

# Palestine: the legal dimension of migration

## *Asem Khalil*

In the wake of the June 1967 war, Israel gained control of the West Bank, including East Jerusalem, and the Gaza Strip, which had been, since 1948, under respectively Jordanian<sup>1</sup> and Egyptian rule. From then onwards, United Nations resolutions start to talk about ‘occupied Palestinian territory’ (*hereafter* oPt). Israel has always contested this appellation and the status of the territories under its control, calling them by their Biblical names<sup>2</sup> and claiming that they are disputed rather than occupied.<sup>3</sup>

If Israel denied its status as occupier, it never acted otherwise. Land was confiscated, civilians were detained and the daily lives of Palestinians were strictly regulated by the Israeli Military Governor and the Israeli Civil Administration, through thousands of military orders issued separately for the West Bank and the Gaza Strip (*hereafter* WBGs), often with similar content,<sup>4</sup> causing a gradual change in the legal system(s), in contradiction of international law as it is applied in times of armed conflicts and occupation.

The Oslo agreements and the establishment of the PA, in 1994, did not change the legal status of the oPt in international law. Israeli Military Orders, as much as Ottoman, British, Jordanian and Egyptian legislation, enacted prior to the establishment of the PA, remained in force unless amended by successive PA legislations.

This paper tackles the issue of migration in the oPt,<sup>5</sup> from a legal perspective. The manner in which Israel regulated the “residency” status, the registration of newly-born children, family unification, permanent permits and visas for foreign nationals will be presented first. The paper shows that military orders forbade the return of some Palestinians, converted other into aliens in their own country, while those married to Palestinians and their children were pushed into irregularity. The presentation of such measures does not entail historic events, but refers to powers that are still enjoyed by Israel, as an

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<sup>1</sup> The West Bank was united to the Emirate of Transjordan in 1950, forming the Hashemite Kingdom of Jordan.

<sup>2</sup> Israeli Military Order No. 187, Interpretation Order (Additional Provisions) (No. 3), issued on 17 December 1967 stated that the term “Judea and Samaria region”, used in Israeli Military orders, is identical to “West Bank Region”. The change of appellation reflects historical and religious attachment and the rejection of a name that implied Jordanian Sovereignty (Takkenberg 1998, 211ff.).

<sup>3</sup> For a complete analysis of this issue, see: Khalil 2004.

<sup>4</sup> For this reason, analyses will be limited to military orders issued for the West Bank. Unless specified differently, all references to military orders in this chapter referred to those issued for the West Bank.

<sup>5</sup> The title of this chapter talks about Palestine. What is “Palestine” and who is “Palestinian”? To answer those two questions, one must go back in time: the concept of “Palestinian” – as much as the concept of “Palestine” itself – developed ; defining who is Palestinian would enable us to define who are Palestinian refugees and migrants. In earlier studies (Khalil 2007a; Khalil 2008b) I argued that the concept of “Palestine” is developing towards a ‘demotic’ ideal of nation rather than an ‘ethnic’ one; it refers to certain ‘citizens’ of Palestine – the state yet to be established, to mean WBGs, i.e. those Palestinians and others admitted by the state, in accordance with the law and maybe in accordance with peace agreements. In fact, since Oslo (or even with the Declaration of Independence in Algiers, 1988) the reference to the “creation of the state of Palestine” is employed much more frequently than the “liberation of Palestine”: for sure, ‘Palestine’ refers to two different territorial entities with consequences for who is to be considered Palestinian. For those refugees in host countries, the right to citizenship of the state of Palestine (in parts of the historical Palestine) may not satisfy their right of return to the homeland, Palestine. For Palestinians, in fact, the country of origin, country of residence and country of citizenship may not coincide. Thus migration policies and restrictions vary according to their current legal status. The creation of the state of Palestine may resolve the issue of the statelessness of the majority of Palestinians. However, it will not necessarily allow their return to the homeland. In this chapter, I prefer to use the term “occupied Palestinian territory”, used by UN resolutions to indicated those territories occupied by Israel in 1967, i.e. the West Bank (including East Jerusalem) and the Gaza Strip.

occupation power. This paper stresses the need for Israel to abide by international law, as expressed in customary international law, ratified treaties composing international humanitarian law (*hereafter* IHL) and international human rights law (*hereafter* IHRL), and UN resolutions.<sup>6</sup>

