



## International and Local Visions of the Justice and Security Sector in the West Bank

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### Abstract

Considerable efforts by leading experts and funds from around the world are put into restructuring the West Bank justice and security sector (JSS). This is an effort done in a highly contested environment, with an ongoing Israeli occupation and weak local trust in the Palestine Authority (PA). This article analyzes the understandings by local Palestinian non-government organizations and international bodies aiding in building the JSS of what a legitimate development of the JSS is and should be, and whose voices become dominant in the discussions and implementations of it. The argument made is that Western legal knowledge, with its focus on security and technocratic solutions, have been dominant at the expense of core political solutions in regard to the Israeli occupation and the workings of the PA, and that it has downplayed the local context, local voices and their understandings of a legitimate JSS.

### Keywords

West Bank; justice and security sector; Israeli occupation; (post-)colonialism; the 'Other'; NGO; Palestine Authority.

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## Introduction

A justice and security sector (JSS)<sup>1</sup> is being reconstructed in the West Bank with the assistance of leading international experts and funds. This is happening within the context of an ongoing conflict and occupation, with Palestine not internationally recognized as an independent state, and where the Palestine Authority (PA) controls only about 18 per cent of the West Bank area. A recurring topic in research on peace- and state-building is the relationship between building states and building peace, and the possibilities for building state structures such as a JSS in war-torn societies experiencing ongoing conflict—what should come first: peace or a state (Call 2008). This is also a dilemma in the West Bank, leading to mistrust and disagreement on priorities between the international and local levels. This article investigates how mistrust, priorities and disagreements are verbalized by local Palestinian non-government organizations (NGOs) and international bodies aiding in building the JSS, with the aim of analyzing local and international visions of the West Bank JSS in a postcolonial legal perspective. What is understood as a legitimate development of the JSS, and whose voices become dominant in the discussions and its implementation? The argument made is that the doxa of Western legal knowledge, with its focus on security, technical advice and financial assistance, has been dominant at the expense of core political solutions in regard to the Israeli occupation and the workings of the PA, and that this has downplayed local voices, justice practices and understandings of a legitimate JSS.

Before discussing the various views on the development of the JSS, it is necessary to introduce the methodology and the immensely complex legal landscape of the West Bank, and the efforts which have been taken to develop the JSS and to situate it within postcolonial legal theory.

## Epistemology of the South

This study is based on two interviews with representatives of United States (US) and European Union (EU) bodies situated in the West Bank with mandates to assist in building the Palestinian JSS—the *United States Security Coordinator* for Israel and the Palestinian Authority (USSC) and the EU Coordinating Office for Palestinian Police Support (EUPOL COPPS)—and interviews with six local Palestinian NGOs, all of which were conducted between February and May 2014.<sup>2</sup> These NGOs work within JSS-affiliated areas of interest: women's rights, the rights of children, prisoner rights, human rights, victims of torture and restorative justice and conflict mediation. The interviewees spoke with me as organizational representatives. Still, it is unavoidable that they also represented their own position, and that an interview with a different person from the same organization might have produced different answers. The interviewed persons, nonetheless, stand in this article as representatives for their organizations, and are referred to by the type of organization they represent, something also agreed upon during the interviews. This material can neither represent the whole complexity of international efforts in developing the Palestinian security sector, nor the totality of local NGO perspectives. Its diversity, nevertheless, represents a sufficient part of civil society to meet the main scope of this article.

The analysis focuses on the discursive practices of the interviewees. Conceptually, the analysis may be placed within postcolonial legal studies and Southern Criminology (*cf.* Carrington, Hogg and Sozzo 2016), a Southern socio-legal study aiming to include 'histories and patterns of crime, justice and security outside the global north' (Carrington and Hogg 2017: 4) and its interaction with the North, and to offer 'challenges [to] the power imbalances which have privileged knowledge produced in the metropolitan centres of the Global North' (Carrington and Hogg 2017: 4).

Research involving people requires special care. This is especially important when the people involved are on the weaker side of power relations with great impact on their lives, such as is the case of the Palestinians living under occupation (AbdulMajeed and Sakka 2014). Protection of interviewee identity is vital; names, gender and interviewed members of NGOs are anonymized in both publication and data storage to protect participants from possible negative consequences

from participation in this study. The international bodies are not anonymized due to their official and public mission, along with the impossibility of doing so as they are unique in their positions. When going into a field with strong power relations, additional precautions must also be taken, and have been in this work. One needs to understand the involved persons in their context and to respect their dignity. AbdulMajeed and Sakka (2014) warn against research in Palestine not taking the context of structural restraints into account and being driven by theoretical concepts ill-fitted for understanding the context of occupation. The standard ethical guidelines of the Swedish Research Council's Expert Group on Ethics (2011) concerning research with human subjects are also followed.

