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PALESTINIAN INSTITUTION-BUILDING

Security first, democracy.....?!

**A Study of Democratic Intentions and Interaction, with Focus on
Civil Society and the Law of Charitable Associations and
Community Organisations**

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List of Acronyms and Abbreviations

AHLC	Ad-Hoc Liaison Committee
CFR	Council on Foreign Relations
CPRS	Center for Palestine Research & Studies
DFLP	Democratic Front for the Liberation of Palestine
DoP	Declaration of Principles
EA	Executive Authority
JMCC	Jersalem Media & Communication Center
LAW	The Palestinian Society for the Protection of Human Rights & the Environment
MIFTAH	The Palestinian Initiative for the Promotion of Global Dialogue and Democracy
MOSW	Minister of Social Welfare
MOPIC	National Center for Public Administration & Human Resource Development
NGC	National Guidance Committee
NGO	Non-Governmental Organisation
NMC	New Middle Class
PA	Palestinian Authority
PARC	Palestinian Agricultural Relief Committees
PASSIA	Palestinian Academy for the Study of International Affairs
PCBS	Palestinian Central Bureau of Statistics
PCHR	Palestinian Center for Human Rights
PCP	Palestinian Communist Party
PDP	Palestinian Development Program
PECDAR	Palestinian Economic Council for Development & Reconstruction
PFLP	Popular Front for the Liberation of Palestine
PJJC	Palestinian-Jordanian Joint Committee

PLC	Palestinian Legislative Council
PLO	Palestine Liberation Organisation
PNA	Palestinian National Authority
PNC	Palestine National Council
PNGO	Palestinian Non-Governmental Organisations
PPF	Palestinian Police Force
PPP	Palestinian Peoples Party
WBGS	West Bank and the Gaza Strip
UNSCO	UN Special Coordinator in the Occupied Territories

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1. Introduction

The focus of this thesis is development of democracy in Palestine.¹

Palestine constitutes a unique case for analyzing development of democracy in the “Third World.”² What we are witnessing in Palestine is rare; an interim government being established through negotiations between the occupier, Israel, and the representative for the occupied, Palestine Liberation Organisation (PLO), before the occupation itself has ended. If one succeeds in creating a modern Palestinian society that respects human rights and democratic principles, it will be an achievement of interest to the entire world. The symbolic dimension is obvious. Middle East is perhaps the least affected region by the “wave of democratisation” that occurred after the end of the cold war. A democratic Palestinian state might start a process of democratisation in the Middle East. In that respect it is interesting to identify which factors that can contribute to building a democratic state. Questions that arise are: Who are the driving forces behind the democratisation, how strong are they and what kinds of problems have they met?

The Oslo Accords provided for the establishment of an interim government, and set up the initial structures of the government. “What has happened,” according to Schulz (1995:7), “is not the end of occupation, but there is less of it. A Palestinian state has not been established, but there is more Palestinian (self-) rule.” Questions revolve around the nature of the new Palestinian political system that is still in the process of development, its relation to Palestinian society and the people that live under it. The overall question that this thesis will consider is: *What significance have voluntary organisations in Palestine had in building increasingly democratic political institutions.* I will examine whether there is correlation between civil society and political development (democracy-building),³ by analysing the environment in which

¹ Palestine is here defined as the West Bank, the Gaza Strip and East Jerusalem.

² The term “Third World” is here understood as countries in an early stage of a democratisational process and/or state-building, or countries where democracy and democratic principles are non-existent.

³ See page 9 for definition.

civil society prosper and the role of civil society in promoting development, exemplified by a study of the NGO Law. The struggle for a new and liberal NGO Law can tell us something about the prospects for a "more" democratic institution-building and shed some lights on the relationship between the Executive Authority, the Palestinian Legislative Council and civil society. The fact that civil society has a long history in providing services to the Palestinian population has lead to the belief that civil society is one of few protectors of democracy in Palestine. Civil society's role and influence in the institution-building process is the main focus of the thesis.

Saad Eddin Ibrahim defines civil society as follows.

"A set of values, norms and organisations which emanate from the free will of individuals in their pursuit of an interest, a cause or a quest to express a collective sentiment."

He continues:

"A value is a goal, a norm is means to attain that objective. Free will is a very important element in the definition of civil society. The core value of civil society is liberty, and tolerance is therefore a norm, i. e., the norm with regard to achieving liberty is tolerance, acceptance of diversity" (1998).

This definition forms the basis of my understanding of the concept civil society in a Palestinian context.

Whether the institution-building that have taken place, makes it likely that democratisation can be initiated from the governing regime constitutes the alternative approach in this thesis. Focus here will be the Oslo Accords, which established the Palestinian Authority (PA) in 1994, and Arafat and his role in the institution-building process.

According to Shibley Telhami: "How you start significantly determine how you finish (Robinson 1995:198)". One very important question, then, is whether the civil society is the most likely candidate to bring about a democratic development.

1.1 Contextual Framework

The establishment of an interim government, The Palestinian Authority in 1994, and the transfer of power from the Israeli military government and its civil administration as outlined in the Declaration of Principles (DoP) and subsequent agreements, made it possible for the Palestinians to build institutions within their own territory. For the PA the situation was particularly delicate being not yet a state, with pressure internally by the opposition, and by high expectations on the part of the population, and externally in the form of Israeli security related pressure and the donor countries demand for transparency and accountability (Schulz 1995:10). In addition, the transformation from revolution to self-government is bound to be problematic rather than smooth (Ibid:102). On the part of the civil society, the establishment of the PA had several important impacts. Firstly, civil society was not involved in the making of the PA. The negotiation was between PLO and Israel and not between civil society and PLO. Secondly, the establishment of the PA had the effect that services once provided by the civil society was now under the PA jurisdiction, and international donor support was redirected from the civil society towards the interim government and institution building. This meant that the civil society had to change their focus and working methods in order to stay alive. Thirdly, with the establishment of the PA, civil society had to get used to a different and more undemocratic style of governing. The Palestine Liberation Organisation, as the legitimate negotiator for a future Palestinian state with Israel, was made up of people from the diaspora, who had lived under authoritarian regimes and therefore not used to democratic principles. In addition, the interim regime (as well as civil society) is heavily dependent on foreign funding. In fact, the rentier like dependency makes it necessary to ask the

question to whom the PA really are responsible for; the people, Israel or the donor community?⁴

Even though Israel and PLO has pledged to obey international human rights and democracy, as stated in the Gaza-Jericho Agreement 4 May 1994 article XIV, and the Interim Agreement on the West Bank and Gaza Strip 28 September 1995, article XIX between Israel and PLO,⁵ the parties in the peace process and in the Palestinian state building process has shown remarkable neglect/will or knowledge in obeying international human rights and democratic principles. Shikaki (1996:20) argues that this neglect of democratic understanding reflects the priorities and policies of the PA and donor community, which reveal a hierarchy of priorities with peace at the top and democracy at the bottom. Moreover, “PA`s first priority has been the ending of occupation by promoting the peace process. A second priority has been the strengthening of the capacity of the central government with special emphasis on the creation of a strong security force. Economic development and the promotion of investment has been a third priority, while the fourth has been the creation of state institutions” (Ibid:20-21).

Accordingly, the emphasis of the donor community on building the capacity of the PA rather than supporting institutions of civil society reveals, according to Shikakai, “a widespread belief that the success of the peace process requires political stability achievable only through the creation of a strong central authority” (Ibid:21).

It is within this setting that civil society could play an important role in influencing the Interim government, and perhaps the population, to improve and enhance democratic values. Whether or not this is likely, is precisely the object of analysis in this thesis.

⁴ Donor community is here understood to contain those who contribute financially to support Palestine in general (both PA and civil society), either through governmental channels or through international non-governmental organizations.

⁵The Palestinian National Council (PNC) also proclaimed that they intend to respect international human rights, in the Declaration of Independence, November 15. 1988, and in the Draft Constitution for the Interim Period, April 1994, also known as the Basic Law.

1.2 Statement of Problem and Assumption for Analysis

In recent time the debate about civil society and democracy has become hot and disputed among intellectuals in the Middle East. Particularly in Palestine, civil society theory has come to life as a direct outcome of the possibility of creating a new and democratic state in a region of authoritarian regimes. In the Western academic literature the relationship between democracy and civil society is perceived as mutually dependent. In order to have a successful democracy one needs a viable civil society, and vice versa. One characteristic of the “Third World” is that the existence of democracy is not a precondition for existence of civil society. However, it is clear that the absence of a democratic state will strongly restrain democratic development. This assumption can easily be transferred to a Palestinian scenario.

In order to answer the overall question introduced in page 1, this thesis will raise several assumptions.

One important assumption is that: *the development of a viable and free Palestinian civil society is an important step for further democratisation*. Schwedler (1995) argues that a democratisation in the Middle East is impossible without a strong and viable civil society. The emergence of a civil society is, according to Norton (1993:211-212), a necessary, though not sufficient condition for the development of democracy. The existence of civil society is however central to democracy. In this thesis I will consider whether the Palestinian civil society is a necessary condition for the development of democratic political institutions.

The legal framework to which the civil society must adhere is an important place to start when discussing the role and potential of NGOs in providing services, but also in regard to the possibilities of enhancing democratic values. It is important to know whether NGOs are given considerable latitude in planning and executing their activities or are instead restricted, controlled, and confined in those activities. Such legal frameworks also indicate the way in which a government will exercise its authority over various other aspects of society- e.g. elections, freedom of assembly,

human rights, trade and investments etc. The newly ratified NGO Law, which process started in 1995, constitutes an informative example of how the PA and Palestinian society (civil society) are dealing with one another, negotiating future relationship, lobbying for current interests, and complaining about one another's actions. Pending the implementation, the process in which this Law came into being might be seen as a breakthrough, when it comes to lobbying and for a more pluralistic society. The second assumption this thesis raises is: *To investigate the law making process, the public debate and incidents closely related to this law will give an idea as to whether the civil society is the more or the only likely candidate to bring about democracy.*

In order to evaluate civil society's ability to influence the political sphere, it is necessary to give a description of the various political institutions that were established as a result of the Oslo Accords. Focus is on how the various institutions interact, both in relation to each other and civil society. The problem that underlies the process of evaluating-democracy building in Palestine is assessing the involvement of Israel and the ongoing peace process, in the current state-building process. The PA has obligations to uphold law and order and more importantly stop and punish attempts and prevent acts of "terror" against Israel. Watson (2000:211) states that the most important Palestinian obligation under the Oslo Accords is to combat terrorism and to prevent violence. The focus on security rather than the respect of human rights is evident in the Oslo Accords. This has meant that the PA, in order to uphold their part of the Oslo Accords, has been forced to use undemocratic means. However, it can be argued that the use of violence, the detention of prisoners without due process of law, and the failure of ratifying laws passed by the Palestinian Legislative Council (PLC) exceeds what is demanded of Arafat by the Oslo Accords, and can be seen as a way of clinging to power. A report carried out by Council on Foreign Relations (CFR) in 1999, right before the ratification of the NGO Law, stated that: "Without prejudging the outcome of negotiations between PLO and Israel, this report recommend reforms that are within the present powers of the Palestinian Authority to implement even under adverse circumstances" (1999:14). These recommendations included the NGO Law. My third assumption is that: *the way in*

which PA operates indicates a lack of will to democratize comprehensively. To substantiate this assumption I will focus, firstly, on how the Oslo Accords paved the foundation/fabric of the various political institutions, and secondly, on how primarily Arafat, the elected president of the PA, is building these institutions. In other words, this thesis will also consider institution-building from a “top-down” perspective.

1.3 The NGO Law: A Brief Historical Overview

The point of departure was that three persons were hand picked by Arafat in the beginning of 1995 to draft a law much similar to an Egyptian NGO law, which is considered to be very restrictive. The draft law gave the Palestinian Authority the right to desolve or melt together organisations without asking for permission. According to the draft law Arafat could appoint board members and restrict the NGO's finances. In sum, the law gave Arafat and the PA, and not members of the civil society the right to decide whether an NGO should exist or not (Robinson 1997:184). Civil society actors, on the one hand, claimed “that the draft law reflected a narrow view of the role of the NGOs and was an effort by the PA to interfere in their internal affairs, partly by attempting to draw a clear line that separated their political objectives from their social, cultural and developmental objectives” (Dajani 1997:71). The PA, on the other hand, said that having control over the NGOs would eliminate duplication, corruption and internal feuding. Furthermore, the PA claims they want the NGOs to exercise their right to be NGOs, but whilst complementing the efforts of the government. In short, the PA does not want the NGOs to have an independent state within the state (Dajani 1997:72). The law was met with disbelief and anger both from the civil society and the donor countries, with the result that its initial form was abandoned. Simultaneously, the Palestinian Non-Governmental Network (PNGO) distributed their own proposal of the Draft Law to PLC members.

A second, and modified draft law was distributed by the Ministry of Justice in September 1995. At the Donor Conference in Paris (October 14), only weeks after its distribution, PA announced its plans to drop the draft law, and said it would start over with dialogue. The most recent draft of the NGO law reached the “third” (see chapter

4.3.1) reading in the Palestine Legal Council (PLC), and was passed 21/12 1998 and sent to Arafat for his signature 27/12 1998. According to art. 71 in the By Laws, Arafat has one month in order to, either ratify it as it is, or make changes and then send it back to PLC. Arafat did neither, and the law should automatically have been ratified and published. This did not happen. Arafat suggested in February 1999 that the law should operate administratively under the minister of Interior and not the minister of Justice.

PA, in particular the Minister of Justice, Abu Frieih Meddein, started a smearing campaign against the civil society, primarily Palestinian human rights organisations, the summer of 1999.

The 12 August the speaker of the PLC announced that PLC had accepted the changes made to the bill by Arafat. This was after the budgetmeeting was over, and most of its members had already left the building. The NGO Law was ratified the 14 January 2000, by President Yasser Arafat (PNGO Newsletter 2000), and is considered as a step forward in liberating the civil society and improving the possibilities of a more viable and stronger civil society. Hammami (2000:18) claims that the law is extremely liberal in an Arab context, allowing organizations to form relatively freely, to access foreign and other funds without informing the government, and also protect organizations abilities to set their agendas and control their budgets without government interference.

The establishment of a new ministerial post, Ministry of NGOs affairs 4 October 1999 is without presedence in the Arab world and must be seen within the context of the ongoing struggle between civil society, PLC and EA regarding the NGO law. If one consider that there already exist bodies that are fully capable of performing similar tasks it is unclear why the ministerial post was established and what its responsibilities are and how the mandate should be exercised. It is worth adding that the ministerial post was not approved by PLC.

Currently the Law is undergoing revision. By Laws, drafted by the EA is expected to be examined by the PLC. The changes concern the moving of registration from the Minister of Interior to the Minister of NGOs Affairs.

1.4 Outline of Model

The dependent variable in this thesis is democracy-building.

Firstly, this thesis will give an indication to where the will for the development of a more democratic system of governing is to be found. Secondly, if civil society is the most likely candidate to lead this development.

Democracy-building is understood as the development and integration of democratic values, the establishment and institutionalisation of rights and obligations through "positive" law and "way of govern" i.e. good governance. The focus will be on how/if institutions and the Interim government are being formed/persuaded to comply to a more democratic system of governing. In other words this thesis will focus on democracy-building in relation to the development of political institutions, i.e. democratic institution-building.

What is clear from the Palestinian case is that issues of democratisation, development, and foreign assistance cannot be separated, especially given the massive amounts of money the donor community is pouring into the PA's coffers. In accounting for the first independent variable, the donor community, focus will be on disbursements, and what impact donor money has had over institution-building and the democratisation process.