The issue of Palestinian refugees is a decisive element in any migration policy in the region. Their legal status and rights in host Arab states will be set out. Those refugees are denied re-entry to their homeland, while host Arab states, in the name of their right to return, grant them a legal status similar, if not worse, than those granted to foreign nationals by often denying them rights enjoyed by refugees. Such measures undertaken by some host Arab states are intended to be a pushing factor against the possible settlement of Palestinian refugees in those countries. Since most Palestinian refugees are stateless and denied re-entry to their homeland, they are forced to remain illegal, and, if they have the possibility, they tend to leave for any third countries that are ready to host them. The laws of Arab States and their policies towards Palestinian refugees are to be considered, along with the original Palestinian displacement, the most destabilizing factors in this and neighbouring regions.

The legal status of the Gaza Strip will be examined, especially since the Israeli unilateral disengagement plan, with special reference to the impact on the right to access, sojourn, exit and border control. Hamas' control over the Gaza Strip introduced different scenarios including discussions over who effectively controls Gaza and whether it is or is not now an occupied territory. Such discussions are not exclusively theoretical. They have a direct impact on obligations of Israel towards neighboring countries, and the international community towards Palestinian civilians in the Gaza Strip and the future of Palestinian statehood.

PA legislations with its impact on migration also needs to be set out. Early reports (Khalil 2006, 2007b) covered the period from the establishment of the PA until the second legislative elections in 2006. Since then, the Palestinian Legislative Council (*hereafter* PLC) has been completely dysfunctional. There have been ever more Presidential decrees, decree laws, and cabinet decisions concerning migration. It can be stated, however, that such legislative changes have not introduced any substantive changes to the laws in force on migration issues.

## I. Israeli Measures<sup>7</sup>

The first Israeli census of the population of the West Bank and the Gaza Strip was carried out in 1967, immediately after the cease fire. Only those who were counted were considered as “**residents**”. Those who happen to not be in the area or who were there but, for any reason, were not included in the census, were simply denied the status of resident. Only residents may have an **ID number**. However, residency is not treated as an inherent right of the indigenous population (as it is in the case of citizenship). Rather, it can be awarded, kept and removed by Israel in a unilateral fashion.<sup>8</sup>

The regulations for the issuance of ID cards and for the **registration** of newly-born children were subject to several changes.<sup>9</sup> **In 1995, Israeli Military Order No.1421** prolonged the registration period for children of residents to 18 years old, regardless of place of birth. It also allowed the registration of a children, at least one of whose parents, was resident. However, it added that this is possible only on the condition that the authorities are convinced that permanent residence is in the

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<sup>6</sup> As was recently and authoritatively confirmed by the International Court of Justice's Advisory Opinion on the “Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory” of 2004. Available at the ICJ official website: <http://www.icj-cij.org/docket/index.php?p1=3&p2=4&k=5a&case=131&code=mwp&p3=4>

<sup>7</sup> Earlier and more detailed versions of this section can be found in: (Khalil 2008a).

<sup>8</sup> Residents were subjected to strict regulations with regards to their stay abroad and anyone who remained abroad beyond the time limit on their **exit permits** lost his/her residency status. With the Oslo agreements, the exit permits were no longer applicable and PA travel documents could be issued for those Palestinians having an ID number.

<sup>9</sup> For more details, see: Khalil 2008b.

“Area”. This means that a Israeli military officer had some discretion in deciding each case; and, in any case, the children, whose permanent residence was not in the “Area”, could not be registered.<sup>10</sup>

The protocol concerning the Civil Affairs of the Interim Agreement of 28 September 1995 gave the PA the authority to register children until the age of 16, if any of their parents is resident. Since Israel did not transfer the population registry, the PA in reality took on the role of mediator between the Palestinian populace and the Israeli authorities with no power to influence decisions of admittance or refusal. The provisions contained in the protocol, it shall be admitted, are a step forwards when compared to IMO 1206/1987.<sup>11</sup> But when compared to IMO No. 1421/1995, adopted 10 months earlier, they mark a step backwards.

