IV
Legal and Normative Borders

7

The Legal Fragmentation of Palestine-Israel and European Union Policies Promoting the Rule of Law

Asem Khalil and Raffaella A. Del Sarto

Introduction

'What we are doing isn't working. In fact, it's making things worse', wrote Ali Gharib (2013) in the *Daily Beast*, summarising in one sentence the open letter sent by 19 prominent Europeans to the European Union's Foreign Policy Chief Catherine Ashton in April 2013.[1] Representing the European Eminent Persons Group on the Middle East Peace Process, the signers called for a reconsideration of EU funding arrangements for Palestine, stressing that the Palestinian Authority's dependence on foreign funding risks freezing rather than promoting the peace process. The group demanded an explicit recognition of the current status of the Palestinian Territories as one of occupation, with Israel being responsible for this condition as the occupying state under international law. They further warned that Israel's continuing control over the territories is 'actually being entrenched by the current western policy' (ibid.).

In order to assess the validity of this claim, this chapter discusses the EU's promotion of the rule of law and judicial reform in the areas controlled by the Palestinian Authority (PA) in the West Bank. The main part of this chapter is dedicated to an analysis of the legal borders in the Palestinian Territories and their pronounced fragmentation into different areas of jurisdiction. We will discuss the differentiation of rights and the legal status of the population living in that area, while disentangling territory, authority and rights (cf. Sassen, 2006). We will not enter into the debate as to whether Israel's prolonged rule over the territories results

from 'legitimate Israeli security needs' in the absence of a Palestinian 'partner for peace', as Israeli governments have consistently claimed, or whether the protracted occupation is an expression of Israeli 'settler colonialism' that necessarily creates an 'apartheid system'.[2] However, there is no doubt that with Israel's occupation of East Jerusalem, the West Bank and Gaza in 1967, Israel progressively imposed boundaries of inclusion and exclusion through law. Considering these constraints, the chapter will assess whether the EU's support for judicial reform and state-building in the territories, in fact, strengthens the fragmented legal order. The chapter concludes with a number of considerations on legal borders, power and interdependence in the Israeli-Palestinian-EU triangle.

A highly fragmented legal space

Palestinians are subject to different legal and judicial regimes. With Israeli policies establishing a new legal space in the territories after 1967, the judicial fragmentation has become institutionalised in the day-to-day practices of legal and political actors. As discussed in the following sections, the judicial fragmentation is multi-dimensional. It establishes different legal boundaries according to distinct patterns of authority and jurisdictions, functional rule, and territorially defined areas, while granting unequal rights to the population living in the Palestinian Territories.

Creating a new legal space

Israel's position on the applicability of international human rights and humanitarian law in the territories it occupied in 1967 forged the emergence of a new legal space. From the first day of the occupation, the army's *Manual for the Military Advocate in Military Government* prepared Israel to deal in 'legal' or 'legalistic' terms with the possible occupation of the West Bank and Gaza Strip (Shamgar, 1982: 30–31). Military courts and a civil administration were subsequently established.

The legal tools adopted by the Israeli government helped to give the appearance of legality to Israeli enactments aimed at controlling the area and the population. By using loopholes and ambiguities in international law, Israel created a situation of protracted occupation that classical humanitarian law was not equipped to cope with (Benvenisti, 2012: 244).[3] This regards, for instance, the differentiation between occupation and control in the absence of a sovereign state, the distinction between military needs and state security as an exception to the application of

international law in times of occupation or war, and the Israeli justification of self-defence for its actions in the territories, actions which might otherwise be deemed illegal under international law.

Although an early military order expressed the intention of the Israeli government to apply the Geneva Conventions to the occupied territory, Israeli military commanders soon reversed this decision (cf. Kassim, 1984: 29–32).[4] Israel's stance on the non-applicability of the Geneva Convention stood in contrast to the position held by the international community (Benvenisti, 2012: 207).[5] The Israeli High Court of Justice accepted the stance of the government – although from a different position. It does consider the Geneva Convention (as any treaty-based law) as applicable in Israeli domestic courts and as legally binding, but only after endorsement by the Israeli parliament, the Knesset. Israel thus maintains a dualist approach to international law, like the UK and other common law countries (Benvenisti, 1997).

While the Israeli High Court of Justice never ruled on whether the Fourth Geneva Convention was applicable to the territories, in its rulings on Israeli policies there, the Court referred in many cases to the law of 'belligerent occupation'. However, the differentiation between binding customary international law and treaty-based international law (that is not binding unless it is endorsed by the Knesset) made it possible for Israeli courts to reject some Israeli measures which violated the Hague Regulations, while refraining from condemning other measures, even though they contradicted the Fourth Geneva Convention.[6] A similar approach was adopted at a later stage with regard to the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, both of which Israel ratified only in 1991 (although it signed them in 1966) (Benvenisti, 1997: 211). When the PA was established as a consequence of the 1993 Oslo Accords, Israel argued that International Human Rights Law was not binding for Israel with regard to the West Bank and the Gaza Strip, but it would be binding for the PA (International Court of Justice, 2004: para. 102). This position was disputed by the International Court of Justice in its Advisory Opinion on Constructing a Wall in the Occupied Palestinian Territories (ibid: paras 103–112).

Altogether, Israel's distinction between sets of rules in customary international law on the one hand, and treaty-based international law on the other, demarcated a new legal space. This made it possible to exclude the Palestinians of the occupied territory from the protection of international human rights and humanitarian law. These laws are, however, applicable and enforced for *Israeli* citizens, wherever they are

across Israel-Palestine. Within this newly defined legal space, Israel also omitted any reference to Palestinians when periodically reporting to the UN's Human Rights Committee, the Committee on Social and Cultural Rights, the Committee on the Rights of the Child and others, despite criticism by the committees in question (United Nations Economic and Social Council, 2003: para. 31; see also International Court of Justice, 2004: 112).[7]

Controlling access and residency

Within this newly created legal space, Israel created different groups of people. These groups were granted unequal rights and freedoms, with territoriality emerging as an additional criterion of demarcation. The Israeli authorities also gained control over the residency rights of the Palestinian population and over their right to access or leave a specific territory.

After the establishment of Israel and the 1948 war, the Israeli government passed several laws that bestowed certain rights upon Palestinians who found themselves in Israel, most notably the right to Israeli citizenship. Palestinians who were outside the new State of Israel, the hundreds of thousands of Palestinian refugees, were denied entry because they were not Israeli citizens – and they were not granted Israeli citizenship because they were not in Israel. Palestinians who were displaced in 1967 had to face this same legal limbo (cf. Khalil, 2011). This legal practice contrasts with Israel's so-called Law of Return of 1950, which grants Israeli citizenship to any Jewish person who decides to settle in Israel.

Israel's census of the Palestinian residents of East Jerusalem, the West Bank and the Gaza Strip, carried out after Israel occupied those territories in 1967, provided the basis for the registration of the Palestinians who had come under Israeli rule. The census was used to determine who had the *right to apply* for an ID number that would give them legal residency status (not citizenship). Those Palestinians who, for whatever reason, were not counted, or who were outside the area during the census, became foreigners. From outside, they had to apply for a permit to enter the territories – from inside, to apply for an ID card – through a lengthy and extremely complicated family unification procedure. In both cases, however, a positive outcome was not guaranteed.