The other independent variables are the Palestinian Authority and the civil society. In accounting for the second independent variable, the PA, I focus on whether institution-building from a "top-down" perspective can lead to the development of democratic institutions. Critical factors to consider are Arafat, how the Accords are being implemented and the heavy focus on security as the basic component in the institution-building process. When analysing PA and its role in the institutioun-

building process it is important to consider the limitations brought to bear upon PA by the Accords, the donor community and Israel.

Voluntary organisations are regarded as the third independent variable. Voluntary organisations are an operationalisation of the concept civil society (see 3.3). Its positive effect on democracy building is exemplified through an analysis of the NGO law. The NGO Law will be treated as a product of civil society's effort in influencing the Interim government in order to enhance democracy. This law determines the conditions for the space in which civil society can operate, and in that respect constitutes a critical factor in the development of a viable and free civil society. The independent variable is assumed to contribute to the development of democracy because it sets the rules and obligations under which civil society can operate, with the effect that organisations more freely can take part in the making of a democratic society. These effects are considered positive. Firstly, for civil society, the NGO law represents a step on the way to a more viable civil society and by doing so directly or indirectly enhance democratic values. Secondly, it can also be perceived as a measure of civil society's effectiveness in influencing the regime, and therefore give an indication to whether civil society or the Interim regime (or none) is the likely candidate to democratize the political system.

1.5 Methodological Considerations

To analyse the development of democracy in Palestine is not an easy task. Several methodological questions arise both in regard to research design and the literature and data used in this thesis.

1.5.1 Research Design

I intend to use empirical qualitative method in this study, thus conducting a case study. The purpose of qualitative methods is to understand the specific, the individual and the unique (Hellevik 1991).

This thesis has a normativ angle: A well functioning democracy is dependent upon a civil society. Robert K.Yin gives the following definition for a case study:

”A case study is an empirical inquiry that investigates a contemporary phenomenon within in its real - life context, especially when the boundaries between the phenomenon and the context are not clearly evident” (1994:13).

According to Yin (1994:8), case studie is preferred when examining contemporary events, and when the relevant behaviors cannot be manipulated. Furthermore, in a single case study, it is important that ”how” and/ or ”why” questions are being asked in order to pursue an explanatory purpose. After choosing the relevant variables for the analysis, one must ask the question ”how are the relevant variables influencing the present democracy – building performance ”. This question may result in an explanatory analysis in the case study. According to Yin (1994:38-39), there are two rationales for applying a single-case study; one is when the case represents the critical case in testing a well-formulated theory, the second is if the case can be said to represent an extreme or unique case. This thesis will mainly relate to Yin`s second rationale, but will also shed some light on civil society theory in a Palestinian context.

Even though applying a single case design is controversial, especially because of the potentially vulnerability that the case later may not turn out to be the case that it was thought out to be at the outset, such a study method might give valuable information if the investigator follows certain criterias in order to complete an excellent case study. Yin lists the following criterias (1994:147-152): The first criterion is that; *the case study must be significant*. It should generate general or special interest. It is a great advantage, if you adress subjects that are of interest for the population, and/or of importance for daily life politics etc. Secondly, *the case study must be complete*. The borders between the case and the context must be put under special scrutiny. One should ask oneself if the limit for interesting information has been reached. Next, it has to be evident that you have done everything you possibly could to gather relevant data, and thirdly, no external restraints must affect the thesis, like shortage of time,

lack of money etc. Thirdly, *the case study must consider alternative perspectives*. One should address rivaling theories, in particular those who poses the greatest threat to our own findings, and then crush them empirically. Fourth, *the case study must display sufficient evidence*. The most important and most convincing data has to be addressed in the thesis, so that the reader can draw his/her own conclusions. It is also of importance that one questions the data's validity. Lastly, *the case study must be composed in an engaging manner*. According to Yin, a good manuscript is one that "seduces" the eye.

What occurred in Palestine in the 1990s, and in the beginning of the 21st century, is a rare case of state-building. Indeed, the development of democracy in Palestine is hampered by several unfavourable conditions: Palestine has no tradition of a state; their freedom movement, PLO, operated from exile until the peace process began; they are currently under occupation; one can argue that the super power, USA, is sceptical to the Palestinian cause; and Palestine is situated in a region where democracy is poorly developed. If one succeeds in creating a modern Palestinian society that respects human rights and democratic principles, it will be an achievement of interest to the entire world. The development of democracy in Europe took several hundred years. In Palestine we are talking about years of experience, and not centuries. Given this, and the special circumstance that Palestine might be the first democratic country in an otherwise undemocratic geographical area, makes Palestine a unique case for analysing a broad specter of issues related to the state-building efforts. This project is therefore not only interesting because of its current relevance, the newly ratification of the NGO law, or the fact that little research has been made regarding this Law, but more because this study might reveal information on the prospects of a democratic Palestinian state. The original NGO Law was based on an Egyptian NGO law. The way in which the Palestinian civil society has lobbied the various public institutions should be of interests to the Egyptian civil society. This thesis is therefore also of interest to other societies in the Middle East. Palestine has been without a representative government for decades; now they have a chance to create one.

1.5.2 Literature and Data

It is important that the most convincing and relevant literature has been addressed. As Yin states in his fourth criterion (see above), *the Case study must display sufficient evidence*. In addition, it is also necessary that the literature applied in the thesis are accurate, and used with precision so that the data measures what one set out to measure.

Reliability is considered as one criterion for judging the quality of data collection (Yin 1994). A test of reliability would be to repeat the operations of ones study, such as the data collection, in order to see if you end up with the same results.

The empirical material, which this thesis builds upon, is relatively compound. As the idea of this thesis progressed it became, however, apparent that in order to get sufficient material I had to make a study trip to the Palestinian Territories. In light of the ongoing Intifada (the so called al-Aqsa Intifada), it was also evident that such a journey would be difficult both to plan well ahead and see through while I was there. This had an impact on the material and the number of people I was able to meet. Fortunately, even under these difficult times, civil society organisations were very helpful. The journey took place in April-May 2001.

The sources of this thesis are composed of the following categories: 1 The Oslo Accords and the NGO Law. 2 Books and Articles. 3 Reports. 4 Interviews. 5 Internet and, 6 Public Statistics.

1. The Oslo Accords consist of several subsequent agreements between PLO and Israel. Only the first three will be referred to in this thesis, because they are considered to be the most important agreements for the establishment and the structure of the PA. These are: The Declaration of Principles (DoP) in 1993, The Gaza-Jericho (also known as the Cairo) Agreement in 1994, and the Oslo II (also known as the Taba) Agreement. They are all well known. The focus will be on how the Oslo Accords are implemented with regard to the establishment of democratic institutions.

The ratified NGO Law, but also the various drafts, will form a part of this thesis. The problem here was that this law is just ratified and it has not been officially translated into English. I therefore had to rely on translations made by various civil society organisations, like The Palestinian Society for the Protection of Human Rights & the Environment (LAW) and Palestinian Center for Human Rights (PCHR), and the Ministry of NGOs Affairs. I compared the various versions and even though I found several differences, I will use the most debated and controversial articles throughout the whole procedure in drafting the law, which was quite consistent. The most important in this thesis is not the explicit text itself, but rather the substance of the argument surrounding the legal procedure in drafting the law. Various reports by PCHR like, Series Study 3 and 12 (see reference of literature), and action news and articles written by several civil society organisations regarding the law, and Schenker (2000), give a thorough description of the debate and the legal procedure in drafting the law. Another source of problem is that very little has been written about the NGO Law, and even less translated to English. This means that I have had to rely on papers, articles, action-news presented by various civil society organisations. Very little material or comments generate from the Palestinian Authority. This might create a one sided approach.

2. Books and Articles constitute the main sources of information. This thesis' main approach is exploratory to detect democratic trends, but its character is also interpretive in that it considers the applied theories in a Palestinian context. My research is thus a process of interpretation where I put events and observations into a conceptual framework, which others have elaborated. In my case civil society theory provides the main theoretical framework, while elite transition theory is considered an alternative approach (see Yin, third criteria and chapter **3.1** and **3.2**).

The elite transition approach has been chosen because it provides a description of the institution-building from a "top-down approach," and thus provides us with a picture of the environment under which the civil society prosper, and how democratic the institution-building effort from a PA perspective has been. I use civil society theory

to evaluate their role in the present institution-building process, but also to shed some light on the concepts applicability in a Palestinian context. The work of O'Donnell and Schmitter (1986) form the essential part of elite transition, and is considered a path-breaking, paradigm setting work. The work of Graeme Gill (2000) will supplement O'Donnell and Schmitter. When it comes to civil society theory, I have primarily used contemporary work by Arab intellectuals like Saad Eddin Ibrahim (1998), and Salim Tamari (1998), and Middle East experts like Schwedler (1995), who apply the concept of civil society in a Palestinian an Middle East context, in addition to several authors like Cohen and Arato (1995), Hall (1994), Walzer (1991) etc., who consider the relationship between the state and individual without primarily applying it into a Middle East context.

3. Reports made by internationally well-known institutions like the World Bank, UNSCO, and domestic like LAW, PCHR etc, form an essential part of this thesis, in particular; Strenghtening Palestinian Public Institutions, commissioned by the Council on Foreign Relations (CFR) in 1999. The report is considered the first comprehensive analysis of public institutions under the Palestinian Authority. At the start of the project Arafat consented to the report and instructed his cabinet to cooperate. However, when realizing that the report would be critical of PA`s many shortcomings under his leadership, Arafat took measures to stall the project in 1998. The European Union intervened to ease tensions, and support for the project was expressed by Bill Clinton, during his visit to Gaza in December 1998. Arafat thereafter resumed cooperation. The report was researched and drafted by a team of 25 experts led by Khalil Shikaki and Yezid Sayigh. In addition, the CFR-commissioned team included an international task force chaired by Michel Rocard, former prime minister of France, and comprised of 13 other distinguished international figures. As a respons to the report and subsequent pressure from donor countries, PA established the Higher National Council for Institutional Development (HNCID), headed by Nabil Shaath, the PA minister of Planning and International Cooperation. Other reports used in this thesis are: United Nations Special Coordinator in the Occupied Territories (UNSCO); Rule of Law in the Palestinian Occupied

Territories, 1999, World Bank; Aid effectiveness in the West Bank and Gaza, 2000; LAW, Executive Interference in the Judiciary (1999).

Several reports by PCHR are also used, in addition to annual reports by Amnesty International, the Palestinian Network of NGOs, PCHR etc. Most of these reports are available on the internet.

4. Interviews were made, mostly with members of organisations within the Ramallah, El- Bireh, and Jerusalem area such as LAW, Palestinian Agricultural Relief Committees (PARC), Palestinian Non-Governmental Organisations Network (PNGO) etc. My attempts to visit Gaza failed and I therefore had to perform interviews over the phone. Such an interview was carried out with Ziad Abu Amr, a PLC member and personally involved with the NGO Law. An interview with the Minister of NGOs Affairs was promised. However, the questions had to be turned in ahead and the interview was delayed time after time until I had to return back home. I had some talks with his staff, and excerpts of this will be used in this thesis. Isam A`ruri of the Palestinian Agricultural Relief Committee (PARC), was also helpful in allowing me to interview him.

A difficult task was how to interpret the answers given to the questions asked. Civil Society is the home of many former leftist fractions like, Palestine Peoples Party (PPP), Democratic Front for the Liberation of Palestine (DFLP), Popular Front for the Liberation of Palestine (PFLP) and their political history and ambitions may guide their answers. The interviews that are used are sources of information that have been checked with other sources, and even though the use of informal and unstructured interviews raise several methodological problems, together with other material they constitute useful sources for the analysis of this thesis.

5. Internet provides a vast number of articles, reports and general information. Most of the research centers and organisations, like; Palestinian Academic Society for the Study of International Affairs (PASSIA), Palestinian Centre for Human Rights

(PCHR), Palestinian Non -Governmental Network (PNGO), Amnesty International and governmental institutions like the PA and its branches like the Palestinian Legislative Council (PLC), UN special Coordinator in the Occupied Territories (UNSCO) and the World Bank have their own homepage where they present their field of work, goals and the latest incidents in Palestine. Book reviews and articles written by the research staff, seminars and participants and resumes from these seminars are easily accessible and can be downloaded from the internet.

The information provided on the internet has to be scrutinised. Many organisations are founded on the basis of an ideological point of view, and the information presented is often of a sensitive character and therefore written with strong feelings and bias. In addition, internet does not set criterias to whom that can publish material. In other words it is easy, and cost efficient to publish articles over the internet which may affect the quality of the work. The organisations, in particular the research centers, are well respected and recognised by international organisations and intellectuals. There is a serious problem in citing electronic information. A citation gives the content and the location of the information at the time of access. Unlike most printed information, electronic information may have been silently modified, moved or deleted by the time a reader tries to verify the citation. Citations may, therefore, on occasions appear to be incorrect through no fault of the researcher. In Palestine where internet is quite new and in the process of developing, this is a frequent problem. Web pages are often under reconstruction and its content changed, like for instance the web page for the Minister of NGOs Affairs. This may affect the reliability of the thesis. In addition, Israel has on occasions shut down the internet access to various civil society organisations, especially during closures. Under the current intifada, internet access to several organisations has been closed or tampered with by individual computer "hackers."

6. Public Statistics will form a small part of this thesis. Various centres in Palestine like, the Center for Palestine Research & Studies (CPRS), and Palestinian Central Bureau of Statistics (PCBS), Jerusalem Media & Communication Center (JMCC) have gathered and published statistics material quite consistently since 1994. These

centers are known as serious and thorough, and are often referred to by international reports and books about Palestine. Reports undertaken by Palestinian Economic Council for Development & Reconstruction (PECDAR) and National Center for Public Administration & Human Resource Development (MOPIC) have a more questionable reputation, and will not be used in this thesis. Therefore, the surveys used in this thesis, are not considered to contain serious errors of measurement.

1.6 Further Outline

The overall goal in this thesis is to evaluate civil society's ability to influence the political sphere, and the institution-building taking place. Chapter 2 will provide an overview of the development of civil society from mass organisations to "development professionals". Chapter 3 will form the theoretical fundament. To analyse development of democracy in Palestinian political institutions is a difficult task. In order to understand the significance and potential success of the civil society in promoting development, this study necessitates a thorough description of the environment in which civil society prosper. The donor community has been vital to the establishment of PA and to the continued existence of a civil society. Donor disbursement and impact of donor support will be addressed in chapter 4, and constitutes the first independent variable in this thesis. Chapter 5 will give a description of the various political institutions, and address institution-building from a "top-down" perspective. In other words chapter 5 will analyse the second independent variable PA. The development of and contestation over the NGO law will form chapter 6, and is the last independent variable. An important task is to evaluate whether the current status of the NGO law and the process leading up to this status is a victory for the civil society and the development of democracy in Palestine. In addition, the ratified law itself and the process leading to the ratification can give us an *indication* to whether the institutional and normative criteria, listed in chapter 3.2.2, are met in a Palestinian context. Altogether these chapters will form the basis for evaluating the dependent variable, democracy-building, and what conclusions (chapter 7) that can be drawn/interpreted from the thesis.

2. Mass Mobilisation and Organisational Development. The Making of a Civil Society. A Brief Historical Overview: From the 1980s to 2000

Palestine experienced an enormous mass mobilization and organisational development in the late 1970s and during the 1980s. In the following various factors will be presented, which can explain this rise in organisational life. Furthermore, I will address development from a factional mass organisation towards a more diversified NGO community.

2.1 Explanatory Factors

Several factors can be said to influence the increase of mass mobilisation and organisational development. According to Arild Schou (1995:57), Palestine had “organisations with the potential of mobilising large segments of the population, like voluntary professional organisations and mass organizations” which had been established during the occupation (after 1967), but it was not until the late 1970s and early 1980s that they gained a significant mass base.

