ofac/actions/20060412.shtml>.

Like other political systems and societies, successive regimes ruling over Palestine or parts thereof have enacted legislation regulating the sector of currency exchange. On July 28, 1921, the British Mandate put forward a law on money change. Later, the British authorities enacted the Law Concerning Money Change No. 26 of 1941⁸² and introduced subsequent amendments to it. In addition, Jordan passed the Provisional Law Concerning the Observation of Foreign Currency No. 95 of 1966⁸³ and subsequently introduced a number of amendments to it. The Israeli occupation authorities also issued forth approximately twenty military orders that regulate several aspects of money change. Most prominently, the Israeli authorities issued Military Order No. 705 of 1981⁸⁴, which comprises 91 articles as well as an appendix.

In 1997, the Council of Ministers of the PA issued forth Decision No. 1 of 1997 Concerning the Regulation of the Business of Money Change.⁸⁵ Consisting of 33 articles, the Decision regulates most aspects of the exercise of money change business. The Decision also addresses the definitions of concepts, application for licences and the process of liquidation. Although it is based on the Law Concerning Money Change No. 26 of 1941 and its amendments as well as the Provisional Law Concerning the Observation of Foreign Currency No. 95 of 1966 as is stated in its preamble, the Palestinian Council of Ministers' Decision is in many aspects characterised as a statutory law rather than an executive decision which is usually issued by the Executive.

Under the presidency of the late President Yasser 'Arafat the Council of Ministers introduced two subsequent amendments to the aforementioned Decision. The first was Decision No. 2 of 1997⁸⁶ and the second Decision No. 4 of 2000.⁸⁷

These Decisions include several provisions that regulate the parties dealing with the money-change sector. They handle licensing of small money change enterprises, fees to be collected there from, allowed or prohibited acts for each category, and appointing the Monetary Authority as a central administrative agency thereto, as well as other issues.

⁸² Palestinian Official Gazette: The British Mandate, Issue No. 1134, October 9, 1941, p. 108.

⁸³ Jordanian Official Gazette: Issue No. 1958, October 22, 1966, p.2144.

⁸⁴ Proclamations, Orders and Announcements (Gaza Strip), 1.April 1982, p. 4549.

⁸⁵ Palestinian Official Gazette: Issue No. 17, 30.4.1997, p. 55.

⁸⁶ Palestinian Official Gazette: Issue No. 19, October 15, 1997, p. 47; to be referred to hereafter as the First Amendment

⁸⁷ Palestinian Official Gazette: Issue No. 33, June 30, 2000, p. 41; to be referred to hereafter as the Second Amendment

The existing regulations do not encourage money changers to engage in the formal sector and they do not feature a method or policy that supports the business of small and medium *bureaux de change*. Fees and financial burden are unbearably high. A policy should be adopted as to exempt small changers from fees for a period of time in order to enable them to establish their own enterprises and fulfil their liabilities towards their clients. Thereafter, fees can be imposed on these enterprises in a manner that does not overburden money changers. In addition, fees shall be collected on certain phases and in a gradual manner so that changers' financial burdens are not increased and financial status is not affected.

Many of the remittances coming from Palestinians working abroad pass through money changers, who do not participate in the payment system. This informal system is called "Hawala". It is a fast, conventional and safe transfer of money, usually with a lower commission than that charged by banks, and is probably the most common informal value transfer system in the Palestinian territories. Money is transferred via a network of money brokers, who have connections to other brokers in the recipient country. The correspondent broker gives disposition instructions of the funds and promises to settle the debt at a later date. The whole arrangement takes place without any foreign exchange transactions and through bypassing official exchange rates. The Hawala system is based on trust and honour and does not have enforced rules behind its functioning.⁸⁸

Everybody recognises the relevance of the sector of money change. This sector should rely on internationally defined exchange rates. These rates are linked to particular alterations and accounts and bear direct relation with public services and issues of financial oversight. Therefore, the significance of this sector must be translated into a sound and strong legal regulatory system. This can be achieved through a law regulating the money change sector to be enacted by the PLC, not through decisions from the Council of Ministers. The two amendments to the Council of Ministers' Decision No. 1 of 1997 are not sufficient in terms of supporting money change enterprises. The law must feature rules which encourage and support owners of small bureaux de change, so as to enable them to exercise their roles in a positive manner. The prospective law must

⁸⁸ For more details See M. Patrick, *The Hawala Alternative Remittance System and its Role in Money Laundering* (Interpol General Secretariat Lyon, 2000). available at

<http://www.interpol.int/Public/FinancialCrime/MoneyLaundering/hawala/default.asp>, and R. Ballard, *Coalitions of Reciprocity and the Maintenance of Financial Integrity within Informal Value Transmission Systems: The Operational Dynamics of contemporary Hawala Networks*, *Journal of Banking Regulation*, Vol. 6, No 4, 2005, pp. 319-352 available at <http://www.art.man.ac.uk/CASAS/pdfpapers/coalitions.pdf>

also adopt effective policies regarding fees, exemption from fees, and manner of collecting fees in a way that does not affect the financial status of new and small money change enterprises.