According to the above, children who were not registered in time, owing to their parents’ negligence or ignorance of Israeli military orders cannot obtain an ID number.<sup>12</sup> Those persons became illegally resident in the “Area”, subject to sanctions, unless they obtain a permit or authorization from Israel to stay where they (or one or both parents) had dwelt. Those Palestinians who, for any of the above reasons, are not in the population registry (still, it must be remembered, under Israeli control) can acquire residency status in the oPt only through a **family unification** procedure. For Israel, family unification has been treated as a security and political issue. The reduced number of approvals to family unification requests proves Israeli reticence here. Besides, the issue of family unification is not treated as a human right but rather as a privilege, given only to a favoured few (Shaml 1996, 107).

Following the deportation of hundreds of Palestinians “illegally residing” in the “area”, mostly wives and their children, a petition was submitted to the Israeli Supreme Court in 1990. The State Attorney's Office announced a change in policy granting “**permanent visitor**” status to wives married to residents, and their children, a status renewable each six months, without the need to leave the territory (Shaml 1996, 106). Israeli policy in terms of approving family unification or granting permanent visitor status varied, according to time and political conditions and was often to temper (internal and international) pressure (B’Tselem 2006, 15-16). The complex procedure for family unification and the high cost for permanent visitors discouraged many from proceeding or pursuing this matter, preferring to remain in irregularity, with all the fragility, instability and immobility that this inevitably involves.<sup>13</sup>

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<sup>10</sup> Contrary to previously applicable military orders (and even, as we shall see later on, to the Interim Agreement itself), this order is to be considered a positive step. In fact, Israeli Military Order No.1206 of 1987 set the registration of new born children for resident parents, at 16 years if born in the “Area” and at five years if born outside the “Area”. The same order linked the registration of children to their mothers and not to their fathers; in other words, if one of the two parents is not a resident, only the children of resident woman could be registered and this should be done within five years of birth.

<sup>11</sup> See previous footnote.

<sup>12</sup> The same applies to children of non-resident women between 1987 (the year when order No.1206 was adopted) and 1995 (the year when Order No.1421 of 1995, and a few months later, the Interim Agreements, were adopted).

<sup>13</sup> Issuing visas for foreign nationals, is not in the responsibility of PA but rather of Israel, the *de facto* supreme and unique authority on oPt borders. However, for a non-Palestinian to work in territories under the PA control, a permit request should be deposited with the PA Ministry of Labor. It should be noted, however, that there is no connection between legal stay and work permits; in other words, a non-WBGS who is residing illegally in territories under PA control, could, theoretically, obtain a permit to work and have a contract. For more details, see: Khalil 2006 & 2008b.

## II. Palestinian Refugees<sup>14</sup>

In addition to the occupation of the WBGS, the 1967 war caused a second wave of displacement for thousands of WBGS Palestinians;<sup>15</sup> in fact, almost one third of the Palestinian population of the West Bank (including East Jerusalem) and the Gaza Strip were displaced, half of them for the second time (Badil 2007, 14). As was the case with the 1948 Palestinian refugees,<sup>16</sup> Israeli policy in the after war was full of contradictions: only residents of the “area” could be re-admitted to the “area” while the status of “resident” was granted by Israeli authorities exclusively to those who had been included in the census, i.e. those who were already there!

These Palestinian refugees can be divided into four groups: first, Palestinians displaced between June 1967, because of the war, and September 1967, when the first Israeli census was carried out for the population of the Area; second, Palestinians, whose habitual residence was the WBGS, who happened to be outside the WBGS when the war started in June 1967 and whose return was forbidden; third, Palestinians who were denied re-entry to the oPt, despite having an ID card issued by Israeli authorities because their (exit) permit or travel document (*Laissez Passer*) had expired; fourth, Palestinians who were deported because of Israeli pretended political and security considerations (Shaml 1996, 12-13).

There is not a unique and common legal status of Palestinian refugees living in host states. According to Takkenberg (1998, 131ff.), a formal legal status under national law, codified in legal instruments, does not, in many instances, exist. The legal position of Palestinian refugees in individual Arab states depends largely on administrative practices, often laid down in circulars that are subject to constant change.<sup>17</sup>