### **The complex legal landscape of the West Bank**

Being under foreign rule for the past 500 years, Palestine has never had full authority of laws, a given territory or physical force. Each foreign power has implemented its own legislation. The Ottoman period ending in 1917 implemented Ottoman laws. When the British Mandate then took control of the area, British Mandate laws were implemented. In 1948, the West Bank was annexed by Jordan, and Gaza by Egypt, which implemented their own laws. In 1967, Israel occupied the West Bank and executed Israeli military orders (Khalidi et al. 2006).<sup>3</sup>

The Jordanian Penal Law of 1960 is now the most used in West Bank criminal cases but laws stemming from all the above foreign powers are still used as necessary supplements.<sup>4</sup> This includes Israeli military orders which are mostly used to fill gaps in other laws (Milhem and Salem 2011). Palestinian laws are in the making, such as the yet-to-be-implemented draft version of the Palestinian Penal Code, and an implemented national penal procedural law in use since 2001.

In addition to plurality of laws, there is also plurality of jurisdictions. Different jurisdictions apply depending on geographical area and formal identity. There is one jurisdiction for Palestinians with a West Bank ID, who can be sentenced in Palestinian courts. There is one jurisdiction for Palestinian Jerusalemites, and one for Palestinian Israelis who are subject to the authority of the Israeli civilian judiciary. Israeli citizens living in colonies in the West Bank also belong to Israeli civilian courts. Palestinian police have no authority over this population.

Geographical jurisdiction was divided in the Oslo II agreement of 1995, where the West Bank was split into A-, B- and C-areas, reflecting the three different administrative responsibilities for the region. The PA was assigned civilian and security control over the A-areas. Israel and the PA were to cooperate on governing B-areas, which are now under control of the Israeli military. C-areas were to be under full Israeli control. The A-areas consist of approximately 18 per cent of the West Bank, and the B-areas of about 21 per cent, leaving the C-areas at 61 per cent of the West Bank (Bouris 2014).

The Palestinians have created local legal avenues such as *Sulha* when no satisfactory official legal system was offered. Customary law is a vital part of the legal culture and practice in Palestine, and is at least as widespread as formal law in both prevalence and types of cases (Fares, Milhem and Khalidi 2006; Kelly 2005; Khalidi et al. 2006; Milhem and Salem 2011). This represents the main form of dispute resolution outside the state legal system, where the main goals are to 'reconcile the conflicting parties on the basis of customs and traditions of the society' and to prevent social chaos and retaliations, where community is prioritized over individuals and settlement of conflicts over rule of law (Fares, Milhem and Khalidi 2006: 21; Khalil 2010). The customary law consists of different forms of reconciliation procedures based not only on customs and traditions, common sense, religious law and tribal law but also on state law such as tribal adjudication or reconciliation committees, or even those conducted by legal departments of governorates<sup>5</sup> and security forces (Fares, Milhem and Khalidi 2006; Kelly 2006). Oft-noted positive sides of *Sulha* include possible fast results, restoration of community peace and ease of use. Negative factors include outcomes often relying on power relations between participants, its

procedural lack of female involvement, and a possible heavy economic burden (Khalidi et al. 2006). The important point in this context is that a locally based functioning justice system exists in Palestine, with its flaws and strengths. Furthermore, this system is vitally important due to lack of access to places and persons in Palestine for the Palestinian judiciary and police. Customary law is most widespread in areas where the PA does not have access (Khalidi et al. 2006).

### **Developing the West Bank justice and security sector**

In all peace agreements and talks between Palestine and Israel, security has been critical to the international community, only intensifying during and after the second intifada (Friedrich and Luethold 2007).<sup>6</sup> Security coordination between Palestine and Israel is a key feature of this and of the PA security doctrine, and is further 'a major source of tension between the Palestinian people and their leadership' (Tartir 2017: 15). The Roadmap for Peace, an agreement signed in 2003 by Israel, the PA and the quartet (US, EU, Russia, United Nations) setting out a strategy for a two-state solution, is the main agreement regarding contemporary security sector reform (SSR) efforts.<sup>7</sup> SSR is seen by donor states as central to the peace process.

Some core obstacles to Palestinian SSR are argued to be that externally-led processes are not being sensitive to local needs and demands, and that international bodies are treating Palestine as a country without recognizing it as such (Bouris and Reigeluth 2012). What a JSS is to be in Palestine is largely defined by external actors, where security concerns are dominant. Friedrich and Luethold (2007: 14), analyzing how SSR in Palestine carries different meanings to different actors, point out that:

For a majority of Palestinians, SSR is about the development of a fully-fledged functional security sector, which protects them against Israeli incursions and provides the basis for statehood and sovereignty. Israel, in turn, looks at Palestinian SSR as a means for enhancing her own security; accordingly, Israel expects SSR to produce a system of Palestinian policing, too weak to constitute a danger and strong enough to confront the 'infrastructure of terror'. The US, several European and some Arab states, very much in line with Israel, see SSR essentially as a process to revive the system of policing laid out in the *Oslo Agreements* ... What has been missing most so far is a genuinely Palestinian perspective on the current SSR process and its direction, achievements and challenges.<sup>8</sup>

A division between assistance to security and civilian control has been created, with American-led aid to security and EU-led aid to civilian control (Hussein 2007: 54). The USSC was established in 2005 to support, professionalize and consolidate the Palestinian security forces, meet US commitments under the Roadmap and assist the PA to meet its security obligation under the Roadmap (Zanotti 2010). All SSR assistance from the US is channeled through the USSC, which also coordinates the international security effort (Philpott 2015).

