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Law, Coercion and Dispute Resolution: The Fragmentation of the Palestinian Legal System From the Oslo Peace Process to the *Intifada*

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In recent years there has been an increased interest in the role of law in conflict resolution¹ (Boutros Ghali 1992: 34, Kritiz 1996, Latto 2002, OSCE 1990: 1505-6, Mani 1998, on the Balkans specifically see DfID no date: 3, and on the Middle East see USIP 2003: 3). Not only is violent political conflict often seen as resulting in the lack of legal processes, but the restitution of the law is also put forward as a way out of prolonged periods of violence. In this way law is understood a process of institutionalised dispute resolution. However, despite this interest, the ways in which legal processes relates to the management of conflicts, both more generally and within specific contexts, has remained largely under-theorised and unexamined.

Since its creation in 1994, the state of the legal process under the Palestinian National Authority (PNA) has been a matter of concern for local as well as the international communities. Some have suggested that an authoritarian PNA has attempted to sideline the ‘rule of law’ in a bid to entrench its control over the West Bank (cf. Robinson 1997). Hillel Frisch, for example, has argued that the PNA has promoted a neo-patrimonial cultural politics rooted in family and kinship (Frisch 1998: 138). The interference of extra-judicial actors in the legal processes has also been widely noted. Following the start of the second *intifada* in the late summer of 2000, other commentators have pointed to a ‘break down in law and order’ in the Palestinian territories (Klein 2003: 194). In this context the Israel-

¹ This approach finds its theoretical exploration most explicitly in the work of Ronald Dworkin. Dworkin argues that law is a coherent set of interpretive practices (Dworkin 1986: 46).

Palestinian peace process has increasingly become linked to issues of legal reform under the PNA² (cf. UNSCO 1999). The promotion of legal processes is seen as a key element in the creation of a stable, democratic and accountable Palestinian polity that would be able to negotiate a lasting peace with the Israeli state³.

The apparent weakness of legal processes across the Arab world has often been understood in terms of the presence of competing normative orders (cf. Bisharat 1989, Frisch 1997, Hajjar 2001, Sharabi 1988). The Palestinian academic Hisham Sharabi has argued that the principles of the 'rule of law' are absent from much of the political culture of the region (cf. Sharabi 1988)⁴. Sharabi writes that what he calls 'Arab politics' is characterised by a culture of 'neo-patriarchy'. In such a situation often violent personal relationships take priority over institutional interests with almost a complete lack of legal and egalitarian discourses (cf. Sharabi 1988: 131). Similarly, the Palestinian lawyer and anthropologist George Bisharat has argued that in the West Bank formal laws and regulations are not the operative principle of social action (Bisharat 1989: 36-37). He goes on to argue that there is a lack of 'awareness and involvement in the law of the lawyers and the state. State law or *qanun*, especially concerning civil matters, is not a general reference point that serves to orient and guide normal transactions among individuals' (Bisharat 1989: 33). Instead Bisharat claims that negotiation and compromise is the 'indigenous' form of dispute resolution (Bisharat 1989: 39-42). According to this perspective legal processes are constantly being undermined by the extra-legal practices and concepts of the people in the region.

However, other writers have argued that far from there being a complete absence of legal discourses, the law is often central to the way that people frame their claims across the Middle East. In Egypt for example, Nathan Brown has written that rather than rejecting the law '...as an alien intrusion or as culturally inappropriate, (Egyptians)... have grasped at the tools that the ...legal system has given them' (Brown 1997: 219). In the West Bank the problems of the '*siyadat al-qanun*' (rule of law, sovereignty of law) are also widely discussed. According to one opinion poll taken in the West Bank and the Gaza Strip in 2000 'equality before the law' was seen as the greatest priority for the PNA by almost three quarters of all Palestinians⁵. Arguably, therefore, many Palestinians have embraced the

² In June 2002, the President of the United States, George W. Bush made a speech outlining his vision for the Middle East. In it George Bush highlighted the need for legal reform in the Palestinian Authority as one of the key steps necessary for the building of what he saw as a sustainable peace in the region (^{Speech given by George W. Bush from the Rose Garden of the White House, June 24th 2002}).

³ This is not a phenomena limited to this West Bank and Gaza Strip. Guillermo O'Donnell has argued that the 'international system increasingly makes the availability of significant benefits contingent on the assessment of a country's democratic and legal condition' (O'Donnell 2000: 5).

⁴ A similar argument, but in the context of sub-Saharan Africa, has been made by Issa Shivji (1995). Shivji argues that what he calls '*ujamaa*' rather than law forms the ruling ideology of the state in Tanzania.

⁵ Birzeit University Development Studies Programme 2000.

idea of the 'rule of law'. However, these understandings of the law must be rooted in the particular historical context of the West Bank.

Although law may appear to be one of the few genuinely globalised phenomena, it has been taken up and transformed in multiple different ways across the world. There is an implicit assumption in arguments such as Sharabi and Bisharat's that the legal regimes in the West Bank and across the Arab world are foreign impositions. However, although the West Bank legal system may have its roots in the encounter with the Ottoman Empire, British Mandate, Kingdom of Jordan and Israeli state, the imposition of law is never a *fait accompli* but interacts with local political, cultural and economic processes (cf. Kidder 1979). As Stanley Diamond has written, 'law has no essence but a definable historical nature' (Diamond 1971: 43).

There has been a tendency to see the problems surrounding the 'rule of law' in the developing world as the product of a failed modernity (cf. Duffield 2002: 1052). Yet, as Jeremy Waldron has argued, there is no agreement over the definition of the 'rule of law' (cf. Waldron 2002). Furthermore, it is far from clear that the 'rule of law' exists in a supposedly uncorrupted form in Western Europe and North America. If we want therefore to understand what role legal regimes can play in the consolidation of fragile political situations, it is deeply problematic to construct a hypothetical model of the 'rule of law', that in reality exists nowhere, and then compare this to a necessarily deficient reality. Despite the interest in law as a universally replicable process of dispute resolution, there is an obvious danger in treating law in a functionalist and essentialist manner. We cannot assume that legal processes are concerned with dispute resolution or that they should be limited to formal legal institutions. In order to understand the potentials for legal reform we must understand how law is used and talked about in particular contexts. If we want to understand how law relates to conflict and disputes we must examine why, where and how people turn to the law and under what conditions they abandon it.