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<sup>14</sup> A distinction between refugee and migrant might be outlined as follows; for the researcher, the concept of migrant is the generic term that contains ‘refugee’ (who was forced to leave his or her country of origin) and the voluntary migrant who leave his or her country of origin to look for a better economic, social or political environment in the destination country. Individuals are key in migration, while groups are key in the case of refugees (Zreik 1998, 7). Another distinction is between Internally Displaced Persons (IDPs) and refugees, the first being ‘refugees in their own country’ who do not pass international borders; this concept is often used to distinguish those Palestinians who left their homes following the 1967 war (Shiblak 1996, 29). However, it should be noted that Palestinian refugees under the UNRWA’s operational definition are those “persons whose normal place of residence was Palestine between June 1946 and May 1948, who lost both their homes and means of livelihood as a result of the 1948 Arab-Israeli conflict”. UNRWA’s definition of a refugee also covers the descendants of persons who became refugees in 1948 (<http://www.un.org/unrwa/refugees/whois.html>); according to this definition, not all Palestinian refugees are UNRWA refugees or, at least, are not necessarily in the areas of its operations (Jordan, Syria, Lebanon and WBGS); while according to the 1951 Convention relating to the Status of Refugees, a broader definition of refugee was adopted with limitations in terms of persecution; however, a strict interpretation of article 1D had led to limited if not in-existent coverage of the mandate of the convention.

For the purpose of this paper, I shall use the term refugee to distinguish the refugee from the voluntary migrant; the first concept, includes all those Palestinians who are not granted the right to return and settle in Palestine regardless of the legal definition (according to international law or organizations). This broad definition of refugee also includes all those who left Palestine freely but where return was forbidden. This definition includes, but is not limited to, UNRWA refugees, convention refugees and IDPs. However, some of the Palestinian refugees are residing in WBGS and “enjoy” the same rights/duties as other Palestinians of the WBGS. When tackling the issue of crossing borders, for Israeli regulations and PA legislation and policies on migration, “WBGS refugees” are not treated differently from other WBGS Palestinians. Since this chapter is dedicated to the legal dimension of migration in the oPt, I will limit my analysis to the post 1967 war refugees, that includes the four categories as detailed in the text.

<sup>15</sup> Not to mention those Palestinian refugees who were forced to leave their homeland between 1947 and 1949 or who were internally displaced as a result of the 1967 occupation.

<sup>16</sup> Palestinian refugees who left the historical Palestine prior to or during the establishment of the state of Israel in 1948, were denied re-entry, because they were not Israeli citizens, while they were denied Israeli citizenship because they were not in Israel (Khalil 2007a, 25-27).

<sup>17</sup> For a comprehensive presentation of the legal status of Palestinian refugees in Arab states: (Takkenberg 1998, 149 ff., Khalil 2007a).

In view of the above, any generalization with regards to the status of Palestinian refugees in host countries would be misleading. Nevertheless, we can distinguish, *grosso modo*, between two kinds of Palestinian refugees: those who have obtained the citizenship of a host state (such as is the case for most Palestinian refugees in Jordan)<sup>18</sup> and those who have remained stateless. For those stateless Palestinian refugees, certain restrictions were imposed by host countries. Some Arab states allowed Palestinian refugees to work; others have prohibited certain professions; this, in turn, encouraged Palestinians to resort to illegal work. Other restrictions can be observed in the lack of access to governmental services or to the ownership of real estate; the latest restriction being in some cases (the Gulf States for example) applicable to all foreign nationals, including Palestinians (Takkenberg 1998, 158, Zreik 1998, 49). Most Arab states have nationality laws that do not grant women the right to transfer citizenship to their children (Zreik 1998, 42) and that forbid dual Arab nationality; the cultural rights of minorities are hardly exemplary either (Hanafi 2001, 230).

Some of the above restrictions go against the position of the Arab League regarding the treatment of Palestinian refugees, which was set out in the 1965 Casablanca Protocol. According to this protocol: first, Palestinian refugees shall be granted full citizenship rights without being naturalized by host Arab states; second, Palestinian refugees shall be granted a Refugee Travel Document in order to maintain their refugee status. In other words, two principles characterized the official Arab position: Arab solidarity with refugees and the preservation of Palestinian identity (Takkenberg 1998, 136). However, this non-binding protocol was often ignored by Arab states especially with regards to equality in employment; in other words, this document was simply a declaration of good intentions (Zreik 1998, 40).

