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***Legislating for Migration:
The Anomalous Case of
the Palestinian Authority***

Analytical and Synthetic Notes 2006/11 - Legal Module

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Legislating for Migration:
The Anomalous Case of the Palestinian Authority

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Introduction

Migration law covers the regulation of entry, residence and settlement, border-crossing and end of stay together with sanctions for the transgression of such rules, and at the same time the protection of migrants through the legal regulation of their rights, often proclaimed on the international level and sometimes incorporated in the domestic law.¹ The legislative position of the Palestinian Authority (PA) is anomalous on both counts. First, the regulation of migration implies the sovereign control of borders, which the PA does not currently exercise. Second, conformity with international standards on the status of migrants and refugees, and the issues of citizenship, presumes accountability and statehood, which Palestine does not enjoy. In other words, the PA is not competent to sign treaties since it is not a sovereign authority with legal character under international law, due to the absence of a state.² Moreover, the PA does not pass legislation, nor can it enforce decisions in these domains.

Despite this basic legal anomaly, under the Agreements between Israel and the Palestine Liberation Organization (PLO), the PA exercises three limited forms of jurisdiction: i) territorial jurisdiction over parts of Occupied Palestinian Territories (OPT); ii) personal jurisdiction over Palestinians of the West Bank and the Gaza Strip; and iii) functional jurisdiction in civil affairs, transferred to the Authority by Israeli military and civil authorities. Within these limitations, the PA exercised legislative authority through the Council nominated by the Executive Committee of the PLO, and then by the Palestinian Legislative Council (PLC) elected in 1996.³

Section I deals with the content and limits of the Authority's legislative powers and the confusing mixture of legal provisions from different legal systems in Palestine. Section II deals with the constitutional framework of the PA and the future Palestinian state and the way international law is considered in the Palestinian constitutional system. Section III considers the legislation adopted by the Palestinian Legislative Council. Section IV examines the pre-PA legal texts and areas where the PA has no jurisdiction or where it intentionally avoids legislating in a context of political instability and in the absence of a Palestinian state. Section V considers those sectors related to migration where Palestinian legislative intervention may be needed.

I. The incomplete nature of legislative powers in territories under PA control

In October 1993,⁴ the PLO Central Council delegated the PLO Executive Committee (EC) to form the 'Council' of the PA, and nominated the Chairman of the Executive Committee, Yasser Arafat, as its President. In 1994 Arafat issued Decree No. 1 concerning the 'Continuation of the Laws, Regulations and Rules Operative in the Palestinian Territories (West Bank and Gaza Strip) before 5 June 1967' until replaced by unified PA legislation. The decree came into force on 20 May 1994—the day of its ratification—but ignored all military orders and declarations in force in the OPT since 1967. Notwithstanding the international law of occupation, there are sectors where regulation is still carried out by military orders and declarations.

Subsequently Law No. 2/1995 revoked some resolutions and military orders thus implying that *other* orders should remain in force unless specifically revoked or replaced. To avoid further misunderstanding, the President adopted Law No. 5/1995 on the 'Transfer of Authorities and Powers', ratified on 20 May 1995, but retroactively effective as of 19 May 1994, that is, one day before Decree No. 1/1994. This suggests that all previous legislation, *including military orders*, will remain in force unless revoked or replaced by Palestinian legislators.

¹ ELMADMAD, Khadija, *La nouvelle loi marocaine du 11 novembre 2003 relative à l'entrée et au séjour des étrangers au Maroc et l'émigration et immigration irrégulières*, CARIM-AS 2004/01, p. 1, available on: http://www.carim.org/publications/CARIM-AS04_01-Elmadmad.pdf.

² Indeed, the PLO as the sole representative of the Palestinian people has legal character under international law and is the only authority competent to sign 'treaties' 'on behalf of the PA'.

³ See www.pal-plc.org (in Arabic). The PLC is sometimes referred to as the Palestinian Parliament. The second legislative elections took place on January 2005 with the surprising victory of Hamas. This election was at the origin of generalized boycott of PA (excluded the Presidency) and the stop of foreign financial aids.

⁴ PLO Central Council Resolution, in its session of 10–12 October 1993.

The Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip (*hereinafter* Interim Agreement),⁵ foresees the amendment or abrogation of military orders (Arts. XVIII),⁶ but the Council cannot exceed the powers transferred to it. Since the establishment of the PA, Palestinian judges have started to apply Palestinian law where this exists and avoided enforcing military orders.

There are three basic problems here. *First*, the territorial and functional jurisdiction of the Palestinian courts do not apply to Israeli citizens, i.e. Israeli citizens in Israel and Israeli settlers in the OPT (Art. XVII (2.c)). *Second*, Palestinian courts have no power to enforce their decisions on zones under direct Israeli control (Area C), and only limited powers in zones under exclusive civil control (Area B). *Third*, Israeli military courts continue to apply Israeli military orders.

Following the setting up of the PA on parts of the West Bank and Gaza Strip (the ‘Autonomous Territories’), the Palestinians were able to exercise legislative power, but the exercise of this power by the ‘Council’ was strictly regulated by the Interim Agreement, which state that: “Legislation... which exceeds the jurisdiction of the Council or which is [...] inconsistent with the provisions of the Declaration of Principles (DOP), this Agreement, or of any other agreement that may be reached between the two sides during the interim period, shall have no effect and shall be void *ab initio*” (Art. XVIII), thus suggesting that the Basic Law *is not* the highest law of the land, but that the agreements with Israel are.

This is an example of a debate which often takes place between defenders of international law and defenders of constitutional law, regarding the relationship between international law and national constitutional law and which takes precedence. The Basic Law, although adopted in conformity with the Interim Agreement is deemed the highest law of the land and its provisions are the sole limitation on the Palestinian legislator. Thus, under the international law of treaties any incompatibility with Israeli–Palestinian agreements shall be the responsibility of the PLO and its counterpart in the agreements, and more precisely, the responsibility of the President of the PA, who, according to the Israeli–PLO Agreements, is not empowered to pass legislation in contradiction with the agreements. However, since the adoption of the BL in 2002, and despite the provisions of Interim Agreement concerning legislative procedures, the presidential *veto* over legislation can be overridden by a two-thirds majority vote in the Legislative Council.⁷ It is surprising to note that the BL makes no reference to the Israeli–Palestinian agreements or to the applicability of international law in general in the Palestinian legal system. Besides, as mentioned in its introduction, the drafters of the BL cite its origin as residing in the will of the Palestinian people and not in the Interim Agreement. The theoretical superiority of the Basic Law is, however, challenged by *de facto* control of most of the OPT by Israeli forces, including complete control of borders and passage to and from different parts of territories under PA control (see below).

II. The Palestinian constitutional system

The exercise of legislative power by the PA should be read in the light of the resolutions, charters, and declarations made by the PLO, in particular the Palestinian National Charter of 1968,⁸ and the Declaration of Independence (Algiers, 1988).⁹ The only limitations to the legislative power of the PA in the areas under its jurisdiction are those provided in the Basic Law. PLO documents, however, remain valid and constitute a general framework in the Palestinian struggle for statehood and self-determination. Reference to the Declaration of Independence is made in the BL itself, whilst there is no reference to it in the Palestinian Charter. On the contrary, the Draft Palestinian Constitution (DPC),

⁵ Also referred to as ‘Oslo II’, and signed in Washington on 28 September 1995. See: http://www.palestine-un.org/peace/p_g.html

⁶ Articles III and IV deal with the structure and size of the Council. It is worth noting that the ‘Council’, according to the Interim Agreement was supposed to enjoy ‘both legislative power and executive power’.

⁷ Article 47 subsequently became Article 41 in the amended BL of 2003.

⁸ This replaced the 1964 Charter, available at: http://www.palestine-un.org/plo/pna_two.html. Palestinian National Charter of 1968, available at: http://www.palestine-un.org/plo/pna_three.html. See also Amendment of Palestinian National Charter of 24 April 1996 available at: http://www.palestine-un.org/plo/pna_one.html.

⁹ Declaration of Independence of 1988, available at: http://www.palestine-un.org/plo/doc_two.html.

whilst intended as the constitution of the Palestinian state and which will follow its establishment, is not intended to substitute the Palestinian Charter which can only be cancelled by the body that established it: the Palestinian National Council. Nevertheless, it is worth mentioning that the DPC refers to an ‘Advisory Council’,¹⁰ which includes members from the Palestinian diaspora. This means indirectly that the PLO and PA institutions will be replaced by state institutions.¹¹ The establishment of a Palestinian state may end the current duality in the representative institutions of the Palestinian people; if established, it will be the Palestinian state, rather than the PLO, that will enjoy legal character under international law, and wield exclusive power to incorporate the institutions that administer Palestinian territories under PA control.