This paper will examine how people in the West Bank relate to the law. It will argue that legal concepts and practices are central to the processes of disputes in the West Bank. However, law should not be understood as process of institutional dispute resolution, but as a potential normative and coercive aspect of ongoing conflicts. The nature of the coercive force behind legal claims is particular importance. Turning to the law does not imply a unified sense of justice, but entails conflicting claims that at some point need to be coercively enforced. The relationship between the normative claims made on law and the processes of institutional enforcement must be understood in the context of the Oslo Peace Process and the history of attempts at Palestinian state building. The failure of the Palestinian court system should not be seen as being due to too much coercion in the political process, but rather too little, or at least too little of the right sort of coercion. The focus of this paper will be on the events of the first eighteen months of the second *intifada*, from September 2000 to April 2002. It

will mainly concentrate on the Ramallah region of the West Bank. Examples will be drawn from what lawyers might call civil disputes, rather than criminal law, as the relationship between civil law and coercion has historically been more controversial⁶.

The Historical Problems of the PNA Courts

The present PNA legal system has its roots in over one hundred and fifty years of developments (cf. Kassim 1984). Under the *tanzimat* of the second half of the nineteenth century, the Ottoman Empire tried to reform its legal regime in the face of growing European capitalist and military encroachment. Ottoman reforms largely took the shape of an increased secularisation and codification of the law. These changes were superseded by the creation of a common law system by the British Mandate of 1917 to 1948. After the creation of the state of Israel in 1948, the West Bank was annexed to the Hashemite Kingdom of Jordan, whilst the Gaza Strip came under Egyptian military rule. The Jordanian regime moved towards a civil law system and an institutionalisation of what might be called ‘customary law’⁷. At the same time, the Gaza Strip maintained a system based on the common law of the British Mandate. Following the Israeli occupation of 1967 the courts in the West Bank and Gaza Strip passed under the control of the Israeli military. The Israeli military also set up military tribunals. After the signing of the Oslo Accords in 1993/94 the PNA was given the responsibility for administering the West Bank legal system. This responsibility did not include the Israeli military tribunals, Municipal courts in the Israeli settlements, or Rabbinical courts, which remained under the control of the Israeli state. Since 1994 the West Bank legal system has nominally been unified with that in the Gaza Strip, but the courts largely remained applying the law developed during the period of Jordanian rule in the West Bank.

The Ramallah courthouse stands in the centre of town next to a row of shops selling chicken feed. The windowless and peeling yellow walls of the building house the district courts for Ramallah as well as the appeal courts and supreme courts for the West Bank. Before the creation of the PNA the courts in the West Bank had been undermined by several factors. In 1967, in protest at the Israeli occupation, many Palestinian lawyers had gone out on a strike that was to last, at least in part, until 1994 (cf. Bisharat 1989). Furthermore, although the Israeli military tribunals only nominally covered ‘security matters’ they increasingly began to become involved in other civil and criminal issues such as taxation and land disputes, undermining the civil court system. It is important to stress that many of the actions of the Israeli occupation were structured through the law. Many Palestinians therefore had direct contact with legal actors, even if these were involved in house demolitions, administrative detention and the appropriation of land. Following the start of the first *intifada* in the late nineteen-

⁶ H.L.A. Hart famously argued that only criminal law could be understood as primarily coercive (cf. Sarat and Kearns 1991: 231).

⁷ The extent to which this was ‘customary’ is of course highly questionable.

nineties there was a renewed call by the Palestinian nationalist leadership to boycott the courts. This boycott applied to all Palestinians and not just lawyers. New nationalist orientated forums were set up to hear disputes, whose orders were enforced by the armed groups associated with the various Palestinian political factions (cf. Wing 1993). It was in this context of having been undermined by the actions of the Israeli military and Palestinian leadership over several decades, that the PNA took over control of the West Bank court system.

The Issue of Delays

Following the creation of the PNA in 1994 there was a reported surge in cases coming before the courts. However the Palestinian courts were unable to cope and court users were faced with long delays. It is difficult to get accurate figures, but according to one report only 10% of cases scheduled to appear could be dealt with during the year 2000 (LAW 2001: 2). On March 22nd 2000, *al-Ayyam* newspaper reported that there were 210, 000 cases awaiting hearings in the Palestinian courts. Furthermore, according to the clerk of the Appeals Courts in Ramallah, no decisions were reached at all throughout the summer of 2001⁸.

Some of these delays were caused by the internal procedures of the court. The court of first instance (*mahkamat al-bidayah*) was heavily overloaded, whilst the magistrates' court (*mahkamat as-sulh*) had relatively few cases. This was the result of the outdated Jordanian laws in force in the West Bank, which meant that only cases below JD250 (\$350) went to the magistrates' court. This was a very small sum given the inflation that had taken place in the West Bank. What is more, the record keeping in the courts was antiquated and according to popular myth dated back to the Ottoman period. There were widespread rumours that during the summer 2001 recess the courts had lost over 2000 case records. At one point the court in Jenin had to postpone all cases because it had run out the necessary forms to register cases. The court in Durra, to the south of Hebron lacked registrars, so all their tasks either had to be carried out by policemen or judges.

A new Civil Procedures Law, published in November 2001, was designed to address many of these issues. The new law transferred to the magistrate's court all cases below JD20, 000 (\$30, 000). This

⁸ Interview with the Clerk to the Ramallah Appeal court, Ramallah, 20th January 2002. Detailed figures can be obtained from the Appeal court and are presented below. The figures are for civil cases and are taken for the month of July in the year's 1998-2001. They show that even before the *intifada* new cases outnumbered decisions by a ratio of around 2:1.

	New Cases	Decisions
June 2001	47	0
June 2000	76	38
June 1999	63	35
June 1998	61	31

Figures obtained from Clerk to the Appeals Court on 20th January 2002.

would potentially have the effect of speeding up cases. However, long delays were expected in the short term, as the new law had also increased the number of judges needed to hear a case. The courts in Bethlehem, Hebron and Jericho lacked enough judges to hold any sessions in the courts of first instance. The other courts, including Ramallah, had enough judges, but whereas previously three judges could have held three separate hearings, now there were only enough judges for one hearing at a time. Even when new judges were appointed in January 2002, they were only given the new Civil Procedures Law three days before it was due to come into effect, and even then only seven official copies existed in the West Bank. Many judges were relying on a summary prepared by an American NGO. Furthermore, when new judges were appointed some of them did not want to take the posts because of the pay cuts it would have involved.

There was also a particular problem in summoning people to appear before the court. There was only one summoner for the Ramallah district with a population of nearly 250, 000 people. This court employee often claimed that he could not find witnesses or defendants and could not deliver the summons, particularly when villages were outside Ramallah. There were suspicions amongst some lawyers that he accepted bribes in order not to deliver summonses. As a result many cases had to be delayed when key figures failed to turn up at court.