The EUPOL COPPS, established in 2006 as a civilian mission upon request from the PA (Bouris 2014; Bulut 2009),<sup>9</sup> was also formed to assist in the Roadmap implementation and to coordinate donor assistance to the civilian police and the rule of law (Bouris 2014). It consists of a police advisory section<sup>10</sup> and a rule of law section (Bouris 2014)<sup>11</sup>, with the latter staffed with police officers, magistrates and experts from EU Member States, Canada, Turkey and Norway. EUPOL COPPS works for 'civilian police primacy', implying that the civil police should be the main law enforcement agency in Palestine (EUPOL COPPS 2015).

That the USSC budget is manifoldly higher than that of EUPOL COPPS, which struggles to provide basic funding for their projects, has led to American dominance of SSR initiatives (Bouris 2014: 113). The international bodies are fully aware of, and navigate within, this. The interviewed USSC representative provides an example of this:

So for instance, the [Palestinian] police came to me and said, 'we are really short of riot equipment for the special police forces ... can you replace our equipment'? It is expensive, a million and a half dollars. And I said 'have you asked the Europeans', 'yes we have asked the Europeans, they can't afford to do it'. So I said, 'well we'll look at it'. So I went and saw my boss and I said 'can we get this', and he said 'yes we can do this, strategically it's a good move because it keeps the police in the forefront'. He said, 'but what do the Europeans say'. I said, 'the police said the Europeans are ok with it, so we are going to ask the Europeans themselves'. So I went to head of EUPOL COPPS and I said 'have you got any donors out there who would be prepared to get a million and a half dollars into the special police force, any one of the 28 member states or the three contributing states'. He said 'we'll ask them', so he asked all 31, but no one said yes. Once the 31 has said no, then under the European mandate, the mission the EUPOL COPPS has, they are allowed to look outside, which is us. So they decided to do it. And that is how we are trying to do business. We say to the Europeans, 'they want this, is it a priority, yes, ok, can you afford it, no, you want us to do it, yes, ok'. And that's the way we do business (USSC).

The development of the JSS can, in general, be said to have focused on curbing inner threats against Israeli security along with a technocratic reformation of the police and the judiciary, to the detriment of considering the security threats the Israeli occupation is posing to the Palestinian population and the traditional justice institutions operating in Palestine.

### **A (post-)colonial legal field**

Palestine finds itself in a peculiar situation between imperialism, colonization and postcolonialism. Shihade (2011) refers to it as double colonization; Palestine was colonized by Britain in 1917, then by Israel in 1948. Seen differently, colonization ended and a postcolonial era started when Israel declared its independence. The independence of Israel simultaneously indicated a post-British-colonial situation while the conquered Palestinian population remained in a colonial situation under Israel (Massad 2000). This complex form of colonialism has also been described as neo-colonial, signifying that colonialism is not something belonging to the past, while taking into account the economic, cultural and political implication of the colonial past (Shohat 1992: 104).

In settler-colonies, laws are commonly transported from colonizer homelands to the annexed territories, while preexisting law is ignored (Roy 2008). Also in this context, a peculiar and complex (post-)colony has evolved, as Israel has established one law, Israeli civil law, for the Israeli settlers in West Bank colonies, while Palestinians in the West Bank are subject to a different set of laws, Israeli military law. Existing laws have indeed been ignored but the indigenous population has not been subjected to the general law of the colonizers. Roy (2008) notes that when European colonizers implemented their own laws, with European values, 'the inherent superiority of these laws were (are) subsequently juxtaposed against the irrational and "barbaric" laws of the Other' (Roy 2008: 330). In the Palestinian setting, the colonizer's laws are not for the indigenous population; their Otherness, however, is exaggerated by implementing a particular set of laws. In Palestine, this is the construction of the Palestinian dangerous 'Other', an enemy combatant, to be ruled by military law.

The concept of the 'Other', introduced by Said (1978) as part of colonial powers' production of knowledge, describes the categorization and production of images of the non-European subject in relation to Western civilization (Roy 2008: 321), against the backdrop of imperialism and metropolitanism. These are images of "'civilized", "progressive" and "lawful" Europeans against "barbaric", "static" and "lawless" native populations' (Darian-Smith 2013: 253). Characterizing the colonial subject as the 'Other' has the effect of 'asserting the naturalness and primacy of the colonizing culture and world view' (Darian-Smith 2013: 253). Social scientists have produced