The Israeli authorities maintained the exclusive power to grant or deny an ID, and with it residency rights, to the Palestinian population of the territories, most of whom were or became stateless. The population registry compiled by Israel following the 1967 census remained the basis for this process. New registrations, however, have remained subject

to a large degree of arbitrariness and restrictions. For instance, until the end of the 1980s, parents needed to register their children after birth within a relatively short period of time;[8] failure to do so was penalised by Israel's refusal to grant an ID number to these children. The need to swiftly register newborn children also applied to Palestinians who were abroad for work, study or other reasons; they needed to return for the registration process. Children who were not registered in time could only obtain an ID if their parents applied through the complex process of family unification. While the rules of this process could change from one day to the next,[9] partly depending on the political situation, they always reflected Israel's approach: that family unification was not a right but rather a reward granted to the Palestinian population under its control.

The Israeli authorities, moreover, still have the power to revoke the ID number of Palestinians. For instance, in cases of security offences, as determined by the Israeli authorities, Israeli military courts, which are composed of judges and prosecutors who are army officials (cf. Hajjar, 2005), can decide to deport Palestinians, revoke their IDs and thus cancel their residency rights. Israel could also refuse the right of return of Palestinians to the occupied territories, should they exceed the duration of their so-called exit permits, issued by the Israeli army. Significantly, the duration of the exit permits varied, and with it the duration of the 'legal stay' outside the territories.[10] Since Oslo, these restrictions are de jure no longer applicable to Palestinians living in PA-controlled areas – although Palestinians may still be expelled and/or denied re-entry for security offences or alleged security offences. Restrictions are, however, still in place for East Jerusalem Palestinians who travel with an Israeli *laissez-passer* document (ibid.: 30 ff.; Shaml, 1996: 94).

Israel's control over the access and residency rights of the Palestinian population established a pronounced territorial fragmentation. For the Palestinian residents of the West Bank and Gaza, for instance, access to Israel within the 1967 borders, and to all of Jerusalem, is dependent on the permits Israel issues. However, an additional distinction is made between legal residency in the West Bank, which presupposes the possession of an ID number issued by the Israeli military government of 'Judea and Samaria' (the Israeli name for the West Bank), and legal residency in Gaza, which depends on the ID cards issued by the military government of the Gaza Strip. The legal residency status of East Jerusalem Palestinians, on the other hand, is regulated by Israel's Ministry of Interior. Each of these three groups of ID holders needs a permit to enter either of the other two areas where fellow Palestinians live. At the same

time, the right to change residency from one area to another requires the approval of the Israeli authorities, which is becoming increasingly difficult to obtain. Thus, Palestinians from the Gaza Strip are considered by the Israeli military government in the West Bank as non-residents, and therefore need a permit to enter the West Bank, a second permit to stay there and a third one to change their residency status. The same applies to West Bank or East Jerusalem Palestinians who wish to reside in Gaza. Since military order no. 1650 of 2009, which came into force in 2010, Gazans found in the West Bank without an Israeli permit are considered infiltrators and are subject to imprisonment and deportation.

While it is almost impossible for West Bank and Gaza Palestinians to obtain the right to reside in East Jerusalem, Palestinian residents of the city cannot decide to live outside of Jerusalem's municipal boundaries without facing consequences. Should Israeli officials from the municipality or the National Insurance Institute of Israel 'discover' that they reside in the West Bank, they risk losing their right to reside in Jerusalem, together with the right to Israeli public health insurance, pensions and other social benefits. The recent amendment to the Israeli nationality law (Israel Ministry of Foreign Affairs, 2003), which made it impossible for West Bank and Gaza Palestinians to obtain legal residency in Israel through marriage to a Palestinian citizen of Israel, let alone to obtain Israeli citizenship, creates additional hardships.[11] For example, an East Jerusalem Palestinian man who marries a Palestinian woman from Ramallah in the West Bank may choose to live with his spouse in the West Bank, or abroad. But by doing so, he risks losing his East Jerusalem residency right. As the spouse from Ramallah cannot move to Jerusalem, the alternative is that the couple must renounce living together. Thus, Israeli practices of demarcating different groups of Palestinians have also started to influence Palestinians' choices in private matters, such as marriage and place of residency.

Authorities, territoriality and jurisdictions

The Palestinian Territories are characterised by an extreme disjuncture of jurisdictions, territorially defined entities and categories of people. From the first day of the occupation, Israeli military orders started a process of distinguishing between the inhabitants of the West Bank and the Gaza Strip on the one hand, and East Jerusalem on the other, with the former having minimal entitlements and the latter being treated as more or less tolerated 'residents', albeit without citizenship. Thus, while Israel expanded its domestic law to East Jerusalem in late June 1967, the West Bank and the Gaza Strip witnessed a further differentiation.

Although the two entities were separated from each other in 1948 as a result of the war (with Jordan controlling the West Bank and Egypt the Gaza Strip), both areas fell under Israeli control in 1967. However, Israel not only maintained the existing legal and administrative differentiation, while adding its own 'layer' of administrative and military law, but also intensified it, by establishing separate military and civil administrations, each with different formal legal enactments – although often with similar content (cf. Shehadeh, 1997, 1985). The two Israeli civil administrations became responsible for all civil affairs of the Palestinian population, including in particular the population registry, the registration of lands and building permits. Even when Israel unilaterally withdrew its soldiers and settlers from the Gaza Strip in 2005, it retained control of the population registry of Gaza's inhabitants (B'Tselem, 2011). From the outset, Israeli policies ensured that the Palestinians (the occupied) became dependent on Israel (the occupier) in all aspects of their lives (Gordon, 2008). The Oslo agreements institutionalised and intensified this dependency (ibid.: chapter 7; Khalidi, 2006, chapter 5–6).[12]

The military courts established in the territories by Israel's military government forged new legal spaces outside the jurisdiction of Palestinian local courts (cf. Hajjar, 2005; Shehadeh, 1985). Initially, cases relating to Israel's security were excluded from the jurisdiction of Palestinian courts. Over time, Israeli military courts extended their competence to rule over all penal, civil, commercial and personal status issues of Israelis residing in the occupied territories (i.e. the settlers) with Palestinian courts having no jurisdiction at all.[13]

At present, and as a result of the Oslo process, which started in the 1990s, Israel accommodates a limited jurisdiction by the PA in the territories. This jurisdiction, however, is only partly based on the principle of territoriality. The West Bank has different systems of jurisdiction for Areas A, B and C, with the PA being responsible for jurisdiction in Area A, shared jurisdiction with Israel applying to Area B and exclusive Israeli jurisdiction characterising Area C. However, different legal spaces are also defined in terms of specific functions. Thus, some tasks are assigned to the PA, while it must follow protocol and cooperate with the Israeli army in others.

Finally, distinct jurisdictions apply to different categories of persons. Thus, Israeli citizens (including Israel's Palestinian citizens) and East Jerusalem Palestinians are excluded from the PA's jurisdiction. At the same time, Israeli military orders theoretically apply to all inhabitants of the occupied territories; in practice, however, Israeli authorities make a clear distinction between Palestinian residents and Israeli settlers. Thus,

while Israeli settlers are excluded from many military orders, they enjoy the protection of Israeli laws by virtue of their Israeli citizenship (cf. Quigley, 1998). Moreover, Israeli laws are extended to specific territorially defined spaces, such as military zones and Israeli settlements. As a result, digging a well or building a new house in Area C necessitates the approval of Israel's civil administration, approval which Palestinians are often denied. The settlement project, on the other hand, is subsidised by the Israeli state, with Israeli settlers enjoying low housing prices and tax benefits.