The History of the PNA Police Forces

Even if a court decision was eventually achieved, it was unlikely that it would have been enforced. There were nominally six operational divisions of the PNA police force. These were the Civilian Police, Presidential Security (Force 17), Preventative Security (PS), General Intelligence, the Public Security Force and Civil Defence⁹. The Civilian Police was nominally responsible for the enforcement of court orders, but in practice several other branches of the police were also involved. However, despite the fact that by the year 2000 it was estimated that there was one policeman for every 110 Palestinians (Milton-Edwards 2000: 352), the willingness and the ability of the Palestinian police to enforce court orders was limited by several factors.

The six branches of the PNA police forces had their roots in pre-PNA armed groups associated with the PLO. The officer corps of the Civilian Police was largely staffed by officers of the former Palestinian Liberation Army who had lived in exile with the PLO across the Arab world. Many had returned to the West Bank in the mid nineteen-nineties with the creation of the PNA. Low ranking policemen were usually drawn from the unemployed youth of the Gaza Strip and the refugee camps of the West Bank. One of the elite branches of the PNA police force, known as Force 17, had its roots in

⁹ There were also smaller sub-branches, which included Coastal Security, Aviation Police and Customs. All of these were set on in the Oslo Agreements (The Palestinian-Israeli Interim Agreement on the West Bank and Gaza Strip, Protocol Concerning Redeployment and Security Arrangements, Annex 1, Article IV.2).

the group that protected Yasser Arafat during the Lebanese civil war of the nineteen-seventies and eighties. The PS, which focused on the arrest and detention of Palestinian activists hostile to the Oslo Peace Process¹⁰, was largely made up of local *Fatah* activists. There was therefore considerable continuity between the Palestinian police forces and Palestinian political factions. PNA police officers would often switch between their official policing roles and their roles as members of political movements.

Several commentators have argued that Yasser Arafat has encouraged the creation of these multiple police services with strong historical roots as a deliberate policy of pre-empting rival power bases (cf. Robinson 1997: 58). The multiple police forces in the West Bank were all answerable to Yasser Arafat as Chair of the PNA and Commander-in-Chief of the PLO, rather than directly to the PNA Ministry of Interior. The various branches of the police force were also nominally answerable to the PNA Governor in their region. In reality regional commanders used to report directly to their branch chief or Yasser Arafat. In 1994 a Higher Council for Security was established, however, this was large and unruly and would only convene at the behest of Yasser Arafat (cf. Sayigh 2001). In 2003, under pressure from the Americans and the Israelis, Yasser Arafat appointed a more streamlined National Security Council, consisting of the newly created post of Prime Minister, as well as the Minister of the Interior, the National Security Adviser and Yasser Arafat himself¹¹. This move was largely seen as an attempt to consolidate the control of the Palestinian police forces directly under Yasser Arafat.

In this context, the legal regulation of the PNA police was problematic. In particular, there was no clear legislation that governed the relationship between the PNA police and the courts. In practice the PLO Revolutionary Penal Code of 1979 has been applied to offences committed by PNA police officers¹². However, it was not until 2002 that it was made an offence for the police not to enforce court rulings¹³. According to the Palestinian political scientist Yezid Sayigh this situation must be understood in the context of the Oslo Accords (cf. Sayigh 2001: 106). The Oslo Process left the final status of the PNA undecided, and in the meantime the PNA was an autonomous entity and not a state. The PNA could have eventually resulted in a fully independent sovereign state, or probably more likely a de-militarised autonomous area. In this context it was unclear what future role the PNA police forces would play. Parts of the PNA police force saw themselves as the Palestinian Army in waiting. Given this uncertain status, part state and part national liberation movement, many Palestinian police officers were deeply ambiguous as to the role they should play in relations to the formal legal system. They would often stress the importance of national unity rather than a strict adherence to the law.

¹⁰ These were largely *Hamas* activists, but also included people associated with the Popular Front for the Liberation of Palestine (PFLP) and Islamic Jihad.

¹¹ It is unclear whether this committee is actually taking an active role.

¹² Interview with senior police officer, Ramallah, 18th June 2001.

¹³ PNA Basic Law 2001, Article 97.

The PNA police forces therefore had an ambiguous legal and political role. Due to their historical in the armed struggle of the PLO they often acted more as political factions than as police¹⁴. Indeed Jibril Rajoub, the former head of the PS in the West Bank, described his organisation as ‘the practical expression of *Fatah*’¹⁵. This meant that PNA court orders was subject to political pressures and often went unenforced.

The Territorial Fragmentation of the PNA

The Oslo Accords also affected the coercive power of the PNA courts on other ways. Under the Oslo Accords the West Bank was divided into three areas (see attached map). In Area A, which covered the main Palestinian towns, the PNA had civil and security control. In Area B, which covered most Palestinian villages, the PNA was given civil control, but shared security control with the Israeli military. In Area C, which covered most of the land in between the towns and villages, the Israeli military had full control. Israeli military control was also extended to cover all Israeli citizens no matter where they were in the West Bank. Crucially however, whilst the Palestinian police did not have territorial control over most of the West Bank, the PNA courts had jurisdiction over Palestinians throughout the West Bank.

Intermittently through the late nineteen-nineties and almost permanently following the start of the *intifada* in late Sept 2000, Israeli military checkpoints were established on the edges of nearly all Palestinian population centres. Ramallah and its surrounding villages were no exception. In some places and at some times Palestinian vehicles were allowed to pass, at other times, no vehicles were allowed through, but passengers could walk on foot. At other times, no body at all was allowed to walk though at all. These checkpoints had a major effect on the operation of the Palestinian courts. Judges, lawyers or witnesses would often claim they could not reach the courts. During the first *intifada* when Israeli checkpoints had been common, judges and prosecutors had been given special permits to enable them to pass through. However, during the second *intifada* the Israeli military refused to issue such permits. The Appeal court in Ramallah was particularly hit by the problems caused by checkpoints. Three judges were necessary to hold a hearing and only three judges had been appointed, leaving no possibility for absence. One of these judges lived in Hebron in the south of the West Bank and another lived in Tulkarm in the north. More often than not they were unable to reach Ramallah. These absences resulted in long delays.

Military checkpoints also caused problems for the enforcement of PNA court orders. A Palestinian police presence was limited to Area A and parts of Area B. However, Palestinian courts were

¹⁴ It is in the context that the attacks by PNA security forces on the Israeli military should be understood.

