(In)dependent lives? International lawyers and the politics of state-building within the Palestinian advocacy field

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This article transposes Bourdieu’s description of a ‘juridical field’ to the cognate notion of an ‘advocacy field’, which I examine through the case of international lawyers working in Palestine. The discussion combines structural accounts of neoliberal state-building with individual narratives of advocates in Palestine to present a study on the dynamic nature of international legal discourse as grounded practice.

International law structures the way that states are made and unmade. This is ever more the case for people in the Global South, caught in a dense web of governance practices that rely heavily on a range of international legal vocabularies about state (in)capacity and (ir)responsibility. As expert speakers of the law, international lawyers are central actors in perpetuating these dynamic practices of in/dependent statehood. The case of Palestine is no exception. In this article, I develop the notion of the ‘advocacy field’, as modified from Bourdieu’s ‘juridical field’, to account for the way in which those individuals speaking the discourse of international law in the quest for (Palestinian) liberation and statehood must appeal to a range of local and international constiuencies. In the advocacy field, the legitimating function of the state cannot be presupposed. Furthermore, since statehood in the Global South is constrained by neoliberal state-building agendas of foreign donors, the advocacy field must also account for the contingent and fractured nature of contemporary governance, where successful advocacy must address a variety of often-contradictory constituencies simultaneously.

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International lawyers operating in the Palestinian advocacy field are particularly challenged by a population that suspects international law’s promise. Thus, for almost 50 years under Israeli occupation, this case has epitomised Martti Koskenniemi’s image of an international law oscillating between apology and utopia. Advocates in the field have sustained hope in Palestinian self-determination while simultaneously witnessing the legalisation and legitimisation of Israel’s occupation of historic Palestine. This is especially true of international humanitarian law (IHL), whose practical effect has been to constrain, and yet enable, Israeli de facto rule over Palestine through its military occupation. In addition to Israeli control, the 1993 Oslo Accords ushered in a vast array of local and transnational governance practices that no longer reflected the ‘bright line-rules’ of sovereignty/occupation. Yet, rather than reading this Oslo shift as simply a turn away from law, perhaps it is best to understand the interdependent evolution of the Oslo regime and the Palestinian advocacy field as symptomatic of a delinking of international law and traditional notions of sovereignty.

In spite of Palestine’s contingent statehood, the possibility of becoming a Member State of the United Nations (UN) galvanised many actors, within the public sector as well as civil society, to support lobbying efforts to prove Palestinian ‘stateness’. Accordingly, in late 2011, I carried out a select ethnographic study of Palestinian lawyers, legal academics, human rights activists and law students to understand their opinions on the Palestinian Authority’s (PA) UN membership bid in September 2011. Through a series of semi-structured interviews, individuals discussed their reactions to the UN moment. They also related the personal and professional place of international law in their lives and it is this topic that forms the focus of this article. My research sought to understand the motivations behind such work, characterisations of the place of international law in Palestine as well as my participants’ backgrounds. A range of reactions indicated that postures were not simply the result of different

3 Koskenniemi (2008).
professional roles—such as the contrast between Non-Governmental Organisation (NGO) employee, human rights activist or academic—but emerged as part of a larger set of personalised tensions linked to wider governance dynamics, each refracted in the advocacy field.

The article argues that juxtaposing individual narratives about the formation of legal professional sensibilities with broader debates about the changing role of law in neoliberal ‘state-building’ is a useful approach in demonstrating the crucial role that international law can play as a language of both domination and emancipation. In particular, the case of Palestine as a permanent quasi-state highlights new forms of Third World statehood that are being shaped through an array of local and transnational neoliberal governance practices. Classic appeals to self-determination are increasingly being silenced by new imaginaries of a Palestinian polity existing in a complex legal configuration that cannot be understood in terms of either dependence or independence. Accordingly, this article asks: what role have Palestinian advocates played in this reconfiguration of Palestinian (quasi)statehood, and what can the Palestinian case teach us about the nature of state-building in conflict-affected states in the Global South?

The following discussion seeks to explore these concerns by tracing the birth and evolution of the Palestinian advocacy field. First, I survey recent scholarship on the transnational application of the advocacy field. Secondly, focusing on the period between the outbreak of the first intifada in 1987 and the present, I explore how the advocacy field has emerged and matured in the Palestinian case. In the final section, I turn to the reflections of a number of individuals whom I interviewed about the role played by international legal norms in shaping strategies of state-building and (in)dependence. Ultimately, this article seeks to make three contributions. First, theoretically, to advance the utility of the ‘advocacy field’ as an analytical tool for understanding the role of legal professionals in highly-precarious states-in-formation. Secondly, vis-à-vis the discipline of international law, to offer an account of the Palestinian experience of neoliberal state-building that dislodges sovereignty-based frameworks of classical international law. Thirdly, in relation to methodology, to show how these contributions are enriched by the integration of empirical material collected during fieldwork.

THE ‘ADVOCACY FIELD’: THEORISING THE PRACTICE AND PROFESSIONAL SENSIBILITIES OF INTERNATIONAL LAWYERS DOMESTICALLY

Successful legal advocates are those individuals best able to negotiate legitimately the interplay between technical expertise and wider social forces. We will see in the
following sections how law, particularly in its international register, has come to be central to the governance of Palestine. Here, I seek to develop a framework for understanding the role that international lawyers play in contemporary global governance. I begin by considering Bourdieu’s notion of the ‘juridical field’ before turning to more recent contributions that have sought to transnationalise his insights. The section ends with a modified version of these approaches through the concept of the ‘advocacy field’, which we can then apply to the case of Palestine.