such theories and assumptions of universal relevance, although based on Northern metropolitan experiences (Aas 2012). Central assumptions within the JSS field include the concept of justice as a domestic project based on stable nation state systems with a high degree of internal peace, followed by an ignorance of state violence, colonialism, armed struggles and customary and local forms of law, justice and conflict resolution (Carrington, Hogg and Sozzo 2016). In metropolitan thinking, it is assumed that the rest of the world will follow the North's development pattern; the 'Others' will become like 'us' if helped a bit on the way: 'the global North designates the normative benchmark (the development destination) to which the rest of the world will naturally aspire' (Carrington, Hogg and Sozzo 2016: 5). In knowledge about crime and justice, Carrington and Hogg (2017) refer to three 'origin stories' of criminology, emanating from the Anglo-American world, stories which have set the foundation of, and normalized and universalized our beliefs and knowledge about, crime and justice. These are the stories of the individual criminal difference (the idea of the criminal as an atavist other), the modernization thesis (crime as an urban phenomenon), and classicism (the Hobbesian idea of exchanging your right to use violence for the protection from a strong state with monopoly of violence). As will be explored below, these assumptions are characteristic for international bodies' JSS efforts in the West Bank, and these same assumptions are contested by the local NGOs.

### **Creating the 'Other'**

What became clear during the interviews with the international bodies and from their mandates is their subtle message that the Palestinians do not know how justice and security is done and are in need of outside expert help. In order to achieve a well-functioning justice system, Palestinians must be trained and learn what a modern rational justice system looks like and how it is operated, assuming that they will naturally aspire to follow the North's development patterns, if helped on the way (*cf.* Carrington, Hogg and Sozzo 2016). Workshops and training of security and judicial personnel comprise one avenue to achieve the desired system. The international bodies see themselves as providers of the expertise that can help prevent the Palestinian society erupting into chaos, and doing this provisioning based on local needs and opinions. At the same time, this creates an image of the Palestinian as 'Other', incapable of administering justice and creating a peaceful society on her own. By doing this, the international bodies also create the converse image of themselves as the keepers of knowledge about a rational justice and security system.

The international bodies do not see any other option than to intervene in order to help the Palestinians build a justice system if they are to prevent chaos here and now: 'if the Palestinian Authority wouldn't provide security to their own people within in the A-areas in particular, the law of the gun would come back' (USSC). They do see constrictions on a well-functioning justice system. The occupation is one such constriction; underdevelopment of the Palestinian legal culture is seen as another. However, as anticipated by the USSC, the Palestinian National Security Forces (NSF) have the possibility of overcoming what they call a partly backward culture:

[The NSF] perform extremely well. They don't do everything as I would do it or as you would do it, but the thing is we don't live at home. First of all they are an Arab society, technically a third world society, and they are an occupied society, so they have pressures and cultural effects upon them that you and I don't have (USSC).

The USSC gains legitimacy by respecting things being done differently in Palestine than in their home countries and by acknowledging that Palestinians experienced pressures from both the occupation and cultural norms. While showing respect, this idea of difference as a reason why help is needed from the outside simultaneously contributes to strengthening the image of the 'Other'—peoples incapable of determining future directions on their own—and devaluing the 'Other's' norms and culture.

The Palestinian 'Other' is also a terrorist 'Other'. A conception among the international bodies is that their assistance helps confine the manifestation of the Palestinian terrorist. The USSC sees it in the best interest of the US to strengthen the security sector, because a weak security sector can foster terrorism. Their aim is to have a stable Fatah government that can keep at bay Hamas and other organizations labeled as terrorists: 'Serious concern that Hamas would snatch power, overthrow Fatah and that things would dissolve into chaos. There were serious concerns. People don't say it in quite those words, no, but that's the reality there. And the Americans in particular were concerned' (USSC).

As with the USSC, the EUPOL COPPS sees 'the law of the gun' and eruption into chaos as a threat: 'Without any justice institutions there is mayhem, and there is no recourse at all. So, it is a priority, at the moment, to give the Palestinian people some kind of recourse in these areas' (EUPOL COPPS). They send a message about the unruly Palestinian incapable of peace and justice, who risks regressing into chaos if not kept within a structured framework.

These attitudes follow patterns discussed above. The idea of providing security to the population within the A-areas (the urban areas in the West Bank) to avoid mayhem follows the origin story of crime as an urban phenomenon (*cf.* Carrington and Hogg 2017), while the notion of no recourse at all without proper justice institutions follows the Hobbesian origin story of exchanging individual violence for a strong state with monopoly on violence. The idea of the barbaric lawless native population (*cf.* Darian-Smith 2013) is obvious in such statements, as is the ignorance about already existing functioning conflict resolution systems (*cf.* Carrington, Hogg and Sozzo 2016) in the West Bank.

One could claim that 'the law of the gun' is not a risk for a failed future but, rather, a present ominous force in the West Bank, as a result of the occupation and with Israeli military law having total authority over the West Bank. This law of the gun is mirrored onto the Palestinian 'Other' as a risk factor if the justice systems are not properly built with external assistance. As such, this is also an ignorance of armed struggles (*cf.* Carrington, Hogg and Sozzo 2016) taking place in Palestine, both the Israeli armed occupation and the armed resistance against it, which is deciphered into security on one side and terrorism on the other.