¹⁵ *Al-Quds* 2nd February 1995

responsible for Palestinians across the West Bank. This meant that enforcement of Palestinian court orders in areas outside the immediate control of the Palestinian police forces entailed cooperation between the Palestinian and Israeli police. Following the start of the second *intifada* this cooperation broke down. The District Coordination Office (DCO), which was supposed to liaise between the Israeli state and the PNA, became in some places the scene of clashes between the Israeli military and the Palestinian police forces. The Israeli government increasingly accused elements of the Palestinian police forces of attacks on the Israeli military and civilians. As a result, the Israeli Air Force repeatedly bombed the offices of the Palestinian police, and in the autumn of 2000 destroyed the office of the Enforcement Division of the PNA police in Ramallah.

In this context, Palestinian police often refused to act outside the centre of Palestinian towns, even if the area in question was nominally under PNA jurisdiction. Many feared arrest or worse by Israeli military¹⁶. Whilst the Israeli police could work relatively freely in the rest of the West Bank and were responsible for the enforcement of PNA court orders, Palestinians would refuse to turn to the Israeli police out of fear of being accused of collaborators. The result was that following the start of the second *intifada* PNA court orders could only be enforced in the centre of the large Palestinian towns. The rest of the West Bank was in an enforcements black hole.

Given the paralysis in the formal West Bank court system, three case studies will now be outlined in order to examine the role of law, if any, in disputes between Palestinians. The case studies were compiled through extensive interviews with the participants, and represent just a sample of a much larger collection recorded during fieldwork.

Case Study 1: Al-Quds Tissue Factory

The Al-Quds factory was one of the largest and oldest in the West Bank. It was owned by the three sons of its Armenian-Palestinian founder, Hovhannes Mamikonian. The Mamikonian family formed one of the richest parts of the small Armenian community, which had fled to the West Bank during the Armenian genocide of the early twentieth century. After the second *intifada* started in late September 2000 the factory had faced a crisis. Many of its workers, who came from villages outside Ramallah, could not reach the factory due the checkpoints that had been set up on the roads into Ramallah by the Israeli military. Furthermore, the factory could not get hold of any raw materials due to the roadblocks and checkpoints set up by the Israeli military. Finally, most of their customers stopped buying their goods or claimed they could not pay the money that they owed the factory. After two months of this situation, the factory owners decided to scale down the work in the factory and to place nearly all the workers on unpaid leave.

¹⁶ Interview with Iyyad Tayyem, PNA Prosecutor, Ramallah, January 19th 2001.

Some of the workers, who were organised in a workers committee, protested. They argued that either they had jobs and should be paid, or they had lost their jobs and under the law were entitled to severance pay. The factory owners argued that they were not laying off the workers, just placing them on unpaid leave, and therefore they did not have to pay any money. The workers' committee went to the Palestinian General Federation of Trade Unions (PGFTU) branch office in Ramallah. In the nineteen-eighties there had been a number of disputes between the forerunner of the PGFTU¹⁷ and the Al-Quds factory over pay and conditions. The disputes had ultimately resulted in the factory calling the Israeli police. In a context where the Palestinian nationalist leadership had called for a total boycott of the Israeli controlled police this caused bitterness on all sides.

Following the involvement of the PGFTU a number of high profile demonstrations were held outside the factory. These demonstrations were amongst the largest that the union had organised since the creation of the PNA and brought what was generally seen as a declining union movement to the attention of many people for the first time¹⁸. Against a background of rising Palestinian unemployment and increasingly violent clashes between Palestinians and the Israeli military, placards were held up at the demonstrations claiming that 'Al-Quds implements the Israeli occupation policies' and 'The Al-Quds factory steals the bread from our children's mouths'. The dispute was widely covered on local newspapers and television stations in the Ramallah area. On the suggestion of the PGFTU the dispute was taken to the office of the PNA Governor of Ramallah, otherwise known as Abu-Firas. The PGFTU said that it would take too long to take the case through the courts, as the workers needed the money they were due immediately. The brothers reluctantly agreed to the Governor's involvement.

The Governor's office was part of a sprawling complex, which had started life as a British prison during the nineteen-thirties. The same complex housed the Presidential office of Yasser Arafat, the military and security courts¹⁹, as well as barracks for several of the Palestinian police forces. Yasser Arafat had appointed Abu-Firas shortly after the creation of the PNA in the mid nineteen-nineties²⁰. As Governor of Ramallah district, Abu-Firas was nominally responsible for coordinating the activities of all the PNA police forces in the area. Before the PNA Abu-Firas had also been member of the

¹⁷ For more on the history of the PGFTU (cf. Hilterman 1991).

¹⁸ For more on this issue (cf. Sovich 2000).

¹⁹ In 1995, one of the first acts of the PNA was to set up state security courts, based on the same British Emergency Laws of 1945 that the Israelis had used to establish their own military courts. Although these courts have tried civilians, they usually tried members of the Palestinian police forces and will not be covered here.

²⁰ Popular legend has it that it was Abu-Firas who drove Yasser Arafat around on his clandestine visit to the West Bank in the late nineteen-sixties. Abu-Firas was later expelled from the West Bank by the Israeli government and became an assistant to Abu-Jihad, the deputy leader of *Fatah*, who was assassinated in Tunis in 1988.

PLO's Western Sector wing, which played a central role in the PLO's efforts to organise the first *intifada*. Abu-Firas was therefore closely associated with the PLO and the PNA leadership. Lawyers and judges often complained that Abu-Firas encouraged the use of what they called '*urf* (customary law). It was also widely rumoured that he had links with the gangs from 'Amari refugee camp in Ramallah. These gangs were accused of being involved in stealing cars from Israel and also formed the basis of the *shabiba* (the youth wing of *Fatah*) in the refugee camps. However, according to laws dating back to the British Mandate the Governor of a district had the power to arbitrate in disputes²¹.

After meeting both sides Abu-Firas delegated the day-to-day negotiations to his legal department. In the negotiations, which lasted several days, the factory owners argued that the factory was itself owed money and therefore could not pay the workers' severance pay. The Governor's office promised to help the company chase up some of its debtors. The union demanded that the Governor's office enforce the labour law, and make sure the workers received severance pay. Finally, a compromise was made in view of the *wada'a* (situation). The factory owners agreed to take 12 of the longest working and most skilled workers back in order to keep the factory working at a minimum level. The other 65 received severance pay at three-quarters of the money owed according to the labour law²². The union accepted the agreement on the behalf of the workers.

Case Study 2: The Expanding Suburbs

Mustapha Kurdi lived in a small house on the outskirts of Ramallah. When he had brought the house in the late nineteen-seventies there had been no one else living in the area, and olive trees and vine groves covered the land. In the mid nineteen-nineties, as Ramallah became the *de facto* capital of the PNA and Israeli imposed building restrictions were removed, there was a construction boom. The area around Mustapha Kurdi's house on the edge of the town saw dozens of apartment buildings being built, as it quickly became a middle class suburb of Ramallah. Mustapha sold some of his land, which had increased greatly in value, to a property developer who planned to build a series of apartment blocks and houses.