Bourdieu’s concept of the juridical field builds on his extensive sociological theorising about social power within a variety of ‘fields’ (a term to which he gave precise definition). Within a given ‘field’, an individual’s power will always be the product of her relative position towards others situated in the field, based on the amount of capital she can muster whose currency ‘does not exist and function but in relation to [the] field’. According to Madsen, it is useful to think of the field as ‘a place of struggle between different agents, a sort of marketplace where different positions are held due to the amount of capital (economic, cultural, social, symbolic, etc.) that agents possess . . . . This struggle or conflict is what gives the field its dynamism but also maintains it as a field’. Further, for Bourdieu:

The specific logic [of a field] is determined by two factors: on the one hand, by the specific power relations which give it its structure and which order the competitive struggles (or, more precisely, the conflicts over competence) that occur within it; and on the other hand, by the internal logic . . . which constantly constrains the range of possible actions, and, thereby, limits the realm of . . . solutions.7

Within the specific logic of the juridical field, according to Bourdieu, conflict occurs over the legitimate interpretation of the law.8 The juridical field encompasses a number of specific legal fields, which tend to reflect more discrete practice areas, such as, to take a random example, international commercial arbitration.9 There is a two-way relationship between a relatively autonomous specific legal field and other social fields as a legal field’s power

rests on the role it plays in society at large.\textsuperscript{10} Lawyers within a particular legal field can therefore bring other forms of capital to operate within the field, but these must be ‘translated’ in some form if they are to function as currency. According to Dezalay and Madsen, ‘a field constructs its own particular symbolic economy in terms of the valorisation of specific combinations and forms of capital’.\textsuperscript{11} For example, although material forms of power, such as economic and political capital can be useful in the juridical field, the field’s particularity is premised on its symbolic function of converting direct conflicts into juridical ones.\textsuperscript{12} Even more than conversion or translation, however, law actually constitutes the social world as its symbolic force ‘creates the things named, and creates social groups in particular’.\textsuperscript{13} Thus, lawyers are constrained in how they should operate by the logic of the field and are products of their particular society in its recognition of their status, but they are also powerful agents in supporting and sometimes subverting the status quo.

In either her conservative or radical role, a lawyer operating in a particular juridical field who seeks to embody the symbolic function of law needs to position herself as removed from arbitrary violence. Bourdieu stipulates that:

\begin{quote}
To join the game, to agree to play the game, to accept the law for the resolution of the conflict, is tacitly to adopt a mode of expression and discussion implying the renunciation of physical violence and of elementary forms of symbolic violence, such as insults. It is above all to recognize the specific requirements of the juridical construction of the issue.\textsuperscript{14}
\end{quote}

Of course, this does not mean that lawyers themselves are removed from a society’s ordinary, everyday violence. On the contrary, the symbolic power of law stems from its ability to mask the bluntest forms of domination.\textsuperscript{15} The prison guard and the legal theorist as part of the legal system are all agents in a society’s ‘chain of legitimation that removes acts from the category of arbitrary violence.’\textsuperscript{16} Bourdieu developed much of his understanding through an examination of the French state and its jurists, concluding that the emerging juridical


\textsuperscript{11} Dezalay & Madsen (2012) 441.

\textsuperscript{12} Bourdieu (1987) 831.

\textsuperscript{13} Ibid 836.

\textsuperscript{14} Ibid 831.

\textsuperscript{15} On this point, see especially R Cover, ‘Violence and the Word’ 95 \textit{Yale Law Journal} (1986) 1601.

\textsuperscript{16} Bourdieu (1987) 824 (emphasis in the original).
field was the product of jurists seizing ‘a powerful position in the contemporary society as both insiders and outsiders to the State’. On his analysis, ‘[a]s a way of making itself both indispensable and self-sustainable, the modern law faculty invested heavily in a formalisation of law, which conversely helped conceal the fact that its main function was to be the professional (and social) training ground for the State elite.’ Such an understanding of the relationship between jurists and the state will only resonate so far in the context of weaker, states-in-formation, such as Palestine, pointing to the need for a modified schema as discussed later in this section.

Bourdieu focused on lawyers tasked with sustaining domestic social relations. But might his insights help us to understand the role of international lawyers, particularly vis-à-vis their relationship with the state? This question has been of singular interest for a number of sociologists considering the transnationalisation or globalisation of legal regulations, especially in relation to economic law and human rights law. Much of this work takes up Bourdieu’s insights explicitly and seeks to show how we can understand a variety of transnational legal developments through his theorising of the juridical field. These scholars emphasise the particular socialising effect of the state in contributing to the expertise required for operating within transnational legal fields. In so doing, they are perhaps countering a recent turn in the literature to ‘epistemic communities’ and, more specifically, ‘transnational advocacy networks’. Thus, instead of studying the ‘transnational level’ in isolation, Dezalay and Garth’s work (especially in relation to lawyers from

17 Madsen (2011) 269.
21 In particular, see ME Keck & K Sikkink, Activists Beyond Borders: Advocacy Networks in International Politics (Cornell UP, 1998).
the US) demonstrates the need to study *interactions* between national and transnational governance elites. What marks this work out is a more sociologically-oriented sensibility, in its recognition that an appraisal of apparent norm consensus at the transnational level alone is inadequate. These scholars call for far greater attention to the role of ‘lawyer-brokers’ or ‘legal entrepreneurs’ in building and legitimating markets for their expertise. They also show how lawyers (as well as other experts) increasingly move across a range of highly fluid and contingent transnational fields, such as the conflict ‘field’ or the humanitarian field.

The rise of more aggressive, interventionist human rights discourses and practices is particularly emphasised by this recent transnational sociological scholarship. A number of voices stress the significant shift that occurred around the end of the Cold War in allowing for a range of new techniques of governance, through human rights in particular, which were increasingly couched in professional, expert registers, but were less concerned with being perceived as neutral. The professionals promoting this register of governance were part of the transnational elite able to converse in a context that witnessed...

24 For example, according to Levi and Hagan, ‘[r]ather than regarding normative consensus as the explanation for legal globalisation, this research instead asks how any apparent normative consensus comes to be presented as such—and, in so doing, crosses geographic and institutional boundaries to study internationalisation as part of a broad process in which local competition for power and prestige are played out’. R Levi & J Hagan, ‘Lawyers, Humanitarian Emergencies and the Politics of Large Numbers’, in Dezalay & Garth (eds) (2012) 13, 14. In a similar vein, but writing as an international lawyer, see U Özsü, ‘International Legal Fields’ *5 Humanity* (2014) 277, 279.
the simultaneous proliferation and growing juridification of internal conflict. In seeking to understand this transformation, the very notion of an advocacy field brings together structural and agential accounts about emergent neo-liberal governance discourses that shape and have been shaped by transnational legal elites since the end of the Cold War. According to David Harvey, neoliberalism is:

>a theory of political economic practices proposing that human well-being can best be advanced by the maximization of entrepreneurial freedoms within an institutional framework characterized by private property rights, individual liberty, unencumbered markets, and free trade. The role of the state is to create and preserve an institutional framework appropriate to such practices.\(^\text{30}\)

Such assumptions first informed reforms in Chile in the 1970s before shifting back to the core North Atlantic states of Britain and the US in the 1980s.\(^\text{31}\) By the 1990s, neoliberalism had evolved into the ‘Washington Consensus’,\(^\text{32}\) which should be understood not as a blueprint for post-Cold War regulation, but rather as a ‘hegemonic mode of discourse’\(^\text{33}\) whose power lies in its ‘self-actualizing quality’, seeking to remake the world in its own image.\(^\text{34}\) Although both liberalism and neoliberalism are informed by an idealised conception of individualism and the market, classical liberalism stresses freedom from state interference, whereas neoliberalism favours overt interventions by state and non-state actors in the realisation of these goals, especially in the Global South.\(^\text{35}\) Thus, for James Ferguson and Akhil Gupta:

>\[\text{this is not a matter of less government, as the usual ideological formulations would have it. Rather, it indicates a new modality of government, which works by creating mechanisms that work ‘all by}\]


\(^{31}\)Ibid 26.

\(^{32}\)Ibid 27.

\(^{33}\)Ibid 23.


themselves’ to bring about governmental results through the devolution of risk onto the ‘enterprise’ or the individual ... and the ‘responsibilization’ of subjects who are increasingly ‘empowered’ to discipline themselves.\(^{36}\)

For David Chandler, it is the term ‘governance’ rather than ‘government’ that captures this trend. Governance is ‘based on the assumption that the political process in non-western states can be externally influenced through the promotion of institutional changes introduced at the state level and pays less attention to how societal pressures and demands are constitutive of stable and legitimate institutional mechanisms’.\(^{37}\) For Ferguson and Gupta, it is best to speak of ‘transnational governmentality’. Such an idea necessarily ‘calls into question the very distinction insisted on by the term nongovernmental organization, emphasizing instead the similarities of technologies of government across domains’.\(^{38}\) Although it is important to be able to identify the metaregulative global scale of neoliberalism,\(^{39}\) Aihwa Ong argues that we must also note the way this ‘migratory set of practices’ are adapted and transformed within specific settings. Thus, instead ‘of assuming that certain environments are more or less amenable to neoliberal rationality’, Ong ‘stresses reflexivity in the interplay between global technology and situated practices’.\(^{40}\)

Any account of neoliberal transnational governmentality must, therefore, be able to capture the dynamic between structure and agent through a rich account of the actors involved, for example, in the practice of ‘state-building’. More specifically, appreciating the role of agents operating in the emerging transnational human rights field requires sensitivity to local and international factors in order to account for why certain types of expertise have come to predominate and how this reinforces broader global governance trends. Scholarship is often divided in its treatment of human rights actors within localised spaces. For example, some work tends to assume that human rights actors within NGOs are necessarily foreign and tend to embody values of


\(^{38}\) Ferguson & Gupta (2002) 995.

\(^{39}\) Peck & Tickell (2002) 400.

impartiality and professionalism. Others interrogate the domestic conditions shaping the practice of (largely national-oriented) human rights advocacy, which, at the very least, requires the ability to converse in and translate international legal idioms. For those foreign or local lawyers grounded in the domestic juridical field, ‘the use of transnational law [such as human rights] ... broadens the legal imagination of lawyers beyond the borders of national sovereignty’, creating new constituencies and audiences. As a society perpetually in the throes of conflict, as well as being subjected to evolving forms of neoliberal ‘state-building’ governance practices (explored below), Palestine is a site, which richly demonstrates the interrelated nature of local, transnational and international legal fields, especially human rights.

In the remainder of this article, I suggest that the interrelationship between international law, international lawyers and state-building is best explored through the notion of an ‘advocacy field’, which requires paying particular attention not only to local and transnational structures generating legal expertise, but also to the characterisations of such expertise by advocates themselves. In contrast to the juridical field, which tends to assume a strong, central state, I define the advocacy field as a weak field spanning local and transnational legal networks, particularly in those spaces that focus on state-building through human rights and development work. Lawyers operating in the advocacy field, then, are not beholden to the state for their training and allegiance and neither are they attached to a particular local constituency. Operating in the ‘advocacy field’—as opposed to the ‘juridical field’—requires greater attention to the act of advocacy itself with an attendant awareness of one’s audience(s). In the highly internationalised case of Palestine, locally-based advocates must perform their professional task for a number of constituencies at the local, regional, transnational and international levels. Legitimacy in the eyes of one constituency or audience will often entail its emasculation in the eyes of another. This is a paradox underscoring internationalised ‘state-building’ programmes that


seemingly strive to foster greater local institutional capacity and legitimation, but do so through various neoliberal governance techniques that can erode support on the ground.

Unlike stronger state–society contexts where there are relatively stable—even if complex—roles for legal academics, activists, judges and legal advisers,44 such boundaries are blurred in Palestine. This becomes evident through Palestine’s high dependence on donor/NGO/Inter-Governmental Organisation (IGO) forms of assistance as exemplary of transnational governmentality. Dezalay and Madsen suggest that the more dynamic nature of international advocacy means that it is less removed from political influences.45 As Palestine is a highly-internationalised space, the international law register is neither esoteric nor theoretical. Any invocation of international law in such a space is an overtly political gesture, presuming the relevance of direct, or at least mediated, application of such norms, especially, human rights. As law’s symbolic power comes from its obscured relation to violence, advocating for a turn to international law in a context of pronounced (direct and structural) violence, along with significant levels of popular support for violent resistance, requires conviction about the promise of law as a symbolic alternative to prevailing conditions.

This is not to say that international lawyers situated outside conflict zones in the Global South are somehow less political and able to remove themselves from the consequences of their own work.46 It is to say, though, that such international lawyers can often appear to be less political and that they may attain legitimacy as a result. Workers in the Palestinian advocacy field need to be attuned to the pronounced cynicism and mistrust of international legal solutions felt by the general populace.47 Thus, operating in the Palestinian advocacy field requires the most subtle interplay between local and international expectations regarding ‘impartiality’, expertise, and one’s relationship with the politics of Palestinian state-building.