Amended Basic Law of 2003¹²

The Palestinian Legislative Council approved the Basic Law in its third reading on 2 October 1997, but it was only ratified by the President of the PA on 29 May 2002 and came into force on 7 July 2002¹³. The President of the PA justified his refusal to endorse the BL on the grounds of the transitional character of the PA and the absence of the Palestinian state. Observers criticized the President for not having done so, considering the real reasons in his fears from having his powers limited.¹⁴ Following the creation of the office of Prime Minister in 2003, the Basic Law was amended in line with changes made in the Palestinian political system, and was again amended in 2005 when the new electoral system came into force.¹⁵

The precedence of the Basic Law over other laws is confirmed in Article 47, which stipulates that legislative power shall be exercised within the limits of its provisions. Laws, regulations and decisions in force in the OPT prior to the establishment of the PA, remain in force, unless incompatible with the Basic Law (Art. 119), or until amended or repealed (Art. 18).

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

The Law does not deal with the question of Palestinian citizenship, but provides that it shall be regulated by a specific law (Art. 7),¹⁶ and confirms that: “No Palestinian may be deported from the

¹⁰ The third draft of Palestinian Constitution, available on: <http://www.pcpsr.org/domestic/2003/nbrowne.pdf>

¹¹ All three drafts of the Palestinian constitution refer to a council representing the interests of the Palestinians, in various forms and competences (something that the BL ignored completely). However, in the early drafts, as noted by Nathan Brown, ‘the body was referred to as the “National Council”, and implicitly seemed to be identical to (or eventually the successor to) the “Palestinian National Council”, the constituting body of the PLO. It served as the upper house of the Palestinian parliament, though its role was not well defined’. The provision of the third draft changed remarkably from early drafts in giving bases of this council in the constitution itself and not the PLO and in the fact of being converted to an ‘advisory council’, distinct from the National Council of the PLO. Brown concludes that, ‘One cost of detaching the body from the PLO will be to leave the relationship between the PLO and the new state of Palestine more ambiguous. The overlap and hazy distinction between the PNA and the PLO has been a frequent complaint of Palestinian reformers; the constitution offers no clear provisions for the role or fate of the PLO’. See: N. Brown, *The Third Draft Constitution for a Palestinian State: Translation and Commentary*, PSR, 2003, pp. 41–43. Available at: <http://www.pcpsr.org/domestic/2003/nbrowne.pdf>.

¹² Amended Basic Law of 2003. Available at: http://www.pnic.gov.ps/arabic/law/law_basic.html.

¹³ The BL for the transitional period of 2002, available at: http://www.pnic.gov.ps/arabic/law/law_20.html.

¹³ Available at: Basic Law of 2005 amending Basic Law of 2003.

¹⁴ For more details regarding the circumstances related to the adoption of the BL and the preparation of the DPC, see: KHALIL, Asem, *The Enactment of Constituent Power in the Arab World: the Palestinian Case*, PIFF, Helbing and Lichtenhahn, 2006, pp. 216–21; KHALIL, Asem, *Which Constitution for the Palestinian Legal System*, PUL, 2003, pp. 89–102. Available at: http://www.profpito.com/Th_se_Lateran_Comp1_te.pdf.

¹⁵ An unofficial version is available at: <http://www.pnic.gov.ps/arabic/law/8-2005.html.html>.

¹⁶ A draft citizenship law circulated in the early years of PA (1995) even before the election of the first PLC, but was never adopted. The problematic issue of citizenship depended largely on the issue of negotiation with Israel and to possible realization of Palestinian rights to return.

homeland, prevented or prohibited from returning to or leaving it, deprived of citizenship, or handed over to any foreign entity” (Art. 28).

Drafting a Basic Law was related to the ‘Palestinian state’ declared in Algiers in 1988. The first drafts circulated following the Declaration of Principles on Interim Self-Government Arrangements (*hereinafter*, Declaration of Principles).¹⁷ On the other hand, the Interim Agreement stipulates that a Basic Law was to be enacted within the limits of the jurisdiction of the Council, not as a constitution for a sovereign state, but a transitional document to be replaced by a constitution, following the creation of a Palestinian state.

According to the provisions of the Basic Law it shall apply during the interim period and may be extended until the new Constitution of the State of Palestine is enforced (BL, Art. 115). As part of the preparation for statehood, and as part of Palestinian obligations under the Road Map, three drafts of the Palestinian Constitution were prepared.¹⁸ Are migration issues treated in the same way as those in the Basic Law? The latter was silent on key issues such as borders, refugees and statehood, since they are dependent on the successful outcome of permanent status talks with Israel, but the Constitution cannot continue to avoid tackling them, since this should follow the creation of a state; the problem is that constitution-making is a step towards statehood, while the determination of those elements will depend largely on the outcome of permanent status talks with Israel, and thus on the creation of a Palestinian state. This, indeed, justifies the insistence on a Palestinian right to return and to Palestinian nationality and citizenship (Arts. 12, 13). The draft constitution differed from the Basic Law since it is intended to follow the creation of the Palestinian state and included regulations regarding the state, such as the right of asylum (Art. 32).

Constitutional provisions with regards to basic human rights

The BL and DPC contain provisions with relation to basic human rights; they seem in complete harmony with Universal Declaration of Human Rights, and the two 1966 international covenants. It is worth noting that the BL and the DPC tackled the issue of conformity with international law, especially those related to basic human rights, in different ways. The Palestinian adherence to international law in relation to human rights, has been done in a voluntarily and unilaterally basis since the PA cannot adhere to international covenants for lack of sovereignty.

To start with, the Interim Agreement contains limitations to the PLC’s right to legislate. The PLO, surprisingly, committed itself in the Interim Agreement to the respect of ‘internationally accepted norms and principles of human rights and the rule of law’ (Art. XIX). The accelerated preparation for a BL that proceeded and followed the creation of the PA was in part the result of the desire of many Palestinians had to ensure the protection of human rights in territories under PA control.

In the 1988 Declaration of Independence the PLO confirmed that, ‘the State of Palestine proclaims its commitment to the principles and purposes of the United Nations, and to the Universal Declaration of Human Rights... It will join with all states and peoples in order to assure a permanent peace based upon justice and the respect of rights so that humanity’s potential for well-being may be assured, an earnest competition for excellence may be maintained, and in which confidence in the future will eliminate fear for those who are just and for whom justice is the only recourse’.

The BL provides that basic human rights and freedoms shall be binding and respected (BL, Art.10.1), and that the PA shall work without delay to join regional and international declarations and covenants which protect human rights (BL, Art. 10.2). As a guarantee, the BL states the need to set up an independent commission for human rights (Art. 31). However, international law, charters, and treaties, will not be enforced directly in the Palestinian legal system, unless converted into law.

This duality in the approach to international law seems unchangeable in the DPC; however, there is a difference: the state of Palestine abides by the Charter of the League of Arab States (Art. 2) and the UN Charter (Art. 3); it shall also abide with the Declaration of Human Rights (Art. 18). The DPC also states that ‘rule of law and justice’ shall be the basis of governance (Art. 9). The authorities have the

¹⁷ The Declaration of Principles of 28 September 1995; called also Oslo I: http://www.palestine-un.org/peace/p_a.html

¹⁸ The third draft to which we make reference here was prepared in March 2003. Available at: <http://www.pcpsr.org/domestic/2003/nbrowne.pdf>

constitutional obligation to defend public and individual rights and freedoms (Art. 20). In the DPC there is a continuous reference to HR, in strict relation to good governance, the rule of law, and independence of judiciary, with respect to international standards of law.

III. Laws and Regulations with a Potential Impact on Migration

Within its territorial, functional and personal limited jurisdiction, the PA had legislated in various sectors in relation to migration: this includes the regulation of settlement and residence of foreigners, their integration and rights; it covers partially also the relationship of Palestinians of the diaspora with their country of origin.