In 1999 one of Mustapha's new neighbours started to lay the foundations for an extension to their house. The foundations appeared to go right up to the edge of Mustapha's land and would potentially overlook Mustapha's house. Mustapha did not want the house built so close to his home and so he asked the neighbour to relocate the foundations. Mustapha argued that under PNA building regulations it was illegal to build a new building so close to the edge of a property²³. The neighbour

²¹ The 1954 Jordanian Law to Prohibit Crimes gives local governors the power to 'prohibit crimes', arrest people and put them under curfew if he 'suspects' they will commit a crime.

²² This dispute took referred to the old Labour Law of 1960 (Amended in 1965), rather than the new labour law that was published at the end of 2001.

²³ Organisation of Towns, Villages and Buildings Law 1966-79.

disagreed and continued to build. Mustapha decided to go to court to try and stop the building. In the meantime a court order was issued which placed a temporary freeze on any new building by the neighbour.

In late December 2000, although no decision had been reached in the courts, the neighbour restarted work on the foundations. He had lost his job in the economic collapse that had accompanied the second *intifada* and so was using his newly found time to finish the extension to the house. Mustapha went to the PNA police to complain. He demanded that they enforce the law and prevent the building work from continuing. However, the PNA police told him that as the building was close to an Israeli Army post, they could not go and prevent the man from continuing with his foundations, as they might be attacked by the Israeli position. Next, Mustapha went to visit the Governor's office. The Governor's office however said that they were too busy to help in this case and that Mustapha should try and reach a compromise. That night Mustapha went home and using a hammer tried to knock down one of the newly built walls. Before he could succeed a fight broke out with the neighbour, which was only stopped by the arrival of both men's relatives. The next week Mustapha Kurdi apologised through an intermediary and the neighbour stopped work on the house for the time being, as he had run out of money. However, Mustapha remained pessimistic about preventing the building in the long run. Mustapha told me that there were no *shurta* (police), no *sulta* (authority)²⁴ and no *qanun* (law) in the West Bank and this is why there was no way he could win his dispute.

Case Study 3: The Incomplete Restaurant

Ibrahim Abdallah returned to the West Bank in 1999 after having spent the last twenty years working as a teacher in Saudi Arabia. Using all his savings he decided to open up a small restaurant on the road between Jerusalem and Ramallah. The restaurant would sell kebabs, falafel and other Palestinian staples. Ibrahim found a contractor and before the work started gave him a post-dated cheque. This was a standard method in the West Bank of ensuring that both parties kept their side of a business agreement. The contractor had been working for only a few weeks when the clashes of late September 2000, that marked the start of the second *intifada*, began. A general strike was declared by the PNA, and all schools, offices and workshops were closed. The restaurant was also situated near an Israeli checkpoint that was frequently the scene of violent exchanges between stone throwing Palestinian youths and armed Israeli soldiers.

For a while all work stopped on the new restaurant. However, after a month or so, Ibrahim was beginning to run out of savings and needed to open the restaurant. He asked the contractor to come back to work. However, in the break the contractor had started another project, building a house for a

²⁴ *Sulta* is used both to imply authority in the sense of legitimate power, and authority in the sense of government, as in the Palestinian National Authority. Mustapha was using it in both senses.

family on the other side of Ramallah. The contractor told Ibrahim that he would come back in a month's time, once he had dug the foundations and poured the concrete for the first floor of his new project. However, a month past and the contractor still did not come back to complete the restaurant. Ibrahim decided to ask a relative, his wife's cousin, to finish the work. The cousin had been busy before, but was now out of work and could start immediately. Ibrahim had also nearly run out of money, and the cousin said that he did not mind being paid as soon as the restaurant was bringing in some cash.

Work on the restaurant had recommenced for only a week, when the original contractor came back to Ibrahim and said he was ready to start again. The homeowner on the other project had run out of money and had postponed the rest of the work. Ibrahim told the original contractor that it was too late and that he had now hired someone else. Reluctantly the contractor agreed and went away. However, when he then tried to cash the cheque that Ibrahim had given him at the start of the job it was declined by the bank.

The contractor threatened to take Ibrahim to court unless he honoured the cheque. The issuing of cheques without adequate credit was an offence under the law²⁵. Under the law a person issued an unsupported cheque had the choice of taking the case to a civil court and attempting to recover his debt, or taking the case to the police, who could arrest the debtor. Taking the case to the police was problematic as Ibrahim lived outside Ramallah in an area that was controlled by the Israeli military. The contractor therefore registered the case in the Palestinian courts, in the hope that he could recover some of Ibrahim's assets held in Ramallah. However, his lawyer warned him that the case could take several years to process. Ibrahim argued that the cheque could not be enforced. His lawyer had told him that it was possible to see the issuing and acceptance of the post-dated cheque as a 'reckless act' and therefore unenforceable under Palestinian law²⁶. The contractor therefore decided to go and see the Governor's office and ask his help in recovering the debt. Shortly Ibrahim was requested to visit the Governor's office as well. The legal department told Ibrahim that he had to honour the cheque and that he could either be arrested or some of his assets seized if he did not do so. An arrangement was reached and signed upon by both parties, by which Ibrahim paid the money he owed to the contractor. In order to guarantee that the payments were made it was agreed that Ibrahim would pay in instalments to the Governor's office, which would then pass the money on the contractor. Ibrahim borrowed the money from some relatives and all the payments were met.

²⁵ Military Order 848. This is an Israeli Military Order, which is still being controversially applied in PNA courts.

²⁶ This was following a precedent set in a Jordanian court that applied the same law as in the West Bank. By the time of this case no ruling had been made in the West Bank.

Law and the Governor's Office

What is perhaps most interesting about the three case studies is the extent to which, despite the almost complete paralysis of the formal legal system, the law remained central to the three disputes outlined above. In the first case study the workers committee had demanded the application of the labour law. In the second case study, Mustapha Kurdi had based his complaint around a building regulation. In the third case study the dispute had centred on the implications of the law for the enforcement of bounced cheques. In all three case studies the disputants used the law as a central normative reference point.

Not only did people constantly refer to the law through out the course of their disputes, but also despite being accused of undermining the legal process the Governor's office was very keen to stress that it operated within the law²⁷. The head of the Governor's legal department, Dr Erij al-Hodi had a PhD in jurisprudence from the University of Moscow²⁸. She also had an adviser, an elderly lawyer who had practiced under Jordanian, Israeli and now the PNA rule²⁹. Dr al-Hodi claimed that far from her office being outside 'the law', people often come to her office with their lawyers and the majority of her employees were trained jurists³⁰. This important role played by lawyers was not unusual amongst the other groups that were often accused in interfering in the judicial process (cf. Council on Foreign Relations 1999: 17). According to the head of the first law school in the West Bank, the greatest source of employment for Palestinian law graduates were the Palestinian police forces³¹.