The municipal election in April 1976 initiated the emergence of a public leadership in the West Bank (Taraki 1989:441). The new urban elite gained most of the seats in the municipal councils. An important reason for this was that the new urban elite “derived its political legitimacy and influence from identification with the PLO” (Schou 1995:47). Some of these newly elected politicians were also leaders of institutional networks like trade unions, professional associations and women’s associations. However, the mayors were the most powerful actors in the municipality structure (Schou 1995:47-48). The nationalist mayors also had important positions within the national Guidance Committee (NGC) (Taraki 1989:442), which was, according to Schou, “formed to oppose the 1978 Camp David Accords” (1995:49).

Mustafa Barghouthi argues that it was the Camp David agreement that made the Palestinians distrustful of external assistance and thus initiated a shift of thinking. This shift “coincided with the recognition of PLO as the sole and legitimate representative of the Palestinian people, and led to two phenomena: The enhancement of self- independence, and the leaning towards self- organisation in the society” (Barghouthi 1997:65). This, according to Barghouthi, explains why there was a large profilation of national institutions (Ibid). The belief that the Arab world would liberate Palestine was eradicated, and this realisation motivated the Palestinian resistance to move inside the Palestinian territories, to assert the importance of the domestic front, thus paving the way for the intifada (Ibid).

An important shift of thinking was that PLO began to focus on building a popular base for support within the territories. Local initiatives had begun through popular resistance towards Camp David and through local political leadership in the form of the National Guidance Committee (NGC), where the majority were left-leaning political independents and members of the Palestine Communist Party (PCP). Nearly all of them were critical supporters of the PLO (Hammami 1995:53-54). A resistance strategy was agreed upon, regardless the differences between NGC and the Fatah leadership outside the territories. In this period the aim was to widen the support for the national movement as means of resisting not only Camp David`s implementation but also attempts by Israel to crush all forms of Palestinian nationalism:

”As the occupation encroached on the ”national institutions” and targeted the political leadership, the national movement had two options: either confine itself to clandestine work but sacrifice a growing mass base; or evolve alternative, open structures that would be more difficult to destroy....The movement realised that... efforts had to be directed to adressing the concrete needs of different sectors of society within the framework of mass organizations” (Taraki 1989:442-443).

Schou also stresses the importance of the deliberate shift by the PLO, and the decision by Fatah “to give priority to mass political mobilisation in the Occupied territories”. He, however, argues that it was the defeat in the Lebanon war in 1982 “that represented the watershed of mass mobilization”. This, in turn, led to institution

building, mobilisation and organising wide sectors of the population (Schou 1995:58). Cobban argues (1990:218), that it was after this defeat that Fatah, PLO largest and wealthiest faction, decided to give priority to mass mobilisation in the occupied territories, and that Khalil al Wasir (Abu Jihad), the Fatah leader in Tunis, responsible for directing the work of the movement inside the territories, “shifted to a fuller embrace of the concept of mass political work in the Occupied Territories”. This shift had a decisive impact on the level of mass mobilisation that in turn made the uprising in 1987 possible. Cobban claims that:

”It was this shift and the resulting efforts that Fatah’s cadres inside the territories put into building up women’s groups, student unions, and the omnipresent ”Shabiba youth groups” that, according to many accounts from the inside the territories, tipped the balance and mobilised the majority of the West Bank and Gaza communities into conscious participation in the nationalist political effort” (Ibid).

Rema Hammami agrees that mass mobilisation gained a greater momentum after the 1982 invasion of Lebanon as the resultant shift of the locus of national struggle from the outside to inside the West Bank and Gaza. However, she distinguishes between Fatah’s mass mobilisation and the leftist mobilization (1995:53-54). According to Hammami (1995:54), it was the leftist factions, like the PCP (now PPP), which were the main contributor in establishing student and worker movements, voluntary work camps and sectoral movements focusing on women, health and agriculture. Through the Palestinian- Jordanian Joint Committee (PJJC), which focused primarily on Arab funding to the occupied territories, Fatah “maintained an uncomfortable working relationship with the Jordanian regime in an attempt to retain some influence over the West Bank” (Ibid). Hammami argues, that while Fatah’s initiatives, directed through PJJC, supported more “traditional, conservative pro-jordanian institutions such as municipalities, universities and charitable societies”, it was the PCP, “independent of PLO, who initiated the organising of labour and student movements, and who founded the voluntary work programmes which broadened participation among wide sectors of the community in the national cause” (Ibid). Many of these grassroots organisations began as cross-factional projects, but soon developed into factional

based groups. Fatah played an important part in this development, and the factionalisation in the early 1980s and mid-1980s was one of the first steps towards its institutionalisation. Hammami claims that in retrospect it is clear that, throughout this period, “many of the mass-based NGOs were predominantly used as means of recruitment for a particular fraction” (1995:55). These organisations did take part in consciousness-raising, and delivered much needed services like health, agricultural extension, and daycare. However, according to Hammami (Ibid), “for better or for worse, they saw these activities and services as means to a political end”.

We have seen some reasons behind mass mobilisation, politisation and organisational development. But why was so much energy used in order to develop new organisations instead of building strong political parties? One important reason is the Israeli military governments harsh reprisals to every sign of uproar or demonstration of resistance. In 1982, 8 West Bank mayors were removed from office by Israeli officials and the NGC became outlawed (Schou 1995:51). These actions severely limited political expression and generated the establishment of civil organisations. Furthermore, this experience led to that the new organisations were built less visible and thus less vulnerable to Israeli reprisals. Whereas Israel outlawed political parties, it tended to ignore the formation of what Frisch has called “localized” and “loosely federated” institutions:

....” Hundreds of committees, charitable associations, labour unions and professional organisations, many of which were located in the refugee camps and villages, increased both vulnerability to Israeli reprisals and decreased Israeli control. Not only was the leadership less known and the institutional targets more dispersed, it was easier to replace, in the frequent event of arrest and imprisonment, a more localized leadership with relatively smaller administratively jurisdiction, than the mayors possessed, than it was leaders of the stature of the Al – Shaq`a and Khalaf” (Frisch 1990:110-111).

This might indicate that it was easier to continue the national struggle through loosely organised organisations than through political parties. Because of PLO and Fatah`s position as the only political power towards the outside world, and through its role as

the sole legitimate negotiator with Israel, the smaller scale parties were left to find other areas to express their thoughts and aspirations. Civil society was such an arena.

2.2 The New Elite and Recruitment

Glenn E. Robinson argues (1993:302), that the political mobilisation of the population leading up to the intifada was closely connected to the rise of the new elite (salaried, students), the professional middleclass (journalists, lawyers, doctors), and the marginalization of the old elite (the traditional notables). The New Middle Class (NMC) consists of salaried persons with no or less than 50% income deriving from land ownership, and the would-be salaried persons, predominantly students (Schou 1995:21-22).

Mass-recruitment was made possible through the establishment of various national institutional networks like: “student groups, labour unions, women`s committees and professional relief organizations” (Schou 1995:16; Robinson 1993). These new institutions, established by the middle-class activists, helped creating a collective bloc by forging new identities. It was this bloc, according to Robinson, that made actions in the form of intifada possible (Ibid).

In a later book, Robinson, after analysing the emergence of the new political elite in Palestine, traces the leadership of the political blocs to Palestinians who had spent time in Israeli prison and had been released in the late 1970s or early 1980s. He claims that prison served as a “principal training ground for future activists”, and that it was “the graduates of these “peoples schools” who often presumed leadership roles in the palestinian student movement” (Robinson 1997:22). If we follow this lead further, Robinson argues that it was the politicised Palestinians coming out of local Universities that “constituted the core of the new Palestinian elite and provided the catalyst for social and political change in the occupied territories from the building of mass organisations to the intifada” (Robinson 1997:27). Schou also highlight the importance the building of new universities after 1972 had on recruitment of new activists from the NMC into political positions (1995:43). The most obvious way of

recruitment was, however, tied to family and on basis of recommendation from friends (Robinson 1997:27).

”...However, the degree of grass root activism that went into establishing a system of popular education– even with all of its insurmountable problems – was indicative of the distribution of authority during the Intifada. That is, the initiative for political action clearly came from below” (Ibid:105).

Shikaki has a similar view. According to Shikaki (1996:30) the period of the 1980s witnessed the politicisation of the poor and the middle class and its mobilisation in the service of organized political and paramilitary factions. It was this leadership, mostly poor and lower middle class, which led the intifada and sustained its momentum of several years since 1987.

2.3 Organisational Redirection/Restructurement and the Introduction of the term Civil Society

In the late 1980s mass campaigns and voluntary work camps, as the main method of relating to the community was displaced by standing projects such as kindergartens, clinics and production cooperatives, which numbers increased massively in the early years of the intifada. This change of methods came in line with changing goals and narrowed focus, much set forth by political conditions laid out by donor countries. Money became available to the organisations in the 1980s through their allied factions. At the same time many organisations began making links to foreign donor organisations. With the money came also new agendas. Foreign countries demanded certain levels of long-term planning, transparency and activities linked to education or service provision, as opposed to political mobilisation (Hammami 1995:56-57).

In the 1990s further changes took place. Hammami describes an overall process in which NGOs became separated from political parties and isolated from the grassroots community (1995:57). Standing projects became largely displaced by the focus on

”human resource development,” carried on through training courses and educational workshops. In this process many of the research centres became reformulated as training centres. This meant that NGOs became distanced from the wider community of which they were once an organic part. Rather than performing as catalysts of the community political organisation, they began to see themselves as development professionals (Ibid).

This overall process is, however, more complex than can be accounted for only by a discussion of donors and professionalisation. In fact, a number of politically independent NGOs were formed in the late 1980s specifically to provide technical and informational resources and autonomous fora to the factional committees, such as Womens Affairs centres in Nablus and Gaza, the Womens Studies Centre and the Womens Legal Rights and Law Centre in Jerusalem. These centres initially saw their goals as strengthening womens agendas within the factional womens committees in response to the historical experience of womens issues being marginalised within the nationalist factions (Hammami 1995:63). Despite this, during the latter period of NGO professionalisation, the dissolution of the mass-based movement and the parties that had led it was also taking place. In late 1988, when Israel criminalized all forms of popular organising, the historical popular committee period of the uprising, where grassroots committees became generalised phenomena, had been dealt its first blow. As a result, the mass population was removed as the front line of the intifada and replaced by militarised underground of cells of male youth.

The more mature national leadership faced massive imprisonment, and became gradually replaced by younger, politically uneducated and inexperienced activists. This led to a loss of ideological direction and oversight. In addition, in order to contain the intifada, Israeli security forces increasingly recruited collaborators. According to Hammami (1995: 58), “by 1989, confronting collaboration had become the dominant resistance activity of intifada activists of all factions and had become an obsession in society as a whole”. Moreover Hammami claims that,

“In this context of generalised fear and suspicion, the mass of the population withdrew to the sanctuary of private life and left the streets to factional strike forces and the non-organised but massively empowered generation of teenage and younger boys. The left parties themselves (which had in any case always wielded an influence disproportionate to their size) were undergoing a series of organisational and ideological conflicts, triggered in part by the collapse of the Soviet Union. This further weakened the popular support and drove many activists out of political life (Hammami 1995:58)”.

A poll carried out by the Centre for Palestinian Research and Studies show that PPP (former Communist Party) and the two splits of the Democratic Front only reached 1% support each, while the Popular front received a 6% support. On the other hand, Fatah received more than 40% and Hamas with about 15% (CPRS 17-19 November 1994).

As we have seen, mass popular organising ceased to exist. However, Hammami claims that leadership structures, standing projects or day care centers, such as day care centres, offices and clinics, remained.

“It was these structures, with their staff, that evolved as part of the community of institutionalised NGOs that we see today, or fell victim, finally, to the PLO budgetary crisis brought on by the Gulf war. Many of these professional development centres became the sole political base for the intellectuals and the activists from the left parties (Hammami 1995:58)”.

But it was not until right after the DoP, and as a result of the establishment of PA, that civil society became a hot and much debated concept within the NGO community.

According to Hammami (1995:53), “the discussion of civil society was initiated by the left intellectuals in the NGO community shortly after Oslo”. This happened because civil society organisations had to adopt to the changes that occurred as a result of the establishment of the PA. Money was diverted from organisations towards the PA. The World Bank estimates that foreign support for Palestinian NGOs dropped from a high of between 170-240 million US dollars, in the early 1990s, to between

100 -120 million US dollars in the post-Oslo period. This amounts, at least, to a drop of 40% in funding (See chapter 4.2). So as to gain the trust and support of donors, they turned the notion of "good governance", transparency and accountability, concepts that donors brought with them in order to reconstruct the remainders of Palestine (Hammami 1995:51), into their own goals.

Hammami argues that out of this situation of crisis and contradictions, and the resulting vacuum, NGOs emerged around a notion of civil society (1995:53).

"Ironically then, it is a defeated and marginalised Palestinian Left that has introduced the term civil society into political culture- ironic since the Left has in many ways conceptualised it similarly to the good governance model, albeit without the stress on free markets. As such, in the current context of Palestinian history, the discussion of civil society amounts to a discourse of defeat. It has become the central term through which demoralised and de-mobilised grassroots movement has been coming to terms with its powerlessness in the face of the transformation of the once distant PLO into a local authoritarian reality" (Hammami 1995:52).

Another aspect of the establishment of the PA, was that NGOs, felt that it had to start mobilising the local constituency to gain support, because many looked at the arrival of the PA with concern, especially the left-linked NGOs, which were outright suspicious. But in absence of a mass base, the only constituency left was other NGOs (Hammami 1995:59). According to their own documents, the Palestinian NGO Network was established at the end of 1993, in light of the political development in the region, because of concern for their existence and role in the coming political stage (The Palestinian Non-Governmental Organization Network 1996:1). Hammami (1995:59) claims that these organisations began to organise themselves into what is called a movement, but is actually more like a lobby group, when they had their first confrontation with the emerging PA. A request from the proto-PA economic body, that PECDAR should have a role in the coordination of NGO funding, instigated the wish to organise themselves, so as to have a stronger bargaining power vis-a-vis PA.

The Network gives the following definition:

”The Palestinian NGO Network is a voluntary cluster of Palestinian NGOs which work in various human, social, and developmental fields. They are brought together by a unified vision. They seek to develop and strengthen civil society” (The Palestinian NGO Network 1996:7).

The PNGO group was predominantly made up of political independents, although individuals and institutions seen as related to the Palestine People`s Party (formerly the PCP) and the PFLP held high profiles in it (Hammami 1995:59).

While some organisations remained independent and began cooperation with other organisations, many NGO leaders decided to merge their institutions and activities into the PA structure after its establishment in 1994 (Sullivan 2000:11). Dr Anis al-Qaq, deputy minister of MOPIC, is an excellent example of this. The NGOs he coordinated, associations of Health Services, were affiliated with Fatah. Once the PA was established, he merged them into the ”governmental structure” (Ibid). Many organisations, however, did not. Muhammad Jaradat, a founder of the NGO Badil 1, expresses a view quite common among NGO workers:

”When we were young we dreamed we were laying the foundation for a state. When we started the agricultural union, we thought we would merge one day with other farmer`s organisations to form the Palestinian Ministry of Agriculture” (Ben Efrat 1999).

Many preferred to stay in the ”third sector” (then on-profit arena), while others transferred some of their responsibilities to PA. However, much of the health and education services run by the PA were transferred from the Israeli Civil Administration. Israel did not provide adequate investment during occupation to maintain staff and facilities. As a result, the PA inherited largely ineffective service delivery operations (Sullivan 2000:11), while the NGO sector that still remained had developed a much more effective service system but failed short of the money.