### III. The Gaza Strip

Israel remains the occupying power in the Gaza Strip despite its claim that it is a “hostile territory”.<sup>19</sup> This is what was asserted by John Dugard (2008), UN Special Rapporteur, during the Seventh Session of the Human Rights Council, on 21 January 2008. Earlier, when Israel withdrew from the Gaza Strip, an Israeli military commander declared that “military governance in the GS has ended” (Al-Mukh 2006, 16).<sup>20</sup> Prime Minister Sharon told the General Assembly on 15 September 2005 that Israel’s withdrawal from Gaza meant the end of its responsibility for the area (Dugard 2008, 7).

For John Dugard, the withdrawal did not though end the occupation of Gaza, since “[t]he test for determining whether a territory is occupied under international law is effective control, and not the permanent physical presence of the occupying Power’s military forces in the territory in question” (Dugard 2008, 8). He then added that Israel’s effective control there is demonstrated by many factors, including the substantial control of Gaza’s land crossings and the control of the Palestinian Population Registry.

**Erez** is the main crossing for passage through Israel to the West Bank and **Karni** the main crossing for foods and supplies; both are strictly and exclusively controlled by Israel and often closed on the basis of Israeli political/security considerations. As for **Rafah**, it is the main crossing between Egypt and the Gaza Strip. In November 2005, a deal was made between Israel and the Palestinians (The

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<sup>18</sup> Excluded Palestinian refugees from Gaza (for more details, see: El-Abed 2004 & 2006).

<sup>19</sup> Declared by Israeli Security Cabinet on 19 September 2007; the legal implications that Israel intends to attach to this “status” remain unclear, but the political purpose was immediately made known - namely the reduction of the supply of fuel and electricity to the Gaza Strip ( Dugard 2008, 8).

<sup>20</sup> The situation of the GS changed following the unilateral Israeli withdrawal in late 2005, but the legal status remained unaltered: since, as in the case in the occupied West Bank, Israel continues to be in control of borders: exits and entries remain in Israeli hands, the occupation power and all Palestinian migration policies (refugees or migrants deciding to return to the WBGS) remains dependent on the will of an alien state, Israel, whose security prevails over Palestinian national security, economy and rights.

Agreement on Movement and Access and the Agreed Principles for the Rafah Crossings<sup>21</sup>) giving full control to the Palestinians on the Palestinian side of the borders, monitored by an EU mission (EU BAM Rafah), while Israel monitored the borders via a closed-circuit television (Al-Mukh 2006, 21).

Besides John Dugard (2008, 8) connected physical (direct or indirect) Israeli control of the borders with the issue of the population registry, as he rightly noted that “the definition of who is “Palestinian” and who is a resident of Gaza and the West Bank is controlled by the Israeli military. Even when the Rafah crossing is open, only holders of Palestinian identity cards can enter Gaza through the crossing; therefore, control over the Palestinian Population Registry is also control over who may enter and leave Gaza”.

Facts on the ground prove the fragility and inconsistency of the pretensions of the first approach. Indeed, following the second legislative elections in 2006 and Hamas's victory, Israel threatened to close Rafah Crossing if Hamas administered it; and so President Abbas adopted presidential decree (16/2006) giving the Directorate of Crossings and Borders autonomy (from the Ministry of the Interior) and placing it under his direct control. Since Hamas's takeover in the GS on 14 June 2007, Rafah crossing has been closed and hundreds were caught in between the Egyptian and the Palestinian side. Despite Hamas's initial refusal, humanitarian cases were eventually allowed to pass to and from GS through Karm Abu Salem, via Israel and thus under Israeli control. In July 2008, a deal on a cease-fire was reached between Hamas and Israel with the mediation of Egypt, resulting in some alleviation in the restrictions on the entry of supplies and food, and the gradual opening of Rafah Crossing, in coordination with the Egyptian side, for urgent humanitarian cases.

However, Israel continued to apply restrictive measures concerning movement to and from the Gaza Strip. It even started to implement a new permit regime and policy which, in the words of Israeli Human Rights Organizations, HaMoked and B'Tselem, are “separating the Palestinian populations of the Gaza Strip and West Bank from each other. The separation regime tears families apart, puts thousands at risk of expulsion to the Gaza Strip and turns Palestinians into “illegal aliens” in their own home[s].”<sup>22</sup>

#### IV. PA legislation since 2006

In the 2006 legislative elections, Hamas won a majority of the 132 PLC seats, and Ismael Haneyyeh was nominated by President Mahmoud Abbas, himself elected one year earlier, to form the tenth PA government. This event was accompanied by discussions with regards to the PLO in the government program. Israel, the Quartet and the international community in general insisted that Hamas recognize the state of Israel, renounce violence, and acknowledge previous agreements between the PLO and Israel.<sup>23</sup> Some months later, more than a third of PLC deputies, mostly from Hamas, including the PLC speaker, were detained by Israel.