Law No. 1/1998 Promoting Investment in Palestine¹⁹

This law was designed, *inter alia*, to provide guarantees for actual and potential investors in Palestine (Art. 2). It prohibited nationalization, the confiscation of projects, and the seizure, freezing or confiscation of funds except through the courts (Art. 7). It provided for the creation of a Public Investment Promotion Authority with moral and legal capacity (Arts. 12–21), and specified its responsibilities and powers (Art. 15). Freedom to invest in any sector of the Palestinian economy was the rule and only the law could deal with exceptions (Art. 3). The law guarantees the unrestricted transfer of financial resources outside Palestine (Art. 11), and stipulates that no one should be discriminated against in enjoying the advantages and exemptions provided by the law (Art. 6.1). This anti-discrimination clause covers also the foreigner investors.

In the case of disputes arising between investors and the PA, either party may initiate negotiations. If these fail, the parties can seek independent arbitration or recourse to the Palestinian courts (Arts. 39–40). The duration and procedures of the first part of this dispute settlement are left to regulations and decisions issued by the Council of Ministers (Art. 46).

Investment incentives are developed in Chapter Four of the law (Arts. 22–38). An exceptional ‘most favored status’ treatment can be granted to investors on the basis of nationality, pursuant to bilateral or multilateral trade or investment agreements (Art. 6.2). This replaced Law No. 6/1995 on Investment in Palestine and was subsequently amended by Law No. 2/2004.

Law on Civil Status No. 2/1999

Under this law, any change in civil status that occurs in foreign countries for a Palestinian is deemed valid if made according to the laws of the state (Art. 9). The Palestinian legislators forward the notification to a Palestinian delegation or to the civil administration when there is no delegation in the country in question. The law abrogated the Jordanian Law on Civil Status No. 32/1966 and replaced the Egyptian (Gaza) Law No. 11/1962 on Changes in Data Concerning the Name or Title Reported in the Registers of Births. This law was amended by Law No. 6/2001.

Law on Charitable Associations and Non-Governmental Organizations No. 1/2000²⁰

This law provides a general framework for freedom of association and abrogates preceding Ottoman (Gaza) and Jordanian (West Bank) legislation (Art. 43). It regulates duties and rights of charitable associations and NGOs including foreign ones (Arts. 34–39). It is worth noting that, contrary to pre-PA legislation, the above law does not require authorization for the establishment of an association, but exclusively a registration at the Ministry of the Interior. The right of association, included in the BL, is ruled by the above law that regulates registration procedures, conditions for acceptance and refusal. The law does not impose limitations with regard to the nationality of the founders or members of the association. However, the distinction between Palestinian and foreign NGO or associations depends on where they are based and the proportion of Palestinians in the concerned association; in

¹⁹ Law Promoting Investment in Palestine No. 1 /1998 available at: http://www.pnic.gov.ps/arabic/law/law_15.html.

²⁰ Law on Charitable Associations and Non-Governmental Organizations No. 1/2000, 13431.

the late case the seat of NGO is outside the Palestinian territories or the majority of their members are not Palestinians.

In 2003 the Council of Ministers issued Decision No. 9/2003 implementing Law No. 1/2000 based on Article 26 of the Basic Law that guarantees the freedom to set up trade unions, associations, societies, clubs and popular institutions in accordance with the law. Foreign associations working in social affairs in Palestine, especially those with headquarters outside Palestine, or mainly staffed by foreign nationals, are dealt with in Articles 24–34.

All foreign associations are required to apply to the Ministry of the Interior for registration (Art. 24.2). In the case of a rejection the applicant can apply to the courts (Art. 33). In the Palestinian context, there is one unique level of administrative jurisdiction, which is the High Court of Justice. If granted, the association then has a moral personality (Art. 35). It should be noted that Article 17 presented different scenarios to prove Palestinian nationality for the purposes of this decision. According to that decision, a Palestinian is a person holding an Identity card (ID) issued by Palestinian Ministry of the Interior (green ID), or by the Israeli occupation civil administration (orange for West Bank residents and red for Gaza Strip), or issued for Jerusalemites (blue). Those who *do not* have an ID but have a foreign passport with a visa or permission of stay (not necessarily valid at the time of the application) with a birth certificate proving that the person or one of their parents or grandparents was born in mandatory Palestine before 15 May 1948; or with a birth certificate proving that the person or one of their parents or grandparents was born in the Gaza Strip or the West Bank (including Jerusalem); or a certificate of valid marriage with a Palestinian (man or woman). In any case, the above regulation does not apply to those holding an Israeli citizenship.

Traffic Law No. 5/2000²¹

This law regulates the issuing of international driving licenses (Art. 29), the recognition of foreign permits (Art. 30), and their substitution (Art. 31). The Palestinian Car Club is authorized to issue international driving permits in accordance with international traffic treaties (Vienna, 1968). Foreign driving permits can be used in Palestine, or substituted by Palestinian ones, under reciprocal agreements.

Labor Law No. 7/2000

This substitutes previous legislation in force in the West Bank and Gaza, abrogating Labor Law No. 21/1960 and the amendments applicable in the West Bank, Labor Law No. 16/1964 applicable in Gaza and all other provisions contradicting the new law. The Council of Ministers adopted a series of decisions, and the Minister of Labor adopted Decisions and Instructions implementing this law.²² The Law prohibits discrimination between workers in Palestine (Art. 16) and the Ministry of Labor can issue an authorization to work in Palestine for non-Palestinians (Art. 14) and such authorizations shall be dealt with by ministerial regulation.

Based on Article 15, the Council of Ministers adopted Decision No. 45/2004 on granting work permits to non-Palestinian workers. Four conditions were presented in this decision: 1) the absence of competition with national workers; 2) a need for a foreigner work instead of a national; 3) the relevant qualifications and experience for the job for which the license is requested; 4) that the Ministry of Labor may impose a condition of reciprocity (Art. 2), and is not required to give grounds for rejection (Art. 4). If the application is accepted, a license is granted for one year (Art. 5). It is worth noting that Social Insurance Law No. 3/2003²³ is applicable, inter alia, to workers covered by labor law (included foreign workers) and applies in accidents during working time.

²¹ Traffic Law No. 5/2000 available on http://www.pnic.gov.ps/arabic/law/law_traffic.html, 13649.

²² Decisions Nos. 4, 14–17, 21–24/2003, Nos. 4, 16, 45–49, 145, 166–169 of 2004. Ministry of Labour Nos. 1, 2, 3 and Instructions No. 1/2004 and Nos. 1–7/2005.

²³ Social Insurance Law No. 3/2003, available at: http://www.pnic.gov.ps/arabic/law/law_14.html.

Law on Civil and Commercial Procedures No. 2/2001²⁴

Palestinian courts have general jurisdiction to examine civil and commercial cases against Palestinians wherever they reside and on foreigners domiciled or resident in Palestine, excluding cases relating to real estate outside Palestine (Art. 27). As for Israeli citizens, the Palestinian courts, have *de facto* no jurisdiction. This is in line with the Israeli-Palestinian agreements which always excluded Israeli citizens from prosecution under the Palestinian court system unless they so choose.

As for the foreigners who are not legally resident in Palestine, there are three areas in which the Court has jurisdiction: 1) when a foreigner has chosen Palestine as their domicile; 2) in cases related to money held in Palestine; a contract drawn up, executed, or to be executed, in Palestine; bankruptcy declared in Palestine; 3) prosecution against a group, one of whose (foreign) members is domiciled or resident in Palestine (Art. 28). If the foreigner does not appear on the appointed day, and the court is unable to pass judgement, the court itself declares its incompetence to pursue the case (Art. 30). This law replaced all previous legislation and regulations in civil and commercial procedures, and was subsequently amended by Law No. 5/2005 without any changes in the provisions presented above.

Palestinian Child Law No. 7/2004²⁵

The law refers to the right to *Palestinian* citizenship for newborn *Palestinian* children (Art. 18). This is an ambiguous provision since it only states that a 'Palestinian child' has the right to Palestinian citizenship without specifying the conditions of eligibility: any child born in Palestine irrespective of whether either or both parents are Palestinian? The Child Law (as the Basic Law itself) leaves these details to a specific law to be adopted in the future.

The law rules on a child's right to know their parents (Art. 20) and to maintain contact with both in the case of separation or divorce (Art. 21), but is silent on the issue of custody, which is left to legislation on personal status. The PA did not legislate in this area since it is left for personal status regulations (BL, Art.101).

Income Tax Law No. 17/2004²⁶

This stipulates that the salaries of non-Palestinians diplomatic functionaries representing foreign countries in Palestine were to be exempt from income tax, on the basis of a reciprocal agreement.