Part III. From factual to structural dependency

There was an assumption by the concerned actors in Oslo peace process economic deprivation in the oPt would affect attitudes towards the peace process.⁸⁹ As was proven earlier, the peace process and the consequent legal reform aiming at creating enabling environment for economic growth did not realize the development objectives. Maybe because the peace process did not have coherent objectives and priorities, thus always prevailing Israeli security over Palestinian need for economic development? Or maybe because the Palestinian economy and market were -and continued to be- dependent on the Israeli, and suffered Israeli unilaterally measures? Or maybe because the PA was not able to adopt harmonized legislative texts? This paper argues that all the above (and other reasons) contributed to the failure of legal reform, especially in terms of realization of expected economic growth and development; however, none of them can, by itself alone, claim exclusive responsibility.

Dependent structures existed since the British mandate period; such structures, during colonial epoch, developed in most of the colonized countries and these were unable to build independent socio-economic entities. Although a de-colonization process in previous colonies took place, the majority of these countries are still under-developed and structurally dependent. The same applies for the Palestinian case, but with an additional factor; a new form of colonialism started after the end of World War II and the Palestinian land and people experienced a unique form of inhuman suppression and occupation. The Israeli occupying machinery, since 1967, has applied different mechanisms to maintain and transmit previous dependency forms into the new created reality, intensifying and consolidating dependent structures and preventing any kind of socio-economic development.

Through the transmission of the old colonial structures into the occupational military orders system, the Palestinian society and after Oslo the PA were faced with a new form of structural heterogeneity. The Palestinian economy is characterized through traditional feudal methods of production and semi-modern structures, hence under-developed and

⁸⁹ This fear finds empirical support in the fact that most West Bankers and Gazans, according to opinion polls, blame their economic difficulties on Oslo. Fidler, *supra* note 5, p.300.

unable to fulfil the needs of the Palestinian population. Such an immature and unstable economic reality was not ready for new experiments on the political level and could not afford the failures of the peace process. Different factors, especially the confrontation between old colonial structures and the new heterogeneous sectors, led to the destruction of the reform initiatives and the manifestation and institutionalization of the old dependency forms resulted in more poverty and under-development. These factors caused societal deformation, as can be seen in the current internal Palestinian situation.

In this section, we will present the three main actors of the developmental process undertaken in the oPt since the beginning of Oslo Agreements with the specific objective to underline what went wrong and why. As the title of this section suggests, the authors suggest that the institutional and legal dependency created by Oslo Agreements and some PA laws, bylaws and practices, convert to structural dependency of the Palestinian economy on the one side on the Israeli economy, and on the others on the international donors' community aids.

3.1. Foreign Aid

The belief that peace depends on Palestinian economic development was central in Oslo strategy, and international aid is one of the main pillars of Oslo strategy for Palestinian economic development.⁹⁰ The main justification of the donor strategy has revolved around the elusive notion of 'supporting the peace process'. In the mid-1990s, the fear was that worsening economic conditions would lead to the political radicalization of the Palestinian society and derailment of the peace process.⁹¹

International direct implication through massive financial aid was clear since early years of Oslo. However, for the Palestinians, international aid was slow and poorly targeted.⁹² Rex Brynen tried to understand why.⁹³ For him this is due to a number of reasons. The cultural clash between the *realpolitik* of foreign ministry officials and the commitment of their counterparts of sustainable development; the donor agencies' underestimation of the political and economic difficulties that lay ahead; the delivery of international assistance was also complicated by legal restrictions by domestic laws of donor countries;

⁹⁰ Fidler, *supra* note 5, p.297.

⁹¹ Le More, *supra* note 6, p.992.

⁹² For Brynen the PA criticism of the pace of assistance has been in part politically motivated, a means of diverting attention from its own shortcomings and exerting pressure for accelerated disbursements. Brynen, *supra* note 33, p.83.

⁹³ Brynen, *supra* note 33, pp.80-83.

the institutional challenge of rapidly expanding aid programs; assistance was shaped heavily also by national priorities of donor countries with little coordination or even communication between them while tying the aid by preferences for suppliers from the donor country; the mismatch between sartorial goals identified by the Palestinians and the distribution of aid funds by donors.