The Mecca Agreement (February 2007) constituted a breakthrough in talks between various Palestinian factions (especially between Hamas and Fatah), and a unity government was formed. In June 2007, Hamas took control of PA institutions in Gaza by force, while President Abbas declared a state of emergency and formed his own government.<sup>24</sup> Led by former Prime Minister, Ismael Haneyyeh and his government, Hamas *de facto* governed the Gaza Strip, while Mahmoud Abbas and Salam Fayyad, his Prime Minister, were ruling on the West Bank. Each party issued legislation and decisions, while both claimed to be the legitimate authority.

<sup>21</sup> Available at:

[http://domino.un.org/UNISPAL.NSF/796f8bc05ec4f30885256cef0073cf3a/c9a5aa5245d910bb852570bb0051711c/\\$FILE/Rafah%20agreement.pdf](http://domino.un.org/UNISPAL.NSF/796f8bc05ec4f30885256cef0073cf3a/c9a5aa5245d910bb852570bb0051711c/$FILE/Rafah%20agreement.pdf)

<sup>22</sup> The press release is available at: [http://www.btselem.org/English/Press\\_Releases/20080910.asp](http://www.btselem.org/English/Press_Releases/20080910.asp)

<sup>23</sup> For the impact on the PA in general and the PLC legislations in particular, cf. Khalil 2007b, 196.

<sup>24</sup> By Presidential Decrees No.8, 9 & 10 issued on 14/6/2007.

The following table sets out PA legislation and decisions issued since 2006 elections that might have an impact on migration.<sup>25</sup>

Date of Issuance	Issuance Authority	Title of Legislation/Decision	Published in Official Gazette	Main topics tackled
27/6/2006	Council of Ministers	Decision of the Council of Ministers No.144/2006 Concerning the Approval of the Structure of the Ministry of Refugee Affairs.	Official Gazette No.71 of 13/8/2007 <sup>26</sup>	For the first time, a government included a ministry for Refugee Affairs whose structure was approved by this decision.
31/7/2006	Board of Directors of the Capital Market Authority	Instructions No.1 of 2006 Concerning the Licensing of Securities Trading Companies	Official Gazette No.68 of 7/3/2007	The Instructions were issued in conformity with the Law of Securities No.12/2004 and Capital Market Authority No.13/2004.
7/8/2006	Council of Ministers	Decision No.90/2006 amending the Council of Ministers Decision issued on 15/3/2005 concerning the Application of Palestinian Specifications	Official Gazette No.68 of 7/3/2007	
14/8/2006	Council of Ministers	Decision No.103/2006 Concerning the System of the Equation of Non-Palestinian Certificates	Official Gazette No.68 of 7/3/2007	- BAs issued by a member of the League of Arab Universities do not need equation. - Equation is not possible for certificates obtained by correspondence.
11/9/2006	Council of Ministers	Decision No.125/2006 Concerning the Holiday of Christian Private Schools	Official Gazette No.69 of 27/4/2007	Exceptionally, Christian Private Schools are closed on Friday and Sunday as opposed to Thursday and Friday. <sup>27</sup>
16/10/2006	Council of Ministers	Decision No.134/2006 Concerning the Approval of the Re-formation of the National Committee on the Facilitation of Transportation and Commerce in the states of the ESCWA region.	Official Gazette No.69 of 27/4/2007	The Committee is responsible, <i>inter alia</i> , for: 1) putting forward and executing economic policies suitable for requirements of transportation and commerce; 2) encouraging partnership between the public and private sectors; 3) ameliorating the environment for investment in transportation and Commerce.
3/3/2007	President	Presidential Decree No.4/2007 Concerning the Formation of a High Presidential Committee for Christian Affairs	Official Gazette No.69 of 27/4/2007	The Committee is responsible for following up Christian affairs with local and international churches, including legal, institutional and real estate issues, and coordination with local, regional and international actors with regards to Christian affairs.
16/4/2007	Board of Directors of the Capital Market Authority	Instructions No.2 of 2007 Concerning the Licensing of Financial Leasing Companies	Official Gazette No.73 of 13/9/2007	It applies to national and foreign Companies.
10/6/2007	President	Decision No.263/2007 Concerning the Establishment of a Constituent Committee of the Palestinian Chamber of Arbitration	Official Gazette No.73 of 13/9/2007.	The Committee undertakes activities until a Palestinian Chamber of arbitration is established.
13/6/2007	President	Decree No.7/2007 Concerning the Establishment of the Public Commission on Civil Affairs	Official Gazette No.71 of 13/8/2007	This Commission inherited the former PA Ministry of Civil affairs and has taken on its responsibilities. The commission however was directly attached to the President, and connected to the (the PLO-) Negotiation Affairs Department.
9/7/2007	Prime Minister	Decision No.32/2007 Concerning the Establishment of an Ad Hoc Committee for the Documentation of Crimes and the Violations of Human Rights	Official Gazette No.73 of 13/9/2007	