45 Dezalay & Madsen (2012) 446.


Although international law has framed the Palestinian predicament since the creation of the League of Nations Mandate in 1922 (if not before),\(^{48}\) this article takes the first intifada in 1987 as the catalyst for the birth of the Palestinian advocacy field. The advocacy field’s evolution thus played out within the wider context of the Cold War’s end and the triumph of neoliberalism. At the moment when Palestinian statehood seemed more likely, its eventual embodiment in fact became ever more fragmented through practices of governance that made the aspirations of national liberation and self-determination appear increasingly anachronistic. This neoliberal shift from government to governance is marked most starkly by the 1993 Oslo Accords. I thus take the ‘Oslo occupation regime’, which is embedded more broadly within post-Cold War transnational neoliberal governance, as the key structuring discourse for any consideration of international law in Palestine today.\(^{49}\) Those lawyers in the advocacy field who aspire to Palestinian liberation through statehood, were increasingly required to speak for, and speak to, multiple and often opposing constituencies.

The birth and evolution of an advocacy field within Palestinian ‘Permanent Transition’?\(^{50}\) The first intifada, the Oslo Accords and quasi-statehood, 1987-2000

The outbreak of the first intifada in 1987 increased international awareness about Palestinian claims, laid the groundwork for a nascent advocacy field and was a key factor in precipitating a shift towards greater international involvement in the conflict and neoliberal state-building. Mass mobilisation within the Israeli-occupied West Bank and Gaza Strip was the culmination of two decades of pent-up frustration by a populace stranded without a state or a leadership as the Palestine Liberation Organisation (PLO) languished in Tunis after its forced retreat from Lebanon in 1982. The arrest and detention of hundreds of Palestinians over the course of years of civil disobedience had

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\(^{49}\) Relatedly, Miller characterises the regime emerging out of Oslo as a ‘tripartite structure of governance’, comprising the PA (along with Hamas after 2007), Israel as the occupier and various international organisations: Miller (2014) 340-41.

required the assistance of local lawyers and a growing local human rights network.\textsuperscript{51} International media coverage of human rights abuses during the first intifada further contributed to a burgeoning ‘human rights consciousnesses’\textsuperscript{52} and placed Palestine on the international political agenda. The end of the Cold War provided new openings for dialogue where none had existed before.\textsuperscript{53} Thus, in 1991, secret talks between PLO and Israeli officials began in Oslo, culminating in a series of agreements, which collectively constitute the Oslo process or what I refer to as the ‘Oslo occupation regime’.\textsuperscript{54}

The framework ultimately established through the Oslo process persists and today constitutes one of the key obstacles to Palestinian self-determination.\textsuperscript{55} Although the Oslo occupation regime legalised the relationship between Israel and the Palestinians through a series of bilateral agreements, their substance was a denial of Palestinian self-determination and can be read as solidifying, or even amplifying, Israeli control rather than presaging its end.\textsuperscript{56} According to Massad, so-called ‘liberation . . . resulted in formal apartheid with Palestinian police acting at the behest of the Israeli occupation’\textsuperscript{57} in an internationally-sanctioned regime of ‘outsourcing’ occupation/domination dressed


\textsuperscript{52} Ibid 484.

\textsuperscript{53} As exemplified by the Madrid Accords, which were held after the Second Gulf War in 1991.


\textsuperscript{55} In particular, the division of the West Bank into Areas A, B, C, where the latter constitutes 60 per cent of the territory and remains under full Israeli control. It is also important to note that since Israel’s illegal annexation of East Jerusalem, this does not come under the Oslo framework of Palestinian self-rule. For a depiction of this territorial fragmentation, see Julien Bousac’s map, in which he refers to the West Bank and the Gaza Strip as a Palestinian archipelago in an Israeli sea, available at http://www.obgeographiques.blogspot.co.uk/ (last visited 8 December 2015). Both Miller (2014) and Sayed (2014) explore the Oslo period through the lens of a number of different legal regimes, including, occupation.


\textsuperscript{57} J Massad, ‘Political Realists or Comprador Intelligentsia: Palestinian Intellectuals and the National Struggle’ 6 Middle East Critique (1997) 21, 28.
up as ‘state-building’. 58 Palestinian lawyers recount how they were not adequately consulted during the drafting of the agreements, 59 which left the most important issues, including borders, settlements, refugees and Jerusalem 60 to be resolved in future talks (that then failed). What was realised in the short term was the return of the PLO from Tunis, the creation of the PA, the guarantee of limitless Israeli security and a spirit of general optimism for both Israelis and Palestinians.

Thus, by the mid-1990s, it seemed that Palestinian lawyers who had played an important role during the intifada only a few years before—often in local human rights organisations (HROs)—were no longer required. According to prominent Palestinian lawyer and writer, Raja Shehadeh, the PLO’s attitude to lawyers on its return to the OPT was: ‘Okay, you people who were working on human rights, you are part of the resistance against the Israeli occupation; now the resistance should be stopped because we have reached an agreement with Israel. Go home.’ 61 It was a similar story for Israeli HROs who continued to report on human rights violations when the majority of the Israeli population thought that peace had been achieved. In particular, many lawyers who were Palestinian citizens of Israel ‘felt that they had “paid their dues” to the Palestinian cause and could walk away with dignity.’ 62 For Israelis in general, invoking law at this time was seen as ‘spoiling the peace party’, 63 suggesting that for both Israelis and Palestinians, law and peace were dissonant.