### **Non-political politics**

'The law of the gun' created by occupation is something the international bodies do not relate to in their work. The EUPOL COPPS are working with practical matters: how to make something work—and make it work better—within the limits set by politics. They clearly state that they do not have a political mandate and have no relations to or communication with Israel. Even if they see the occupation as obstructing their work, there is nothing they can do about it and they are not in a position to address it. They have a purely depoliticized technocratic mandate. Unlike the EUPOL COPPS, the USSC cooperates extensively with Israel, and the security of Israel is both a priority in their work and also part of their mandate:

As part of the USSC mandate, one of the things we never do is, we never do anything which could harm the security of the state of Israel. That is an absolute given. That is American policy. So everything we do is with the understanding of the state of Israel, and the knowledge of the state of Israel (USSC).

The USSC experiences criticism from some NGOs about the security forces because they are seen as cooperating with Israel. The USSC responds to this criticism by saying that these NGOs do not understand that the NSF is really there to protect the Palestinians, even if it is at the cost of cooperating with Israel.

The EUPOL COPPS fully understands the frustration of the NGOs but, when criticized by NGOs for not addressing problems with the occupation, they think the NGOs are missing the point, as they are not able to go outside their mandate:

That is not our mandate, as frustrating it is for people on the ground when they see the realities, we have no voice to discuss the political situation or the occupation, we highlight it as a problem for access to justice, but we are mandated to deal with what, you know, reality on the ground ... we don't have a mandate to work with the Israeli side (EUPOL COPPS).

The EUPOL COPPS are unable to be involved in any sort of politics. Even though the occupation is impacting their work, they have to try to pretend it is not there: 'The occupation is a shadow over everything. As much as we prepare to try to ignore it, it is the elephant in the room' (EUPOL COPPS).

Studies show that trying to build state structures with a non-political mandate is unlikely to bear fruits: 'statebuilding is not simply a technocratic exercise in capacity building, but rather one that is profoundly embedded in difficult, controversial politics' (Brynen 2008: 218). The international bodies depoliticize contentious issues into questions of technicalities and, hence, neutralize their own highly political involvement in a highly political field, the JSS. The postcolonial nature of this effort—apparent in the rebuilding the justice sector as a domestic project, where an existing state is taken for granted even though this state is non-existent; in its ignorance of state violence, colonization and ongoing armed struggles; and in its universalized ideas about what a JSS is and how it should operate (*cf.* Carrington, Hogg and Sozzo 2016)—is thereby neutralized as mere technical assistance or as a general question of security.

### **Who are the experts?**

The NGOs have a clear political address for their problems: the occupation. One cannot expect the JSS to work properly before an end to the occupation. Thus, the international bodies' efforts to improve the JSS by training Palestinians are aiming at the wrong target. Local NGOs are frustrated about where efforts are directed. They are treated as the problem in need of training—as the perpetrator, the unruly, dangerous or terrorist 'Other'—while experiencing themselves as victims of a brutal occupation: 'They already know that we are not the abusers of human rights to be taught human rights principles. We are the victims of human rights abuse' (anti-torture NGO). This is echoed in scholarly criticism of Northern dominant knowledge production, calling for a closer look at geopolitical context and the situatedness of knowledge: 'Who and where is the "subject at risk" and who and where is the "risky subject"?' (Aas 2012: 12).

This seems to be contested in the restructuring of the JSS, with Palestinians constructed as the risky subject. According to the NGOs, they do not have a problem requiring training; it is the Israelis that have to change: 'maybe we should do more workshops for the occupation, maybe they can stop this behavior, and maybe we can train them' (prisoner NGO). The international bodies should work on changing Israeli conduct, where the main problem is situated, rather than the Palestinian: 'The Palestinians are too weak to force anything on the Israelis. So our hope is that the international community, the Europeans or the Americans can practice some pressure on the Israelis to stop torture' (anti-torture NGO).

While the international bodies highlight technical police and military competencies, the NGOs emphasize local knowledge. Not only do some of the NGOs think that the local NGOs are best suited to conduct training, they also mistrust the intentions of international bodies believed to be 'only following their own agendas and are out of touch with what is needed on the ground, or they don't care because they have their own agenda' (children's rights NGO). Training is seen as a hypocrisy that various parts of the security sector participate in only because it comes with

money: 'What happens with us here is that a lot of these police men go to these European funded human rights trainings just because the Europeans give them the money' (human rights (HR) NGO). The human rights NGO thinks that trainings should be conducted by Palestinians or others more credible and knowledgeable of the local context:

... most of the works of the trainers I have seen done by international actors have been useless. When it is done by the EU and so forth it is just not done correctly. And therefor I don't think it is useful, I think it is a waste of funding. But that done by Palestinians is different, or when they are done by other Arabs, people from other Arab countries instead (HR NGO).