Far from abandoning the law, in all three cases people were demanding the enforcement of the law. Furthermore, even organisations such as the Governor's office that at first glance appeared to be extra-legal, were at great pains to claim that they operated within the law. Despite the ongoing violence of the *intifada* and the break down in the formal institutions of law, law remained central to the people involved in the disputes. The question then becomes what role were legal processes playing in disputes and why?

²⁷ This paper focuses on the Governor's office, as this is the most well known seemingly extra-judicial organisation that is involved in disputes. However, similar arguments could be made for the PS or Force 17.

²⁸ Interview with Dr. Erij al-Hodi, Director of the Legal Department for the Ramallah Governate, Ramallah, 25th September 2001.

²⁹ There was an expert in '*al-qada' al-'asha'iri*' (tribal mediation) attached to the Governor's office, who would deal with so called crimes of 'honour'. However, he would operate alongside the formal legal system, not in contradiction to it. For example, a murder might result in a conviction by the criminal courts and a *sulha* (conciliation) between the parties involved by the 'tribal judge'.

³⁰ Interview with Dr. Erij al-Hodi, Ramallah, 1st June 2001.

³¹ Interview with Dr. Ali Khashan, Dean of the Al-Quds University Faculty of Law, Abu-Dis, 25th January 2001.

The Attractions of Law

To say that concepts and practices of law were pervasive in the West Bank is not to universalise the meanings of law. At one level, making a normative claim through the law did not rule out alternative normative frameworks being held simultaneously. There is no need to assume that the people involved in the case studies looked at the world entirely in legal terms. Law was potentially just one normative frame amongst many. At another level, these understandings of law were potentially specific to the historical context of the West Bank.

How then did these people relate to the law in the course of their disputes? Several legal scholars have linked the legitimacy and effectiveness of law to its grounding in social practices which are 'generally supported' (cf. Hart 1961). However, Sarat and Kearns have argued that assuming the legitimacy of law assumes that legal processes serve a common purpose and advance common, rather than specific ends (Sarat and Kearns 1991). In the case studies outlined above all the parties in the dispute had very different interpretations of the implications of the law, and were attempting to use the law to specific ends. At Al-Quds factory in the first case study a win-win solution was not imaginable. If the workers had been granted their demands for severance pay the factory owners have probably have refused to pay. If the factory owners had won, their employees would not have been happy. In the second case study, foundations could not be half dug. Either the wall was placed next to Mustapha Kurdi's land or it was not. There was not much space for compromise. Both Ibrahim and the contractor had very different perspectives on the meaning of the law on post-dated cheques. In the West Bank there was no consensus over social practice and its relationship to the law. This was not just a conflict over how the events should be interpreted in relation to the law, but over the very content of the law and its implications. The appeal to a common dominator in terms of law did not result in a unified sense of justice.

These conflicting approaches to law meant that any 'solution' to the disputes would not be created by consensus but would have to be enforced. In all the cases described here, people were not pushing for mediation but for enforcement. Both Mustapha Kurdi and the workers at Al-Quds factory had initially explicitly refused mediation. They had said that if there were mediation, they would inevitably come away with a worse deal than they originally sought. Mediation would have favoured the status quo and the stronger party in the dispute. During my fieldwork I was frequently told that people did not want mediation, as they would be forced to take less than they wanted³². These findings are also

³² The insistence on enforcement rather than mediation sheds light on the failure of a World Bank financed scheme for Court Annexed Mediation. From the perspective of the argument presented in the paper, the mediation programme can be seen to have failed because it failed to provide enforcement (Interview with Director, DPK, Ramallah, 15th September 2001).

reflected in the results of a survey carried out by Gad Barzilai among Israeli-Palestinians. Barzilai found that only 18% of his respondents favoured mediation/arbitration over formal legal settings for the processes of disputes (Barzilai 2003: 129). This emphasis on the enforcement of claims is in stark contrast to the image of law as a form of peaceful dispute resolution as well as to the arguments usually made about the attitudes to disputes in the West Bank.

Turning to the law was not about creating equilibrium, an appeal to a unified sense of justice or 'solving' disputes. Rather it was concerned with redistributing and reordering already existing relationships. The law was attractive not because it offered an avenue to consensus but because of the redistribute claims that could be made through it. Law was not a source of consensus but a possible object of dispute. Coercion was therefore a central feature for effectiveness of the law³³.

The Attractions of the Governor's Office

Given a weak and decentralised PNA legal system, many people searched for alternative forums through which they could enforce their claims through the law. The territorial structures of the Oslo Accords, the historical legacy of the Palestinian police and their relationship with the courts meant that the formal legal system was often unable to enforce legal claims. The police refused to stop Mustapha Kurdi's neighbour from continuing to build. They were afraid of the nearby Israeli Army post. Ibrahim Abdallah also lived in an area that was outside the practical control of uniformed Palestinian police as it was routinely patrolled by the Israeli military. The delays in the courts meant that seeking enforcement through them would have taken too long for the workers at Al-Quds factory. The legal philosopher Robert Cover has argued that the 'organised social practice' of coercion is central to the study of the effects of legal processes (Cover 1986: 1602fn). Cover argues that in what he calls a 'well developed' legal system, violence and coercion is so well organised that it almost goes without saying (Cover 1986: 1624). This is not the case in the West Bank, where the courts had great problems in organising coercion.

However, it is important not to assume that, for the people in the West bank at least, the court was the proper site for the enforcement of the *qanun* (law). Law was a dynamic normative reference that could be applied in multiple institutional settings (cf. Santos 2002: 99-16). Through their struggles people can and do seek to have their understandings of the law enforced through multiple mechanisms. The workers at the Al-Quds factory, Mustapha Kurdi or the contractor did not care how their claims were enforced. Faced with a situation in which they were practically excluded from the protection from the courts, many Palestinian turned to the other forums that were available. Often, the enforcement of

³³ Several scholars have claimed that coercion is central to the maintenance of 'civil law' regimes, especially those that involve private property (cf. Cover 1986, Hale 1923).