With its projected settlement of final status issues pending, the ‘interim’ Oslo occupation regime has shifted much of the burden for public administration from Israel, as the belligerent occupier, to the PA, as well as—in a move Lori Allen calls ‘NGOisation’—to various local and international NGOs. 64 The supply of international funds was vital in underpinning this policy, but the results for ‘state-building’ have been mixed at best. As the PA was Oslo’s creation, NGOs now found themselves competing for funds supportive of projects that aligned with the (non-)political outlook of the era. Thus, we can

64 Allen (2013).
characterise this period as one of ‘capacity-building’ and international ‘training’ within a wider context of transnational neoliberal governmentality. According to Chandler, this reflects a change from overt forms of interventionist state-building to an emphasis on local initiatives as the ‘focus therefore shifts away from international policies (supply-driven policy-making) and towards engaging with the internal capacities and capabilities that are already held to exist. In other words, there is a shift from the agency, knowledge and practices of policy-interveners to that of the society, which is the object of policy concerns’. 65

In keeping with donor agendas’ intent on ‘depoliticising’ NGO projects, the ‘corralling of NGOs . . . toward a particular vision of “peace”, contributed to these organizations’ declining credibility in Palestinian society’.66 The popular base of some NGOs was further eroded as many once-politically active individuals took up newly available international NGO sector jobs or PA jobs as a way of shifting their energies to safer, ‘less political’ projects about ‘development’ and ‘democracy’ rather than national liberation and ending the occupation.67 The sheer amount of (largely unaccountable) foreign funds channelled through the PA allowed for increasingly corrupt ‘state’ practices. So, for the first time, HROs, in particular, began to document not only Israeli, but also Palestinian abuses. The PA reacted by trying to control all funding to the sector.68 According to Lisa Hajjar, another particularly effective tool used by the PA to delegitimise HROs was to play on their Western or foreign credentials.69 Even for local HROs (because of outside funding), it was important to

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66 Allen (2013) 76.
67 Ibid 78. Allen adds: ‘Not only does human rights work offer the educated, often formerly active leftists a place to focus their energies in the absence of any organized and appealing political venues, but through their cosmopolitan networks, relatively high salaries, and opportunities for international travel, the NGO system also promotes individualistic bourgeois values and interests that are inconsistent with nationalist politics.’ Ibid 89. Turner informs us that by 2013 ‘56 per cent of PA expenditure went towards paying public employee salaries, while 15 per cent went towards the payment of social benefits—meaning that more than 70 per cent of the PA’s expenditure went towards the upkeep of the population. The PA is thus in essence a large social security net tying a huge section of the population into its stability and future existence.’ M Turner, ‘The Political Economy of Western Aid in the Occupied Palestinian Territory Since 1993’, in M Turner & O Shweiki (eds), Decolonizing Palestinian Political Economy: De-Development and Beyond (Palgrave Macmillan, 2014) 32, 43.
69 Ibid 67.
speak to Western audiences and thus risk losing local legitimacy in the process. According to Shehadeh:

What happened after the Oslo Accords was a serious corruption of this voluntary spirit, because massive amounts of international aid money began pouring in. And in a way, one of the disservices that international aid did for us—in addition to financing the occupation, which is another great disservice, and relieving Israel of some of its responsibilities under international law—is to have attracted some of the best people who were otherwise volunteering their services, offering them well-paid jobs, and, in a sense, corrupting them.

Thus, the Oslo occupation regime fostered cultures of developmental managerialism in a seemingly depoliticised language of expertise that further removed governance choices from the Palestinian people. The language of human rights advocacy became increasingly technical and ‘neutral’, as demonstrated by the work of international humanitarian organisations looking to their international constituencies.

This initial period of the advocacy field, then, is marked by a dramatic shift that occurred between the two intifadas (1987-2000) as a result of the consolidation of the Oslo occupation regime and the attendant creation of the PA. During the first intifada, legal advocates had performed their role in a voluntarist, activist spirit that was intimately connected with local constituencies. Once the first intifada ended, and the Oslo era began, by the mid-1990s, lawyers and human rights workers had opted for increasingly professional, depoliticised tactics shaped by foreign donor funded development and state-building through NGOs. Increasingly, the key constituency for those operating in the advocacy field was located within the transnational field of human rights, nested within broader IO and IGO networks of neoliberal funding and governance. Thus, lawyers operating in a porous and weak field—which the Palestinian advocacy field necessarily is—contributed to building a weak and dependent state under the Oslo regime while simultaneously fighting against that regime.

70 Ibid 68.
71 Bernard et al. (2012) 23.
72 R Khalidi & S Samour, ‘Neoliberalism and the Contradictions of the Palestinian Authority’s State-Building Programme’, in M Turner & O Shweiki (eds), Decolonizing Palestinian Political Economy: De-development and Beyond (Palgrave Macmillan, 2014) 179, 184, 192.
The development of the advocacy field through juridification and internationalisation of the conflict: continuities and ruptures on the road to ‘statehood’, 2000-2016

All hopes for a lasting peace that would usher in statehood dissolved by late 2000, with the outbreak of the second intifada, which can be seen as the culmination of Oslo’s unworkable framework for the Palestinians. During the first Oslo decade, while Israel had reaped the economic fruits of peace, the Palestinian economy contracted, settlement numbers doubled, along with concomitant land seizures and settler bypass road construction. Furthermore, despite the promise of ‘self-rule’, restrictions on movement and the virtual closure of the Gaza Strip meant that statehood remained unrealised.73 Peace through negotiations thus gave way to violent confrontation between various Palestinian armed groups, and Israeli settlers and the Israeli army (the latter redeployed across the West Bank in 2002). The main victims of the second intifada were civilians (Palestinian and Israeli) together with any hope of dialogue between the two peoples. Efforts of Palestinian and Israeli HROs were vital in documenting abuses and challenging Israeli occupation practices during this period.74 But the work of Palestinian NGOs was far less grounded in popular support than it had been during the first intifada75 (an indication perhaps that the advocacy field had come to reflect the transnationalisation and professionalisation of human rights struggles focused on depoliticised neoliberal state-building).

Documentation and advocacy work by various HROs in the occupied Palestinian territory (oPt) in the last decade and a half, has become increasingly international with a quantitative and qualitative shift towards more sophisticated strategies of international litigation and investigation less concerned with a domestic ‘constituency’. Lawyers in the advocacy field provided the knowledge and skills required for this shift, which the PA would come to embrace as part of its broader ‘internationalisation’ push under Salam Fayyad, as explored below. We can see this emphasis on juridification operating internationally in two key arenas: first, efforts (mainly by local HROs) to bring universal jurisdiction cases against prominent Israeli officials and (more recently)

73 In particular, see S Roy, Failing Peace: Gaza and the Palestinian-Israeli Conflict (Pluto Press, 2006) pt III.


75 Allen (2012) 56.
corporations complicit in occupation abuses;\textsuperscript{76} secondly, in the quest at the UN to gain recognition of both Palestinian statehood and the need to end the Israeli occupation and its attendant human rights violations.\textsuperscript{77} The most significant move, early in the decade, was the UNGA-sponsored ICJ Advisory Opinion on Israel’s construction of a wall in the oPt.\textsuperscript{78} Palestinian national institutions invested considerable staff and financial resources to present the Palestinian arguments before this court.\textsuperscript{79} Although the ICJ’s determination on the illegality of the route of the wall, and its consequences, was seen as a clear victory for the self-determination struggle, arguably the main benefit was the international legal training opportunity afforded to both the PA and the various local HROs. In the early 2000s, it was the PA that directed the legal strategy before the ICJ, but HROs have since become even more important in assisting the PA, formulating international legal strategies in Palestine’s recent claim before the ICC. This illustrates Chandler’s cognate point that neoliberal development has shifted supply-driven policymaking to the nurturing of local capacity and capabilities.