These distinct but partly overlapping systems of jurisdiction create a complex web of legal boundaries, which can also create ambiguity. For instance, which labour law should apply to a West Bank Palestinian working in an Israeli settlement? If it is the Israeli law, he or she is protected, just like any other Israeli or foreign worker, with Israeli laws being more advantageous, for instance, regarding the minimum wage. If it is the Palestinian law, then the worker faces discrimination, because a less advantageous law is applied on the basis of nationality. However, the argument that Israeli labour law should apply to the settlements, and to Palestinians working there, contradicts the principle of the illegality of both the settlements and the extension of Israeli law to the territories, while also undermining the Palestinian right to self-determination. But how can one argue in favour of discriminating against Palestinians who work under the same conditions as Israelis in the settlements? This is but one example of contradictory Israeli court decisions that reached Israel's High Court of Justice (cf. Hasson, 2011). In the literature there are many other examples of the awkward position of Israeli military and civil courts in distributing rights to the Palestinian subjects under its jurisdiction.[14]

Another aspect of the judicial fragmentation pertaining to people and territory is the complex network of roads in the West Bank, connecting the settlements to Israel and to each other, which was built during Oslo. Built entirely on Palestinian land – sometimes on privately owned land (B'Tselem, 2004: 6) – these 'bypass roads' are intended for Israelis only. Even though they are not clearly demarcated, Palestinians using them face fines and harassment by the military, and sometimes the settlers as well (cf. B'Tselem, 2004). This fragmented road infrastructure in the West Bank is accompanied by the difference in colour distinguishing number plates registered in Israel and in the Palestinian Territories, respectively. Thus, cars with yellow plates, driven by Israeli citizens as well as Palestinian Jerusalemites, can circulate freely across Israel and the territories (although since the second intifada Israeli citizens are

forbidden by the Israeli authorities, worried for their safety, to enter Area A).[15] These cars also benefit from reduced or no waiting times at the checkpoints on the roads dedicated to Palestinians only. Cars with green plates and the letter P/ف, characterising the vehicles of Palestinians from the territories, cannot enter Israel, and they are forbidden to use the so-called bypass roads. At the checkpoints, a further distinction is made according to IDs. For example, an East Jerusalem Palestinian woman will drive a yellow-plate car. Let us assume that she is married to a Palestinian from Ramallah with a 'Palestinian' ID. Her husband will drive a car with a green plate. They may travel in the same car in the areas under Israeli control in the occupied territory (with a yellow- or a green-plate car). They may also travel in Israel itself with a yellow-plate car only, provided that the husband has a permit to enter Israel. However, at the Qalandia checkpoint – the only access point for entry into Israel, including East Jerusalem, for residents of the nearby area[16] – the wife can drive through the checkpoint in the car, while the husband has to cross it on foot.

External borders

The different categories of rights relating to residency, citizenship, access and freedom of movement bestowed upon Israelis and Palestinians are *legal* statuses that are defined solely by Israel. For the purposes of the law, being within or outside a specific legal space in most cases does not depend on physical borders. Indeed, as we have seen, inclusion in, and exclusion from, distinct legal regimes are not primarily based on the principle of territoriality. However, as we have seen with the fragmentation of the West Bank into Areas A, B and C, territorially defined borders remain relevant. They add to the legal fragmentation of the areas under Israeli control, while also separating Palestinians from each other.

Physical borders also remain relevant in demarcating rights and distinct areas of jurisdiction with regard to what Israel defines as its external borders, such as the border with Jordan. With the Oslo agreements and the establishment of the PA, restrictive regulations applying to Palestinians wishing to cross the border remained in place. At the same time, Israel's border control at the Allenby Bridge clearly differentiates between different groups of people according to their legal status, such as Israeli citizens, foreigners, and Palestinians, with the latter facing particularly restrictive procedures (see Del Sarto, Chapter 3, this volume).

Israel's control over the external borders of the Gaza Strip reflects yet another combination of rights, jurisdictions and territory. Israel retained control of Gaza's border with Egypt after the Oslo Accords

and the frequent closures, justified by the Israeli authorities on security grounds, entailed growing restrictions on the movement of Palestinians in and out of Gaza; Israeli settlers in Gaza were not affected. After Israel withdrew its soldiers and settlers from Gaza in August 2005, by agreement with the Egyptian government it also relinquished control over the so-called Philadelphi Corridor, the narrow strip of land situated between the Strip and Egypt. The US-brokered 'Agreement on Movement and Access' of November 2005, between Israel and the PA, defined the rules for the only border crossing for people on the Egyptian-Gaza border at Rafah. It stipulated PA responsibility, Israeli oversight and third-party supervision, carried out by the European Union (see also Bouris, Chapter 2, this volume).[17] The agreement was suspended following Hamas' taking control of PA institutions in Gaza in 2007. This prompted Israel to impose an economic blockade and largely seal off its crossing into the Gaza Strip at the pedestrian Erez checkpoint in north-eastern Gaza. Exceptions depended on permits issued by the Israeli authorities, usually for urgent medical cases. On the other side, Egypt also practically closed the Rafah crossing after the Hamas takeover.[18] Following the 2011 regime change in Egypt, restrictions for Gaza Palestinians wanting to cross in and out at Rafah remained unclear but were somewhat relaxed (cf. BBC News Middle East, 2011).[19] However, they were still required to hold PA passports that depend on being registered in the population registry controlled by Israel.[20] Following the dismissal of Mohammad Morsi in July 2013, transit through the Rafah crossing has become more restrictive, while the Egyptian government's tolerance of the hundreds of tunnels between Gaza and Egypt has been coming to an end.[21]

Hence, in the case of Gaza, Israel's demarcation of rights and legal spaces has been changing in recent years, together with its patterns of control. Although it seems as if, after 2005, Israel's direct rule over the Gaza Strip no longer extends to the border with Egypt, but is limited to what has been emerging as the new border between Israel and the Strip, Israel still prevents all access from and to Gaza by air and sea. Concurrently, by controlling the Palestinian population registry and thus the issuing of travel documents that the Egyptian authorities require for crossing Rafah, Israel continues to control the access and residency rights of Gaza Palestinians, albeit indirectly and with Egypt's complicity (Human Rights Watch, 2012: 50 ff). Finally, Israel's policy of restricting travel between the West Bank and the Gaza Strip, and of increasingly preventing Gaza Palestinians from relocating to the West Bank, further cements the separation between West Bank and Gaza Palestinians (cf. Gisha, 2010).

The discussion thus far has shown that the areas under Israeli control are far from being a territorial unit with one single jurisdiction. Rather, they constitute a space that is fragmented into partly overlapping and partly intersecting legal regimes. Defined by the Israeli authorities, these regimes lend different rights to distinctive groups of people. The discussion so far has also shown that within these separate but partly overlapping jurisdictions, territorial borders are but one aspect of demarcation. It is against this backdrop that we will now move to a discussion of the European Union's legal and judicial cooperation with the Palestinian Territories.

EU support for judicial reform in the Palestinian Territories

Since Oslo, the European Union and individual EU governments have been involved in what is generally referred to as the 'Middle East peace process'.[22] They became the largest donors to the Palestinian Authority and the Palestinian population. The EU also started to play a political role, for instance, by being part of the Middle East Quartet, and by issuing various declarations on how to end the Israeli-Palestinian conflict. The establishment of a democratic and independent Palestinian state living side by side with Israel has been a key element in the EU's vision for the Middle East. Accordingly, the EU started financing programmes in support of judicial reform, the rule of law and democratic governance in the Palestinian Territories. In this context, the EU has also been supporting the PA's security sector reform, including training for Palestinian civilian police officers on human rights issues (Bouris, Chapter 2, this volume; also Bouris and Reigeluth, 2012: 79; Berg, 2011). While both aspects are intrinsically linked, our analysis focuses on EU support for judicial and legal reform outside the security sector only. Before proceeding, however, it is important to briefly locate our discussion within the EU's democracy promotion policies in general, policies which have remained problematic.