In recent years, different authors have dedicated several publications to this topic. Le More⁹⁴ concluded even that the international donor community ended up by funding the demise of the Palestinian state. After having quoted a report from World Bank in 2004 in which it was stated that donor disbursements doubled to almost US\$1 billion per annum while real personal incomes fell almost 40 per cent in the same period, she presented complementary explanations for the failure of international aid to realize developmental goals.

First, donors acted as if the aid effort in the WBGS could proceed independently from the political process. Since main topics remained unresolved in Oslo process, aid was directed towards keeping the peace process and the PA alive rather than fostering growth, development and the institutional basis for a state.⁹⁵ Donors, on the contrary, continued to treat the West Bank and Gaza as a quasi normal 'sovereign' country. On the contrary, Le More concluded, aid can buttress but not replace political process.⁹⁶

Second, the shift of donors funds to emergency assistance rather than to development, on the one hand preventing further socio-economic deterioration and enabled vital social services to continue to function but on the other raising serious doubts regarding long-term effectiveness and sustainability. This shift started as much as the mid-1990s, and not in 2000, as many believe, following the eruption of the second Intifida. For this reason, aid to the oPt has, on the whole, been overwhelmingly reactive and short term in nature. Beyond the issue of aid effectiveness, Le More argues that aid not only relieves Israel of its responsibilities under international humanitarian law but it has also clearly helped sustain its occupation, which would have been much trickier and more onerous to maintain had the international community not footed the bill.⁹⁷

⁹⁴ Le More, *supra* note 6, pp.981-999.

⁹⁵ Fidler had had the same conclusions regarding the shift of international aid. Fidler, *supra* note 5, p.301.

⁹⁶ Le More, *supra* note 6, p.999.

⁹⁷ Not to mention also the evidence that Israel benefits economically from donor funds: according to UNCTAD report of 2003 for every dollar produced in the oPt, an estimated 45 per cent goes back into the Israeli economy. Le More, *supra* note 6, pp.993-994.

3.2. The Israeli factor

Many experts and observers present the Israeli role as determinant factor for the level of economic growth and development of the territories under PA control and the rest of the oPt: the dependency of Palestinian economy on the Israeli economy; the repeated Israeli closures of the oPt; the block on importation of necessary goods; the slow pace of Israeli tax clearances to the PA, and later on, the VAT clearance; the obstacles imposed by Israeli custom procedures; the difficulties of granting necessary visas and other documents for foreign experts working on development projects.⁹⁸

Those facts and measures, Brynen argued, are not always due to Israeli bureaucratic inertia but rather often result from deliberate Israeli policy. This policy is applied, according to the PA officials, as an Israeli means of forcing Palestinian concessions at the negotiating table. This proves also that aid effort has been caught up in the broader Palestinian Israeli negotiating process.⁹⁹

Anne Le More went in the same analytical direction, considering territorial fragmentation of the WBGS as a continuous Israeli policy, regardless of the political affiliation of parities in government.¹⁰⁰ She then argued that the territorial fragmentation of the WBGS today is more pervasive than at any point since the beginning of the Israeli occupation in 1967.¹⁰¹ Besides, Israel enforced the internal closure (on Palestinian people, vehicle and goods) within the oPt by a complex permit system and is supplemented by the external sealing off of the WBGS from one another and from all neighboring countries.

This "cantonization" of the WBGS has led to the disintegration of the economic links between its various parts and contributed to the creation of disconnected economic clusters with increasingly less access to either the Israeli economy or to one another. Some other authors went further describing the Israeli policies with the term "Bantustanization", originally used in South African apartheid literature to refer to the

⁹⁸ Brynen, *supra* note 33, pp.87-89.

⁹⁹ Brynen, *supra* note 33, p.88.

¹⁰⁰ Le More, *supra* note 6, pp.983-985.