The experience of using technical legal positions as advocacy tools has allowed HROs to become more attuned to the importance of media coverage and sustaining international awareness about alleged Israeli violations. International advocacy strategies were honed in response to Israeli uses of force against Lebanon in 2006 and Gaza in 2008-2009 and 2014. International awareness, partly generated by those working in the Palestinian advocacy field, resulted in the UN Human Rights Council establishing an Independent Commission of Enquiry (the Goldstone Commission)\textsuperscript{80}: this underscores the crucial transnational position of Palestinian advocates in shaping regulative responses after conflict.

The PA itself was aware of the importance of sophisticated international legal arguments but, unlike the HROs—whose key rhetorical register remained


\textsuperscript{77} For example, in relation to the documentation of alleged human rights abuses, Jabareen details how the UN was reliant on Adalah, a Haifa-based NGO for Palestinian rights for accessing materials during the height of violence in 2002: Jabareen (2010) 275.


\textsuperscript{79} Jabareen (2010) 248.

international law—the PA focused on international diplomacy and recognition which, after the second intifada, operated within broader debates about Palestine’s capacity for (neoliberal) statehood. International law is increasingly linked to neoliberal determinations of state (in)capacity, but it is only one of many discourses in which states-in-formation must become fluent.81 Palestinian politics became particularly precarious in the wake of the second intifada with Hamas’s 2006 victory in the legislative elections. Israeli and international sanctions were applied, most Hamas parliamentarians were arrested by Israel, and tensions reached such a pitch that Palestine witnessed the outbreak of ‘civil war’, especially in Gaza, which effectively broke away from the PA West Bank administration in 2007. Into this mix stepped Fayyad, who, as Prime Minister between 2007 and 2012, effectively governed only parts of the West Bank. He possessed exemplary neoliberal credentials as a US-trained economist who had worked at the International Monetary Fund. In 2009, he launched his key policy platform, which emphasised public security and the rule of law, good governance (i.e., stamping out PA corruption), effective service delivery and private sector growth.82 In seeking to achieve these aims, Fayyad’s thinking was that Palestinian statehood would become a fait accompli, irrespective of the occupation. This strategy was to be strengthened internationally through a concerted push to gain bilateral recognition of Palestine as a state83 through IGO membership and by treaty accessions. The most prominent victory was in 2012, when Palestine was recognised by the UN General Assembly as a non-Member State.84 During this period of international juridification, Palestinian HROs played a prominent role in supporting the statehood push yet many remained critical of the PA’s rule, with its unrelenting repression of dissent.85

The recent ICC push illustrates the way in which HROs are increasingly taking a direct role in Palestinian international policymaking as the advocacy field matures and develops independently. Palestine first tried to become a


82 Khalidi & Samour (2014) 185.

83 In the words of one Palestinian legal advisor, ‘we were living on a wave of state recognition’, Interview with Palestinian official, female, September 2011.


85 See generally, Mustafa (2015).
member of the ICC under Article 12(3) of the Rome Statute in 2009. This stalled because the Prosecutor deferred to State Parties on the question of the status of Palestine. With the recognition of Palestine as a UN non-Member State in 2012, and diplomatic efforts at third-state recognition of Palestinian statehood, the Court accepted Palestine’s renewed Article 12(3) declaration in January 2015, and the Prosecutor has since opened a preliminary investigation. Such formal moves by the PA have been echoed and supported by local Palestinian HROs, who have also turned to ICC advocacy as their latest strategy to challenge Israel’s occupation. In fact, Palestinian HROs have led the ICC effort and have provided much needed expertise to the PA. Regardless of their chances of success, this underscores the growing independence of Palestinian HROs in relation to the PA, and illustrates the way in which redress has become less a matter of collective struggle and self-determination, and more a matter of criminal prosecutions of individual Israelis and Palestinians. Much as human rights became a vital element of state-building policies in the recent past, so international criminal law appears in the Global South today. And this turn too—with its emphasis on individual criminal responsibility—tends to obfuscate broader questions of occupation/independence, and further truncates collective responses to political domination.

In short, both the recent history of the Israeli–Palestinian conflict and the evolution of the Palestinian advocacy field have been marked by a growing

86 The text of Art. 12(3) reads: ‘If the acceptance of a State which is not a Party to this Statute is required under paragraph 2, that State may, by declaration lodged with the Registrar, accept the exercise of jurisdiction by the Court with respect to the crime in question. The accepting State shall cooperate with the Court without any delay or exception in accordance with Part 9.’ Rome Statute of the International Criminal Court, 1 July 2002, available at https://www.icc-cpi.int/nr/pdf/report_english.pdf (last visited 15 December 2015).


juridification of discourse, not only by local HROs (by now well-trained in transnational legal advocacy) but also by the PA itself. Certain legal registers—especially those supportive of neoliberal statehood—are recognised by the PA as well as by Israel and local and international NGOs, as a central aspect of the conflict’s resolution and/or continuation.

NARRATIVES OF ADVOCACY: UNDERSTANDING PROFESSIONAL PRACTICE IN PALESTINE

How have advocates themselves understood and characterised their contribution to the evolution of the advocacy field? To answer this question, I explore the narratives recounted during interviews I carried out in late 2011 with 20 key individuals who worked as legal advisers in IGOs, locally-based HROs, the PA or academia as well as with groups of law students in the West Bank. These semi-structured interviews took place shortly after the PA’s full UN membership bid. Interviewees were asked about: their reasons for working in the international law and human rights field; their views on the UN membership bid; their understanding of the role of international law in the Israeli–Palestinian conflict; and their opinion about the existence of a shared Palestinian legal community and language. I also carried out a series of interviews in 2015 with key actors working on Palestine’s membership of the ICC.