EU democracy promotion

It was only with the start of the Euro-Mediterranean Partnership in 1995 that the promotion of political reform in the countries of North Africa and the Middle East became a declared EU objective. In this framework, the PLO (on behalf of the Palestinian Authority) and Israel signed association agreements with the EU, which contained a clause stipulating that the agreement could be suspended in case of human rights violations.[23] In this period, the EU democracy promotion was not a great success,

mainly because of the reluctance of Arab regimes to embark on political liberalisation, in conjunction with the EU's unwillingness to make use of the conditionality principle contained in the agreements.

The European Neighbourhood Policy launched by the EU in 2003 referred more explicitly to the need for political reform, with Brussels now offering economic and political rewards to reform-willing states (Del Sarto and Schumacher, 2005). Promoting the rule of law and good governance became part and parcel of the new policy. However, one of the main problems of the EU's approach has been its reliance on vague concepts and the lack of clearly defined benchmarks for measuring success (Del Sarto and Schumacher, 2011: 936). Certainly, democracy promotion faces the challenge, to begin with, that there is no universal agreement on the key features of democracy and the rule of law. Without entering into this complex debate, there is, however, some agreement in the literature that in addition to open and fair elections, democracies require genuine competition for executive office, accountability, institutional checks on power and respect for core human rights. Not every notion of the rule of law is significant for, or compatible with, democratic governance. Only those conceptions addressing the *quality* of the legal and political system as well as the *quality of the laws*[24] are relevant here. Moreover, an independent judiciary that guarantees a fair, consistent and equal application of the law to all citizens is required. Conversely, an exclusive focus on elections, together with the adoption of a minimalist notion of the rule of law may establish (or strengthen) what Zakaria (1997) has termed 'illiberal democracies'.[25]

EU democracy promotion policies have also suffered from problems of implementation. By focusing on the European Initiative for Democracy and Human Rights, in which promoting justice and the rule of law in the West Bank and Gaza figured as priorities, Bicchi (2010) shows, for instance, that the long chain of command within EU institutions and what she terms 'the tyranny of small decisions' has had a negative impact on the implementation process.

The EU's failure to address these flaws also means that it has been applying the concepts of 'democracy' and 'the rule of law' to third parties irrespective of their distinct legal and political features and traditions.[26] Hence, these concepts could theoretically coexist with illiberal governments, and even with authoritarian regimes which espouse a limited degree of liberalism. The inclusion of the PA – a non-state actor that acts within the limits of the Israeli occupation – in the EU's democracy promotion policies is a case in point, highlighting the fact that the EU is aiming to export abstract notions that are anchored in formal and

technical procedures. Against this backdrop, the next sections will focus on the EU's policy of supporting the rule of law, together with judicial and legal reforms, in the Palestinian territories.

Supporting judicial reform in the Palestinian Territories

It goes beyond the scope of this chapter to discuss the history of EU aid to the Palestinians and for the peace process.[27] While the EU/EC contributions to UNRWA preceded the Oslo process, Oslo marked the beginning of the EU's increasingly complex financial support for the Palestinians. Amounting to an average of €480 million a year since 2007 (Office of the European Union Representative West Bank and Gaza Strip, 2013), EU funding to the Palestinians not only reacts to developments in the region, but also expresses the EU's political preferences for Israeli-Palestinian peacemaking. Thus, during Oslo, the EU mainly provided financial and technical assistance to the Palestinian Authority; but with the start of the second intifada, the EU shifted its assistance to humanitarian aid. When Hamas won the elections in 2006, the EU decided to boycott the organisation, but also increased its humanitarian assistance to the Palestinian people of Gaza. In June 2006, the Union established a specific financial mechanism, the so-called Temporary International Mechanism (TIM), to channel most of its assistance to the Palestinians in the West Bank and the Gaza Strip, while circumventing Hamas. It was replaced in 2008 by PEGASE (*Mécanisme Palestino-Européen de Gestion de l'Aide Socio-Economique*). Interestingly, PEGASE was set up explicitly to provide support for the Reform and Development Plan 2008–2010 of former Palestinian Prime Minister Salam Fayyad and the subsequent Palestinian National Plan covering the time span 2011–2013 (European External Action Service, 2013; European Union, 2013a).[28] Hence, while the EU provided more than €2.7 billion to the Palestinians between 1994 and 2006, in 2007 funding increased considerably; and between 2007 and 2012, €2.9 billion was committed from the EU's general budget (European Court of Auditors, 2013: 10). The EU has also been unequivocal in declaring that the objective of its financial assistance to the Fatah-dominated PA was not only to help sustain a substantial part of the PA's running costs but to prepare it for statehood, building 'viable institutions that are essential to run a democratic state' (Office of the European Union Representative West Bank and Gaza Strip, 2013).

At present, the EU's assistance to the Palestinian Territories rests on three main pillars: first, support for state- and institution-building through direct financial assistance to the PA; second, support to local agencies and civil society through different thematic programmes;

and third, continuous financial contributions to UNRWA. Under the first pillar, which is associated with the PEGASE mechanism, the EU and single European governments fund the salaries and pensions of the approximately 75,000 Fatah-affiliated PA civil servants (including doctors and teachers) in the West Bank and Gaza Strip. Additional funds are provided to Palestinian families living in extreme poverty in both the West Bank and Gaza, with the assistance being channelled through and in coordination with the PA of Mahmoud Abbas. Programmes in support of the PA's civil service reform and social protection policies are also covered within this pillar. In addition, PEGASE provides assistance in paying the debts accumulated by the PA to the private sector and, since 2009, for private sector reconstruction in Gaza. Between 2008 and 2012, approximately €1 billion have been disbursed through the PEGASE Direct Financial Support programmes (European Court of Auditors, 2013: 6), with the lion's share going to the direct financial support of the PA. Indeed, between February 2008 and January 2011, the EU's assistance to the PA through PEGASE amounted to an average of €18 million *a month* (Business and Strategy Europe Consortium, 2012: 9; EEAS, 2013).

Under the second pillar, the Palestinian Territories benefit from funds under different thematic programmes, including the European Instrument for Democracy and Human Rights and the Partnership for Peace programme. Funding within these programmes aims at improving the socio-economic conditions of the Palestinian population in East Jerusalem, while some projects specifically target Area C. The third pillar of EU assistance to the Palestinians regards UNRWA, the agency serving around 4.5 million Palestinian refugees in the territories and in neighbouring countries. The EU and its member states pay the salaries of the agency's doctors, teachers and social workers; provide food aid and cash subsidies to the poorest refugees; contribute to humanitarian and food aid in emergency situations; and contribute to UNRWA's institutional development. Between 2007 and 2012, the EU contributed an average of €130 million a year to UNRWA, amounting, for example, to €146 million in 2012 (European Court of Auditors, 2013: 11).

The EU's support for judicial reform and the rule of law involves a wide range of programmes and cooperation projects. Some of these projects directly target legal and judicial reforms, while others are related in an indirect manner only. For instance, in July 2013, the EU and the PA celebrated the start of a €21 million construction project, to build seven courthouses and a headquarters for the Palestinian Bar Association (European Union, 2013b). The mainstay of EU judicial

assistance, however, covers the fields of legal aid, juvenile justice, legal training and judicial review. Projects involve the major actors in the Palestinian justice sector, including the Ministry of Justice, the High Judicial Council, the Palestinian Judicial Institute, the Bar Association and, more recently, the law faculties of three Palestinian universities (i.e., Birzeit, An-Najah and Al-Quds). Indeed, legal education has been added to the objectives of EU funding, by helping to develop masters degrees in advanced legal studies across Palestinian universities, and the first-ever Palestinian diploma programme, training candidates to become judges and prosecutors (ibid.).