Before Oslo most NGOs, and other institutions, pledged allegiance to the PLO and defined themselves as part of a national front operating in various ways on its behalf. Thus the organisations that wanted to remain independent after the establishment of the PA were considered opponents to PA (Hammami 1995:52), and the peace process. Hammami (Ibid) claims that one of the most confusing element for the side watchers is that it appears that Palestinian NGOs and figures from left PLO opposition factions has formed a civil society block vis-a-vis the PA.

“The confusion arises because the opposition is seen to inhabit a political world which the PA is part of, while NGOs seem to occupy a civil world which now seems clearly separate from the PA” (1995: 51-52). ... “What confuses the matter even further is the distinction between the PLO and the PA. The first, formerly a government in exile, has now been displaced by the second, a government in practice. The PLO had always historically played a dual governmental/non-governmental role at international forums, a prerogative that the PA has sometimes tried to hang on to (1995:52)”.

For Glenn E. Robinson (1997:184) it is clear that because the NGO`s are the institutional home of the new Palestinian elite it has been treated with suspicion by the PA from the outset of its rule. This might explain some of the tension that has been between the PA and civil society organisations.

Nevertheless, today in Palestine, NGOs play an ”essential part in delivering economic and social services in the West Bank and Gaza Strip. In early 1996, it was estimated that NGOs provided about 60% by value of all primary health care services and up to one-half of secondary and tertiary health care. All disability and preschool programs are run by NGOs as well as most agricultural services, low-cost housing programs and micro-enterprise credit schemes”(Sullivan 2000:12). Palestinian NGOs also provide a great deal of primary education, especially in Jerusalem where the vast majority of Palestinian children attend religious or secular private schools, run mostly by Palestinian or international NGOs (Ibid). This might be another reason behind the controversy between civil society actors and PA. Civil society wants to continue playing a considerable part in providing these services to the population or otherwise close down, while PA on the other hand wants to, in the long run, themselves provide

such services. In other words, the controversy between the PA and civil society might be a contestation over money and power.

Summing up it is safe to say that mobilisation, as a key word for organisational development in the late 1970s and during the 1980s, was replaced by the notion of empowerment in the late 1980s and 1990s.

“Empowerment was generally linked to bringing about social change through development, as opposed to political transformation through mass resistance. Constituencies became defined as “target groups” while grassroots leaders became specialists armed with new forms of knowledge and techniques (Hammami1995:57)”.

This came as a result of foreign funding and its influence on the agenda of NGOs. Another aspect is the defactionalisation in the NGO community. Gradually the NGO community became less of a political pool for former PCP and other leftist parties. As we have seen this is the outcome of a long process, from the transformation of broad-based grassroots movements into discrete professional NGO institutions, but also as a result of an ideological and organisational crisis among the left PLO factions. “This had begun before the intifada, but reached its zenith in the period of the Soviet Union`s demise (Hammami 1995:52)”. However, still today many, especially the PA, claim that several civil society organisations are lead by persons with political objectives.

Given the chaotic situation in Palestine, it is all but impossible to develop a concise picture of the NGO community in Palestine. What is clear is that the number of NGOs in both the West Bank and Gaza Strip is at least 700 (and could be as many as 1500). Fully half, of this minimum figure of 700, 377, are founded on a singular block, the General Union of Palestinian Charitable Associations (CFR 1999). Another major block is the Palestinian Non-Government Organisations (PNGO), which comprises of about 80 organisations and was heavily involved in the making of the NGO Law.

3. Theoretical Considerations

Much focus has been on the dynamics of the elites interaction during the process of transition. To analyse the shift towards a more democratic society, many scholars, like Graeme Gill, claim that one also have to consider civil society's role as an explanatory factor (Gill 2000). In Palestine, with a long history of societal organisations, this might be a valid point to make. Therefore, two theoretical positions are essential in this thesis: The Transitional School and Civil Society theory.

3.1 Elites and Transition to Democracy

The collective study, edited by Guillermo O'Donnell, Philippe C. Schmitter and Laurence Whitehead is considered to be a path-breaking, and paradigm setting, work in explaining the dynamics of the elite in transitions to democracy. The various cases show, according to Lowenthal, that although international factors, "direct and indirect, may condition and influence the course of transition the major participants and the dominant influences in each case have been national". The collective study illustrates "the importance of institutions, of mediating procedures and forums that help make the rules of political discourse legitimate and credible in a period of change. Furthermore, they demonstrate the vital significance of political leadership and judgement, and the role of single individuals in complex historical processes (O'Donnell and Scmitter 1986:ix)".

Transition is defined as the "interval between one political regime and another" (O'Donnell and Scmitter 1986:6), "and its chief characteristic is uncertainty (Gill 2000:44)". The transition might lead to another authoritarian regime or to a more democratic polity. However, this uncertainty relates not only to the outcome of the transition, "but more importantly to the process itself (Ibid)". Other characteristics are that the rules of the political game are not defined, and it is likely, to the extent that

there are any effective rules and procedures, that these will be in the hands of authoritarian rulers (O'Donnell and Schmitter 1986:6). According to the authors, the typical sign that the transition has begun comes when the regime, for whatever reason, begin to modify their own rules such as to provide more secure guarantees for the rights of individuals and groups (Ibid). O'Donnell and Schmitter has named this "first stage" towards democratisation, liberalisation.

3.1.1 Liberalisation

The authors define liberalisation as the "process of making effective certain rights that protect both individuals and social groups from arbitrary or illegal acts committed by state or third parties" (O'Donnell and Schmitter 1986:79). These rights include:

"On the level of individuals, these guarantees include the classical elements of the liberal tradition: habeas corpus; sanctity of private home and correspondence; the right to be defended in a fair trial according to preestablished laws; freedom of movement, speech, and petition; and so forth. On the level of groups, these rights cover such things as freedom from punishment for expression of collective dissent from government policy, freedom from censorship of the means of communication, and freedom to associate voluntarily with other citizens" (Ibid).

There are no logic or necessary sequence to the application of the above-mentioned rights, nor are they irreversible. In fact, according to the authors, a characteristic of this early stage in the transition is its precarious dependence upon governmental power, which remains arbitrary and capricious (1986:7). However, liberalisation tends to occur when regimes are under pressure.

Gill criticises O'Donnell and Schmitter's focus on development in terms of rights and duties as overly legalistic, and reflects the authors view of democratisation as bound up with citizenship. Legalisation does not have to be an intrinsic part of liberalisation from the very start, but may come later. Moreover, Gill argues that the definition of liberalisation assumes "a defence against acts by the state, which are

“arbitrary or illegal”. One problem here is, illegal according to whose laws and arbitrary in whose eyes (Gill 2000:47)”.

It is important to keep in mind that liberalisation does not automatically lead to democratisation. However, it is more likely that once a regime has embarked upon a process of liberalisation, it will usually be met with pressure to expand it (Gill 2000:49). Also, if those liberalised practices are not implemented in a rapid fashion, and represent an obvious threat to the established regime, they tend to accumulate, and become institutionalised, and thereby raise the effective and perceived costs of their eventual annulment (Schmitter and O`Donnell 1986:7).

It is equally true that democratisation cannot occur without liberalisation, “except where it comes from a rapid and probably violent rupture of the political process (Ibid)”. This brings us to the possibly next step in the transition process, democratisation.

3.1.2 Democracy and Democratisation

For Schmitter/O`Donnell the guiding principle for democracy is that of citizenship, including both the right to be treated by fellow human beings as equal with respect to the making of collective choices and the obligations of those implementing such choices to be equally accountable and accessible to all members of the polity (1986:7).

However, it is difficult to give a precise and final definition to the concept of democracy, because of its dynamic nature. During the past centuries it has been the focus of many intellectuals and the interpretations therefore varies. A narrow understanding of the concept defines democracy as a special form of political system. Understood in a wider sense, the concept is not only a political system, but also includes special forms of social and economical systems. A narrow understanding makes it easier to ask questions regarding the relationship between one political

system on one side and, social and economical dimensions on the other (El Fassed 1998:1).

According to Joseph A. Schumpeter a political system can only be understood as democratic if its most significant actors are elected through periodic elections, where the candidates freely can compete for votes, and where the population (adults) has the right to vote. Schumpeter understands democracy as a mechanism for electing a political leadership. He defines political method as:

”That institutional arrangement for arriving at political decisions in which individuals acquire the power to decide by means of competitive struggle for the people’s vote” (1947:260).

To sum up, democracy can be said to include the dimensions of competition and participation.

Democracy can also be said to include certain rights like: freedom of religion, freedom of assembly and speech, the right to form organisations and political parties and protection from random arrest/detention. A precondition for a democracy is the establishment of an independent court system, where everyone can take proceedings before a court without undue delay, and where everyone, in principle, are equal when it comes to the rule of law (Østerud 1996:171). It is common to equate democracy to the idea of living a good life and what constitutes a good society. The disadvantage with this idea is that it is difficult to agree to what a good life means. To the extent the population benefits from internationally accepted human rights declarations, may be one indicator of what constitutes a good life. However, it is common to talk about the concept in terms of specific institutions and rules.

We have now defined democracy in terms of competition, participation and human rights. It is only natural that democratisation therefore contains the development, institutionalisation of the above-mentioned rights. In short democratisation involves putting principles into practice through specific and detailed rules and procedures

(O'Donnell and Schmitter 1986:10). For O'Donnell and Schmitter democratisation refers to:

” The process whereby the rules and procedures of citizenship are either applied to political institutions previously governed by other principles (e.g., coercive control, social tradition, expert judgement, or administrative practice), or expanded to include persons not previously enjoying such rights and obligations (e.g., nontaxpayers, illiterates, women, youth, ethnic minorities, foreign residents), or extended to cover issues and institutions not previously subject to citizen participation (e.g., state agencies, military establishments, partisan organisations, interest associations, productive enterprises, educational institutions, etc.)” (Ibid).

Several factors can affect the transformation of liberalisation into democratisation one being that through negotiation, which is applicable in a Palestinian context.

3.1.3 Pacts and Pacted Democracy

Schmitter and O'Donnell define pact as an:

” Explicit, but not always publicly explicated or justified, agreement among a select set of actors which seek to define (or, better, to redefine) rules governing the exercise of powers on the basis of mutual guarantees for the ”vital interests” of those entering into it” (1986:37).

Pacts may be of limited duration or contingent upon ongoing consent. They are often seen as “temporary solutions intended to avoid certain worrisome outcomes and, perhaps, to pave the way for more permanent arrangements for the solution of conflicts (Ibid)”. The pact may therefore be subject to renegotiation. O'Donnell and Schmitter identify three possible types of pacts. The first is “a pact governing military withdrawal from politics”. Second, “a political pact involving the gradual extension of political rights, often through the medium of political parties, and of inclusiveness”. Third, “an economical/social pact to facilitate the making of hard economic decisions (Gill 2000:53)”. According to Gill (2000:54), “Pact-making is facilitated when a number of conditions are satisfied”. The most important being that each party depends on the other. When there is no need for one group to resort to

compromises, there is little incentive for it to seek agreement (Gill 2000:54). Other aspects of pact-making are that it is an advantage if the negotiation takes place in private and as little as possible leaks to the public, when leaders are able to convince the other party in negotiation that their followers will abide and respect the pact. Furthermore, trade-offs and exit guarantees are tools often used in the negotiating process. Exit guarantees are “ensurances given to elements in the old regime that their interests will not be crucially affected by the transition to democratic rule”, while trade offs “involves a commitment to widen the boundaries of participation in the political system, thereby enabling formerly excluded political forces to have a voice”. In return they have to accept that their most radical positions has to be changed or excluded (Gill 2000:55-56).

According to Gill (2000:57), “the key to pacts is that they limit the uncertainty associated with democratic transtition, and thereby give some guarantees to those who potentially have a lot to lose as a result of transition. Pactmaking is a form of conflict resolution”.

In the case of Palestine, the Oslo Accords constitute a pact based on several subsequent agreements. A special feature of this pact is that a former diaspora organisation led the negotiation on behalf of all Palestinians with Israel. In other words, the pact was not between groups within the occupied territories but between the occupier, Israel, and PLO. Also, transition as defined by O`Donnell and Schmitter is the interval between one political regime and another (1986:6). Palestine did not have a political regime inside the territories, but were under Israeli administration. According to Nils A. Butenschøn the Oslo Agreement is “a declaration of principles which lays the foundation for a limited, interim Palestinian self-rule in those areas of Palestine occupied by Israel since 1967”, meaning the West Bank, East Jerusalem and the Gaza strip (1998:19). The Oslo process is a step-by-step implementation for peace, which means that several subsequent agreements is necessary in order to conclude the ”final status talks”, and establish an independent permanent Palestinian state. The various agreements, referred to in this paper, are the Declaration of

Principles (known as DoP or Oslo I) in September 1993, the Cairo Agreement of May 1994 (also known as the Gaza and Jericho Agreement), and the Oslo II (also known as the Taba Agreement) in September 1995. The substance of the pact is also a little different from that of the pacts listed above (O'Donnell and Schmitter), although it contains the establishment of an interim government and institutions and provided for the election of the Palestinian Legislative Council and the election of a President in 1996. In addition the pact included obligations on the part of the established interim government in securing protection for the Israelis living in Israel or in the occupied territories. The Cairo Agreement represents the establishment of an interim "peace regime", which cleared the way for the first Palestinian Authority presence in Jericho and Gaza. The Agreement contains the fabric of institutional and security related arrangements deemed necessary for erecting a Palestinian infrastructure within the confines of the Agreement (Butenschøn 1998:17). Article VIII of the Cairo Agreement obliged the PA to take steps to "guarantee public order and internal security." Article VII obliged both parties, Israel and the Palestinians to "cooperate in combating criminal activity which may affect both sides...." (Watson 2000:211). The Taba Agreement details the institutional and security arrangements in the Occupied Territories (Butenschøn 1998:17).

Watson (2000:216) states that, for Israel, nothing is more central to the "object and purpose" of the Accords than prevention of terrorism. The establishment of a strong Palestinian police force, provided for by DoP, Article VIII, and also the Taba Agreement, Article XIV (1), to uphold their part of the Agreements was thus essential for the Israelis. The Cairo Agreement authorized the Palestinians to deploy a total of 9000 policemen (Annexe 1, Art. III (3)). The 1995 Taba Agreement expanded the allowable number of Palestinian Police to a total of 24.000, with an additional 6000 to be deployed "according to the phases of the further redeployments or as needed, as agreed upon by the two parties (Annexe 1, At. IV (3)(a)-(b)). The PA has admitted that it has deployed more police than is called for in the Accords (Watson 2000:238). In 1996, the PA reportedly employed more than 40.000 policemen. In Gaza, there was one police officer for every 50 people, the highest ratio of police to civil population in

the world (Wagner 2000:124). The exact number today is unclear. A human rights activist is said to have declared that there are at least 80.000 PA policemen, including intelligence agents and security officers (Watson 2000:239).

According to O'Donnell and Schmitter (1986:38) there is a paradox about pacts; they often move towards democracy by undemocratic means. Furthermore, they are typically negotiated among a small number of participants representing established, and often highly oligarchical, groups or institutions. They reduce competitiveness and accountability, they attempt to structure the agenda of policy concerns, and they distort the principle of citizen equality (Ibid).

As we have seen in the introduction chapter (1.1), Khalil Shikaki stated that the priorities of the PA are peace at the top and democracy at the bottom (1996:20). Eventhough the Oslo Accords stipulates the establishment of "democratic" institutions, like PLC, an independent judiciary in addition to the respect of human rights⁶, the main focus of the pact was security. The number of Palestinian policemen and the huge security apparatus illustrates this point. Arafat had to provide for the security for not only his own population, but also the Israelis, by almost any means necessary. In other words, the pact in itself does not necessarily lead to a democratic Palestinian state. This will be further elaborated in chapter 4.1. Other factors may be more explanatory to analyse a shift towards a democratic society.