¹⁰¹ Notably the strict closure regime that has been imposed on the oPt since the early 1990s, its partition into areas A, B, and C following the 1995 Interim Agreement, and the creation of physical 'facts on the ground' on Palestinian land through such measures as large-scale house demolitions and land expropriation, Jewish settlements and by-pass road expansion, and, more recently, the construction of the separation barrier in the West Bank which replicates the fence erected around Gaza in the 1990s. Le More, *supra* note 6, p.983.

development of the reserves set aside for African occupation into self-governing states, colloquially known as 'bantustans'.¹⁰²

4.3. The Palestinian Responsibility

Having admitted the negative role played by the continuous Israeli occupation and colonial policies and having assisted the deficiencies of international aid, many authors argued that part of the responsibility should nevertheless be borne by the PA itself. The challenges facing the newly established PA in its primary mission of putting policies and laws aiming at enhancing growth and development have been varied: some are related to financial and structural means, others are related to the political system itself which lack transparency and accountability, and still others are related to lack of expertise and sometimes political will of the decision-makers.¹⁰³

There is evidence beyond these inadvertent shortcomings of intentional misdeeds by PA rulers, in the form of widespread corruption and the creation of PA monopolies, the absence of the Rule of Law, clientalism and neo-patrimonialism in distribution of resources, the marginalization of the private sector, the localization of Palestinian politics and economy, and the marginalization of the Palestinian refugees and diaspora.¹⁰⁴

Several analyses have connected the authoritarian system created in the oPt with the establishment of the PA by the Oslo Process¹⁰⁵ and associated international donor aid. For Le More,¹⁰⁶ donors and diplomats were mainly concerned with establishing a strong power structure around Chairman Arafat capable of delivering security and a peace deal while reform, good governance and democracy came to the forefront of the donor

¹⁰² Alissa, *supra* note 32, p.140.

¹⁰³ Brynen enumerated some of those challenges: the lack of resources and expertise and the unwillingness of some Palestinian professionals; the lack of institutionalization mainly due to the emergence of bureaucratic structures which became personal power bases enmeshed in competition with each other and with preexisting civil society organizations; the unclear demarcation of authority between the remnants of the PLO bureaucracy and the emerging power centers of the PA; Arafat's neo-patrimonial management style where the Office of the President has retained a role in many projects; the weakness of Palestinian private sector in quality and capacity, that was distorted by decades of "de-development" under Israeli occupation; the weakness of local infrastructures, such as the transportation, the communication, and the energy; the administrative confusion by weak Palestinian institutionalization inhibited the PA's ability to formulate and implement economic policy and severely slowed the delivery of assistance; the absence of solid project proposals and sufficient procedural guarantees, funds were simply not released; the unclear lines of economic authority. Brynen, *supra* note 33, p.88.

¹⁰⁴ See for example: H. Frisch, Modern Absolutist or Neopatrimonial State Building? Customary Law, Extended Families, and the Palestinian Authority, 29 Int. J. Middle East Stud. 341-358 (1997), Fidler, *supra* note 5, Le More, *supra* note 6, p.981-999, Alissa, *supra* note 32, pp.123-143.

¹⁰⁵ Alissa, *supra* note 32, pp.123-143.

¹⁰⁶ Le More, *supra* note 6, p.993.

agenda only in mid-2002. For this reason, the same author concludes, the reform effort was conceived as a technocratic exercise aimed at improving –and for some changing– the regime.

Moreover, the PA was conceived as a transient institution, limited spatially and circumscribed in the powers it can exercise in the non-continuous areas which it has been created to administer. Within this 'client status' context, the PA's core functions are to provide civil and legal administration to the non-refugee population of the WBGS and deliver security for the Israelis.¹⁰⁷ From this perspective, broader governance towards sustainable growth and development is simply beyond the PA's capacity.

Part IV: Conclusion

With all of the PA's shortcomings, the main challenge to a vital economy in Palestine nevertheless remains the occupation. The past few years have witnessed the second Palestinian Intifada and, with it, an era in which every aspect of the life of the Palestinians deteriorated. GNP declined dramatically; unemployment grew to an unprecedented size; and poverty reached very high levels. The fact that the Palestinians were working on the improvement of the general economic situation, and in particular on reforming the legal and judicial system is worth praising, and the fact that the success was limited does not come as a surprise.

The experience of the last years has confirmed that sustained economic development cannot be achieved if all parties ignore international norms. In contravention of these norms, a crippling regime of walls, exclusion, population transfer, and expansion of settlements has hampered any effort to develop the Palestinian economy. The "international community" has failed to play the role of a neutral mediator in this long-standing conflict. The PA and in consequence the Palestinian population have been faced with harsh economic sanctions, that disrupted the supply of vital services, such as health and education. International donor activities have not focused on long-term projects, and instead an aid-reliant society has been created that can be controlled through economic stranglehold whenever its behaviour is not accepted.

Many international organizations are involved in facilitating the enhancement of the rule of law in Palestine and in reforming the legal system. It is important to couple these efforts in Palestine with efforts on the international level aiming at enforcing a just

¹⁰⁷ Le More, *supra* note 6, p.986.

political solution to the conflict based on international law, thus ending the latter-day colonial reality that the Palestinians face.