The largest single project in the justice sector was the Seyada II project (2009–2013), with a budget of €4.4 million – the continuation of Seyada I, which had taken place over the previous three years and had a budget of €3.7 million. Seyada mainly supported the Palestinian High Judicial Council and the Palestinian Judicial Council by training judges, public prosecutors and staff; it facilitated access to information, supported the construction of law libraries and supported the procurement of IT equipment. Seyada supported the Palestinian Bar Association, while also assisting the PA in extending legal aid to the Palestinian population, independent of their financial means. It also aimed at improving the Constitutional Review by the High Court, by reviewing legislation and training judges in constitutional issues.

As EU assistance is disbursed through various projects and budget lines, it has remained difficult to assess the precise amount of EU funding for legal and judicial reform in the Palestinian Territories. According to one official EU account, between 2010 and 2013, the Union invested a total of €35 million in the Palestinian justice sector (ibid.). Commenting on newly approved funds for the justice sector at that time, EU Representative to the West Bank and Gaza John Gatt-Rutter stated: 'Applying the rule of law is fundamental to any democratic and modern state and must also be the foundation of the future State of Palestine' (ibid.). This echoed the declaration by European Commission Representative Christian Berger upon the launching of Seyada II in November 2009 (Seyada, 2009):

> The EU is committed to the establishment of a viable, democratic and independent Palestinian state and it is clear that this ambition will only be realized through maintaining and developing the rule of law across its territory. 'Seyada II' will build on the many achievements of the first phase of the project and will greatly improve the delivery of justice to all Palestinians.

State-building and 'justice to all Palestinians'

As Bouris and Reigeluth (2012: 79) have argued, the EU's contribution to the peace process through its support for state-building is based on a conceptualisation of peace as governance. From this perspective, priority is given to a state's capacity to guarantee law and order, with the EU's involvement in the Palestinian Territories reflecting an increasingly technical focus in its external relations (ibid.: 180–181; also Bouris, 2014; Berg, 2011). Moreover, the discussion so far has indicated that EU support for judicial reform in the Palestinian Territories seems to rest on the assumption that justice is a substantive value. While only a technical and somewhat ill-defined notion of justice allows for the export of the rule of law and good governance to an area where there is no state, the EU's approach also gives the wrong impression about the real problems the Palestinian legal system is facing. Hence, it will be misleading in terms of any possible solutions.

EU support for the justice sector in the Palestinian Territories is highly problematic, and, for a number of reasons, the declared objective of delivering 'justice to all Palestinians' remains seriously compromised. The first, and most obvious, obstacle is that EU assistance operates within the parameters of the differentiated judicial borders imposed by Israel on the Palestinian territories. Glossy EU brochures may depict Palestinian institution-building (and the Union's support for it) as an 'international success story' (Office of the European Union Representative West Bank and Gaza Strip, 2013). However, EU officials are well aware that the PA can only act within the areas in which it is able to exercise control, with EU-Palestinian cooperation facing the 'challenges primarily imposed by the occupation' (European Commission, 2013: 2; also European Court of Auditors, 2013). Israel continues to maintain full jurisdiction wherever Israelis are present, and whenever there is a security concern for Israel (Lia, 2006: 272), while EU support for the Palestinian justice system remains limited to that 18 per cent of the West Bank that constitutes Area A. Hence, EU policies may help in improving the justice sector in PA-controlled areas, but its support does nothing to tackle the Israeli military court systems, or the arbitrariness of Israeli military rule.

Secondly, while it is clear that 'sustainability cannot, in the circumstances of the Israeli occupation, be more than a strong intention' (Business and Strategy Consortium Europe, 2012: 10), as a PEGASE evaluation report puts it, the concrete impact of the EU's support for the rule of law in PA-controlled territories has ostensibly been very limited so far. The EU Commission does identify 'some progress in the justice

sector', together with 'some progress on human rights issues', but it also observes an 'overall diminishing of democratic space' (European Commission, 2013: 3). In particular, the PA's respect for the freedom of expression and assembly has remained problematic, and there has been a decrease in media freedom, together with recurrent human rights violations by the Palestinian security forces. The latter include illegal detentions as well as ill-treatment and torture of prisoners (ibid.: 2–6).

Thirdly, it remains ironic that EU support for the rule of law and judicial reform is aimed at an authority, the PA, whose democratic legitimacy and accountability has been decreasing in the absence of Palestinian general elections since 2006.[29] The Palestinian parliament remains dysfunctional because of the internal split between Hamas and Fatah while laws continue to be issued by presidential decrees (cf. Khalil, 2013). In other words, the EU is not only engaged in the ugly business of training a civilian police under occupation, it is also helping an autocratic government to function and remain in power, despite the complete lack of parliamentary oversight and popular accountability (Bouris and Reigeluth, 2012: 189). While the PA remains accountable to the EU and other international donors, EU support for the rule of law can be seen as both authoritative and somewhat authoritarian, outside the basic principles of the rule of law it is advocating. Thus, the improvement of the security situation in the Palestinian Territories, from the perspective of Israel and international donors, does not necessarily coincide with improved human rights or security for the Palestinians. What is more, it goes hand in hand with the strengthening of an increasingly undemocratic and unaccountable regime.

Finally, through its decision to boycott Hamas – whether justified or not from an EU perspective – courts, lawyers, judges and prosecutors in Gaza are excluded from receiving EU training. Hence, the EU is contributing to a further separation between the different legal spaces demarcating the West Bank and the Gaza Strip, seeking to strengthen one side at the expense of the other. While the question of viable alternatives remains of course open, the EU has thus helped to cement a situation where there are two High Judicial Councils, two types of judges, two bar associations, two prosecutor generals, two governments, two non-functioning factions of the Palestinian parliament – all of this without the existence of a state.

Conclusions

Our analysis has highlighted the existence of various legal borders across Palestine-Israel that are not necessarily based on territory; neither do

they reflect the identity boundaries of the Palestinian community. These borders artificially create regimes of inclusion and exclusion. They are not dividing an 'inside' and an 'outside' but are everywhere. They define the legal status of groups of individuals, separate Palestinians from Israelis, but also Palestinians from each other, and the latter from their lands and sources of income. Our discussion has also shown that, independent of the underlying reasons and motivations, the legal fragmentation of the Palestinian Territories is a direct result of Israeli policies since 1967. These policies have been marked by a surprising degree of continuity. In the absence of a final status agreement that would put an end to Israel's rule over the territories and its people, the Oslo agreements only contributed to the further consolidation of Israel's matrix of inclusion and exclusion through law, most notably by creating the Palestinian Authority, with its limited jurisdiction over a number of territorial enclaves – mainly Palestinian cities. With Israeli domestic rule applying to the settlers, and West Bank Palestinians being subject to military rule, Israel continues to define distinct judicial borders. Within this framework, the PA is tolerated by Israel, as long as it cooperates in providing security for Israelis; at the same time, it continues to function thanks to generous foreign aid. The internal division between Hamas-ruled Gaza and the Fatah-dominated West Bank only adds to the legal fragmentation of the Palestinian Territories. This is further exacerbated by the donor community's decision to work with one side only.

The legal fragmentation that reflects Israel's 'matrix of control' (Halper, 2000) is the framework against which EU support for Palestinian state-building and judicial reform takes place. This matrix defines the quality of the Palestinian justice and governance system, which is strictly subordinated to Israeli interests and priorities. The obstacles to serious reforms in the Palestinian justice sector are thus not so much the volatile environment, as some may occasionally argue, but rather the nature of Israel's protracted rule over the territories. It is therefore not surprising that the concrete impact of EU policies in the Palestinian justice sector is limited, if not irrelevant, as the root cause of the evident lack of 'justice for all Palestinians' is not tackled. More than that, without an end to Israel's occupation, the EU's state-building policies, with their focus on law and order, are highly counterproductive and risk undermining the ideals that motivated them.