Above we established that ones a liberalisation process has started, and some foundation of democratic structure has been laid, press will be exerted to widen/extend these. The strongest factor in this regard, as I will argue throughout this thesis, has been civil society and international donors. This is interesting; this could mean that a third party and/or fourth party, left out of the negotiation, may influence, maybe even direct the process of institution building towards democratisation, away from what seemingly would be another authoritarian regime.

⁶ Israel and [Palestinian] Council shall exercise their powers and responsibilities pursuant to this Agreement with due regard to internationally-accepted norms and principles of human rights and the rule of law. The Taba Agreement Art. XIX.

The role of civil society in the transitional process is largely neglected as an analytical concept in the transitional school. According to O'Donnell pacts are facilitated, at least in Latin America, when civil society is poorly organised and politically inactive, or when the levels of social organisation and political activation are high but these are accompanied with a strong representative party system. The general point O'Donnell is making here is that the mass will be excluded from pact-making process if its leaders are not seen as being the head of a constituency which cannot be excluded from that process (O'Donnell m.fl. 1986:12-13). The transition-school acknowledge that mass action can contribute in stimulating the process of democratisation, but such mass action is not the main contributing factor in this regard (Gill 2000:59). In chapter 4.3 I will focus on the role civil society played in the forming of the so-called NGO Law. An analysis of this Law will therefore give us an indication of whether civil society was the main influential factor in the law-making process. This in turn could tell us about the possibility for a transition towards a more democratic system lead by civil society forces and/or other factors such as the PA or international donors.

3.2 Civil Society

The second important concept that addresses democratic development is civil society theory. Many scholars claim that civil society is a precondition for a democratisation, and that a strong civil society in itself contains democratic values. The concept, however, has no clear and precise definition. This has led to a vast number of definitions and different opinions to the importance of civil society theory in explaining democratisation or, like in this case, evaluating the democratisation process in progress. The link between democracy and civil society is close.

According to Saad Eddin Ibrahim (1995:29), civil society is closely connected to democratisation because a democratic society has peaceful competing organisations/groups and/or interests that have to relate to a certain set of rules and institutions in its daily work. Norton expresses a similar view when he claims that:

"There are little prospects for sustainable democratic reform in the absence of a viable and reasonably autonomous civil society" (1995:4).

Then, how is the relationship between democratisation and civil society in countries with authoritarian regimes, like Palestine? Schwedler (1995) argues that a democratisation in the Middle East is impossible without a strong and viable civil society. Walzer has a different opinion. He argues that only a democratic state can create a democratic civil society, and that only a democratic civil society can uphold a democratic state (Beiner 1995:170). With the lack of democratic values shown by the interim government, Walzer's view leaves no room for a civil society in the autonomous areas in Palestine. However, history has shown that civil society (or civil groups) can exist and even overcome dictators and authoritarian regimes through collective actions (Dajani, Munther 1997:19-20).⁷

The purpose of this thesis is to evaluate the possibility of a democratisation process led by civil society in Palestine. Then it is necessary, in order to use the concept as an analytic tool, to look in to the very essence of the concept, meaning to set the boundaries and criteria of the concept in order separate the concept from society at large.

3.2.1 Boundaries

One of the most controversial aspects of the concept civil society is to define what it contains (the space). Cohen and Arato gives us an indication and a starting point to this very question when they state that:

"All agree that civil society represents a sphere other than and even opposed to the state. All include, almost always unsystematically, some combination of networks of legal protection, voluntary organisations, and forms of independent public expression" (1995:74).

⁷ See also Cohen and Arato concerning the rise of civil society structures under the authoritarian governments in Easter Europe during the 1980s (1995:16).

Beyond this understanding the opinions differs on whether to include political parties, families, social movements etc. Scwelder includes virtually all non-violent associational activity between individual citizen and the state (1995:3).

In general, civil society can be described as the room and the mediator between the state on the one side and the individual on the other. It is not necessary for this case to define the space for which the civil society should operate other than that of the operationalisation of the concept outlined in chapter 3.3. Firstly, and obviously, the existence of a civil society is a precondition to use it as an analytic tool. The question, then, is whether these organisations fulfil certain preconditions in order to be considered civil?

3.2.2 Criteria

I have already mentioned the close relationship between democratisation and civil society. Hence, it is natural that civil society in order to contribute in a democratisation process, display certain democratic values. It makes sense to separate the concept in two categories: a normative precondition, and an institutional precondition.

The normative criterion demands that the civil society must exhibit, and enhance values such as tolerance, equality, liberty, participation and political inclusion. This should mean that organisations have to obey democratic rules of the game. Even the word "civil" has connotations of democratic behaviour in its interpretation. It refers to a state of being. To be civil is the opposite of being barbaric (Tester 1992:9). Then, how should we understand this criterion in a Palestinian context? The answer must be that the organisations should prove their civility through the means they adopt in their work. This would mean that organisations are "civil" if they use and promote democratic values in their work. This idea is compatible with the common understanding that we expect democracy to be married to civility (Hall 1995:26).

The question then, is how can we separate civility from democracy in Palestine. In other words is democracy a precondition to establish civil behaviour? If so, that would exclude civil society as an analytic tool in a Palestinian context. Even though civility and democracy are closely connected there is no logic in excluding civil behaviour in non-democratic countries. According to Hall civil society must depend upon voluntary and overlapping membership in autonomous groups and organisations if society is to become "civil" (Hall 1995:15). This can be accomplished in undemocratic countries like Palestine.

However, two major weaknesses of a normative understanding are that it is difficult, if not impossible to, first, define what is appropriate behaviour and, second, to conclude that civil society has a common set of values and belief system that serves as a guideline for societal behaviour. In other words it assumes citizens to be equal. According to Tørnquist it is rather the density and structure of associations and public discourse that are relatively independent of the state, and at times, of the market itself, that matter. And though that is important, the process behind all this is not focused upon by the paradigm (1999:96). Tørnquist argues that the concept sets aside relations of power in civil society when they assume citizens to be equal. Seligman expresses a similar view, criticising the normative understanding of the concept, when he claims that the problem lies in what the concept ignores, that is, how to constitute a sense of community among and between social actors who are conceived in terms of autonomous individuals (1992:204). Tørnquist argues further that there are strong indications that democratic values does not evolve on its own in civil society, but rather through deliberate political work and efforts (1999:142).

It is, however, very unlikely that the normative criterion can be regarded as alien even in a Palestinian context. Seligman's criticism therefore fails to prove that the normative criterion and, therefore the concept, is useless as an analytic tool.

Another problem is whether or not to include those who do not have a minimum or acceptable level of civility. Should one include organisations that tries to enhance/

spread democratic values. Such an understanding would undermine the importance of civility and tolerance as a driving force in a democratisation process. For instance, an organization, which does not use violent means to promote their goals, does not necessarily respect the rights of other organisations. Schwedler stresses the importance of tolerance understood as acceptance of diversity. She claims that “those” with “deviant” visions etc. has to be included in order for the society to be understood as civil (Schwedler 1995:6). According to Schwedler, the question is not whether these organisations seek reforms or governmental changes, but whether they do so by working within the system.

”What matters is not what people feel about others, but how they act towards them” (Schwedler 1995:11).

Such an understanding would mean that even organizations that are not themselves based on democratic principles can be a part of civil society, if they work within the established system and accept the rule of law.

Summing up, in order to be part of civil society, in a normative understanding, one has to act in an acceptable manner and work within the system, i.e following the rules established by law or common law.

The second category is the institutional criterion, which stresses the importance of a certain set of rules, which regulate the civil society both internally and externally. The NGO law is set out to do just that. Hall claims that even if civil society enjoys a high degree of autonomy, the civil society is dependent upon governmental regulations that set the limits and framework within which the civil society can operate (1995:16). Cohen and Arato express a similar view. They claim that:

”For several reasons, modern civil society cannot be institutionalized without the political reaffirmation of rights through positive law. First, the complexity of modern civil society (and probably of any post primitive society) requires legal – juridical regulations in all spheres of life. Even

the private, intimate spheres are protected as such by legal dispensation. In other words, morality and *sittlichkeit* cannot, and must not, as Hegel knew, fully substitute for law, for any sphere of a modern society, or make law entirely superfluous. This point holds for fundamental rights as well,...Second, the very power of the modern state to intervene in society cannot be contained without self – imposed limits on the state. In other words, rights become limits in this sense only through being legally posited” (1995:414).

Seligman (1992:203) argues that the idea of civil society as an expression of a type of institutional order, adds little to already existing ideas of democracy or of citizenship. As we have seen, existing ideas of democracy are more occupied with democratisation from the top and down. Where this is not a likely scenario, the exclusion of civil society theory would mean that important structures and interaction between civil society actors and state representatives would be neglected.

On the other hand it is evident that the absence of clearly defined rules and obligations strongly decreases civil society`s possibilities to play an important part in the democratisation process, but that is not a reason to exclude them in the democratisation process. Palestine has numerous civil society organisations (see chapter 2), but not a clearly defined legal framework. The newly ratified NGO Law can help to clarify the situation, and give civil society the ”space” it needs to operate freely. However, the Law has not been implemented, and therefore it is questionable that the institutional criterion can be applied in a definition of civil society in a Palestinian context. This thesis will give an indication to whether the institutional criterion is met. Also, Cohen and Arato (1995) have argued that democratisation is possible from below through collective actions. Moreover, it is questionable that every transition to a more democratic country, even those conducted in a ”democratic manner”, were supported and defended by a already existing legal framework and that any alteration of the existing legal framework therefore was not necessary.

3.2.3 Limits to Civil Society

One very important aspect of civil society is its ability to generate popular support in order to put force behind their demands. According to Kazziah, lack of grass root is

one of the main reasons for the failure of the intellectual project of democratisation in the Middle East (1996:4). Gill, on his side, claims that:

”Without popular pressure, without the fear of the consequences of not responding to the perceived popular will, there is little incentive for the elites to adopt a system of government which would render them regularly accountable to the population at large” (2000:126).

He further argues that the relationship between elite regime actors and civil society force leaders will be a crucial factor in structuring the outcome of the pressure for regime change (Gill 2000:126). This relationship is also essential in addressing civil society’s achievement regarding the NGO law. According to Gill, any outcome of negotiations that civil society enters into with regime actors, are heavily dependent upon the ability of civil society actors to carry with them their constituencies. He also claims that the nature of civil society and the relationship between civil society forces and any relationship any of them possesses with the regime will shape the discussion fundamentally (Gill 2000:127).

With the high unemployment rate in The West Bank and Gaza Strip, it is difficult for the civil society forces to get their constituencies with them in the struggle for democracy. The number one priority is to be able to provide for their family. The question then, is whether it is fruitful to consider the civil society’s ability to effect the regime without addressing the issues of economics and the impact such factors has on the democratisation process. Cohen and Arato make a point of segregating the economic factors from the concept civil society. They claim that democracy can go much further on the level of civil society than on the level of political or economical society, because here the coordinating mechanism of communicative interaction has fundamental priority (1995:417).

Another serious restraint is limited Palestinian autonomy. The Palestinian civil society has undoubtedly been influenced by the fact that Palestinian jurisdiction is limited, and limited jurisdiction lead to a limited civil society (Rabah 1997:56). Another

major problem civil society is facing, concerns the relation between the PA and PLO. The PA is clearly limited by the Oslo Accords, which is its terms of reference; on the other hand, there is the PLO, the sole legitimate representative of the Palestinian people, which due to the PA's inability to sign any treaties is responsible for signing any agreement with Israel (Ibid:57).

The debate concerning the NGO law has been more silent than before the escalation of violence between rock-throwing Palestinians, and Israeli military forces. Due to restriction on commerce etc., the economy has worsened and the unemployment rate radically increased. However, the focus of the thesis is to analyse to what degree civil society can be said to have influenced the PLC and the PA in building democratic institutions. Factors like popular support and socio - economical factors are therefore already included in the analysis.

3.2.4 Conclusive Remarks to the Concepts Applicability

The application of a Western originated concept is not without its problems. According to Seligman (1992:204), the concept should only be understood within the context it was developed, meaning the Period of Enlightenment. This should, however, not mean that civil society theory only is applicable on Western society's. If one focuses on analysing what organisations arrive at, how people really come together to affect and be included in the political discourse and struggle; in other words, if one address how citizen and communities address their interests grievances vis a vis government policies, civil society as a concept is applicable as an analytic tool, because it helps visualizing a broad spectre of social interaction otherwise invisible or looked upon as irrelevant (Schwedler 1995:16).

Instead of abandoning the idea of civil society, some scholars have asked, "What is it that civil society achieves vis-a-vis the state. Civil society, interpreted in specifically Western terms, is unlikely to emerge in the Middle East, but this should not exclude other kinds of inclusive solidarity communities (Schwedler 1995:15). Answering these questions is essential in evaluating the effectiveness of civil society, exemplified through the NGO law. Using civil society theory as an analytic tool, as

we have seen, is not without problems. This thesis will, in accordance with evaluating civil societies effectiveness, therefore also share some thoughts to whether civil society is a useful concept in a Palestinian context. This thesis has no ambition of drawing one final definition of civil society, nor come to any final conclusion concerning the concepts applicability in a Palestinian context.

3.2.5 Operationalisation

Tamari (1998) claims that the operationalised definition of the concept civil society has come to mean only one thing, NGOs. This reduces the process to a very simplistic analysis and twist reality. The problem, according to Tamari, is that you cannot equate civil society and NGOs. The concept is much broader than that. Further, Tamari argues, that the fight for democracy is much wider than the struggle between the state and NGOs. That is just a small piece in a larger puzzle. The fight for democracy is also contended within PLC, between PLC and PA and there is a fight for a more pluralistic system within the political society (Tamari 1998).

For the sake of this thesis, the operational definition of civil society will include those organisations that have contributed to the debate and the struggle for or against the NGO law. This would mean that political parties and islamistic organisations are excluded from the analysis. For that reason, I will not debate whether or not political parties or Islamic groups should be a part of civil society in a Palestinian context. This study will therefore contain reports and statements from various human rights organisations, research centers and the PNGO Network etc. These organisations are considered independent of the regime, and membership is voluntary. For that reason, and as outlined in **3.2**, the operational understanding of civil society is here understood as voluntary organisations. When I refer to civil society I refer to this operationalisation, voluntary organisations.

The NGO law will serve as a measure of the civil society's ability to influence the political sphere. An analysis will also show if the struggle for democracy is wider than the struggle between NGOs and the state. This thesis will therefore analyse the

”space” between civil society and governmental institutions exemplified through the NGO law. This does not exclude, however, that civil society is capable of playing a considerable part in enhancing democratic values in other spheres than this thesis addresses, like on the grassroots level or within the civil society.

4. Donor Community and Influence

In October 1993, two weeks after the signing of the DoP, the international donor community met in Washington to mobilize support for the peace process. Donors pledged 2.4 billion US dollars to support Palestinian socio-economic development over a period of five years. That figure increased to 4.2 billion dollars in 1998. Actual disbursement to the end of 1998 amounted to, for various reasons, only 2.5 billion dollars. Donors pledged a similar level of support, for a further five-year period, in November 1998 (CFR 1999:24). According to the World Bank 2000 Report, by the end of 1999, donors had pledged almost US dollars 5.7 billion in assistance to the WBGS, of which US dollars 4.1 billion was committed against specific projects, and over US dollars 2.7 billion was disbursed. Donor disbursements averaged in this period at US dollars 464 million per year, ranging from a high of 537 million US dollars in 1996 to a low of 409 million US dollars in 1998 (2000:18).

“In both absolute and per capita terms, the donor effort for the Palestinians has been one of the largest ever undertaken by the international community” (CFR 1999:24, and World Bank 2000:18). The focus here will be donor assistance aiming at strengthening public institutions, in particular the law sector and the NGO sector.