Diplomatic Corps Law No. 13/2005²⁷

This law marks a break from the classical way of treating Palestinian diplomatic missions abroad, which was mainly the competence of the PLO's Political Department. For the first time in Palestinian history, the Palestinian Legislative Council adopted a law beyond its competence: foreign affairs, which is left to the PLO, the only representative of the Palestinian people, and subject of international law.

This law is likely to have a key impact on how diplomatic missions are administered and their personnel nominated as the Ministry of Foreign Affairs not only participates in the formulation of foreign policy, but also executes it. The Ministry also represents Palestine in foreign countries and consolidates the relationship with states and international organizations. It oversees diplomatic missions politically, administratively, and financially (Art. 3). Another impact will be the relationship between Palestinian expatriates and their country of origin since the Ministry should attempt to promote the interests of Palestinians living abroad, and to strengthen the links between them and their homeland (Art. 3.5).

The law also regulates the nomination, promotion and training of diplomats. The nomination is left to the President upon the recommendation of the Minister of Foreign Affairs (Art. 7). It is worth noting that there is no reference to the head of the PLO's Political Bureau, who had played a key role in the

²⁴ Law on Civil and Commercial Procedures No. 2/2001, available at http://www.pnic.gov.ps/arabic/law/law_1.pdf.

²⁵ Child Law No. 7/2004 available at: http://www.pnic.gov.ps/arabic/law/law_24.html.

²⁶ Income Tax Law No. 17/2004, Art. 7.2, available at: <http://www.pnic.gov.ps/arabic/law/17-2004.html>.

²⁷ Diplomatic Corps Law No. 13/2005, available at: <http://www.pnic.gov.ps/arabic/law/25-8-2005.html>.

nomination of Palestinian representatives abroad. One of the conditions for being a diplomat is to be a Palestinian national. The law does not specify who is considered Palestinian but analogy can be made to Council of Ministers Decision No. 9/2003 (Art. 17, see *supra*).

General Intelligence Law No. 17/2005²⁸

This law is one of the most recent pieces of legislation adopted by Palestinian legislator in the framework of reforms in the security sector and stipulates the limits to General Intelligence acting in relation to Human Rights; the guarantees are ‘those provided by Palestinian laws and principles of international law in this domain’ (Art. 13). In the case of the detention of a foreigner, the law requires that they receive assistance in contacting the nearest representative of their country of origin; it also permits General Intelligence to inform representatives of the country or countries concerned (Art. 15). The Attorney General can issue legal decisions, on the request of the chief of general intelligence, forbidding the movement of foreigners to and from the country (Art. 11).

Insurance Law No. 20/2005²⁹

This law requires foreign insurance companies to apply for permission to practice in Palestine through the branch of an insurance company registered in Palestine and subject to a reciprocal agreement (Art. 89), and imposes basic conditions on that branch of the foreign insurance company (Art. 90). A foreign company shall not deduct more than 5% of taxable income gained in Palestine, for administrative expenses in its central seat (outside Palestine) (Art. 91), and companies must maintain minimum guarantees for all their insurance activities (Art. 92).

Execution Law No. 23/2005

Palestinian legislation stipulates the conditions for adopting official foreign resolutions, decisions, and documents (Arts. 36–39). The only condition of such application of foreign regulations is the national interest and the existing Palestinian laws.

IV. Pre-PA legal texts and domains where the PA does not legislate

There are areas relating to migration where the PA does not legislate, at times intentionally, as in personal status and nationality or citizenship, where pre-PA constitutional documents, laws and regulations remain in force. Thus, some pre-PA legislation forms part of the current legal framework of migration in Palestine, such as the rights of foreign spouses of nationals and citizenship and/or nationality.³⁰

Those legal documents from previous jurisdictions—Ottoman, British, Egyptian (Gaza), Jordanian (West Bank) and Israeli—still theoretically in force, are often contradictory or overlap and the main task of PA institutions, in particular the Palestinian Legislative Council, is the harmonization of texts in the Palestinian legal system. Until the unification of laws, judges apply existing law/laws according to their discretion.³¹

As regards the applicability of previous laws, the difference between the West Bank and Gaza is that the Egyptian forces in control of Gaza did not annex the territory and always treated it as a distinct body, so that although partially influenced by Egyptian legislation, most British legislation remained in force or was amended by the Egyptian Governor. In 1953 Law 621/1953³² promulgated the Basic Law for the Territory under Egyptian Forces Control in Palestine. Article 45 stated that the 1922

²⁸ General Intelligence Law No. 17/2005, available at: <http://www.pnic.gov.ps/arabic/social/law23.html>.

²⁹ Insurance Law No. 20/2005 available at: <http://www.pnic.gov.ps/arabic/law/10-2005.html>.

³⁰ See Annex III.

³¹ Despite the plurality of legal text, the real obstacle is not the different legal texts applied in Palestinian territories but rather the legal culture that resulted from those different legal systems.

³² Law No. 621/1953, promulgating the Basic Law for the Territory under the Egyptian Control in Palestine, abrogated by Law No. 255/1955, promulgating the Basic Law for the Territory under the Egyptian Control in Palestine.

Palestinian Order in Council³³ should remain in force unless incompatible with present law. Accordingly, the first Constitution drawn up by the British for Palestine is theoretically in force in Gaza where it does not contradict the Basic Law. Nevertheless, according to the Basic Law, the only limit to the powers of the Palestinian legislator is the Basic Law itself (Art. 47). This means that the only text of constitutional rank in the territories under PA control is the BL, and not subject to the Palestinian Order in Council, the Jordanian Constitution, or the Egyptian Basic Law for Gaza.

The West Bank, by contrast, was annexed to the Emirate of Transjordan to form the United Kingdom of Jordan and in 1952 the Jordanian Parliament, with an equal number of representatives from the two banks of the River Jordan, adopted a new Constitution, which replaced the Palestine Order-in-Council of 1922 and its amendments (Art. 129.2).³⁴ However, when Israeli forces entered West Bank and Gaza in 1967, they declared the assumption of powers under Declaration No. 1/1967 (abrogated by Law 2/1995). In this way the Israeli occupation began to change legislation applicable in the territories under its control through military orders and declarations.

There are areas where the PA is not competent to adopt legislation since is not a sovereign authority with legal character under international law. As a liberation movement and the sole representative of the Palestinian people the PLO enjoys legal character under international law so that agreements with Israel are exclusively in its hands. Following the creation of the PA that administered part of Palestinian people and portions of territory, several international actors and organizations accorded special consideration to the PA.³⁵ As a result the Authority played a quasi-state role, rather than that of a liberation movement (the PLO). The only authority competent to sign ‘treaties’ are those subject to international law so that the PLO signed agreements ‘for the benefit of the PA’. A case in point being the Euro-Mediterranean Interim Association Agreement on Trade and Cooperation which came into force in 1997.³⁶ The PA, mainly through its foreign ministry, began to play a quasi-state role in negotiating agreements with states and international organizations (e.g.) Council of Ministers’ Decision No. 81/2004 that approve the European Neighborhood Agreement,³⁷ and charged the Minister of Foreign Affairs to continue the negotiation with the European counterpart.

The Authority’s lack of a legal character under international law had repercussions on the legal framework of migration in Palestine, mainly on the relationship between Palestinian expatriates and their country of origin. Moreover, at times the Palestinian right to statehood was partially based on the UN General Assembly Resolution No. 181 of 1947³⁸ and on a people’s right to self-determination. International law, resolutions and institutions are particularly relevant for the Palestinians, and elements related to migration may be influenced by them: a case in point being Palestinian refugees, their re-integration into their country of origin, absorption into the country where they have settled, or indeed, into a future Palestinian state.

There are other areas where Israel, the occupying authority, is the *de facto* holder of sovereign powers and the sole regulatory authority in matters of border control and entry or termination of stay. In these areas military orders, such as No. 5/1970 on the general entry permit for Israeli and foreign residents (in force in the West Bank), and its amendment in 1974 in which conditions of entry and stay are strictly regulated to and from territories under Israeli control, remain in force.

³³ The Palestine Order-in-Council was expressly abrogated in the West Bank by Jordanian Constitution of 1952. It was amended several times and remained valid in the West Bank. No successive texts abrogated the text in Gaza, although the Israeli occupation rendered many of its provisions void.