Two aspects stand out in particular: first, the focus on law and order in the EU's state-building policies for the Palestinian Territories may indeed contribute to the fulfilment of one condition for statehood, according to international law, namely, effective government.[30] However, the EU is

thereby promoting democracy and the rule of law under occupation. It is sponsoring the consolidation of an illiberal and authoritarian regime, which by now lacks democratic legitimacy but survives with the help of the security apparatus. Thus, in the areas under PA control, EU policies, in fact, contribute to the creation of a sort of police state that controls the local population, without being able or willing to protect their basic rights.

Secondly, without an end to Israel's rule over the territories, the EU's support for judicial reform and the rule of law can achieve only a limited justice, namely that of a population living under occupation. EU policies, in fact, consolidate the processes of exclusion and inclusion, while strengthening the existing legal fragmentation of the Palestinian Territories, to the benefit of Israel as the occupying power. In other words, by agreeing to deal with the PA in the current circumstances, EU policies actually consolidate the legal borders set by the post-Oslo security arrangements, in which Israel considers the PA as its 'sub-contractor in the task of enhancing Israel's security', as former Israeli foreign minister Ben-Ami (2006: 11) put it. While Israel's occupation became, partially due to the international donor community, a 'first class' occupation, it is still an occupation. The EU's support for Palestinian judicial reform only strengthens the existing legal and political order.

Finally, at the conceptual level, our analysis confirms the existence of complex patterns of interdependence in the Israeli-Palestinian-EU triangle, where partly overlapping areas of jurisdiction are an expression of power relations. At the same time, the Israeli-Palestinian space is a clear example of a pronounced dissociation of territory, rights, and authority, with Israel maintaining the upper hand in defining the practices that determine the rights and legal status of Israelis and Palestinians alike. While the PA is co-opted into Israel's system of inclusion and exclusion, Israel, however, relies – and perhaps increasingly depends – on it for the security of its citizens, thus highlighting the multi-dimensional nature of relations across the Israeli-Palestinian space. As for the EU, in the absence of the emergence of an independent Palestinian state, its policies towards the Palestinians are subordinated to the patterns of interdependence and the unequal power relations that define the Israeli-Palestinian space.

To conclude, the EU has undoubtedly manoeuvred itself in an absurd situation. Its policies towards the PA may reflect its vision for Israeli-Palestinian peacemaking, together with its long-held position that Israel's rule over the territories contravenes international law. In practice, however, EU policies are counterproductive, as long as there

is no independent Palestinian state. As argued by a growing number of European intellectuals and politicians, and as mentioned in the introduction, in the absence of a peace settlement, the EU risks financing Israel's protracted occupation, while releasing the country from its responsibility as an occupying power as defined by international law. While it would be difficult to end the EU's financial support for the Palestinians without negative consequences, the nature of EU-Israeli relations since Oslo only adds to the absurdity of the situation. On the one hand, Brussels' criticism of Israel's settlement expansion and the human rights violations has recurrently put a strain on bilateral relations. On the other hand, EU-Israeli economic relations have steadily improved over the last decade (Del Sarto, 2011: 117; also Pardo and Peters, 2010). In spite of some indications that the EU may have started to streamline its declarations and policies towards Israel, as exemplified in the recent guidelines on EU grants and scholarships, which exclude entities and activities in the settlements (Bouris and Schumacher, 2013),[31] the EU still maintains two different policies towards Israel and what it officially designates as Palestine. Unless a political framework is created that ensures respect for international law, including international humanitarian and human rights law, by Israel and other parties, realities on the ground plainly contradict the EU's approach.

Notes

1. The group comprises former presidents, prime ministers, and senior ministers, including Jeremy Greenstock, Britain's former ambassador to the UN; Hubert Védrine, former French Foreign Minister; Wolfgang Ischinger, former State Secretary of the German Foreign Ministry; ex-French Prime Minister Lionel Jospin; and former EU Foreign Policy Chief Javier Solana. The original letter is reprinted in the *Daily Beast* article (Gharib, 2013).
2. Dugard (2007) differentiates between an occupation and a colonial or apartheid regime, stressing that the first one aims at the temporary control of a territory and is therefore lawful and tolerated by the international community. Conversely, colonialism and apartheid violate international law.
3. Benvenisti (2012: 244) concluded that both the Hague Regulations and the Fourth Geneva Convention, 'the two major instruments regarding the law of occupation do not provide meaningful guidelines for lawful deviation from the regular rules of occupation in cases of protracted occupations'.
4. Article 35 of Israeli Military Order No 3 of 7 June 1967, stipulated the application of the provisions of the Geneva Conventions. The article was then deleted by virtue of Israeli military order No. 144 of 22 October 1967, thus stripping the Palestinian population of the protection of the Fourth Geneva Convention.

5. Israel has been arguing that this body of law is not applicable to the Palestinian Territories as they have never been part of a sovereign state (the international community did not recognise Jordan's annexation of the West Bank).
6. However, the Court often rules that the Israeli authorities respect the norms of 'belligerent occupation', or that their violation is justified by security concerns (Kretzmer, 2012, 2002; Benvenisti, 2012: 208–209).
7. The Committee on Economic, Social and Cultural Rights has repeatedly expressed concern about Israel's position on excluding the Palestinian population from the occupied territories from enjoying the rights of the Covenant. It repeatedly affirmed 'its view that the State party's obligations under the Covenant apply to all territories and populations under its effective control' (United Nations Economic and Social Council, 2003: para. 31).
8. Israeli Military Order No. 297 of 1969 imposed the reporting of a birth to the authority within ten days for resident subjects, and 30 days if the birth was outside the 'area'. While Israeli Military Order No. 1206 of 1987 extended the registration period for resident parents to 16 years (instead of ten days) if born in the 'area', and five years (instead of 30 days) if born outside the 'area', Israeli military order No. 1421 of 1995 extended the registration period for children of residents to 18 years of age, regardless of the place of birth (Khalil, 2008: 4–5).
9. For instance, registering children sometimes required that only one parent had an ID number, but sometimes both parents had to possess an ID, and sometimes it was required that the mother possessed an ID.
10. Between 1967 and 1994, the Israeli army removed some 140,000 Palestinians from the population registry; of this total, it re-registered about 10,000 people after 1995, mainly PLO members returning to the territories (Human Rights Watch, 2012: 19).
11. These changes were introduced in 2003 by the amendments to the Israeli Nationality Law (Citizenship and Entry into Israel Law) through temporary provision 5763–2003, and justified by security considerations. This temporary provision has been renewed on a yearly basis since 2003, with the Israeli Supreme Court upholding its constitutionality in 2012 (cf. Jabareen and Zaher, 2012).
12. Hence, it is wrong to assume that the Oslo agreements prompted an emancipation process for a people under occupation. In hindsight, and considering the astonishing consistency in the modalities of Israel's rule over the territories, it is questionable whether the main reason for the lack of reaching an agreement relates to the intricacies of Israeli domestic policies. In this light, it is also questionable whether Israel really is an 'accidental' empire, as suggested by Gorenberg (2006).
13. For a discussion of the legal aspects related to Israeli-Palestinian agreements, see the various contributions in Cotran and Mallat (1996).
14. Some authors (e.g. Hajjar, 2005) looked at processes of adjudication before Israeli military courts, with the Israeli High Court of Justice being ultimately responsible for the judicial review of military court decisions, as for any other state agency (Jarach, 1993). Other authors looked at Palestinian rights claims before Israeli courts, in particular for cases related to their work in Israel or in the territories. These cases are under the jurisdiction of Israeli labour courts and subject to final review by the Israeli Supreme Court (Kelly, 2006). Still

other studies are primarily concerned with the role of the High Court in assessing the constitutionality of certain laws, such as those discriminating against Israel's Palestinian citizens (cf. Adalah, n.d.).