PNA law could only be done *bi-laffah* (round about), through the Governor's office or other PNA policing organisations. By turning to the Governor's office people could cut out the courts and turn directly to a source of legal coercion. The Governor had his own police force and prison, housed in the same compound as his office³⁴. He also had connections, real or imagined, with local gangs and political activists. The Governor's office because of its semi-official status, its close connection to its own coercive apparatus, and its ability to side step the territorial legal structures which prevented the court from acting effectively, offered an avenue through which people could attempt to enforce the law³⁵. One lawyer had told me that Abu-Firas was *qawi* (strong), whilst the courts were *d'if* (weak)³⁶. At the Al-Quds factory they told me that Abu-Firas was the only person who could *yasallim* (deliver) their *huquq* (rights)³⁷. Not only could he use his own police force, but also he could call on the connections that he had throughout Ramallah, and his reputation as a representative as Yasser Arafat. I heard of very few cases where Abu-Firas actively used coercion. His reputation were usually enough to enforce a decision.

The Governor's office was not seen as a neutral, selfless or even a particularly wise organisation. It was common for people to talk about Abu-Firas as a self-interested *siyasi* (politician). Whilst the Governor's office gave people a space in which they could enforce it often interpreted the law with what might be called a nationalist attitude. In its work it tended to stress the importance of 'national unity'. The workers at the Al-Quds factory were forced to make a compromise on their formal legal entitlements to severance pay because of the 'situation'. This emphasis on unity often favoured the stronger party in the dispute³⁸. There were frequent accusations that Abu-Firas' office favoured the dominant economic and political personalities in Ramallah³⁹. One of the unionist involved in the Al-Quds strike claimed to me that Abu-Firas owed his position to the large families of Ramallah and therefore did not want to make problems with them⁴⁰. Whilst the dispute at Al-Quds, which had a high profile, was taken on by the Governor's office, Mustapha Kurdi was turned away. I heard many stories from people who had visited Abu-Firas and had been told to go elsewhere.

The legalities of the Governor's office were therefore highly selective and reflected the prevailing balance of power. This was well recognised by the many of the people who turned to his office in

³⁴ In April 2002 the compound was partially destroyed by the Israeli military.

³⁵ This arrangement had in part been sanctioned by the Israeli military. An agreement signed in 1994 in Rome, which gave the PNA security forces the power to operate in all of the West Bank and East Jerusalem in return for help with a crack down on *Hamas* (Usher 1998).

³⁶ Interview with lawyer, Ramallah, 22nd September 2001.

³⁷ Interview with member of workers' committee, Ramallah, 27th March 2001.

³⁸ The idea of national interests should not be seen as a feature of law unique to the Palestinian territories. As David Kretzmer has shown 'interests of state' are central to the workings of Israeli law (cf. Kretzmer 2002).

³⁹ Abu-Firas' family came from the village of Bayt Lifta, in what is now Israel. After 1948 many of the residents of Bayt Lifta had become refugees and settled in the Ramallah area, becoming important political and economic figures.

⁴⁰ Interview with unionist, Ramallah, 12th March 2001.

their disputes. However, at the same time the Governor's office made claims to work within the law. People would turn to the Governor's office and try and pin it down to the legality that it professed to support⁴¹ (for a similar argument with reference to India see Eckert 2002, 2003). The workers at Al-Quds factory had demanded that the labour law be enforced. Mustapha had demanded that the building regulations be respected. The contractor had demanded that contract law be adhered to. These claims were of course only partly successful and the Governor's office did try to turn people away or persuade them to make compromises. However, they did have some force and were not completely ignored. In this way law not only served as a way through which legal claims could be made but also as a way of holding the PNA and Abu-Firas' office accountable.

There was a tension between legal claims and their practical manifestations as enforced by the PNA. However, even if the application of law was problematic, this very difficulty meant that the idea of a state of law was reinforced. The lack of an effective and accountable state, what ever that may be, that could enforce legal claims was often seen as being at the root of all many problems. According to Mustapha, 'In America you have a state and they will pay for you if you have no money, but here we have no state, there is no *siyadat al-qanun* (rule of law), there is only *qanun al-jawiy* (the law of force)'. The PNA was repeatedly criticised for failing to live up the promises that it implicitly made through the law. These promises were both substantive, having do with entitlements, and procedural, having to do with the ways in which these entitlements were distributed. The very absence of a state of law served to enforce its importance in the minds of many people in the West Bank.

It is therefore important to note that people did not turn to the Governor's office for purely instrumental reasons. The issue of legitimacy was not entirely irrelevant. There was at some level an important commitment to the idea of the law and more importantly of a state of law, in both the senses of a political authority and a general condition. Above all people turned to Abu-Firas because they felt that the PNA had a moral duty to help them in the difficult circumstances of the second *intifada*. The *intifada* had greatly affected many Palestinian's customary ability to provide for their families⁴². Legal entitlements provided an effective set of promises about the nature of political and economic life, which, it was felt that the PNA had a duty to maintain. These were not just instrumental demands but involved claims about how the PNA should govern through and ensure legal entitlements.

⁴¹ Why the Governor's office chose to make claims to legality is a slightly different issue. Issa Shivji has argued that many states make claims to legality merely under pressure from the international community (cf. Shivji 1995). However, this rules out the possibility of a genuine commitment, at some level to the law.

⁴² A survey from Birzeit University estimates that across the West Bank 69% of respondents had a family member who lost a job as a result of the *intifada* (Birzeit University Development Studies Programme 2001). Similarly a UN report estimated that over 40% of the West Bank and Gaza's population has experienced 'economic distress' since the start of the *intifada*, with unemployment rising to 38% (UNSCO 2001: 10-11).

Some Concluding Remarks

In the West Bank the law should not be understood as being concerned with a peaceful process of dispute resolution, but as coercive and normative aspect of ongoing disputes.

Despite all the problems facing the formal Palestinian legal system, many Palestinians still struggled to produce and enforce legal claims. Cultural inappropriateness was not a factor. Neither was the law approached in a purely instrumental fashion. However, these legal claims and concepts were rooted in the historical context of the West Bank. The law was attractive because of the publicly communicable claims that could be made through it on the PNA. Reference to the law was an avenue for expressing and enforcing complex normative attitudes and holding the coercive power of the PNA accountable to its promises. The appeal to a common dominator in terms of law did not result in a unified sense of justice. Indeed, the very lack of a common dominator meant that legal claims were contradictory and the law produced no consensus. Any solution would therefore have to be enforced.

Whilst legal systems do not have to have the monopoly on normative concepts to be effective, they must deliver on their promises to enforce the claims that can be made through the law. It is the failure to do this, which can potentially undermine the formal structures of law and force people to turn to other less accountable mechanism. There is nothing inevitable about the formal court system as the process through which legal claims are enforced. The political and territorial fragmentation of the PNA under the Oslo Accords meant that it was unable to give legal claims coercive backing. Through struggles with the Governor's office, people tried to create alternative structures, which could enforce the promises of the law. Resort to the Governor's office was not an attempt to challenge the formal institutions of the PNA law, but rather, it was the result of the failure of the PNA to live up to its promises⁴³.