From the position of the international bodies, the security sector should be trained by people experienced within the police and military sectors; Palestinian civil society lacks the required knowledge to conduct this job. There is a belief that NGO competence is of little worth when it comes to training employees of the security sector, while external expertise in the field of policing and security is valuable. In the opinion of the USSC, only personnel with police or military experience should train the security forces, whereas the NGOs should work on other social problems:

... they [NGOs] are not the right people to do it. And the reason that they are not the right people to do it is because, not because they are not good in dealing with women and children and human rights, but you need to train police officers and military with a police structured and organized mentality. You have to have a policing mentality to deliver that sort of training and that sort of skill set, and most of the people in the NGOs they don't have that. They are really good well-meaning people, but they can't relate to the people that they are dealing with. And so their training immediately is 75% less effective. Before they even walk into the door through that training room their training is 75% ineffective, because they don't come from the right background or mindset or mentality. But if you get police officers, or soldiers, or people with those background, even if they are not presently a soldier, delivering the training that 75% isn't lost when you walk in the door (USSC).

The worth of NGO competence and knowledge is minimized to that of well-meaning people that can deal with the soft tasks of women and children, while the international bodies can take care of the hard responsibilities of work with police and military.

The international bodies are firm when asserting that they are not imposing anything on their Palestinian counterparts or society. Still, what they offer in cooperation is Western legal knowledge, experience, expertise and doxa. Even if there might be good intentions and emphasis on building local ownership to the JSS, their assistance comes with a blindness to the worth of local and Arabic expertise, justice structures and traditions of conflict-resolution, and a firm belief in the universal relevance of Anglo-American expertise and experience within the police and military sector.

### **Security vs legitimacy**

In order for a legal system to be considered just by its population, it needs to be experienced as legitimate: 'Law has to be a human law. Law has to be justice, has to have norms, has to have morals, has to have values. That's why I am thinking, people who are working in law has to be aware, not to say "oh, this is legal". What legal, legal according to what?' (Restorative Justice NGO). Experienced legitimacy has consequences for how the NGOs see the laws, how they are enforced, and how the international bodies assist in building their structures. The justice sector is not considered legitimate, as illustrated by this NGO's account:

And if we want to analyze how many of those laws came in place, the goal behind those laws was to subjugate the Palestinian people. So it was never a legal system with the goal of ensuring that the Palestinian people will have dignity, will have freedom of movement or freedom of opinion, or economic rights. The whole way the structure was put on Palestinians was that it was imposed (HR NGO).

This is primarily because they do not see the PA and its institutions as legitimate representatives of the Palestinian people, and because they experience security, particularly Israeli security, coming before justice for Palestinians. According to Tartir (2017), many Palestinians view the security coordination with Israel as a national betrayal, something that immensely impacts the legitimacy of the PA and its security forces. A 2014 poll showed that 80 per cent of West Bank residents oppose security coordination with Israel (Tartir 2017: 16). According to Brynen (2008: 228), this relationship between protection of Israeli security interests on the one hand and domestic stability and trust in the PA on the other, has essentially been a dilemma since the Oslo Accords. This also implies a balancing act for operations of the international bodies.

The international bodies legitimize their work through their close cooperation with PA officials, such as ministers and chiefs of police and security forces. Among the NGOs, however, trust in the PA and its organizations is severely weak. They are of the opinion that the PA is ruling by proxy for Israel. Going back to Fanon (1986), this is a recurring topic in colonial and postcolonial studies, where one observes local elites, who do not necessarily enjoy trust and legitimacy by the population, cooperate with and imitate colonial powers and international bodies (Roy 2008; Spivak 1988).

The Palestinian security sector depends on international funding, creating strong incentives for the PA to cooperate with international bodies. The EUPOL COPPS is of the opinion that they avoid this problem by anchoring assistance in local reality and wishes in order to achieve local ownership:

... it takes time to listening to them, to see what they want. Something is ridiculous. I mean we just can't accommodate, you know. Other things are very legitimate. And to give them what they need, and at the same time provide technical advice on its practices. Certainly not pushing the European model at all. That is providing European expertise of the European member states to help them achieve what they want. But obtaining the counterpart its ownership is vital. I've worked with the minister of justice for over two years now, and we meet the minister very regularly. That's because we built a very strong trust with him. And he knows that we provide him with what he wants, we are not imposing. It just doesn't work. One of our key approaches is consider and ensuring that they want it and they need it. That it matches for, that it fits the situation on the ground rather than what works in Norway or other countries (EUPOL COPPS).

It is, however, their counterpart, the PA's, version of reality and wishes that causes a legitimacy problem as seen from the perspective of local NGOs:

First of all, the ministry of justice doesn't know what is needed, and second there is also a competition between the various ministries. There is a competition between the ministry of justice and the ministry of social affairs which is responsible for juvenile justice. And also many of them are incompetent (children's rights NGO).