Here, I map out the broad contours of the Palestinian advocacy field through a narrative methodology. Such a small interview sample cannot represent the field per se; my intention had not been to amass a comprehensive data set on the topic. Rather, my aim was to glean insights into the nature of international legal consciousness and advocacy under occupation. Furthermore, with a handful of exceptions, the interviews were only conducted with individuals situated in the West Bank/East Jerusalem and thus do not give voice to the very different situation that Palestinian advocates experience in the Gaza Strip.

As international lawyers rarely engage in fieldwork of this kind, it is useful to reflect briefly here on the nature of such research. Focusing on the

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91 As these interviews were conducted on the basis of anonymity, interviewee identities are anonymised, but their professional sector and gender will be indicated.

92 The same can also be said in relation to Palestinian citizens of Israel, who constitute 20 per cent of the population or Palestinian refugees scattered across the region and beyond. For a general discussion about the problems of conducting research in Palestine, see M Al-Malki, ‘Researching in an Unsuitable Environment: The Palestinian Case’, in R Heacock & E Conte (eds), Critical Research in the Social Sciences: A Transdisciplinary East-West Handbook (Birzeit University, 2011) 191.

importance of individual narratives to understand how knowledge is constituted involves an explicit turn away from ‘objective’ accounts that obfuscate agency. My aim was to draw on Bourdieu’s interrogation of the interaction between structure and agent, discussed above. Working with narratives is one way to understand international lawyers’ roles in shaping and changing a local legal imaginary within the context of global governance trends. In depicting the Palestinian advocacy field, this section first discusses the conditioning effects of living under occupation. It then considers the motivations for entering the advocacy field and relations between its practitioners, the general public, and the PA, before assessing more broadly the nature of a legal culture heavily dependent on the vagaries of foreign donor policies and funding.

Although many interviewees were keenly aware of the gulf that existed between their own optimism in international law and general public mistrust, respondents agreed about the conditioning effect of the occupation on all Palestinians situated in the West Bank/East Jerusalem, Gaza Strip and Israel. By this, I mean, that from the outset, this shared experience created a sense of solidarity and, in the opinion of a number of interviewees, forged a heightened sense of legal consciousness. According to one PA lawyer, ‘Palestine is made and unmade by international law.’94 Ordinary Palestinians had become experts in international law, able to recite UN resolutions verbatim. This is why Bernard Botiveau suggests that ‘Palestinian society is probably the Arab society that has most used the international legal order’.95 Yet such awareness can be a double-edged sword when international law is ‘counter-intuitive to daily life’96: interviewees pointed out how the populace had become cynical and mistrustful of law (as we saw in relation to the failure of the Oslo process). In the words of one Palestinian academic, ‘the first question for every Palestinian is that there is no law . . . it justifies why we teach law’.97 In the absence of a state, Palestinians had only experienced distorted ‘rule of law’ discourses as part of broader ‘state-building’ and development policies that prioritised Israeli security and certain economic reforms while shelving political transformation.

This dynamic played out in everyday life. For example, lecturers relayed to me the difficulty of teaching students who were suspicious of international law and the way it has been deployed by certain internationalised civil society actors and the PA. As part of the larger study of which this article is a

96 IGO worker, male, September 2011.
97 Palestinian academic, male, September 2011.
part, I interviewed students, who suggested that they often tried to balance such acknowledged shortcomings with the aspiration to understand the reasons for Palestine’s continuing lack of statehood and the role of international law in their personal predicament. Such a stance typifies the dance between apology and utopia that is performed in international legal texts as well as the positions of international lawyers themselves.

The general Palestinian experience under occupation was the most important motivation for interviewees engaging with the discipline of international law. Many interviewees came to international law after recognising the increasing importance of international legal tools for the broader Palestinian struggle. Some Palestinian government lawyers and NGO employees took their cue from the ICJ Wall advisory opinion as well as from the fallout from the Goldstone Report. It was recognised, after Operation Cast Lead (2008-2009), that Palestinian advocates needed to hone their legal and media skills not only vis-à-vis the Israeli counter-offensive and international audiences, but also for local audiences increasingly silenced by Palestinian security forces. In his examination of security sector reform, Tahani Mustafa details the increasing sway that US- and European Union-trained Palestinian security personnel have had in constraining outlets for popular expression. Since 2005, the US formed the Security Coordinator to train local forces in riot control, civilian disturbances, human rights and the ‘proper’ use of force. Accordingly, Lieutenant-General Dayton regarded such reforms as a ‘success’ when, during and after Israel’s assault on Gaza in Operation Cast Lead, the West Bank experienced no violent reaction. Within the geographically- and politically-confined space of the West Bank, it was important that international lawyers could provide appropriate advocacy avenues as an alternative form of politics when the state was in abeyance.

Some prominent academics also spoke of a sense of responsibility in bringing their legal skills to the service of the Palestinian people. Such a sense of professional responsibility points to the way in which international law has taken on the form of an alternative politics for those operating in the Palestinian advocacy field. They continue to regard their key constituency as the locally- and internationally-disenfranchised Palestinian populations in

98 Burgis-Kasthala (2014).
100 Mustafa (2015).
102 On the territorial constriction and fragmentation of the West Bank, see Julien Bousac’s map above.
103 Nagaraj & Wijewardene (2014) 411.
Despite the many pressures brought to bear by other local and transnational constituencies.\(^{104}\)

One seminal characteristic of this interview group of those in the advocacy field—save for law students—was the centrality of Western education. Every interviewee had been educated outside of Palestine, most in western European universities.\(^{105}\) Crucially, this brought with it the ability to converse in English and/or other European languages,\(^{106}\) allowing speakers to connect to an ‘invisible college’ of international lawyers.\(^{107}\) As important was the inculcation of western, often neoliberal, mindsets. When placed within the transnational context of growing foreign donor influence in the oPt after Oslo, fluency in ‘donor-speak’ became increasingly important, geared towards international audiences that desire, as we have seen, the depoliticised and neutral language of advocacy. Not all claims can be articulated in a policy context that favours ‘state-building’ within a set of highly constrained neoliberal frameworks. Calling for political transformation through self-determination, for example, fell outside the margins of donor discourse. Some interviewees recounted how donor influences had encouraged the crafting of only modest human rights claims that often deflected more sustained structural critique of the occupation. According to a Palestinian academic, only ‘certain rights are legible’ now.\(^{108}\) An increasing emphasis on neoliberal governance and a retreat to consumerism were other outcomes of donor dependence and its associated ‘donor-speak’, especially for those working in international NGOs.\(^{109}\)

One possible reason for the extent of donor influence, especially in the early years of the advocacy field, was the nature of Palestinian legal education.

