

Introduction:

Compared to other countries in the world, the legal status in Palestine is at once complicated and unique because a number of authorities have ruled over Palestine throughout history. Various legal systems have prevailed in Palestine. Accordingly, multiple legal systems have affected the political and legal structures in Palestine. The partition of Palestine has also led to the emergence of complex and varying legal systems in the West Bank, Gaza Strip and Jerusalem as well as within part of Palestinian territories occupied in 1948.

Until the end of the Ottoman rule in 1917, the legal system in Palestine was based – primarily – on principles of the Islamic Law, but it was also influenced by the Latin system in Europe.

In 1917, the Ottoman rule was terminated by the establishment of the British Mandate, which re-formed the legal system in Palestine. The British added to the Ottoman legislation the principles of the Anglo-Saxon system (the Common Law) which is based on judicial precedents.

In 1948, the Hashemite Kingdom of Jordan ruled over the West Bank, including East Jerusalem. The West Bank submitted then to the Jordanian legal system that is influenced by the Latin system. On the other hand, the Egyptian Administration controlled the Gaza Strip. The Common Law established during the British Mandate period remained effective in the Gaza Strip.

Following the 1967 war, the Israeli occupation seized control of the Palestinian legal system by imposing the military law (Military Orders) in the West Bank and Gaza Strip territories. After annexing it in 1980, the Israeli occupation submitted East Jerusalem to the Israeli Domestic Law.

According to the Declaration of Principles on Interim Self-Government Arrangements of 1993 (Oslo Agreement I), the Palestinian Authority (PA) was established. Foundations were set for the Israeli-Palestinian agreements that regulate PA powers and authorities. Consolidation and approximation of various legal systems operative in the Palestinian territories are the most important legal issues. Since 1994, consolidated legislation has been promulgated for both the West Bank and the Gaza Strip governorates.

The Ottoman Rule over Palestine 1516 – 1917

Palestine was part of the Ottoman Empire. Until the end of 1917, the Ottoman legal system had been enforced in Palestine for over 400 years. With the British occupation of Jerusalem on 9 December 1917, the Ottoman Rule over Palestine was terminated.

The Ottoman legal (legislative) history was divided into two basic periods. The first period lasted from the establishment of the Ottoman Empire until the Regulations (Tanzimat) Era and the second extended from the Regulations Era until 1917.

During the first period, the Ottoman legal system was primarily based on principles of the Islamic law, Islamic jurisprudence, customs and decisions issued forth by the Sultan (the Governor). However, events witnessed throughout the 17th and 18th centuries enfeebled the Ottoman Empire, leading to the emergence of a period of reforms known as the “Regulations (Tanzimat) Era”.

Since the beginning of 1839, reform regulations aimed to centralise, modernise and to some extent secularise the Ottoman Empire. The Ottomans also adopted a number of Western laws (the French Law of Commerce for example) in order to increase commercial activity with Europe. The reform regulations compelled the Ottoman Empire to codify the provisions based on religion, customs and Sultan Law, resulting in the enacting of important pieces of legislation which are still effective in Palestine until the present day. Most significantly, the Land Law of 1857 and the Ottoman Civil Code (Majala) were enacted during this period.

British Mandate over Palestine: 1918 – 1948

The British army occupied the entire territories of Palestine in 1917 and the League of Nations mandate over Palestine was assigned to Britain. The British High Commissioner administered the mandate over Palestine and exercised all administrative and legislative powers therein.

This period, which lasted for 30 years, witnessed an extensive legislative activity, resulting in the promulgation of legislation in various fields in Palestine. Ottoman laws, which had been operative until 1917, were still valid taking into account amendments or replacements introduced to them according to the British Mandate laws. The Mandate Government re-formed the legal system by converting it from the Latin-Ottoman system to the Anglo-Saxon system (The British Common Law).

In 1933, Robert Harry Drayton, then called “The Recorder of the Palestine Government”, was delegated to collect and edit all British Mandate legislation in three volumes. Drayton compiled and catalogued the laws, decrees, regulations, rules, etc. which were issued in Palestine in addition to the British Royal laws and decrees enforced therein. After the 1948 war, three quarters of Palestine were controlled by Israel. Meanwhile, Jordan ruled over the West Bank and Egypt over the Gaza Strip.

The Jordanian Rule over the West Bank: 1948 – 1967

Following the 1948 war, the West Bank, including East Jerusalem, submitted to the Jordanian rule. In 1948, the Jordanian Military Governor declared that other laws and legislation that had been operative in Palestine would still be effective to the extent with which they do not contradict the Law on the Defence of the Trans-Jordan of 1935.

In 1949, the Jordanian Civil Administration restored the civil rule over the West Bank according to the Law of the Public Administration over Palestine. In 1950, the West and East Banks of the River Jordan were officially annexed. In addition, it was confirmed that the laws, which had been operative in the

West Bank until the end of the British Mandate, would remain valid until they are replaced by Jordanian laws.

Between 1950 and 1967, the Jordanian Parliament was composed of an equal number of deputies from both the West Bank and the East Bank. This period also witnessed a broad legislative activity, leading to a transformation of the legal system prevalent in the West Bank from the Anglo-Saxon system (the Common Law) into the Latin system.

The Egyptian Administration in the Gaza Strip: 1948 – 1967

After the 1948 war, Egypt administered the Gaza Strip but did not annex it to its territories. Therefore, little Egyptian civil legislation was effective in the Gaza Strip. Egyptian military forces ruled over the Gaza Strip and managed all public departments and civil affairs therein. With the establishment of the Legislative Council of the Gaza Strip in 1957, the Egyptian military authority in the Gaza Strip was converted into a civil authority.