The NGOs give several reasons as to why the PA and the security forces are not seen as legitimate: they are not perceived to be representing the Palestinian people;<sup>12</sup> they act in a repressive manner; and they cooperate with Israel on security issues. This is something that reflects on the

legitimacy of the international bodies: 'We did a demonstration in front of the European police. We closed this office because we believe that they cooperate, they are involved in the violence used by the PA, by the police and by the others' (Prisoner NGO). Some think that the international bodies are pushing the PA organizations into cooperating with Israel: 'they [PA] need funding from the EU and the US, but the US and the EU are not willing to fund the Palestinian security forces unless the Palestinian security forces cooperate with Israel to maintain Israel's security' (HR NGO). As a result, the PA is seen as a continuation of the occupation, and Israel as relieved from the human rights responsibilities of an occupying force. This view is expressed by the Restorative Justice NGO: 'Everyone thinks the Palestinian Authority is just doing work for the Israelis. So why do they want to trust it. It is but from the occupation' (Restorative Justice NGO). The prisoner NGO similarly references a continuation of history:

In the early 80s, the Israelis created collaborators to represent villages, and tried to destroy the legitimacy of the PLO. These people used to have guns and a lot of power, and use violence, beat the people, shoot them, humiliate them ... The idea behind this, this idea in the Israeli mind didn't disappear, this is where the idea of the PA came, to control the society without political demands and give security for Israel, and this is basically what the Palestinian Authority is doing today (prisoner NGO).

Some NGOs even view the PA, with its police and security forces, as a direct threat. The human rights NGO believes the security forces regard the NGOs as enemies, where people get arrested for protesting, and incriminating rumors are spread by security forces. Tartir (2017: 8) goes further, arguing that 'the overarching goal of the SSR ... was to criminalize resistance against the Israeli occupation and to silence opposition to Israel's colonial dominance'. Some NGOs think that the international bodies put pressure on the PA in order to maintain its security strength so it can curb and control the Palestinian population to prevent disorder, at the expense of legitimacy. The human rights NGO expresses distrust: 'There is pressure from the Americans. The way the system works is that the Palestinian Authority needs to maintain its military, or its security strength, so it can maintain control over the Palestinian population' (HR NGO). The prisoner NGO tells about experiences of maltreatment and oppression of rights by the security forces. In their view, if human rights defenders are acting against PA interests, they are characterized and treated as terrorists. They believe the security forces have adopted Israeli military strategies and behaviors.

The human rights NGO is of the opinion that nothing has really changed in regard to the JSS since the Oslo Accords, and that this is a strategic choice from international bodies and aid providers:

A lot of the funding and aid that comes into Palestine doesn't have the goal of achieving change for the better; it has the goal of sustaining the status quo. And that is two different things. So when the EU told the way they deal with the Palestinian police and so forth it is simply to sustain the status quo. It is not to change it (HR NGO).

A question posed by NGOs is to whose security is the international effort aimed: Palestinian, Israeli, regional or international security?

A security-focused JSS might lead to a militarization of social control, evident in Palestine where close to half the male population has experienced imprisonment in Israeli military prisons. This has such an impact on Palestinian society that the PA has established the Commission of Detainees and Ex-Detainees Affairs (Aas 2012) in order to provide assistance to the imprisoned and their families.<sup>13</sup> Following a Hobbesian notion, Palestinians are expected to surrender their rights to use violence in order to receive peace, order and state protection (*cf.* Carrington and Hogg 2017), while being in a position where there is not an independent state able to offer this. This notion of exchanges that has been central in criminology and international relations has

evolved, however, into the exchange of crime, freedom, democracy and equality for security; law and order has been exchanged for security (Bigo 2016). This Northern-centered idea of the strong state maintaining social order and security bypasses realities in the global South, such as in Palestine where social order and conflict resolution has been in the hands of local communities for centuries, and the security offered is not adapted to the local context of occupation, of a state with severely limited authority and legitimacy, of already existing mechanisms of social control and conflict resolution, and where central questions of the relation between security and insecurity remain unaddressed.

### **Concluding notes**

In restructuring the West Bank JSS, Western legal knowledge focusing on security and technical assistance, where Palestinians are to learn how to operate a rational justice system, dominates at the expense of political solutions in regard to the occupation and the PA. Local voices, here represented by local NGOs, stress the crucial importance of fundamental changes in order to achieve a functional JSS; the occupation has to end and the authorities in Palestine have to be legitimate representatives of the population. Two main points in this article are, first, that the international bodies ignore the occupation, although centrally important to the Palestinians, and, second, that the international bodies ignore the extant customary justice systems important to everyday justice for Palestinians. The international bodies thus ignore both central knowledge and needs among Palestinians as presented by the local NGOs.