³⁴ Jordanian Constitution of 1952, OJ 1039 of 8/1/1952, p. 3. This expressly abrogated the Jordanian Constitution of 1946 and the Palestinian Order-in-Council.

³⁵ This change of attitude is expressed in two ways: through political and diplomatic recognition of PA and the opening of representative offices for foreign countries in Ramalla, enjoying a status similar to foreign ambassadors in the territories under PA control. Besides, most funds and aids passed through PA institutions which made PLO personal and institutions dependent to PA money. Besides, the attitude of PA and its personal towards itself changed too. The case of the diplomatic law, presented in previous section, is a good example. The arrival of Hamas to power had changed attitude of international community towards the PA.

³⁶ OJL 187 16.7.1997, pp. 3–135. Available at: [http://europa.eu.int/eur-lex/lex/LexUriServ/LexUriServ.do?uri=CELEX:21997A0716\(01\):EN:HTML](http://europa.eu.int/eur-lex/lex/LexUriServ/LexUriServ.do?uri=CELEX:21997A0716(01):EN:HTML)

³⁷ Council of Ministers’ Decision No. 81/2004 concerning European Neighborhood Agreement.

³⁸ Also called also the Partition Plan; available also at: http://www.palestine-un.org/res/2_181.html

Border-crossing and movement to and from and within the West Bank and Gaza were partially regulated by the Interim Agreements which stipulate that: “Arrangements for coordination between Israel and the Council regarding passage to and from Egypt and Jordan, as well as any other agreed international crossings, are set out in Annex I”. (Art. XXX). Cross-border circulation is regulated in Annex I (Art. IX), while appendix 5 regulates joint Palestinian–Israeli border control. Many of these provisions were *de facto* changed in the wake of the second *intifada* when Israeli forces resumed complete control of borders. Any tentative Palestinian legislation in these domains cannot be enforced and previously enforced legislation, although *de jure* valid, becomes *de facto* void.

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

V. Possible legislative interventions

There are several key areas where the Palestinian legislator will need to intervene in the future, namely the question of Palestinian citizenship, the rights of foreign spouses and the status of the children of mixed marriages, the distinction in legal status between citizens and non-citizens, entry and termination of stay, and the question of Palestinian refugees and their country of origin. Some of these issues will have to be resolved within a general framework of political compromise and a peace agreement, based on the ‘two states’ solution. Others will need to take into consideration international human rights provisions and national declarations that form jointly the basis of the Palestinian struggle for independence and statehood.

As regards *Palestinian citizenship*, in Gaza, British legislation on nationality theoretically remained in force, but was replaced by Jordanian legislation in the West Bank. Nevertheless, issuing (Israeli) occupation identity cards to residents of the West Bank and Gaza constitutes a further delimitation to citizenship laws. In fact, the destination of those Palestinians in possession of ID cards is to become future Palestinian citizens. Other Palestinians who do not have ID cards, although Palestinian nationals (thus, according to Palestinian Charter and Declaration of Principle, would have a right to citizenship), will not enjoy automatically Palestinian citizenship unless within the framework of a permanent peace agreement and following the creation of the state. The way in which the concept of Palestinian citizenship has developed and the problematic legal issues relating to Palestinian citizenship and nationality pose a challenge to Palestinian legislator.

The issue of the *rights of foreign spouses and the status of the children of mixed marriages* calls for a comprehensive solution to the duality between regular and religious/*shari'a* courts and the existing legislation on personal status. The *shari'a*/religious courts are based on the Ottoman *millet* system, consolidated under the British mandate, and the jurisdictional separation between *shari'a* or religious courts and regular courts has been adopted by the Palestinian Order-in-Council. This constitutional duality has been maintained in the Basic Law and the Draft Palestinian Constitution.

In the Occupied Palestinian Territories the normal *distinction between citizens and non-citizens* (foreign-national) with respect to rights and duties, and thus regulations, expands to three rather than two, ‘categories of persons’: those holding West Bank and Gaza Strip identity cards (‘Palestinian citizens’), foreigners, and Israeli citizens who *always* fall under Israeli jurisdiction *wherever* they are, in Israel, the West Bank or Gaza. In addition there are the Jerusalemites (Palestinians of East Jerusalem) who hold different ID cards and who are considered non-Israelis with permanent residence in Israel.

Entry and termination of stay are dealt with under Israeli legislation and international law of occupation, but are affected by the political instability and tend to be ambiguous. Following the Oslo Agreements, special arrangements regulated Israeli-Palestinian control of border-crossings in the West Bank and Gaza (Allenby and Rafah). During the second *intifada* Israel resumed complete control of

borders and re-occupied several Palestinian cities in the ‘Autonomous Territories’, leaving many of these arrangements inactive. Gaza airport was destroyed by Israeli military forces and Palestinians were banned from using Israeli airports. At the borders people holding a West Bank or Gaza identity card and in possession of a foreign passport are treated as other Palestinians and cannot invoke their foreign citizenship.³⁹ Following the withdrawal of Israeli forces from Gaza in 2005, the Israelis and Palestinians reached an agreement regulating passage via Egypt, giving control to Palestinians under EU supervision using Israeli video camera surveillance.

The solution of the *Palestinian refugee problem and their relationship with their country of origin* is a pre-condition for the settlement of the Israeli-Palestinian conflict. There is an urgent need for a comprehensive study of scenarios for settlement or return in accordance with international law, PLO key documents and texts, and Israeli national law.

Conclusion

The PLC has no powers regarding Palestinian refugees and borders and that the Palestinian courts have no power to enforce decisions on migration and freedom of movement, on zones under direct Israeli control (Area C), and only limited powers in zones under exclusive civil control (Area B). The theoretical superiority of the Basic Law is thus challenged by *de facto* control of most of the OPT by Israeli forces in the wake of the second *intifada*, including control of borders and passage to and from parts of territories under the PA’s control. Thus, any tentative Palestinian legislation in these domains cannot be enforced and previously enforced legislation, although *de jure* valid, becomes *de facto* void of its content. Regulating the issues of borders, refugees and citizenship will depend on the successful outcome of permanent status talks with Israel, settlement of the Israeli–Palestinian conflict and an end to military occupation rather than on the introduction of specific legislative texts by the PA.

³⁹ For example, a West Bank or Gaza Strip ID holder with US citizenship cannot use Ben-Gurion Airport but must pass through Allenby Bridge.

Key PA/PLO Institutions with an Impact on Migration

Presidency of the PNA, <http://www.p-p-o.com>

Security Forces and Police: the Civil Police, National Security, General Intelligence, Preventive Security, Presidential Security, Civil Defense, Military Intelligence, Naval Police and other forces with particular competences, such as the Military Liaison Force, Special Security, and Special Forces

Palestinian Legislative Council, <http://www.pal-plc.org> PLC Committees: Refugee Affairs, Political, Economic, Interior and Security, Education and Social Issues committee, Oversight of Human Rights and Public Freedoms Committee

Judiciary: Regular Courts, Magistrate Courts; Courts of First Instance, Courts of Appeal; High Court; Shari'a and Religious Courts, Specialized Courts: Electoral Appeal Courts, Labor Courts.

Annex II : Palestinian National Texts, Institutions and Websites Relating to Migration**1. PA legislative texts relating to migration**

Admission	Residence and settlement		Integration and rights of foreigners		Relationships with the country of origin		Exit and end of stay
Visas: insurance, conditions, types, duration, etc.	Status of foreigner		Rights of migrant minors		Relationship between the State and its expatriates		Cross-border circular migration
					Arts. 8, 9, 16, 45	Law No. 2/1999	
						Law No. 13/2005	
Travel documents	Residence permit: types, procedures		Rights of refugees		Political participation of expatriates: elections, representation		Exit control
	Art. 20	Basic Law					
Cross-border circulation	Work permit: types, procedures		Rights of foreign spouses of nationals		Associations of emigrants		Readmission
	Arts. 14–16, 28	Law No. 7/2000	Art. 21	Law No. 7/2004			
Control at entry	Change of status: procedures, populations concerned		Work regulations applicable to foreigners		Management of financial transfers		Expulsion: types, procedures
			Law No. 7/2000				
Rejections	Other questions of interest for foreigners recognition of foreign diplomas, driving licenses, administrative documents		Investment regulations applicable to foreigners		Emigrants' relation with the diplomatic representation of their country of origin		Programmes for and assistance with reintegration in countries of origin
	Arts. 1–3	Law No. 11/1995	Law No. 1/1998				
	Art. 9	Law No. 2/1999					