<sup>25</sup> The author refers exclusively to that legislation and those decisions that were published in the Official Gazette issued by Diwan al-Fatwa Wal Tashre'i. However, there was confusion within the legal community concerning the Official Gazette No.71 which was issued twice, once in the Gaza Strip and once on the West Bank, though with different content.

<sup>26</sup> The difference in the issuance date of Official Gazette No.71 is possibly explicable because of the existence of two different copies of the Official Gazette, one from the Gaza Strip and other from the West Bank, cf. above footnote 24.

<sup>27</sup> It should be noted that Salam Fayyad's government [I don't have the context to check whether the tense is right] cancelled the provision of the council of Minister concerning holidays for the public sector. This means that on the West Bank Friday and Saturday are ferial, but that in the Gaza Strip Thursday and Friday are taken as days off!

18/7/2007	Prime Minister	Decision No.37/2007 Concerning the Establishment of an Ad Hoc Committee to Submit Draft Anti-Money Laundering Law <sup>28</sup>	Official Gazette No.73 of 13/9/2007	
20/6/2007	President	Decree No.16/2007 Concerning the Granting to the Minister of the Interior of the Power to Review all Association Licenses	Official Gazette No.71 of 9/8/2007	The decree empowers the Minister of the Interior: - to review the licenses of all associations, institutions and organisations issued by the Ministry of the Interior; - to undertake any necessary measures against illegal associations. The decree also instructs that all associations, institutions and organisations should start the procedure for a new license within a week.
20/6/2007	Council of Ministers	Decision No.8/2007 Concerning Associations and Organisations	Official Gazette No.71 of 9/8/2007	The Council of Ministers empowers the the Minister of the Interior to undertake all necessary measures against associations and organisations undertaking illegal activities.
26/6/2007	President	Decree No.18/2007 Concerning the Exemption of Citizens in the Southern Governorate from Taxes and Fees	Official Gazette No.71 of 9/8/2007	- Palestinians in the Gaza Strip are exempted from paying fees for public services and VAT on internal activities and income tax on companies and individuals. - This exemption does not apply for taxes on the import of goods and purchases and sales with setoff invoices, nor does it apply to income tax for public servants.
23/8/2007	President	Decree-Law No.3/2007 Concerning the Law on the Income Fees Stamps No.27/1952 and the Law on the Revenues Stamps No.31/1927.	Official Gazette No.73 of 13/9/2007.	- It cancels Jordanian and British Mandate laws imposing taxes on certain incomes and revenues.
23/8/2007	President	Decree-Law No.6/2007 Concerning the Repealing of the Law on Social Insurance	Official Gazette No.73 of 13/9/2007.	
2/9/2007	President	Decree-Law No.1/2007 Concerning General Elections	Official Gazette No.72 of 9/9/2007	- It substituted Law No.9/2005 Concerning Elections. - The decree law imposes a proportional electoral system, based on lists, considering all the territories as one.
20/11/2007	President	Decree-Law No.11/2007 Concerning Preventive Security	Official Gazette No.74 of 9/6/2008	Article 8 requires the General Directorate of Preventive Security to respect human rights and liberties as reflected in Palestinian law and international treaties and documents.
12/12/2007	President	Decree-Law No.13/2007 Concerning Tax Exemption	Official Gazette No.74 of 9/6/2008	This law considers tax exemption given in accordance with Investment Promotion Law No.1/1998 to be half of the Income Tax due for the project. The decree law is enforced retroactively, since the entry into force of the Income Tax Law No.17/2004.
12/12/2007	President	Decree No.38/2007 Concerning the Final Ratification of the Arab Convention on Human Rights	Official Gazette No.74 of 9/6/2008	
14/1/2008	President	Decree No.2 of 2008 Concerning the Amendment of the Formation of the High Presidential Committee for Christian Affairs	Official Gazette No.75 of 15/6/2008	
28/1/2008	President	Decree No.3/2008	Official Gazette No.75 of 15/6/2008	The president ratifies the amendment to paragraph 3 of Article 1 of the Arab Convention for the suppression of Terrorism.
18/3/2008	President	Decree-Law No.3/2008 Concerning Amendment of Income Tax Law No.17 of 2004.	Official Gazette No.75 of 15/6/2008	The decree law is composed of 17 articles and contains substantive changes in the original Income Tax law.
20/5/2008	President	Decree-Law No.6/2008 Concerning Amendment to Company Law	Official Gazette No.76 of 20/6/2008	This law added new categories for companies, amending the laws in force.
25/5/2008	President	Decree-Law No.7/2008	Official Gazette No.76 of 20/6/2008	The decree approves loans from the Islamic Development Bank to connect the electricity of the Gaza Strip with Egypt.