To place coercion rather than dispute resolution the centre of the study of legal processes is not to make the post-modern claim that law is inherently destructive (cf. Derrida 1992). Nor is it to make the structural Marxist claim that law is implicitly part of the repressive apparatus of the state (cf. Poulantzas 1978). Such perspectives ignore the ways in which law can provide a resource for the marginalized and can be involved in the maintenance of normative claims (cf. Thompson 1975). An attention to the relationship between law and coercion means recognizing that 'organized violence can be socially productive' and that 'what matters is not its presence or magnitude but rather its structure and form' (Bates, Greif and Singh 2002: 599). As Robert Cover argues 'as long as death and pain are part of our political world, it is essential that they be at the centre of the law' (Cover 1986: 1628).

⁴³ This article will deliberately talk about the failure of the Palestinian legal system. The concept of state failure is undeniably problematic, in that it implies a value judgement about the proper functions of states (cf. Yannis 2002: 818). However, as this paper has hopefully shown there is also a danger in forgetting that people on the ground have normative expectations, which they expect the state, or its proxies, to provide for.

Whilst legal reform is often seen as an alternative to coercion, the problem in the West Bank was not the presence of too much coercion in the political process, but rather of too little, or at least too little of the right type of coercion. More careful attention needs to be paid to how legal regimes, and the states behind them, can best organise their coercive power. It is important to note that the Governor's office lacked the formal restrictions⁴⁴ that meant it had to take all the cases and could therefore apply its coercive power selectively. The coercive fragmentation of law meant that people were increasingly forced to turn to less accountable institutions to get their claims enforced.

It is probably worth concluding by asking what will it take to build an effective legal system in the West Bank that responds to the needs of the people who would use it? Such a legal system will not necessarily prevent conflict or solve disputes but it will provide a channel through which claims can be made and enforced. The law was attractive because of the implicit promises it made. These promises were not just institutional or procedural, but also normative, and as such often included redistributive claims that at some point required a coercive capacity. All too often legal development is seen as a neutral, technical process of institutional reform, but in order to make those institutions attractive they must respond to the needs of the people who would use them. These means backing complex normative claims with coercive force. Towards the end of the last surge of interest in the relationship between law and development in the nineteen-seventies Trubek and Galanter criticised practitioners for having an instrumental conception of law (cf. Trubek and Galanter 1974). However, to remove the political and normative element from legal regimes is to ignore why they are so attractive for so many people.

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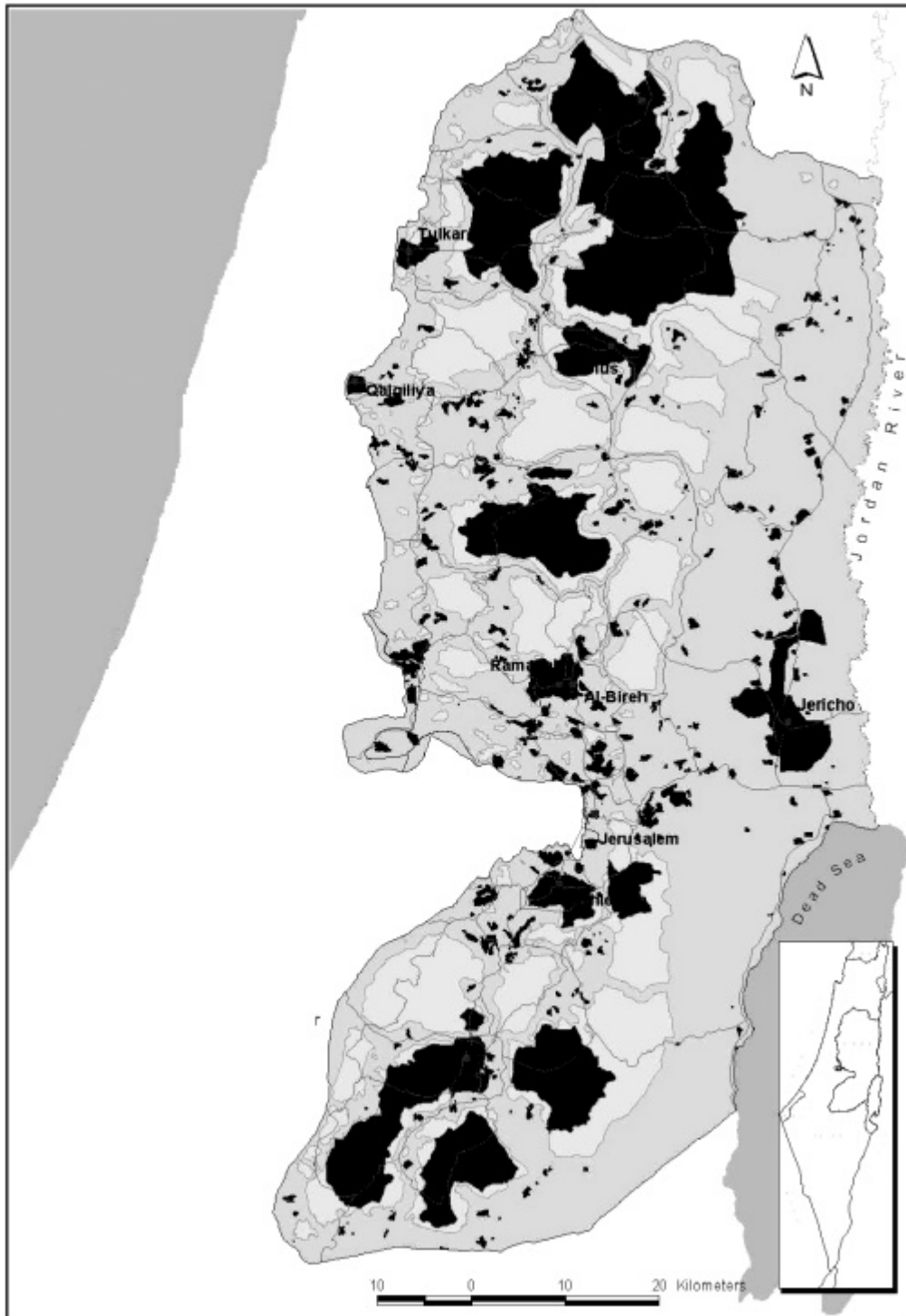
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Key: ■ Area A ■ Area B ■ Area C

Map: West Bank Showing Areas A, B and C According to the Oslo Agreements.