	Arts. 29–31	Law No. 5/2000			
	Arts. 36–39	No. 23/2005			
Expulsions	Family, marriage, separation, divorce (separation of income)		Tax regulations applicable to foreigners		
28	Basic Law	Art. 101.1	Basic Law	2	Law No. 17/2004
	Arts. 9, 26–28, 37	Law No. 2/1999			
	Art. 11	Law No. 17/2004			
Readmission	Criminality and judgment of foreigners		Social rights, social security		
	12	Basic Law	2.1.	Law No. 3/2003	
	15,16	Law No. 17/2005			
Reintegration in country of origin	Civil and commercial tribunals competences on foreigners		Freedom of association, of worship		
	27–30	Law No. 2/2001	18, 26	Basic Law	
	36–39	Law No. 23/2005			
	Foreign Companies regulations		Integration, the fight against discrimination and xenophobia		
	89–92	Law No. 20/2005			
			Settlement, transfer of goods		
			Naturalization and access to citizenship: Citizenship law, Conditions of access to citizenship, Descent and access to citizenship, Intermarriage and access to citizenship.		
			7	Basic Law	
			37.1	Law No. 2/1999	
			18	Law No. 7/2004	

2. PA/PLO Institutions relating to migration

PNA Institutions	Admission	Residence and settlement	Integration and rights of foreigners	Relationship with country of origin	Exit and end of stay
The Presidency	X		X	X	X
Government	X	X	X	X	X
Prime Minister	X	X	X	X	X
Ministry of Foreign Affairs		X		X	X
Ministry of Justice	X	X	X		X
Ministry of the Interior and National Security:	X	X	X		X
- Department of Civil Affairs		X	X		
- Department of Residence Permits and Foreigner Affairs	X	X			
- Department of Travel Documents (Passports)	X	X		X	X
- Legal Department	X	X	X	X	X
- Department of Inspection and Control	X	X	X		
General Directorate for Passage and Borders	X				X
Ministry of Social Affairs		X	X		X
Ministry for Women			X		
Ministry of Civil Affairs		X			X
- Administration of Registration of Residents		X			
- Administration of Commercial Passage	X				
- Administration of Passage	X				
- Administration of Passage for Workers	X				
Ministry of Labor	X	X			
- Administration of Inspection and Protection at Work	X	X			
- Administration of Arab and international collaboration and public relations					
Ministry of Planning		X			
Ministry for Refugee Issues	X	X		X	X
Governorates:		X			
- Directorate of Labor		X			

Security Forces and Police			X		
- Civil Police		X	X		
- National Security	X	X	X		X
- General Intelligence	X	X	X	X	X
- Preventive Security	X	X	X		
- Presidential Security	X		X		X
- Civil Defense					
- Military Intelligence				X	X
- Naval Police	X				
- Special Security		X			
- Special Forces		X			
PLC	X	X	X	X	X
- Refugee Affairs Committee	X			X	X
- Political Committee				X	X
- Economic Committee			X	X	
- Interior Committee	X	X	X		
- Security Committee	X	X	X		
- Education and Social Issues Committee			X		
- Human Rights and Public Freedoms Committee	X	X	X		
Regular Courts		X	X		
- Magistrate Courts			X		
- Courts of First Instance			X		
- Courts of Appeal			X		
- High Court	X	X	X		
- - Court of Cassation			X		
-- High Court of Justice (acting as constitutional court, unique level of administrative court)	X	X	X		
<i>Shari'a</i> and Religious Courts			X		
Specialized Courts:		X	X	X	
- Election Appeal Courts				X	
- Labor Courts		X	X		
The Commission of Human Rights and NGOs Affairs			X	X	

The Palestinian Independent Commission for Citizens Rights	X		X	X	X
<i>Palestine Liberation Organization (PLO)</i>					
Palestinian National Council			X	X	X
Palestinian Central Council			X	X	X
Executive Committee of the PLO	X		X	X	X
Political Department			X	X	X
- Diplomatic or Permanent Representations				X	
PLO Negotiations Department	X		X	X	X
Department of Refugee Affairs	X		X	X	X
Department of Social Affairs			X	X	X

Annex III: Pre-PA legislative texts still in force in parts of Occupied Palestinian Territories relating to citizenship and the status of foreigners**I. British Mandate in Palestine****I.1. Citizenship and Naturalization**

Constitution, Laws, Regulations, Proclamations, and Decisions	Publication in the Official Journal	Notes	Doc. no.
Mandate over Palestine		This document had enabled the Mandatory state to administer Palestine temporarily including the adoption of legislation.	
The Palestine Order in Council, 1922		<u>Foreign Jurisdiction Act of 1980</u> (doc. 683) Abrogated in the West Bank by the Jordanian Constitution, 1952. Amended several times. Remained valid in the West Bank during Egyptian control. No successive texts abrogated the text in Gaza, although the Israeli occupation rendered many of its provisions void.	1023
Treaty of Lausanne		According to this treaty, Palestine was officially detached from the Ottoman state. The Ottoman citizens living in Palestine had obtained Palestinian citizenship since 6/8/1924 the date of its enforcement.	
Palestinian Citizenship Order of 1925	24/7/1925 (issued)	Refers to Foreign Jurisdiction Act of 1980	7371
Palestinian Citizenship Regulations of 1925	16/9/1925 (issued)	Based on Art. 19 of Palestinian Citizenship Order of 1925	33
Palestinian Citizenship (amendment) order of 1931	23/7/1931 (issued)	<u>Foreign Jurisdiction Act of 1980</u> Palestinian Citizenship Order of 1925	7376
Palestinian Citizenship Regulations No. 2/1934	OJ 472 Annex 2 of 18/10/1934, p. 1277	Palestinian Citizenship Order of 1925	8762
Palestinian Citizenship Regulations No. 3 of 1934	OJ 474 Annex 2 of 1/11/1934, p. 1331	Palestinian Citizenship Order of 1925	8764
Palestinian Citizenship Regulations of 1935	OJ 487 of 17/1/1935, p. 39	Palestinian Citizenship Order of 1925	7387
Palestinian Citizenship Regulations of 1936	OJ 598 of 28/5/1936, p. 500	Palestinian Citizenship Order of 1925	10445
Protocol on Military Obligations in Certain Cases of Dual Nationality of 1930	OJ 750 Annex 2 of 20/1/1938, p. 93	Still in force in the West Bank and the Gaza Strip	7402

1930 Convention on Questions on the Conflict of Nationality Laws	OJ 756 of 3/2/1938, p. 281	Still in force in the West Bank and Gaza Strip.	<u>7405</u>
1930 Protocol Relating to Cases of Statelessness,	OJ 756 Annex 2 of 3/2/1938	Still in force in the West Bank and Gaza Strip.	<u>7497</u>
1939 Palestinian Citizenship (Amendment) Order	OJ 917 Annex 2 of 31/8/1939, p. 845	Palestinian Citizenship Order of 1925	<u>7409</u>
1939 Palestinian Citizenship Regulations	OJ 960 of 2/11/1939 p. 1448.	Palestinian Citizenship Order of 1925	<u>7410</u>
1939 Notice on Palestinian Citizenship (Amendment) Order	OJ 960 of 2/11/1939, p. 1451	Palestinian Citizenship Orders of 1925-1939.	<u>8770</u>
1940 Palestinian Citizenship (Amendment) Order	OJ 1076 of 6/2/1941, p. 242	Palestinian Citizenship Orders of 1925-1939.	<u>7456</u>
Palestinian Citizenship Regulations of 1942	OJ 1176 Annex 2 of 12/3/1943, p. 557	Palestinian Citizenship Order of 1925	<u>7457</u>
Palestinian Citizenship Regulations of 1942	OJ 1196 Annex 2 of 21/5/1942, p. 1010	Palestinian Citizenship Order of 1925 Palestinian Citizenship Regulations of 1925	<u>7459</u>
Palestinian Citizenship Regulations (naturalization of foreign women) of 1942	OJ 1198 Annex 2 of 4/6/1942, p. 1128	Palestinian Citizenship Orders of 1925-1941	<u>7460</u>
Palestinian Citizenship Regulations of 1942	OJ 1202 Annex 2 of 18/6/1942, p. 1328	Palestinian Citizenship Orders of 1925-1941 Palestinian Citizenship Regulations of 1942 (published in OJ 1176)	<u>7462</u>
Palestinian Citizenship (Amendment) Order of 1942	OJ 1210 Annex No. 2 of 16/7/1942, p. 1530	Palestinian Citizenship Orders of 1925, <u>Foreign Jurisdiction Act of 1980</u>	<u>7463</u>
Palestinian Citizenship (Amendment) Regulation No. 2/1942	OJ 1236 Annex No. 2 of 3/12/1942, p. 2309	Palestinian Citizenship Orders of 1925 Palestinian Citizenship Regulations of 1925, 1942 and amendment 1942.	<u>7464</u>
Unified Palestinian Citizenship Order of 1925-1941	OJ n. 1351, Annex 2 of 10/8/1944, p. 912	<u>Foreign Jurisdiction Act of 1980</u> This is the last Order that collect the previous Orders and regulations in one document. Still valid in the Gaza Strip.	<u>8771</u>
Palestinian Citizenship (Amendment) Regulations of 1944	OJ 1354 of 24/8/1944, p. 1038	Palestinian Citizenship Order of 1925 Palestinian Citizenship Regulations of 1925	<u>8769</u>