In 1962, the Legislative Council appointed the first Palestinian President, thereby complementing the transference of the legal authority from the Egyptians to the Palestinian control. Also in 1962, the Legislative Council of the Gaza Strip ascribed a constitutional capacity to two basic laws: The Law of 1955 and the Constitutional Regulation of 1962, which were published as a collection for the first time in the Middle East Gazette, Winter/Spring Issue, 1963. The then current constitution reflected features of the Ottoman Law and British Common Law, which had been effective in Palestine over past periods. In a brief view, it should be noted that the legal system operative in the Gaza Strip before 1948 did not significantly change under the Egyptian Administration.

The Israeli Occupation in the West Bank and Gaza Strip: 1967 – Present

After the 1967 war, the Israeli forces occupied the Gaza Strip and West Bank, including East Jerusalem. The “Commander of the Area” – the Commander of Israeli forces – declared control over the legislative, executive and judicial authorities in the occupied Palestinian territories (OPT).

Initially, the Israeli forces issued Military Order no. 2 of 1967 that provided for the annulment of any effective laws in OPT in the event they contradicted military orders issued by the Administration of the Israeli Occupation. After Military Order no. 947 of 1981, all legal and administrative powers were transferred to the so-called “Civil Administration” which was established lately then. From the onset of Israeli occupation, Israeli-formed military courts and military commissions preserved a total jurisdiction over particular criminal issues as well as all disputes over lands, taxes, natural resources and finance. In general, the military orders issued during the occupation period regulated all aspects of life. Military orders in the West Bank were, however, somewhat different from those issued in the Gaza Strip. Since 1967, approximately 2,500 military orders have been issued in the West Bank and Gaza Strip. Many other orders were also issued but were not disseminated.

According to the military legislation since 1967, Israeli settlers in OPT have

not submitted to the laws issued by the Israeli Commander of the Area or Civil Administration. Settlers were subject to the Israeli Domestic Law. Accordingly, the Israeli government has expanded the concept of Israeli citizenship so as to include settlements constructed throughout OPT. To achieve this end, the Israeli government claimed that settlements were not part of OPT. In addition, the Israeli government separated the legal system applicable in the occupied West Bank and Gaza Strip from that enforced in the Israeli settlements.

The Palestinian National Authority: 1994 – Present

According to the Declaration of Principles on Interim Self-Government Arrangements of 1993 (Oslo Agreement I), several agreements, signed between the Palestinians and Israelis, aimed to transfer a number of powers from the Administration of Israeli Occupation to the Palestinian Authority (PA) in particular parts in the occupied West Bank and Gaza Strip. Most significantly, Palestinians and Israelis signed the Gaza-Jericho Agreement in Cairo in 1994 as well as currently effective Oslo II Interim Agreement in Washington on 28 September 1995.

The Palestinian-Israeli agreements address several issues, including election of the Palestinian Council, redeployment of the Israeli forces, transference of civil authorities and responsibilities, freedom of movement for the Israelis, legal issues in criminal and civil fields, release of detainees, water shares, issues of security and public order and economic development.

Israeli-Palestinian negotiations, which commenced on 4 May 1994, continue until the present day so as to address other primary issues, including the status of Jerusalem, Palestinian refugees, Israeli settlements in the West Bank and Gaza Strip, security arrangements, borders, water and international relations.

On the legal level, the President of the Palestinian Authority issued his first decision on 20 May 1994 which provided that legislation and laws that were effective before 5 June 1967 in the West Bank and Gaza Strip would remain effective. Since the 1994 summer, the PA Council (the Executive Authority since 5 July 1994 and then Palestinian Legislative Council since 7 March 1996) has assumed the power to promulgate legislation which regulate the public life of the Palestinian society. The new legislation aims to regulate Palestinian life and establish a consolidation of laws between the West Bank and Gaza Strip. Until the 2000 summer, Palestinian new legislation amounted to approximately 48 laws as well as 200 other items of legislation. As a result, many military orders, which had been issued by the Israeli occupation in the West Bank and Gaza Strip, were annulled.

The Palestinian legislation is published in the Palestinian Official Gazette “Al Waqae’”. In addition, other issues not relating to legislation are published in the Official Gazette. On 20 November 1994, the first issue of the Palestinian Official Gazette was published. It should be noted, however, that the Palestinian new legislation basically focuses on administrative, regulatory, commercial and financial matters; issues pertaining to lands and services, including health and education; and political issues (e.g. elections,

transference of powers and authorities, etc.).

On the judicial level, the High Judicial Council was established in accordance with PA President's decision issued on 1 June 2000. The High Judicial Council composes a group of senior judges in the West Bank and Gaza Strip governorates. Courts are divided into regular, religious and special courts, in addition to the Supreme Court of Justice which examines administrative disputes.

A few new courts were also established in a number of Palestinian governorates. However, the regulation of courts remained as it was during previous periods. With respect to regular courts in the West Bank governorates, the Court of Appeals, which was established on a provisional basis in Ramallah, is deemed to be the highest regular court and its decisions are ethically binding to lower courts. Additionally, this court implements the legislation effective in the West Bank.

In the Gaza Strip governorates, the Supreme Court is the highest regular court and its decisions are deemed as judicial precedents (Case Law). The Supreme Court also enforces the legislation that is effective in Gaza. It should be noted that the difference arising between effective laws in the West Bank and Gaza Strip has begun to decrease due to the legislative consolidation. Such a difference will vanish in the future.