4.1 Donor Strategy

“Aid is not neutral, it is politically biased, development merits notwithstanding. In any foreign – policy context, the real question regarding aid is: How political is it?” (Roy 1996:59).

According to the World Bank (2000:87), donor assistance in 1993-94 was driven by two urgent priorities: “The first of these imperatives was to support the establishment of the PA and to build- where none had existed before- the institutions necessary for self-government. The second imperative was to signal to the Palestinians, the region, and the world – the strong commitments of the international community to support progress in the Middle-East.” Sustainability, as a strategy, were secondary to other

considerations, such as making the peace process work by improving the Palestinians everyday lives (Ibid). Brynen states that for the PA, the receipt and expenditure of aid has been closely tied not only to developmental needs but also to two additional, and not always complementary, imperatives; political consolidation of the PA, and the need to strengthen the PA vis-a-vis Israel (2000:144). A trend of donor pledging being given at critical junctures in the peace process is easily traceable. High level donor meetings was held in October 1993 immediately after the Oslo Agreement (Brynen 2000:209); a special police donor conference was convened in Oslo in December 1993 and in Cairo in March 1994, to discuss ways of channelling aid to the Palestinian Police Force (PPF). A number of donor countries made pledges to support the PPF with training, equipment and limited financial aid. The Cairo conference also resulted in the establishment of the first first coordinating mechanism to the PPF, the Coordinating Committee for International Aid, named COPP (Lia 1999:161)⁸; the January 1996 ministerial conference; after the interim agreement and right before the Palestinian elections; and the November 1998 pledging conference after the Wye River Memorandum (Brynen 2000:209). This further envisages the connection between the aid given and political considerations.

Robinson is very sceptical on behalf of the future development of civil society because assistance in the post Oslo period was so closely tied to the largest political structure and not to the level of professionalism and effectiveness of institutions. As an example he refers to the fact that representatives from the Union of Health Work Committee (UHWC) were told orally and in writing on a number of occasions by foreign aid donors that they would not receive any funding until they relaxed their opposition towards the Oslo Accords (Robinson 1997:45). This view is similar to that of Roy quoted earlier, and gives the expression that the donor community uses donor money as means of pressure for a political objective. Rex Brynen, in a conference speech regarding: Palestinian Governmental NGO Relations: Co-operation and Partnership, stated that:

⁸ For a view of the aid coordination structure, see Appendix 1 (Lister and Venäläinen 1999:10)

“Donors are complicated beasts, with various interests. Some of which are national. Donors are interested in flying the flag and the kind of things that the ambassador would be pleased to cut the ribbon on. Some NGOs has used that to their advantage” (2000b:80).

He however, makes a point that a whole set of standard operating procedures, and a number of other things, have a larger impact on what donors do rather than detailed political calculations (Ibid).

4.2 Disbursement, and Trends in Donor Assistance: A Focus on the Rule of Law Sector

Institutional development represents one of the most serious challenges facing donors and Palestinians alike (Brynen 2000:222). Accordingly, during the past five years, and particularly during the past two years, the international effort to provide development support to the WBGS has increasingly focused attention on strengthening the Palestinian legal sector and justice system. Increased attention to this sector has come amidst a growing recognition on the part of the international community, as well as Palestinian legal institutions and civil society, of the importance that the rule of law plays in ensuring the sustainability of many other forms of developmental assistance (UNSCO 1999:Foreword).

According to MOPIC data, donors committed 611 million US dollars for institution-building between 1994 and mid-1999, and disbursed 257 million US dollars (World Bank 2000:54). A May 1999 UNSCO report found that the total amount of donor and agency funds thus far (data available as of 28 February 1999) committed to the rule of law sector, including completed, ongoing and pending projects, is US dollars 100.725,612. In all some 322 activities are reported upon, more than doubling the 152 activities registered in the previous survey in July 1997 (Ibid:11).⁹

The 1999 UNSCO Report has found that, twenty-four donors and thirteen UN agencies and programs, along with numerous independent international and Palestinian NGOs, currently support the rule of law sector (Ibid). These donors have

focused much attention on developing a strong civil society, with special attention to Palestinian NGOs. NGO development has absorbed (received-min) a full 16.7% of the assistance to the rule of law sector, for a total of US dollars 16,864,421 in committed assistance (not necessarily disbursed) (UNSCO 1999:32).¹⁰

Another sector, which has received a lot of attention, is PLC. In all, the PLC has been the recipient of a large percentage (15%), of the overall committed assistance to the rule of law sector, representing US dollars 15,083,692 (UNSCO 1999:34).¹¹ The judiciary has received 14% of the total assistance, which in US dollars amount to 14,112,839 million (UNSCO 1999:24).¹²

The trend is, however, towards a reduction of aid, especially in the institutional sector. Sectoral analysis of aid disbursement indicates a market decline in support of institution-building, from an average of 20% in 1994-1995, to an average of 13% in 1998-1999. At the same time support for infrastructure increased from 19% to 39% of donor support over the same period (World Bank 2000:19).¹³ Also the level of donor support for Palestinian NGOs has declined. World Bank estimates suggest that Palestinian NGOs received somewhere between 140-220 million US dollars by the early 1990s. However, with the establishment of PA that number dropped to about 90 million in 1994, and in 1995, and stabilized at about 60 million US dollars in 1996. MOPIC data suggests less, with about 45 to 50 million during 1995-1998 (World Bank 2000:20).

⁹ Of these 322 activities, 141 are completed, 146 are ongoing and 35 are pending (UNSCO 1999:11).

¹⁰ Of the support registered 24.8% was in the form of financial assistance, 11.8% as provision of equipment and materials, 5.4% as training and education, 32% as technical support, and the remaining 54.8% in multiple forms of assistance. Of the 93 activities registered in the survey, 35 are completed, 49 are ongoing, and 9 are pending (UNSCO 1999:32).

¹¹ Among the activities registered in the survey, 30% is in the form of technical assistance, with another 10% representing training and education, 10% as provision of equipment and materials, 5% as financial assistance, and the remaining 45% reported as mixed or multiple forms of assistance. Of the 20 activities registered, 10 are reported completed, with 6 ongoing, and 2 pending (UNSCO 1999:34).

¹² 40 % of the committed assistance is in the form of training, with the remaining 60% in mixed form. Of the activities reported one is completed, three is ongoing and six are pending (UNSCO 1999:24).

¹³ The World Bank 2000 Report note that while donor investment in infrastructure and public investment has increased in relative proportions, it has not increased in absolute terms in 1998-99. Thus, the decline in the 1998-99 donor disbursements cannot be fully explained by reference to infrastructure investments (Ibid:22).

William Reuben¹⁴ claims that this trend has important consequences on the NGO sector and on the civil society (Reuben 2000:65). Organisations that are not self sufficient or linked for a long period of time to external organisations will cease to exist. George Giacaman (2000:99) claims that several factors will influence the development of civil society in Palestine. The most important is stability of the sphere itself. This in turn depends on the nature of the political system, and on the existence of structural guarantees such as a functioning court system, unification of the various branches of the executive etc.

4.3 Effects of Donor Assistance

There is broad concensus that donor assistance has been crucial to the establishment of the PA, covering a significant portion of start-up, salaries, and other running costs for both the civil service and the Palestinian Police Force. The CFR report states that; "international assistance has had a major impact on the development of all branches of Palestinian government" (1999:24). The World Bank 2000 report argues that; "donors have played a key role in supporting Palestinian institution-building", and that "without such support it is difficult to see how a functioning administration could have been established in this early critical period" (Ibid:53).

It is easy to agree. At the time of the signing of DoP, there were no governing institutions in the WBGS, and thus the PA had to be built from scratch. Without prior experience of institution-building, PA had to depend on the donor community on advice as well as funding. Programs were therefore largely donor driven, particularly in the area of institution-building (CFR 1999:24). According to the World Bank 2000 report, donors have been central in providing policy advice and technical assistance. Moreover, donors, with their relevant economic ministries, have made significant contribution to drafting new laws and revising existing ones to modernise and stimulate the Palestinian economy (Ibid:50).

¹⁴ William Reuben is the coordinator for the World Banks NGOs and Civil Society Unit, Washington.

The massive donor assistance has also had negative effects. In a Palestinian context, the most important, and challenging, is the risk of creating growing structural Palestinian dependency on external sources. Stephen Lister and Raisa Venäläinen points to this in a draft report carried out for the AHLC, the 6 September 1999; Improvement of Aid Coordination for West Bank and Gaza, where they claim that the WBGS is unusual in its degree of dependency on aid, because the PA has depended on donors to finance its entire investment programmes (Ibid:8). This in turn has led to competition among PA institutions, and between PA and NGOs for donor assistance. Firstly, competition among PA institutions has led some donors to conclude direct arrangements with PA ministries, regional agencies, and municipalities. The institutions with the best political or organisational skills to lobby for funding has received most attention, while sectors with less skills and, in many instances, in most need of assistance, has been left short of money (World Bank 2000:24-25). Secondly, Brynen argues that competition between local NGOs and the PA has been another unfortunate feature of aid management. This is seen in the wish of some Palestinian officials to extend tighter control on NGO activity, whether in the interests of efficiency or because NGOs were seen as political rivals. NGOs, on their part, have showed little interest to cooperate with the PA, either because they feared government expansion into formerly NGO-dominated policy sectors, or because of political differences with the Fatah-dominated PA. "Donors have tended to support the position of NGOs, but inconsistently and unevenly"(Brynen 2000:217-218).

The fact that the donor community has both supported the establishment of a Palestinian Police Force, which has a poor record of human rights violations, and at the same time supported different NGOs, who promote human right issues etc., and criticises PA for human rights violations, corruption, has further generated suspicion between PA and the NGO community. PA officials has also publicly stated that these organisations have been bought off by Israel so as to focus on PA and not Israeli violations. LAW, for instance, has faced such accusations several times. It also tells

us that eventhough the PPF has been through various training programmes¹⁵ with an explicit emphasis on human rights and the rule of law, the increasing number of human rights abuses had become a major concern for most of the donor community (Lia 1999:165).

Brynen states that within the NGO community, the continued reliance on donor funding has shaped the extent to which NGO priorities were driven by donor priorities rather than local needs. Brynen further argues that donor support was most easily available for new programs in sectors relating to the contemporary thematic concerns or bilateral programming of agencies- human rights, democratic development, gender, the environment, and so forth, and conversely rarely available to support less popular areas, such as agricultural development, or support the recurrent costs of regular operation. NGOs were therefore often forced to fund their regular activities and operating costs by securing a series of special projects grants from donors and international NGOs. According to Brynen, many NGOs responded to the thematic priorities of funders less out of conviction than out of the imperatives of fund-raising (Brynen 2000:188).

4.4 Summing Up

The previous section has provided a general picture of donor assistance to the Palestinian territories, and institution-building in particular. As we have seen, donor assistance has been vital to the establishment of PA as well as crucial to the continued existence of civil society. International assistance has focused primarily on supporting and protecting the peace process. This can be seen in several ways. Firstly, that large amount of donor assistance has been given at crucial junctures in the peace process. Secondly, that one important objective has been the establishment of a strong EA, which could perform as viable a partner in the peace process. As an answer to the growing reports on human rights abuses the donor community has focused much attention on the rule of law sector. The World Bank 2000 Report shows that support

¹⁵ Coordinated by the Sectoral Working Group for Police Assistance, a donor coordination mechanism established in early 1995.

for institution building has decreased as well as support for NGOs. However, the last couple of years, donors have specified their support to a larger extent than before. UNSCO's support for the rule of law sector, for instance, is broken down to 15 developmental areas of which NGOs and PLC are the largest recipients (UNSCO 1999:11-12).

Donors have reacted differently to the reports of human rights abuses. Several donors decided to withdraw their involvement in police assistance, or put their aid programmes on hold. There has been a strong belief that abuses were a result of an untrained police force which lacked the necessary capacity to cope with the mounting challenges as soaring crime rates, small-arms proliferation, smuggling and heavy Israeli pressure to curb any anti-Israeli violence at any price (Lia 1999:164). However, it has also been recognized that what kind of police one should have is not a technical issue, it is very much a political question. According to Lia (1999:164), leading police donors acted through diplomatic channels to put pressure on the Palestinian leadership to take legal action to curb human rights abuses in the PPF, but only with limited success (Ibid). So as to avoid being publicly criticized for supporting a police force, which violate internationally accepted human rights norms, several donors established direct contacts with the intelligence and security services of the PPF (Lia 1999:164-165), and funding, especially in areas of counter-terrorism programmes, has increasingly been channeled via non-public channels outside the coordination structures (Ibid:169).

This reflects a tendency that priority number one has been to create a strong PA and that growing concern that a future Palestinian state would resemble that of other authoritarian regimes in the Middle East, has lead to increased focus on supporting the rule of law sector with a heavy focus on training, equipment and technical assistance. The focus on the role and importance of civil society, PLC and the judiciary in building the future Palestinian state, indicates that the international community has great hope in or see civil society as an important factor, together with PLC and a functioning judiciary, in the democratisation process.

5. Arafat and the Oslo Accords: Institution-building from a “top-down” perspective

”Without good governance-without the rule of law...- no amount of funding, no short term economic miracle will set the developing world on the path to prosperity. Without good governance the foundation of society – both national and international – are built on sand” (UNSCO 1999:1).¹⁶

A CFR Report (1999:14), however, states that: “what determines the effectiveness of governance is the nature of the emerging institutional culture and the manner in which the different parts of the system interact”.

5.1 Constitutional Framework

This section addresses the public institutions, which constitutes the principal elements of the Palestinian political system in the West Bank and Gaza Strip. The political institutions consist of the Executive Authority (EA), comprising the Presidency and the Cabinet, the Palestinian Legislative Council (PLC), and the Judiciary. Together these branches form the PA, and are direct results of various agreements between PLO and the Israeli government.

The Cairo Agreement, signed 4th of May 1994, established PA (18th of May) and “defined the initial structures and powers of PA, as well as functional responsibility that were to be immediately transferred to it by the Israeli government in the WBGS” (CFR1999:27). The Interim Agreement of September 1995, the Taba Agreement (Oslo II) is considered to be the most important and legally clarifying accord when it comes to establishing PA’s constitutional basis. This agreement provided for the establishment of the ”Palestinian Council”, which was to have legislative, executive,

¹⁶ Kofi Annan cited, originally in French, in Rule of Law Development in the West Bank and Gaza Strip. Survey and state of the Development effort, May 1999. UNSCO.

and judicial powers and responsibilities. Some of these responsibilities had already been transferred to the PA, and would now be delegated to the Council, while new ones were directly transferred from the Israeli government. The drafting and issuance of a Basic Law, delineating the various branches of government, was one of the most important and immediate tasks empowered to the Council. The Agreement stipulated that a committee drawn from the Council should legislate and perform oversight functions over policy and budget, and that the President had the power to propose the members of the EA to the Council for approval, in addition to be an *ex officio* member of the EA. The President was to be elected separately. The Council, however, was assumed to have within its jurisdiction an independent judicial system (CFR 1999:27).

The Palestinian Council has come to be known as the Palestinian Legislative Council, while the EA is known as the Council of Ministers or Cabinet.

5.1.1 Legal Ambiguity

The absence of a Basic law or any other constitutional document has led to continuing legal ambiguity about the precise powers and responsibilities of each branch of the Palestinian government. According to media reports, Arafat signed the Basic Law on 28 May 2002, nearly five years after it was passed by the PLC (PCHR 2002:2). However, the law has yet to be formally published and can therefore not be implemented. According to PCHR, with the expiry of the interim period on 4 May 1999 and the breakdown of the Oslo process, the context for which the Basic Law was conceived no longer exists and the philosophy behind it is no longer applicable. Furthermore, the signing of the Basic Law does little to guarantee the separation of powers and the protection of basic rights and freedoms (Ibid).