Palestinian Citizenship (His Majesty's Forces) (Amendment) Regulations of 1945	OJ 1419 Annex 2 of 21/6/1945, p. 881	Has expressly abrogated Palestinian Citizenship (His Majesty's Forces) (Amendment) Regulation No. 2/1945	<u>13068</u>
Palestinian Citizenship (His Majesty's Forces) (Amendment) Regulation No. 2/1945	OJ 1437 of 6/9/1945, p. 1239	Had abrogated: Palestinian Citizenship (His Majesty's Forces) (Amendment) Regulations of 1945	<u>8757</u>
Palestinian Citizenship (Amendment) Regulations of 1947	OJ 1602 Annex 2 of 7/8/1947, p. 1464 ²	Palestinian Citizenship Order of 1925 Palestinian Citizenship Regulations of 1925	<u>10377</u>
Palestinian Citizenship (Amendment) Regulation No. 2/1947	OJ 1609 of 4/9/1947, p. 1655	Palestinian Citizenship Order of 1925	<u>9276</u>

I.2. Status of Foreigners

Constitution, Laws, Regulations, Proclamations, and Decisions	Publication in the OJ	Notes	Doc no.
Personal Status (Consular Powers) Regulations of 1922	Drayton 22/1/1937, p. 3356	Still in force in the West Bank and Gaza. ¹ Based on Palestine Order in Council of 1922, mainly Art. 64.	<u>48</u>
Immigration Act (Chapter 67) of 1933.	Drayton 67 of 22/1/1937	Basic document in terms of immigration: unified all precedent legislation. Replaced by the 1941 Immigration Act.	<u>7367</u>
Immigration Ordinance of 1933	Drayton 22/1/1937	Still in force in Gaza.	<u>7365</u>
Immigration (Amendment) Rules of 1935	OJ 500 of 28/3/1935, p. 421	Still in force in Gaza. Based on Art. 15 of the Immigration Act 1933 (Chapter 67).	<u>7389</u>
Immigration (Detention) (Amendment) Order of 1937	OJ 682 of 22/4/1937, p. 455	Still in force in Gaza.	<u>7391</u>
Immigration (Amendment) Rules of 1937	OJ 687 of 10/5/1937, p. 527	Still in force in Gaza. Based on Art. 15 of the Immigration Act 1933 (Chapter 67).	<u>7395</u>
Immigration (Amendment) Rules (No. 2) of 1939	OJ 885 of 4/5/1939, p. 420	Still in force in Gaza. Based on Art. 15 of the Immigration Act 1933 (Chapter 67).	<u>7407</u>
Immigration (Amendment) Rules No. 3/1939	OJ 912 of 29/8/1939, p. 754	Still in force in Gaza. Based on Art. 15 of the Immigration Act 1933 (Chapter 67).	<u>7408</u>
Immigration (Custody Pending Deportation) (Amendment) Order No. 2/1939	OJ 962 of 9/11/1939, p. 1569	Still in force in Gaza. Still in force in Gaza. Based on Art. 15 of Immigration Act 1933 (Chapter 67).	<u>7411</u>
Defence (Immigration) Regulations of 1940	OJ 994 of 18/3/1940, p. 579	Cancelled.	<u>7451</u>
Defence (Immigration) (Amendment) Regulations of 1940	OJ 1030 of 11/7/1940, p. 1117	Cancelled.	<u>7453</u>
Immigration Act No.5/1941	OJ 1082 of 6/3/1941, p. 7	Still in force in Gaza. Consists of unification of all previous regulations on immigration. Had been the basis of most successive regulations relating to immigration.	<u>7454</u>
Immigration (Amendment) Rules of 1943	OJ 1302 of 25/11/1943, p. 1344	Still in force in Gaza. Issued by the British High Commissioner, based on Art. 18 of the Immigration Act No. 5/1941. Amended the Immigration Act 1933 (Chapter 67).	<u>8767</u>

¹ When reference is made to the validity of the text, it does not necessarily mean that the text is enforced by competent judge. Many of the pre-PA legislative texts are rendered *de facto* inapplicable although never replaced by a new text or abrogated officially.

Immigration (Amendment) Rules of 1944	OJ 1324 of 16/3/1944, p. 312	Still in force in Gaza. Issued by the British High Commissioner, based on Art. 18 of the Immigration Act No. 5/1941. Amended Immigration Ordinance 1933.	<u>7456</u>
Immigration Ordinance of 1944	OJ 1347 of 20/7/1944, p. 809	Still in force in Gaza. Based on Art. 18 of the Immigration Ordinance, 1941. Cancelled 1939 and 1944 ordinances on expulsion.	<u>7471</u>
Immigration (Amendment) Rules of 1944	OJ 1359 of 14/9/1944, p. 1144	Still in force in Gaza. Issued by the British High Commissioner, based on Art. 18 of the Immigration Act No. 5/1941. Amended Immigration Ordinance of 1933.	<u>7476</u>
Immigration (Amendment) Rules of 1945	OJ 1457 of 24/11/1945, p. 1748	Still in force in Gaza. Issued by the British High Commissioner, based on Art. 18 of the Immigration Act No. 5/1941. Amended Immigration Ordinance of 1933.	<u>7493</u>

II. Gaza Strip under Egyptian Control

II.1. Citizenship and Naturalization

Constitution, Laws, Regulations, Proclamations, and Decisions	Publication in the OJ	Status of legislat. in Gaza	Notes	Doc. no.
Law No. 621/1953, promulgating the Basic Law for the Territory under the Egyptian Control in Palestine		Abr.	Abrogated Law No. 255/1955, promulgating the Basic Law for the Territory under the Egyptian Control in Palestine	
Notice of Directions for the Naturalization of foreign women married to Egyptians of 1953	OJ 19 of 15/7/1953, p. 650	C.	Applies instructions included in Egyptian citizenship law of 1950 and its amendment of 1951 for foreign women wishing to apply for Egyptian citizenship.	<u>7495</u>
Law No. 255/1955, promulgating the Basic Law for the Territory under the Egyptian Control in Palestine	OJ special issue of 25/2/1958, p. 304	V.	Abrogated Law No. 621/1953, promulgating the Basic Law for Territory under Egyptian Control in Palestine.	<u>9593</u>
Decree of the Governor General, on Reverting to Palestinian Citizenship No. 3/1959	OJ 113 of 1/2/1959, p. 574	V.	Unified Palestinian Citizenship Order of 1925-1941	<u>11096</u>
Decree of the Governor General concerning Amendment of the name of Passport Department into “Department of Passports, Travel and Nationality” No. 23/1961	OJ 170 of 20/5/1961, p. 326	V.	Issued in accordance with Art. 22 of Law No. 255/1955 that give governor administrative regulatory powers.	<u>11106</u>