<sup>28</sup> A Decree-Law was indeed adopted and published by Special Issue No.3 of the PA Official Gazette on 6/4/2008, but the researcher could not obtain a copy of that issue. Reference was made to this decree in Official Gazette No.74 while correcting errors in previous numbers.



## Conclusion

The legal and political divisions between the West Bank and Gaza Strip have grown with the Hamas-Fatah power struggle and Hamas's use of force to control PA institutions in the Gaza Strip, while Israel maintains effective control over borders and the population register of both the WBGS. For this reason PA legislations on migration issues remain limited in extension and impact since the PA lacks sovereignty. Israel, indeed, remains, as an occupation power, the highest authority in the land.

Most issues related to migration (such as entry, stay and exit, status, rights, integration of foreign nationals...) remain under direct Israeli control; the major part of the legal regime regulating migration in the oPt consists inevitably of declarations and orders issued by the Israeli military governor and those authorized by him.<sup>29</sup> This paper, however, argued, that IHL and IHRL is *de iure* part of this regime and shall be thus enforced therein. Accordingly, Israel is invited to reconsider any measure that is contrary to its obligations under international law. In real or fictional democracies, discrimination based on ethnicity or origin cannot be justified. Israel cannot continue to exempt itself from applying human-rights imperatives, with reference to domestic law and national legal systems. Basic human rights cannot (and should not) be randomly selected, or applied in a discriminatory way.

Finally, the issue of Palestinian refugees remains the core issue in the Israeli-Palestinian conflict and constitutes one of the corner stones for any future peaceful arrangement/agreement. This paper has hinted that a security-based approach to Palestinian refugees undermines those refugees' basic human rights, while not necessarily contributing to the realization of the objectives of either the host country or of the Palestinians themselves. In fact, Palestinian refugees could not (and still cannot, because of an Israeli refusal to re-admit them) return to their homeland; accordingly, they have no choice but to stay in the country of first refuge, despite their illegality/irregularity or they must find a country ready to admit them. Their very existence becomes a source of suspicion and is absolutely unwelcome for both, the host countries and third countries to which those Palestinians may be willing to travel, for study, work or any other reason. In terms of migration policy and laws, they are treated as a risk and a danger for which states apply restrictive measures, based on 'national security' and not on human rights and dignity. Those measures are often justified by the need to preserve Palestinian national identity and their right to return. In other words, Arab regimes often "act, or claim to act, against Palestinians for the sake of Palestine" (Khalil 2007a) or "With Palestine, Against Palestinians" (Raffonelli 2004).

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<sup>29</sup> Since 1994, the PA has issued several laws and some secondary legislation related to migration (for more, see: Khalil 2006), within its jurisdiction which is limited in terms of territory, functions and persons. Besides, all previous legislative texts of different origin (Ottoman, British Mandate, Jordanian, and Egyptian) remain in force unless amended or substituted by successive legislation.

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