The points raised both confirm earlier studies on international assistance to the Palestinian JSS and track postcolonial studies in several ways. In line with arguments from Southern Criminology, the assumption behind the development of the West Bank JSS is that it is for a stable nation state system with a high degree of internal peace, ignoring state violence (PA), colonialism (Israel) and armed struggles (resistance against the occupation as crime or terrorism), and further ignoring customary and local forms of law, justice and conflict resolution (*cf.* Carrington, Hogg and Sozzo 2016). The international bodies' subtext involves a claim to universality, where Northern experience and expertise within the field become universally suitable standards as part of a linear progression toward development. The international bodies' focus on security is not experienced by the NGOs as bringing security to Palestinians, and the forms of security offered are not seen as legitimate. Not only do the international bodies offer money, providing an advantage in decision-making processes, but they also come with an experienced advantage in knowledge about their own capabilities and those of the Palestinians. There are, however, differences between the two international bodies: the USSC is operating on the basis of an assumption that the Palestinian 'Other' would be lawless without the civilizing influence of the international bodies; whereas the EUPOL COPPS sees its mission as merely technocratic, bringing knowledge to the unknowledgeable, denying the political implications of their work.

Brynen (2008: 241) points out that earlier failures of peace- and state-building in Palestine have not been due to inadequate technical assistance but rather to the failure of handling the core problems of PA and Israeli policies. As well-intentioned as the international bodies might be, they are still part of reproducing an image of the Palestinian 'Other'. Palestinians are portrayed as the colonial 'Other' with a backward legal culture, who do not know justice besides 'the law of the gun'. The Palestinians, meanwhile, see themselves as living in a situation where the law of the gun in the occupation's hands is the most pressing issue of everyday life and the development of a functioning justice and security sector.

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- <sup>1</sup> The justice and security sector is here understood as the Palestinian Civil Police, the National Security Forces and the judiciary.
- <sup>2</sup> This article is part of a larger project focusing on the Israeli occupation's impact on, and interaction with, the rule of law and plural legal orders in the West Bank. The total material consists of 34 interviews with about 50 persons, along with three months of court room observations in the West Bank. Except for interviews with international bodies operating in the West Bank, the interviews are conducted with Palestinians living in the West Bank and East Jerusalem, such as police officers, judges, prison workers, NGO staff, ex-prisoners, social, youth, culture and community workers, mukhtars and lawyers.
- <sup>3</sup> Milhem and Salem (2011) estimate that there are about 2,500 military orders in the West Bank, covering most fields of law, such as commercial, judicial and criminal law. Enactment of new orders is still ongoing, also in spheres and responsibility areas of the Palestine Authority.
- <sup>4</sup> Palestinian Presidential decree no. 1/1994 (Official Gazette of the Palestinian National Authority 1994) states that laws, regulations and orders in force before 5 June 1967 shall continue to apply until unified in one legal framework (Khalidi et al. 2006).
- <sup>5</sup> According to the 1954 Jordanian Law to Prohibit Crimes (Jordan Official Gazette 1954), local governors have the power to prevent crime by measures such as dispute arbitration, arrest and the imposition of curfews on criminal suspects (Kelly 2006).
- <sup>6</sup> The second intifada (Palestinian uprising) started in 2,000, sparked by Prime Minister-elect Ariel Sharon's intrusion at Jerusalem's Temple Mount together with an armed entourage of more than 1,000 Israeli police officers. The intifada ended in 2006 with almost 6,000 Palestinians and around 1,000 Israelis killed. The structural backdrop of the second intifada was the failed peace talks, continuing occupation, Palestinian economic crisis, expanding Israeli settlements, severe restrictions of movement and daily humiliation of Palestinians (Gordon 2008).
- <sup>7</sup> The text of the agreement in the Roadmap for Peace is available at <http://www.un.org/News/dh/mideast/roadmap122002.pdf> (accessed 21 January 2018).
- <sup>8</sup> Even though this is an old account of the SSR situation in Palestine, based on my material discussed later, it is still valid to a large degree.
- <sup>9</sup> The legal basis for EUPOL COPPS is the Council Joint Action 2005/797/CFSP of 14 November 2005 (Official Journal of the European Communities 2005).
- <sup>10</sup> The police advisory section comprises field advisors and specialist advisors. Field advisors visit police stations, conduct surveys on capabilities and needs, audit Palestinian Civil Police (PCP) personnel, facilities and equipment, deliver basic office equipment and handcuffs and provide training on their use. The specialist advisors train the PCP in expertise areas such as criminal investigation, crime scene management, public order, command and control, human resources management, police administration, communication and training development (EUPOL COPPS n.d.).
- <sup>11</sup> The rule of law section addresses the prosecution services, courts, High Judicial Council, penitentiary, Ministry of Justice, the Bar Association, NGOs and the law faculties (Bouris 2014). The aim of the rule of law section is to 'support the development of the Civilian Police Law and guidelines, the prison sector, the judicial police, and work related to domestic violence and honour crimes by drawing in experts from new areas, including prosecution, defence counsel, criminal justice, court administration, human rights and policy drafting' (Bulut 2009: 292).
- <sup>12</sup> The last election was in 2006, and it was Hamas which won that election, not Fatah, the party now ruling the West Bank.
- <sup>13</sup> Until 2014, the commission was a Ministry under the Palestine Authority when President Mahmood Abbas issued a presidential decree that changed the Ministry to a commission to be placed directly under the Palestinian Liberation Organization (PLO) (Toameh 2014).

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