15. Palestinian citizens of Israel are allowed to enter Area A, however.
16. There are other access points for Israeli citizens and East Jerusalem Palestinians driving a yellow-plate car, but these are not accessible for Palestinians who enter Israel with a permit.
17. Goods, vehicles and trucks to and from Egypt have to pass through the Israeli-controlled crossing at Kerem Shalom.
18. The Egyptian government under Mubarak argued that it cannot open the Rafah crossing without undermining the authority of the PA under Abbas. Israel justifies its blockade of Gaza, which has been eased since 2010 but is still in place, by arguing that it wanted to pressure Hamas to end the rocket attacks on Israel's south while preventing the supplies of materials needed for assembling weapons. Israel claims that it is no longer responsible for the Gaza Strip after it withdrew in 2005; this position is contested. Although a UN investigative committee concluded in the Palmer Report (United Nations, 2011) that Israel's naval blockade of the Gaza Strip was legal, most international law experts consider Israel's economic blockade of Gaza as illegal, and the dominant position of the international community is that Israel should end it.
19. Women, children and men over 40 were allowed to pass freely, while everyone else required a permit from the Egyptian authorities.
20. After the Oslo agreements, the PA became responsible for issuing Palestinian travel documents. However, this process is dependent on Palestinians holding an ID, and thus on being registered in the population registry that Israel continues to control (see also Del Sarto, Chapter 3, this volume).
21. In March 2014, the Egyptian military said it destroyed 1370 Gaza 'smuggling tunnels' (*National*, 2014).
22. In the official discourse, the term 'peace process' is maintained; although for most of the 2000s, there have been no negotiations between the two sides, and notwithstanding the fact that since Oslo there has been more process than peace.
23. The EU-Palestinian Interim Association Agreement on Trade and Cooperation was signed in 1997; the EU-Israel Association Agreement was signed in 1995 and entered into force in June 2000.
24. The law must be clear, publicly known, stable, universal, and non-retroactive.
25. As argued by Del Sarto and Schumacher (2011: 937), a certain extent of liberalism under the rule of law may exist without democratic governance.
26. In the aftermath of the Arab uprisings, the EU declared its support for 'deep democracy', defined in terms of political reform, elections, institution-building, the fight against corruption, an independent judiciary and an active civil society (European Union, 2011). Whether the new definition is sufficiently precise remains to be seen.
27. On international funding to the Palestinians see for instance Challand (2009).
28. PEGASE also allows for EU member states and other governments making contributions. As of December 2013, 16 EU member states, together with Switzerland and Japan, contributed to PEGASE.

29. The European Commission (2013) is well aware of this situation.
30. The traditional criteria for statehood as listed in the 1933 Montevideo Convention on the Rights and Duties of States include: (1) a permanent population, (2) a defined territory, (3) a government, and (4) the capacity to enter into relations with other states. The Badinter Commission established by the European Conference on Yugoslavia in 1992 adopted similar criteria, which represent customary international law. While the fourth condition is usually equalled with *effective* government, particularly in the case of decolonisation, it has not been given the same significance as the other criteria.
31. While the authors speculate about a possible 'paradigm shift' in EU foreign policy, it may also be posited that EU-Israeli relations will remain unshaken in practice. The guidelines may also serve the EU to demonstrate its seriousness on the setttlement issue, while absorbing internal pressure by civil society groups that have been asking for boycott, divestment and sanctions of Israel. Moreover, the EU's exclusive focus on the settlements may contribute to a whitewashing of other Israeli actions and policies as being regular and legal, such as, for instance, the continuous human rights violations in the territories, Israel's control over most of Area C in the West Bank, including the natural resources, and the blockade of Gaza. For the limited impact of EU regulations on Israeli economy, see also Gordon and Pardo, Chapter 5, this volume.

References

Adalah – The Legal Centre for Arab Minority Rights in Israel (n.d.). 'Discriminatory Laws in Israel', at http://adalah.org/eng/Israeli-Discriminatory-Law-Database.

BBC News Middle East (2011). 'Egypt Eases Blockade at Gaza's Rafah Border', 28 May.

Ben-Ami, S. (2006). *Scars of War, Wounds of Peace: The Israeli-Arab Tragedy*, Oxford: Oxford University Press.

Benvenisti, E. (1997). 'The Attitude of the Supreme Court of Israel Towards the Implementation of the International Law of Human Rights', in B. Conforti and F. Francioni (eds), *Enforcing International Human Rights in Domestic Courts*, The Hague: Martinus Nijhoff.

Benvenisti, E. (2012). *The International Law of Occupation,* 2nd ed., Oxford: Oxford University Press.

Berg, A. (2011). 'The EU's Experience with Security Sector Governance', United States Institute of Peace Special Report, 265.

Bicchi, F. (2010). 'Dilemmas of Implementation: EU Democracy Assistance in the Mediterranean', *Democratization* 17(5): 976–996.

Bouris, D. (2014). *The European Union and Occupied Palestinian Territories: State-building without a State*, London: Routledge.

Bouris, D. and Reigeluth, S. (2012). 'Introducing the Rule of Law in Security Sector Reform: European Union Policies in the Palestinian Territories,' *Hague Journal on the Rule of Law* 176–193.

Bouris, D. and Schumacher, T. (2013). 'The EU Becomes Assertive in the Middle East Peace Process,' *Open Democracy*, 25 July, available at http://www.opendemocracy.net/can-europe-make-it/dimitris-bouris-tobias-schumacher/eu-becomes-assertive-in-middle-east-peace-proce.

AQ1 B'Tselem (2004). 'Forbidden Roads: Israel's Discriminatory Road Regime in the West Bank', Information Sheet, Jerusalem: B'Tselem.
B'Tselem (2011). 'The Scope of Israeli Control in the Gaza Strip', Jerusalem: B'Tselem, 1 January, available at http://www.btselem.org/gaza_strip/gaza_status.
Business & Strategy Europe Consortium (2012). '*External Evaluation of PEGASE 2008–2011 for West Bank and Gaza*, Final Report', available at http://www.lacs.ps/documentsShow.aspx?ATT_ID=5820.
Challand, B. (2009). *Palestinian Civil Society: Foreign Donors and the Power to Promote and Exclude*, London: Routledge.
Cotran, E. and Mallat, C. (eds) (1996). *The Arab-Israeli Accords: Legal Perspectives*, London: Kluwer Law International.
Del Sarto, R. A. (2011). 'Plus ça change…? Israel, the EU and the Union for the Mediterranean', *Mediterranean Politics* 6(1): 117–134.
Del Sarto, R. A. and Schumacher, T. (2005). 'From EMP to ENP: What's at Stake with the European Neighbourhood Policy towards the Southern Mediterranean', *European Foreign Affairs Review* 10(1): 17–38.
Del Sarto, R. A. and Schumacher, T. (2011). 'From Brussels with Love: Leverage, Benchmarking, and the Action Plans with Jordan and Tunisia in the EU's Democratization Policy', *Democratization* 18(4): 932–955.
Dugard, J. (2007). *Implementation of General Assembly Resolution 60/251 of 15 March 2006 entitled 'Human Rights Council': Report of the Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied since 1967,* A/HRC/4/17, Human Rights Council, 29 January.
European Commission (2013). 'Implementation of the European Neighbourhood Policy in Palestine: Progress in 2012 and Recommendations for Action', SWD 2013(82) final, Brussels, 20 March 2013.
European Court of Auditors (2013). '*European Union Direct Financial Support to the Palestinian Authority*', Special Report No. 14/2013, Luxembourg: Publications of the European Union.
European External Action Service (EEAS) (2013). 'The EU, the Netherlands and Sweden Contribute €18.9 Million to the Palestinian Authority's Payment of June Salaries and Pensions', Press Release PR 20/2013, 4 July, available at http://eeas.europa.eu/delegations/westbank/documents/news/2013/20130704_press_release_csp_en.pdf.
European Union (2011). 'Remarks by the EU High Representative Catherine Ashton at the Senior Officials' Meeting on Egypt and Tunisia', Brussels, 23 February, A 069/11.
European Union (2013a). 'The EU Releases Further Assistance to Support Palestinian People and Refugees', Press Release, A 174/13, Brussels, 27 March, available at http://eeas.europa.eu/delegations/westbank/documents/news/2013/20130327_eu_releases_further_assistance_to_palestinian_people_en.pdf.
European Union (2013b). 'EU Supports Construction of New Courthouses and Headquarters for Palestinian Bar Association, Press Release PR/21/2013, Brussels, 24 July, available at http://eeas.europa.eu/delegations/westbank/documents/news/2013/20130724_en.pdf
Gharib, A. (2013). 'Eminent Europeans: Drop the Oslo Peace Process', *Daily Beast*, 19 April, available at http://www.thedailybeast.com/articles/2013/04/19/eminent-europeans-drop-the-oslo-peace-process.html.