\(^{104}\) I use the plural ‘populations’ deliberately here to underscore the fragmented nature of the Palestinian people, the bulk of whom now reside as refugees outside historic Palestine. Lack of space does not allow sufficient discussion about the way in which Palestinian refugees in the diaspora have increasingly been removed from mooted configurations of statehood.

\(^{105}\) Only one interviewee had been educated in the former Eastern bloc, one in the Arab world and one in Israel and not in the West. Despite this, all three were fluent in English as well as a number of other foreign languages. Furthermore, two of my interviewees grew up in the West, studied there and then returned to Palestine as international lawyers with a keen sense of obligation to the national cause.

\(^{106}\) See D’Aspremont (2015) 15. All interviews—save for half of those in Arabic with law students—were conducted in English. My only interview in Arabic was with a legal academic who had studied in Spain.


\(^{108}\) Palestinian academic, male, September 2011, also cited in Burgis-Kasthala (2014) 701.

\(^{109}\) Palestinian academic, male, September 2011.
Two of its senior figures, for example, described a society in the 1970s with only the first stirrings of awareness about the place of international law in the lives of Palestinians. They recounted how early human rights efforts were comprised of a small group of individual volunteers, without organisations or coordinated strategies. The emphasis then was on other forms of resistance. More practically, Palestine only saw the establishment of its first law school at the University of Bir Zeit in 1993. This too was made possible through donor funding. Today—perhaps reflective of a growing international legal consciousness—there are a number of legal education programmes across the West Bank as well as in the Gaza Strip.

Whether through local legal education, overseas education, foreign donor pressures, the nature of the occupation or a combination of all these factors, interviewees were united in identifying a burgeoning legal consciousness among PA officials, the local and international NGO sector as well within the general populace. This was also linked to the general trend of the conflict’s juridification. Lacking sufficient capacity itself, the PA has reached out to certain, usually local, HROs for technical advice on matters relating to international legal advocacy. This consultation has taken place within a general context of increasing coordination among Palestinian HROs, greater sensitivity to the role of the media, and civil society-led legal training in the community. Beyond these illustrations of increasing ad hoc interactions, interviewees were in disagreement over the extent to which this could be regarded as constitutive of a community possessing a shared vision of international law.

Moreover, in spite of general constraints arising from donor pressures and the occupation, interviewees diverged over the nature of their advocacy work. Some characterised the recent period as a story of capacity-building of local as well as international HROs, and growing PA awareness of the importance of international legal strategy and culture: ‘we can see a kind of commitment to international law . . . in foreign policy from [the] Palestinian side since Salam Fayyad; for how to use international law to advocate for [the] national

110 Palestinian academic, male; and Palestinian independent lawyer, male, September 2011.

111 This is echoed in the case of Sri Lanka and points more broadly to the professional shift that was required once NGOs were tasked with long-term, complex and costly state-building ventures in the Cold War era. On Sri Lanka, see Nagaraj & Wijewardene (2014) 417.

112 These include a BA in International Law and Human Rights at Al Quds Bard in East Jerusalem, a MA in Human Rights at Bir Zeit University, a Human Rights clinic at the Al Quds University in East Jerusalem, as well as Hebron University and a number of human rights and international law courses at the University of Bethlehem. In Gaza, the Islamic University offers courses on public and private international law as well as human rights in shari’a and law within the Faculty of Shari’a and Law.
interest.’\textsuperscript{113} Others, however, noted a far smaller community based not simply on the deployment of international law as a tool, but as possessing reflexivity about the potential, as well as the limits, of international law. Greater juridification of the conflict had not only provided a language of claims for Palestinians, but also for Israelis,\textsuperscript{114} thus relativising the conflict and weakening hard-fought Palestinian positions.

Although these narratives were often polarised over the positive contribution that international law had made in seeking Palestinian independence, some common themes emerged. The advocacy field, it was agreed, had arisen in the last few decades and was shaped by the particular dynamics of Israeli occupation, foreign donor pressure, and the PA quasi-state under Oslo, within the wider framework of post-Cold War neoliberal governance. After the failure of both violence and negotiations as resistance strategies to achieve statehood and peace, interviewees converged in their agreement about growing legal awareness within the PA, the international NGO sector and the population as a whole. Yet this growing juridification only made the contrast between popular cynicism about law and the professional commitment of legal advocates more pronounced. Perhaps such awareness has instilled in Palestinian advocates a stronger sense of a shared identity and purpose in educating people—and indeed the PA—in internationalised legal strategies towards a fragile and fragmented statehood.

**CONCLUSION**

Exploring the relationship between international law and international lawyers in Palestine is central to understanding the unfolding dynamics of the moribund ‘peace process’ within the context of neoliberal ‘state-building’. In this article, I have suggested that approaching this relationship through the lens of the ‘advocacy field’ is a fruitful way to think not only about the particular case at hand but, more broadly, about how international legal discourse and practice constitute the legal imaginaries of its practitioners in a range of transnational spaces. The Palestinian case has highlighted how emerging states situated in the Global South are increasingly governed by a range of dispersed national, transnational and international actors and interests. For ordinary Palestinians under occupation, then, there is no simple way to resist the daily realities or imagine another political reality. Instead, they must rely on both local and foreign actors to advance their claims. International lawyers operating in the Palestinian

\textsuperscript{113} Palestinian academic, male, September 2011.

\textsuperscript{114} D’Aspremont (2013) 3.
advocacy field are vital to this task of creatively speaking across a range of regulative registers. Yet, working in the advocacy field is not a simple process of translating and presenting the Palestinian case to the ‘international community’. Instead, this article has shown how the advocacy field itself is constantly reshaped by the many constituencies to and for whom it speaks.