The CFR report (1999:27-28) claim that the legal ambiguity resulting from the lack of a Basic Law has negatively affected constitutional arrangements in the WBGS in that the delineation of powers between PLO and PA continues to be unclear and confusing. The CFR report states that:

“On the one hand, it has bequeathed to the PA foundations of constitutional framework. In 1988, the Palestine National Council (the PLO’s parliament- in- exile) declared the establishment of an independent state based on a ”democratic parliamentary system”, freedom of expression, equality, a constitution, the rule of law, and an independent judiciary. On the other hand, the confusion of mandates and overlap of authority between PLO and PA institutions has impeded transparency, accountability, the rule of law, and other elements of good governance” (1999:28).

The most important aspect of the relationship between the PLO and PA is that “PLO and its constituent parts- the PNC, Central Council, Executive Committee, and Chairman- are imbued with a higher degree of legitimacy than the PA and its institutions: the PLC, Cabinet and President. The legitimacy, authority, and tenure of the PA are derived from the DoP and at the same time limited by it” (CFR 1999:28). In a strictly real-political sense PA has to obey PLO, which represents every Palestinian in the world. Arafat is Chairman of PLO, and the President of Palestine. This duality of roles is another confusing element.

The other source of legal authority affecting constitutional arrangements in the WBGS is the extensive mixtures of laws and legal traditions in force. The West Bank and Gaza Strip have at least two distinct legal systems with their own statutes and military orders. In Gaza this consists of the Anglo- Saxon common law tradition, as applied by the British Mandate up to 1948, and elements of civilian and military law in force during the period of Egyptian administration up to 1967. The law has been left largely unchanged by Egyptian and Israeli occupiers. The legal system in the West Bank is derived from the Napoleonic tradition and the introduction of Jordanian law in the 1950s and 1960s, following Jordan’s annexation of the WB (Robinson 1997:183). This legal ambiguity has had the effect that a criminal in Gaza could be punished in a totally different manner to one who had committed exactly the same crime in the West Bank (Qader 1997:78).

5.1.2 The Executive Branch

The Executive Branch has a high degree of concentration of power, including the ability to issue “legal decrees in all spheres, to make appointments to the civil service

and the police, to establish or dissolve public institutions, and to disburse public funds” (CFR 1999:16). According to a CFR report (Ibid) a large part of this centralisation of power was embodied in the Oslo framework. The EA follows the presidential model of government.

The 1999 CFR report claims that this “centralisation of authority, detailed micromanagement, and lack of delegation of administrative authority in some fields have weakened executive ability to manage a growing and increasingly complex system of public administration and finance” (CFR 1999:16). Schenker claims that although PA is equipped with the architecture of democratic institutions, the interactions among the three authorities do not resemble that of a democracy (Schenker 2000:24). Relatively speaking, the executive is strong and all other Palestinian institutions are weak (Ibid).

5.1.3 Palestine Legislative Council

”The ongoing contest between the President and PLC will determine the kind of political system that is likely to emerge” (Moughrabi 1997:14; Stæhli 1999:61).

Schenker has a similar point of view:

”The PLC, more than any other PA institution, is representative of pro-democratic forces. As goes the PLC, one might say, so goes the Palestinian Democracy” (Schenker 2000:5).

The Interim Agreement on the WBGS (Oslo II), signed in Washington the 28 September 1995, provided for the election of a legislative council, which was held the 20 January 1996, and the transfer to this council authority over much of Palestinian internal affairs in the spheres and geographic areas where PLC has authority, and where the Israeli civil administration has been dissolved. The PLC was, however, already mentioned in both the Oslo I, the 13 September 1993, and in the Cairo Agreement the 4 May 1994 (Schenker 2000:8). The PLC does not, however, have

authority over Palestinian foreign affairs, only the PLO have authority to conduct negotiations and sign economic and regional development agreements.

Six hundred and seventy-two candidates campaigned for the eighty-eight seats in the PLC. The election was supervised by 2000 international observers, and was attended by approximately 75% of the Palestinian population. The election was, by most accounts, considered free and fair (Schenker 2000:10). The 88 PLC members represents 16 constituencies; of these 11 are in the WB, while 5 are in GS, and forms 20% of the total number of members in the Palestinian National Council (PNC) (Rabah 1997:59b). About 71 of the 88 seats, were in one way or another, affiliated with Fatah. Either as fully-fledged members, supporters of Fatah, or backed by Fatah in the elections (Andoni 1996:4; Stæhli:70). The high domination of Fatah supporters in the PLC may be a result of the boycott of elections on the part of Hamas and Islamic Jihad. Also, some members of DFLP and PFLP boycotted the election.

5.1.3.1 Jurisdiction

According to the Interim Agreement of 1995 and its own by-laws, PLC has the power to initiate, draft, and approve legislation, including those proposed to it by the Cabinet. This means that PLC is granted the power to enact primary legislation relating to all areas and responsibilities, except those not transferred to the PA, and secondary legislation i.e. that clarifies, or explain primary laws. PLC has, according to the agreement, control over the activities of government, the PA, in addition to the right to check and pass the budget (Rabah 1997:57). The Agreement also prohibited the PLC from issuing any legislation that was inconsistent with the provisions of the various agreements between Palestine and Israel or on questions that are subject to final negotiations. The election law imposed no further constitutional restriction on the PLC's power to legislate or to exercise oversight over the Executive and Judicial branches (CFR 1999:35-36).

Ziad Abu Amr outlines two main areas of PLC jurisdiction. The first involves drafting of legislation and the second is keeping oversight over the executive branch

(Abu Amr 1996-97:91). Regarding the PLC possibility to keep oversight over the EA, Schenker states that this constitutes another area in which the PLC has de jure but not de facto powers. Kamal Ash Sharafi, a Palestinian legislator from Jabaliyya, Gaza, and former head of the PLC Monitoring Committee maintains that there are results, but no judiciary to implement them (Schenker 2000:37). The Monitoring Committee has, however, issued important and controversial reports such as a report on political prisoners in PA jails, in 1999, and the Special Committee Report Concerning the Annual Report of the General Comptroller Office for 1996, the so called Corruption Report, issued in June 1997. Several PA ministers, including Minister of Planning and International Cooperation Nabil Sha`ath, Minister (at that time) of Culture Yasser Abbed Rabbo, Civil Affairs Minister Jamil Tarifi, and Minister of Transportation Ali Qawasmeh, were pointed out as leading figures in the "disappearance" of more than 300 million dollars (Schenker 2000:38-39).

5.1.4 The Judicial Branch

"The rule of law and the provision of oversight over the executive and legislative branches of government cannot be achieved without a functioning judiciary, which is equally important for the conduct of civil society and free market enterprise" (CFR1999:17).

The Cairo Agreement states in Article VI that the Palestinian authority "will administer justice through an independent judiciary". "The Taba Agreement requires the judiciary to be empowered to judicially review the actions of EA" (LAW 1999:9). This would mean that there should be delineation of powers between the judicial branch, the executive and the legislative branch of government. The separation of powers between three distinct, and independent branches: an elected legislative, an elected executive and an independent judiciary, are fundamental in a democratic society. Furthermore they are supposed to act in a system of checks and balances against each other. The rule of law means that everyone is subject to the law, meaning in short, that no one is above the law (Ibid:18). The Palestinian Basic Law stipulates in Article 4 that, "the rule of law is the basis of government in Palestine. All Palestinian authorities and organs, as well as individuals in Palestine, shall be

subject to the law” (Ibid:2). The Basic Law is still not implemented and considered irrelevant. In addition, the Judicial Authority Law, which passed third reading in PLC the 25 November 1998, has just recently, the 18 May 2002, been ratified (PCHR 2002:1). LAW stated in its 1999 report, shortly after the law had passed its third reading that, “this law develops the principle of independence by guaranteeing independence of the courts and its judges” (Law 1999:29). In the current context, Israeli attacks render the proper implementation of the Judicial Authority Law almost impossible, and in the short period since the ratification, the PA has continued to undermine the independence of the judiciary and the rule of law (PCHR 2002:1).

5.1.5 Inherited problems and Internal Institutional Constraints

PA inherited largely ineffective departments and agencies of civilian government from the Israeli- run Civil Administration upon its establishment, in addition to executive norms and practices deriving from the PLO, “many of which were authoritarian and have tended to impede good governance and effective public administration” (CFR 1999:31). According to the CFR report (1999:40), the PA inherited a judicial system in a state of virtual collapse. An April 1999 Law Report, argue that by the time of the peace agreement in 1994, only fragments of an indigenous judicial process remained in the Occupied Palestinian Territories (Ibid:16). Both the Law report and the CFR report claim that it was during this period of occupation, from 1967 until 1994, that the judicial system deteriorated dramatically, to the point “where the judicial system was moribund and decapitated” (CFR 1999:40; Law 1999:16). In addition the justice system have “a severe shortage of qualified personell, buildings and equipment, legal texts, and funds“ (CFR 1999:42). As of January 1999 the Judiciary comprised 65 judges, 30 in the Gaza Strip and 35 in the West Bank. 12 judges sit on the High Court, 9 of whom are based in the Gaza Strip, with the remaining 3 in the West Bank (UNSCO 1999:23). The Palestinian court system continues to suffer a severe shortage of judges, prosecutors, court administrators, and other staff. While there are now 50.000 policemen, one for every 60 people, only 37 judges have been appointed to deal with 137000 cases awaiting trial (Barghouthi 1999). In the Gaza Strip more than 75.000 cases were

processed in the Magistrate courts, or at the trial level, in 1998. From a population standpoint there is one judge for every 34,027 people in Gaza, and one judge for every 53,423 people in the West Bank (UNSCO 1999:23). Moreover, the judiciary lacks consolidated clear lines of authority between it and the EA, and within the Justice system, in addition to unified laws and administrative procedures between the WB and GS (CFR 1999:42).

Since its establishment PLC have faced several problems, both of internal and external character. The most mentioned, besides Arafat and executive interference in the PLC, is the Oslo Accords, and the mere fact that the final status negotiations is yet to be clarified, preventing PLC from legislating on a wide range of issues that remain subject to negotiations. The division of the West Bank and Gaza Strip is another serious obstacle to effectiveness. The division demands duplication of resources and extensive travel between the two territories. In the current situation this is often impossible, and makes it difficult to coordinate current issues across the territories. Technical shortcomings and lack of experience makes the situation even more complicated (CFR 1999:35).

Dilapidated public services and infrastructure, a collapsed judiciary, domestic and external opposition to the peace process, Israeli trade restrictions and border closures, all of these facts have had, according to the CFR report (1999:31), “major implications for the PA’s ability to provide efficient public services and to promote a legal and regulatory environment that will support a free society and market. It has also had serious implications for the emergence of transparency, accountability, and other key elements of good governance”. Still, this does not in full explain the slow process and, often neglect, in which Arafat responds to laws passed by PLC.

5.2 Executive Interference and Centralisation of Power

Yassir Arafat has been criticed for his authoritarian leadership, and the enormous power he possess in the form of responsibilities attached directly to his office and

person. This centralisation of power, and authoritative leadership is evident in many aspects of the institution-building taking place.

PA President Yasir Arafat has delayed the promulgation of important laws, such as the above-mentioned Basic Law, and he has on many occasions issued primary legislation in the disguise of secondary legislation, which does not need PLC approval (CFR 1999:38). From 1994-1999 more than 800 presidential decrees have been issued in this manner and been published in the official Gazette (Ibid:38). Robinson (1997:183) claims that PA rules by decree and not concensus, and that the arbitrariness of the decree process has been alarming. Ziad Abu Amr, the Chairman of the Political Committee in PLC, also stresses the negative impact the decrees issued by the President have on the legislative process. In an interview in May 2001 he claimed that:

”The President has all the power. The President can issue presidential decrees whenever he sees necessary, and under the prevailing circumstances the Council cannot hold meetings, and therefore have no way to play a part in developing the country” (Telephon interview, Ziad Abu Amr 26.05.01).

When one consider how many laws, enacted by PLC, that actually have been ratified by Arafat, according to Barghouthi 3.5 per year (Barghouthi 1999), and the number of decrees issued (800 by 1999 according to the CFR report) the situation is indeed alarming. Arafat`s disregard for the PLC is also seen in the way he treats laws passed by PLC. More than 60% of the laws passed by PLC are not in effect because the President refuses to sign them. Other laws, such as the civil service law have been signed, but never implemented (Barghouthi 1999). According to PCHR (2002:2), Arafat, shortly after ratification of the Judicial Authority Law, reportedly asked the Minister of Justice Freih Abu Meddein, to unilaterally amend several articles of the law before publishing it. This was an attempt to circumvent the legislative process. The Justice Minister refused, and was replaced the 8 June 2002 (Ibid). EA`s refusal to offer PLC its legitimate role in the PA is further underlined by a media boycott. When PLC members tried to broadcast its session on a private channel, the

transmission was jammed by the EA, and the person in charge of the transmission was arrested (Stæhli 1999:94).

The PLC has tried to influence the EA to restrict its abuse of power and to respect the independence, and decisions of the court. According to the CFR report (1999:38) PLC, in such instances, lacks the constitutional power and an effective system of sanctions to enforce executive compliance. Eventhough PLC have the power to cast a vote of no confidence as a means of bringing the executive authority to account, it has effectively abandoned this tool (CFR 1999:38). According to Qader; a Palestinian journalist, a member of Fatah and an elected member of PLC, they (PLC) have been unable to garner enough support to propose a vote of no-confidence, although it has been discussed several times. Many PLC members are convinced that the Authority is not doing its job, and that the Cabinet is not effective, but if it came to an actual vote, they would be reluctant. That means that in an eventual vote "we will have to rely on the support of those individuals who have ambitions of becoming ministers or holding certain positions and have the most to gain by a change of government" (Qader 1997:80). One reason for this reluctance to cast a vote of no confidence is that President Arafat's party, Fatah, dominates the PLC, which in turn has enabled him to marginalise the PLC during critical votes (CFR 1999:39), as was evident during the shift from the Minister of Justice to the Minister of Interior on who should administer the NGO Law. This will be further discussed in chapter 6.

Members of PLC have also tried to criticize EA outside the political institutions. On the 27 November 1999 a press release, Petition 20, criticizing the PA's practice was published to the general public. The press release accused the PA of adopting a "policy of corruption, domination, and exploitation of the Palestinian people". The press release was signed by 20 signatories of whom 9 were from the PLC. In response the PA adopted strict measures, among them imprisonment, against all the signatories, except those belonging to the PLC and therefore protected by parliamentary immunity. Some PA officials demanded, however, that the immunity of those members should be lifted in this case. PA described the press release as

devoius and as a direct insult to the President. PLC later condemned the statement and issued a warning to the 9 members of PLC who signed the press release. Months later two of the PLC members who had signed the petition were attacked. Mu`awiyya al-Masri was shot in the foot by masked men. Abdul Jawad Salah was severely beaten by General Intelligence Forces in Jericho, while participating in a demonstration (PCHR 1999b; Schenker 2000:41-42).

The strong position of the Fatah party makes it difficult, if not impossible to enforce laws that contradict Arafat objectives. In addition, according to Qader, a majority of the Council members, or a good part of them has tried to serve their own interests. This has undoubtedly affected the performance of the Council (1998:79-80).

”Sometimes it is possible to reach a concensus on particular issues, such as corruption [...]. But when we oppose the President on a specific issue, then the number becomes less. Some people do not vote when Abu Ammar is present. This is not because they are afraid, but due to their own interests” (Qader 1998:80).