Gisha – Legal Center for Freedom of Movement (2010). 'What is the "Separation Policy"?', Position paper, June 2010, available at http://www.gisha.org/UserFiles/File/publications/Bidul/bidul-infosheet-ENG.pdf.

Gordon, N. (2008). *Israel's Occupation*, Berkeley: University of California Press.

Gorenberg, G. (2006). *The Accidental Empire: Israel and the Birth of Settlements, 1967–1977*, New York: Times Books.

Hajjar, L. (2005). *Courting Conflict: The Israeli Military Court System in the West Bank and Gaza*, London: University of California Press.

Halper, J. (2000). 'The 94 Percent Solution: A Matrix of Control', *Middle East Report* 30(216): 14–19.

Hasson, N. (2011). 'West Bank Settlement to Apply Israeli Law to Palestinian Workers', *Haaretz*, 9 November.

Human Rights Watch (2012). '"Forget about Him, He's Not Here:" Israel's Control of Palestinian Residency in the West Bank and Gaza', available at http://www.hrw.org/sites/default/files/reports/iopt0212webwcover.pdf.

International Court of Justice (2004). '*Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*', Advisory Opinion, I. C. J. Reports 2004, 114–203.

Israel Ministry of Foreign Affairs (2003). 'The Citizenship and Entry into Israel Law (Temporary Provision) 5763–2003', 31 July, available at http://mfa.gov.il/MFA/AboutIsrael/State/Law/Pages/Citizenship%20and%20Entry%20into%20Israel%20Law%202003.aspx.

Jabareen, H. and Zaher, S. (2012). 'Israeli Citizenship Laws are Unconstitutional', *JURIST – Hotline*, 10 February, available at http://jurist.org/hotline/2012/02/jabareen-zaher-israel-citizenship.php.

Jarach, R. (1993). 'Judicial Review of the Military Government by the High Court of Justice', in D. Yahav (ed.), *Israel, the 'Intifada' and the Rule of Law*, Tel Aviv: Israeli Ministry of Defence Publications.

Kassim, A. (1984). 'Legal Systems and Developments in Palestine,' *Palestine Yearbook of International Law*, 1: 19–35.

Kelly, T. (2006). *Law, Violence and Sovereignty among West Bank Palestinians*, New York and Cambridge: Cambridge University Press.

Khalidi, R. (2006). *The Iron Cage: The Story of the Palestinian Struggle for Statehood*, Boston: Beacon Press.

Khalil, A. (2008). *Irregular Migration into and through the Occupied Palestinian Territory.* CARIM Analytic and Synthetic Notes 2008/79. Florence: European University Institute, Robert Schuman Centre for Advanced Studies.

Khalil, A. (2011). 'Socioeconomic Rights of Palestinian Refugees in Arab Countries', *International Journal of Refugee Law* 23(4): 680–719.

Khalil, A. (2013). 'Beyond the Written Constitution: Constitutional Crisis of, and the Institutional Deadlock in, the Palestinian Political System as Entrenched in the Basic Law', *International Journal of Constitutional Law* 11: 34–73.

Kretzmer, D. (2002). *The Occupation of Justice: The Supreme Court of Israel and the Occupied Territories*, Albany: State University of New York Press.

Kretzmer, D. (2012). 'The Law of Belligerent Occupation in the Supreme Court of Israel', *International Review of the Red Cross*, No. 885, available at http://www.icrc.org/eng/assets/files/review/2012/irrc-885-kretzmer.pdf.

Lia, B. (2006). *A Police Force without a State: A History of the Palestinian Security Forces in the West Bank and Gaza*, Reading: Ithaca Press.

Office of the European Union Representative West Bank and Gaza Strip (2013). 'The European Union and the Palestinians: Real Partners Make a Real Difference', available at http://eeas.europa.eu/delegations/westbank/documents/news/2013_generalbrochure_en.pdf.

Pardo, S. and Peters, J. (2010). *Uneasy Neighbors: Israel and the European Union*, Lanham: Lexington.

Quigley, J. (1998). 'Living in Legal Limbo: Israel's Settlers in Occupied Palestinian Territory', *Pace International Law Review* 10(1): 1–29.

Sassen, S. (2006). *Territory, Authority, Rights: From Medieval to Global Assemblages*, Princeton: Princeton University Press.

Seyada (2009). 'Empowering the Palestinian Judicial System: EU Launches "Seyada II"', Press Release, Ramallah, 12 November, at http://www.lacs.ps/documentsShow.aspx?ATT_ID=2142.

Shamgar, M. (1982). 'Legal Concepts and Problems of the Israeli Military Government: The Initial Stage', in M. Shamgar (ed.) *Military Government in the Territories Administered by Israel 1967–1980: The Legal Aspects*, Jerusalem: Hebrew University of Jerusalem.

Shaml (1996). *Al-Nazehoun Al-Falesteneyyoun wa Mufawadat Al-Salam (Displaced Palestinians and Peace Negotiations)*, Ramallah: Shaml.

Shehadeh, R. (1985). *Occupier's Law: Israel and the West Bank*, Washington, DC: Institute for Palestine Studies.

Shehadeh, R. (1997). *From Occupation to Interim Accords: Israel and the Palestinian Territories*, The Hague: Kluwer Law International.

The National (2014). 'Egyptian Military Says It Destroyed 1,370 Gaza Smuggling Tunnels', 12 March, available at http://www.thenational.ae/world/palestinian-territories/egyptian-military-says-it-destroyed-1–370-gaza-smuggling-tunnels#ixzz3FdXaVKGf.

United Nations (2011). *Report of the Secretary-General's Panel of Inquiry on the 31 May 2010 Flotilla Incident* (Palmer Report), September 2011, available at http://www.un.org/News/dh/infocus/middle_east/Gaza_Flotilla_Panel_Report.pdf.

United Nations, Economic and Social Council (2003). *Conclusing Observations of the Committee of Economic, Social and Cultural Rights: Israel 23/05/2003*, E/C.12/1/Add.90, 23 May, available at http://www.unhchr.ch/tbs/doc.nsf/0/b313a3503107f1e6c1256d33002cea38?Opendocument.

Zakaria, F. (1997). 'The Rise of Illiberal Democracies', *Foreign Affairs* 76(6): 22–43.