II.2. Status of Foreigners

Constitution, Laws, Regulations, Proclamations, and Decisions	Publication in the OJ	Notes	Doc. no.
1957 Notice Regarding Foreigners Residing in the Gaza Strip	OJ 83 of 2/12/1957, p. 173	Issued by Director of Internal Affairs and Public Security on 21.10.1957.	<u>7499</u>
Decree No. 8/1958 by the Administrative Governor General, on the Collection of the Entry Visa Fee to the Strip	OJ 100 of 1/7/1958, p. 408	Issued by the Governor based on Immigration Ordinance No. 5/1941 (Art. 18). Successively amended by new regulations.	<u>7501</u>
Decree No. 18/1958 on the Collection of a Fee on each Urgent Travel Transaction	OJ 111 of 1/1/1959, p. 540	Issued by the Governor based on Immigration Ordinance No. 5/1941 (Art. 18). Successively amended by new regulations.	<u>11097</u>
Decree No. 24/1958 by the Administrative Governor General, on the Amendment of Decision No. 8/1958	OJ 111 of 1/1/1959, p. 558	Issued by the Governor based on Immigration Ordinance No. 5/1941 (Art. 18). Successively amended by new regulations.	<u>7504</u>
Decree No. 12/1959 by the Administrative Governor General, on the Amendment of Decree No. 24/1958	OJ 634 of 11/5/1959, p. 634	Issued by the Governor based on Immigration Ordinance No. 5/1941.	<u>11602</u>
Decree No. 32/1961 by the Administrative Governor General, on the Amendment of Decree No. 24/1958	OJ 176 of 15/8/1961, p. 397	Issued by the Governor based on Immigration Ordinance No. 5 of 1941 (Art. 18) and amending Decree No. 8/1958 and Decree No. 24/1958.	<u>2221</u>

III. West Bank under Jordanian Control

III.1. Citizenship and Naturalization

Constitution, Laws, Regulations, Proclamations, and Decisions	Publication in the OJ ²	Notes	Doc. no.
Jordanian Passport Law	OJ 970 of 7/2/1949, p. ...	Permitted Arabs holding Palestinian Citizenship to obtain a Jordanian Passport.	
Additional Law to Jordanian Nationality Law No. 56/1949	OJ 1004 of 20/1/1949, p. ...	Palestinians living in the West Bank and the refugees obtained Jordanian Citizenship.	
Jordanian Constitution of 1952	OJ 1039 of 8/1/1952, p. 3	Expressly abrogated Jordanian Constitution of 1946 and the Palestine Order-in-Council	1023
Jordanian Nationality Law No. 6/1954	OJ 1171 of 16/2/1954, p. 105	Cancelled all the contradictions to its provisions. Based on the Jordanian Constitution of 1952 (Art. 31)	7526
Law of Enforcement of the Agreement on the Nationality of Arab Natives and the Agreement of Judicial Notices and Delegations No. 6/1955	OJ 1214 of 16/2/1955, p. 150	Jordanian Constitution of 1952	6934
Law No. 21/1956 amending Jordanian Nationality Law	OJ 1272 of 1/5/1956, p.	Jordanian Constitution of 1952 Jordanian Nationality Law No. 6/1954	7527
Decision No. 17/1957 issued by <i>Diwan Khas</i> for the interpretation of an Article of Jordanian Nationality Law	OJ 1346 of 1/9/1957, p. 816	Jordanian Nationality Law No. 6/1954	7537
Decision No. 18/1957 issued by <i>Diwan Khas</i> for the interpretation of an article on provisions of Law of Jordanian Citizenship	OJ 1350 of 1/10/1957, p. 914	Jordanian Nationality Law No. 6/1954	7539

² Until the establishment of the PA, most legislation remained in force. Under the PA, many new pieces of legislation were enacted that rendered the legislation here *de facto* abrogated, although without direct reference.

Jordanian Nationality Amendment Law No. 50/1958	OJ 1410 of 1/1/1959, p. 49	Based on the Jordanian Constitution of 1952 and amending the Jordanian Nationality Law No. 6/1954 (Art. 18)	7541
Jordanian Nationality Amendment Law No. 3/1961	OJ 1535 of 16/2/1961, p. 219	Based on the Jordanian Constitution of 1952 and amending the Jordanian Nationality Law No. 6/1954 (Art. 8)	7546
Jordanian Nationality Amendment Law No. 7/1963	OJ 1675 of 1/4/1963, p. 290	Based on the Jordanian Constitution of 1952 (Art.31) and amending the Jordanian Nationality Law No. 6/1954	7553
Decision No. 45/1964 issued by <i>Diwan Khas</i> for the interpretation of the Jordanian Nationality Amendment Law No. 7/1963	OJ 1776 of 16/7/1964, p. 1038	Jordanian Nationality Amendment Law No. 7/1963 Jordanian Nationality Law No. 6/1954	7558

III.2. Status of Foreigners

International Agreements, Constitution, Laws, Regulations, Proclamations, and Decisions	Publication in the OJ	Notes	Doc. no.
Law of Foreign Nationals of 1927	OJ 162 of 1/8/1927, p. 146	Still in force in the West Bank. Transjordan legislative text applicable on the West Bank following unification of the two banks of the River Jordan.	7512
Foreigners Regulations No. 1/1940	OJ 677 of 1/7/1940, p. 149	Based on Art. 6 of Law of Foreign Nationals of 1927. Successive residence instructions (1951 and 1957) based its provisions on this regulation.	7510
Law on the Heritage of Foreigners and Non-Muslms of 1941	OJ 700 of 3/1/1941, p. 68	Applicability of this law extended to cover the West Bank, with the adoption of Law on the Heritage of Foreigners and Non-Moslems (Application to the West Bank) Law No. 8/1958	14973
Foreigners Regulations No. 1/1949	OJ 1002 of 1/2/1949, p. 386	This small regulation amended Art. 1 of Foreigners Regulations (No. 1) of 1940 that added Palestinian refugees to those persons on which the 1940 regulation does not apply.	7513
Agreement between the Hashemite Kingdom of Jordan and the Relief and Works Agency for Palestinian Refugees in the Near East, 1951	OJ 1061 of 7/4/1951, p. 943	Agreement for the UNRWA to work in territories under Jordanian sovereignty.	6901
Foreigners (Amendment) Regulations No. 1/1953	OJ 1136 of 16/3/1953, p. 645	It included minor changes to Foreigners Regulations (No. 1) of 1940.	7519
Foreigners (Amendment) Regulations (No. 2) of 1953	OJ 1164 of 16/12/1953, p. 789	It included minor changes to Foreigners Regulations (No. 1) of 1940.	7523
Immovable Property (Lease and Sale by Foreigners) Law No. 40/1953	OJ 1134 of 16/2/1953, p. 558	Based on Art. 52 of the Jordanian Constitution. Amended with the Immovable Property Amendment Law (No. 12) of 1960 and Immovable Property Amendment Law (No. 2) of 1962.	7518
Residence (Amendment) Instructions, 1957	OJ 1321 of 2/3/1957		7530
Law No. 8/1958 on the Heritage of Foreigners and Non-Moslems (West Bank)	OJ 1366 of 1/2/1958, p. 101	Extend the applicability of Law on the Heritage of Foreigners and Non-Moslems of 1941 on the West Bank.	7540
Law No. 12/1960 on Immovable Property (Lease and Sale by Foreigners) Amendment	OJ 1476 of 16/2/1960, p. 164	Amended Immovable Property (Lease and Sale by Foreigners) Law No. 40/1953.	7543
Immovable Property (Lease and Sale by	OJ 1599 of 18/2/1962, p. 217	Amended Immovable Property (Lease and Sale by Foreigners)	7548

Foreigners) Amendment Law No. 2/1962		Law No. 40/1953.	
Treaty on Parity of Treatment (Area of Social Security) of 1962	OJ 1653 of 1/12/1962, p. 1440	Includes provisions on social security.	7070
Foreigners (Amendment) Regulations No. 84/1962	OJ 1661 of 1/1/1963, p. 3	Included amendment to Foreigners Regulations No. 1/1940.	7551
Agreement No. 111/1958 on the Distinction in Regard to Employment and Occupations	OJ 1688 of 30/05/1963, p. 633	Contains international provisions on occupation and employment.	7080
1963 Agreement between the Hashemite Kingdom of Jordan and the Relief and Works Agency for Palestine Refugees in the Near East	OJ 1720 of 16/11/1963, p. 1509	A necessary agreement for the UNRWA to work in territories under Jordanian sovereignty	7086
Agreement No 122/1964 on the Employment Policy Approved by the General Conference of the International Labour Organization	OJ 1891 of 16/12/1965, p. 2247	Employment policy	7128
Agreement No. 100/1951 on the Equalization of Wages between Men and Women Workers for Equal Work	OJ 1935 of 10/7/1966, p. 1272	Workers and necessary indiscriminate between men and women.	7146