The ratification of Arafat`s enlarged cabinet in the aftermath of the Corruption Report is an indicative of the consequences that executive behaviour has had on PLC initiatives (Schenker 2000:42), and can also serve as an example to Qaders statement above. The Corruption Report was big news, both internationally and domestic, and PLC members publicly clamored for the resignations of those accused. A PLC general session vote, failed to exonerate any of the accused, eventhough the ministers in question failed to provide any defense against the allogations. The general session did, however, confirm the Corruption Report, and then delivered it to Arafat. It was expected that the indicted ministers would be fired, but Arafat reconstituted his cabinet. In addition, he appointed eight new ministers. The majority of PLC members voted confidence in Arafat`s entire reconstituted cabinet (Schenker 2000:39).

A PCHR report; The Palestine Legislative Council: Evaluation of its activities during the third session, between March 1998- March 1999, which overall goal was to

measure the process of democratic transformation in Palestine, and the obstacles that negatively affect it, concluded that PLC had become weaker and more isolated than the two first sessions. The PLC showed weakness and inability to confront the EA. According to the report it also failed to build a solid base of transparency and accountability in its relation with the EA (PCHR 1999). This report further outlines the PLC's inability to play a significant role in developing the country. The subsequent report by PCHR, Performance Evaluation of Fourth Term (March 1999-March 2000), concluded that PLC was further weakened and marginalised by the end of its fourth term. Furthermore, "the total outcome of this unhealthy relationship with the Executive does not augur well for the development of democratic norms, the rule of law, and good governance in Palestine" (PCHR 2001:51). The last report, Performance Evaluation of Fifth Term (March 2000- March 2001) concluded that PLC had witnessed a quantitative improvement in terms of legislation passed compared to the previous session. Qualitatively, however, PLC had become increasingly weak and irrelevant in face of the intransigence of the Executive (PCHR 2002b:45).

David Schenker talks about a pattern of disrespect in his book *Palestinian Democracy & Governance: An Appraisal of the Legislative Council*. He claims that "executive abuses of legislative authority is not only limited to occasional slights. It has become a pattern of behavior that prevents the PLC from performing nearly all of its mandated tasks, particularly in terms of its oversight role" (2000:39). According to Schenker (Ibid), this pattern show that the executive views the PLC, like all other forms of "opposition" within PA, as a threat to be controlled, coopted, or destroyed. For Schenker the main obstacle to an effective legislative branch is EA, and not necessarily internal self- inflicted problems.

Arafat has also interfered in the work of the justice system. The April 1999 LAW Report claims that the EA has: "defied courts sentences, interfered with the judiciary and attacked the professional independence and dignity of judges and lawyers". In other words the EA has regularly ignored and undermined the judiciary (LAW April

1999:10). The 1999 Law Report outlines a pattern of disrespect for the courts and their functionaries by EA. The result of this evident disrespect of the judicial branch is that “there is no rule of law, but rule by political force” (Ibid:74). The tenure of office of the judges is an essential component for the independence of the judiciary. Both the PCHR 1999 Annual Report and the Law April 1999 report detect an overall tendency that judges are dismissed after publicly criticising the EA or as a response to “unfavourable” court decisions. One such example is the dismissal of the then Chief Justice and President of the High Court in Gaza, Qusai Al Abadleh. He had publicly raised concern about judicial independence and executive interference after several judges had been appointed and promoted without his knowledge (LAW 1999:32). Amin Abdulsalam, former head of the West Bank High Court, was dismissed, apparently because he ordered a release of a group of students from Bir Zeit University for alleged suicide bombings. The students were held in detention without charge or trial (Ibid:33). This is just two of several similar cases. An Amnesty 2000 report (2000:4-5) states that torture and inhumane treatment frequently occur during interrogations, and that given the frequent number of infringements on freedom of expression, to “criticise PA officials and institutions, in particular the President and members of the various Palestinian security forces, is a dangerous area”. Bassam Eid gives a description of the strength of the security service when he notes that they hold a position of excessive power within the PA and is involved in everything that happens under PA rule, even in ministerial work (Wagner 2000:122). In addition, Arafat is to decide whether a case is to be tried before a civilian or a state security court. Hence, the Judiciary has no authority over the protection of the law, and does not possess sovereignty in the field of adjudication (Ibid:138).

The CFR report (1999:41) states that:

“A functioning judiciary capable of exercising oversight of the executive and legislative branches of government is fundamental to good governance. Without trained and independent judges and a unified legal code, there is a serious threat to the rule of law, public order, and enforceable contract that are vital for a free society and market”.

However, as of today, the judicial branch is not capable of keeping oversight of the executive and legislative branches of government, nor is it capable of influencing the rule of law and good governance. This has had, and will continue to have, a negative effect on democracy building in Palestine.

Maybe the most evident example of the centralisation of power that has taken place in the institution building process is the extent of executive power that the PA President Arafat wields. This can be seen, among other things, by the number and range of agencies attached directly to the President's Office by executive decree, like: "the Council of Higher Education; General Personnel Council; Bureau of National Institutions; Higher Council for Health; Planning and Research Center; Palestinian Central Bureau of Statistics (PCBS); Water Authority; Energy Authority; Office of Public Information; General Control Institute (GCI); Environmental Authority; National Center for Studies and Documentation; Betlehem 2000 Project; School of Talented Students; and Council for Tribal Affairs" (CFR 1999:33).

In addition to nominate the heads and a number of board members of the institutions mentioned above, and institutions such as the Palestinian Monetary Authority, quasi-NGOs such as the Palestine Economic Policy Research Institute and the Academy for Scientific Research, Arafat also personally heads government agencies like the Water and Energy Authorities. According to the CFR report (1999:33), this, in certain cases, undermines the role of government ministries. "For example, the new Industrial Zones Authority answers directly to the president rather than to the Ministry of Industry".

According to Hillel Frisch, the Palestinian state-building process diverges from absolutist state-building. The spread of customary law and its practices shows rather that patriarchy and familism are more useful concepts (Frisch 1997:349). Arafat has used his power to reappoint ministers charged with corruption. This may indicate that Arafat wants the ministers to "owe" him favours so that he can get unconditional support from them. In that aspect, Frisch makes a valid point. Hatem Abdul Qader

further underlines this when he claims that Arafat likes to have everything in his hands, and that he does not like to allocate responsibility to anyone. Even ministers cannot make decisions in their area of expertise without first referring to Arafat (Qader 1997:79). This applies to the Palestinian Police Force (PPF) as well. The command structure in the PPF was in a large degree dictated by the patrimonial politics of Arafat, who desired to keep potential and rivals in an eternal struggle for his favour. In reality the PPF had no head, since all police and security service commanders were responsible to Arafat only (Lia 1999:166-167).

5.3 Oslo Accords, Security and Human Rights

According to Watson, the Oslo Accords treat human rights in rather general terms. However, the "due regard" clause to human rights norms in the Taba Agreement, Art. XIX, Annexe 1, implies at least a good faith effort to comply with the most important norms of human rights law, like torture, arbitrary arrest or detention, extra-judicial killing, freedom of expression and speech and movement (Watson 2000:172). The PA stresses that the Oslo Accords oblige it to arrest and prosecute terrorists, and Israel has indeed repeatedly criticized the PA for failing to do enough to prevent and punish terrorism and other crimes of violence. Watson argue that the answer is not for the PA to arrest even greater number of people without charge, but rather work harder to identify and prosecute the actual perpetrators of crime, to take a more active role in security cooperations with Israel, to share intelligence with Israeli security officials and to act on Israeli intelligence when it is provided (Watson 2000:256). The PA cannot justify its arrest of journalists and human rights activists on the grounds that the Taba Agreement obliges the PA to prevent "incitement, including hostile propaganda" as stated in Art. XXII (1). This obligation is limited to the prevention of incitement against each other, like Palestinian incitement of violence against Israel or vice versa, and not non-violent criticism of the PA by Palestinians, journalists or professors (Watson 2000:258-259). In sum, the PA has a discouraging record on human rights (Ibid:262).

It is safe to say that the primary character of the Oslo Accords is not necessarily "humanitarian". The Oslo Accords contains very few institutional or legal restraints on the PPF (Lia 1999:159). According to Lia, only lip service was paid to the need for independent courts and human rights standards (Ibid:159-160).

Robinson argues that Palestinian politics under the PA has been a function of the political needs of its rulers to effect social control over a society they do not fully trust (Robinson 1997:188). Indeed, both Hamas and Jihad has tried to either stall and/or kill any attempt at reaching an agreement with Israel. This might explain, and to a certain degree excuse, the way in which Arafat repeatedly tries to enhance/maintain his control over every aspect of the state building effort taking place. However, Arafat has denied too ratify laws that are not in contradiction to the various accords, as stated in the CFR Report (1999:14). Moreover, Arafat has used security forces to contain, co-opt, control and punish political and other opponents who did nothing more than criticizing Arafat for his leadership.

5.4 Summing Up

Even though many problems regarding institution-building are related to the fact that PA just have begun the process of building political institutions, EA's interference in the other branches of government supersedes the content of the various peace accords with Israel. In other words, the institution-building that have taken place, from a top-down perspective, does not reflect that of pluralism, equality and respect of the supremacy of the rule by law, and does not give much hope for the development of democratic institutions. In chapter one I proposed the following assumption: *the way in which PA operates indicates a lack of will to democratize comprehensively.*

According to Ziad Abu Amr:

"Arafat is not used to a democratic system. He sees himself as above the council, show not high regards for democratic institutions and does not like to be challenged. He sees his mandate deriving from the historical role he has played, the election in 1996 and his charismatic personality. All this

makes it premature to even think about developing democratic institutions. I mean that Arafat's style of political rule, his disregard for institutions and the lack of separation of power, does not enable or help the democratic process to develop or be consolidated" (Ziad Abu Amr, Telephone Interview 26.05.01).

Arafat has consistently interfered with the work of the judiciary as well that of PLC. He has postponed ratification of several laws, fired and hired judges and ministers at his own will. This has led to a crippled judiciary and a marginalised PLC. The study so far has revealed that Arafat is more interested in building a solid powerbase than democratize the political system. As Shakiki (1996:22) remarks:

"The PA (meaning EA, my remarks) has tended to implement policies and programs and to enact laws and propose draft legislation that aim at strengthening its central control and coercive capabilities, "protect" the peace, and assert national agendas at the expense of liberal democratic principles and practices".

However, there are actors within the PLC, in particular, that oppose the President, and strive for a more open and pluralistic country. They are, at present time, too few and too weak to offer any real progress. Yet again, the NGO Law was ratified by President Arafat the 14 January 2000. In an environment of suspicion against any oppositional force, the NGO Law, which presumably gives civil society a larger room in which to operate and a clearer set of rules and obligations, was ratified by Arafat. Why? Donor pressure and/or a strong civil society might be explanatory factors.

6. Civil Society and the NGO Law: Institution-building, capabilities and interaction.

The protection of Palestine's "well-developed civil society" in the period of state formation was the NGOs community's initial strategy in the wake of Oslo (Hammami 2000:17). However, the relationship between the PA and the local NGO community is, as we have seen, characterized by ever-growing PA authoritarianism toward the various NGO sectors, and the NGOs constantly evolving attempts to thwart governmental control. According to Hammami (Ibid), by 1995 the "professionalized" NGOs, dominated by figures with political histories in left factions, had become a vocal lobby whose first showdown with the PA followed the issuance of a repressive draft law on charities and associations by the ministries of social welfare and justice in 1995.

George Giacaman claims that:

"Above all, a functioning legal system and the supremacy of the rule of law and the protection of civil liberties are the most important factors in influencing the future development of civil society in Palestine" (2000:99).

In the theoretical chapter, part **3.2**, the existence of certain set of rules which regulate the civil society both internally and externally was set as a criterion, if civil society were to be able to contribute effectively in building a democratic Palestinian society. In addition, civil society has to fulfill a normative criterion in order to be considered as developers of democracy. This section will provide an overview/assessment of the NGO Law and incidents related to the law, with regard to facts outlined in chapter **2**, **4** and **5**. In addition, institutional and normative aspects of the NGO Law will be analysed against the criteria in chapter **3.2.2**.

6.1 Procedural Aspects Regarding the Third NGO Law

The Procedural Path of Draft Laws is guided by the PLC Standing Orders (see **Appendix 2**)¹⁷. These Standing Orders, also known as PLC's By Laws, were adopted during the first regular council session, on March 21-22 1996. The Standing Orders were amended in May 1997, and again in April 1998 (Schenker 2000:12). The Palestinian legislative process is similar to the British parliamentary model. The Standing Orders has, however, not been published in the Official Gazette. The Standing Orders stipulate that until the laws are ratified and published in the Official Gazette they are not legally binding. Whether Arafat is obligated to adhere to the prescriptions in the Standing Orders remains unclear from a legal perspective (Schenker 2000:30). This legal ambiguity is reflected in the legal procedures concerning the NGO Law.

The NGO Law, Nr. 19/97/M, dated 13.10.97 was the third draft NGO Law. The previous ones had been turned down after heavy opposition from civil society and the donor community (see **1.3.**). Before a bill becomes a law it may be submitted for a third and last reading in PLC. Regarding the NGO Law it is unclear from a legal perspective whether the Law underwent three or four readings. Both PCHR and Schenker agree on the first and second reading. PCHR, however, claim that the Law went through a third reading on 21.12.1998 and a fourth on 25.05.1999, while Schenker does not mention the vote in December 1998, but refers to the vote in May 1999 as the third reading.

The 19 August 1998, after being passed in its second reading, the PLC referred the NGO Law to the President for approval or comments. The President did not approve or comment on the Law within the legal time period, which is, according to the Standing Orders Article 68, 30 days from the date the law was presented to him. During the Council's 16th session between 21-24 December 1998 the law was submitted to a third reading and passed. The PLC presented the Law to the President on 27 December for approval, but it was not ratified or sent back with comments

within the legal time period. According to PCHR, since the President did not follow the Standing Orders, the draft NGO law should automatically have become a law and been published in the Official Gazette. PCHR claims that this no doubt shows a real crisis in the relationship between the PLC and the EA (PCHR 1999:30-31).

Arafat did, however, make written comments on art. 4, requesting that the Minister of Interior is the reference for registering charitable societies and non-governmental organisations, after the legal time period (PCHR 1999:37-38). This ploy is not without precedent. In December 1997, Arafat made the same type of modification to the Palestinian Monetary Authority (PMA) Law, making the PMA governor responsible to the President rather than to the PLC (Schenker 2000:80).¹⁸ Although the terms of this modification was supported by the Minister of Justice, it was considered unacceptable to the NGO community. Civil society actors were afraid that such a change would mean that NGOs are under the jurisdiction of security forces rather than the rule of law.¹⁹ The Council rejected this change and insisted on the original text.

The 25 May 1999, after the President asked on the 10 April 1999 for some modifications, the most important being to change the authority for registering NGOs from the Ministry of Justice to the Ministry of Interior, the PLC members voted to retain the Minister of Justice as the responsible agency. Out of a total of 87 PLC members only 50 were present. 38 voted in favour of retaining the minister of justice, while 12 (mostly cabinet ministers) opposed (PCHR 2001:40). At the end of the session, the issue was transferred to the legal Committee after several members rejected the result of the vote, claiming that an absolute majority had not approved the vote. Article 71, paragraph 2 of the PLC's Standing Orders assert that an absolute majority (half of the total membership plus one) is required to approve or reject comments of the President on draft laws (PCHR 2001:41). Set aside the legal

¹⁷ Procedural Path of Draft Law (Bill) in the PLC (Schenker 2000:126).

¹⁸ See "PLC Endorses Monetary Authority Law," *Jerusalem Times*, December 19, 1997.

¹⁹ Health Development Information and Policy Institute. The NGO Law: Palestine civil society in action... Available online > <http://www.hdip.org/activities/legunit/ngolaw.html>.

uncertainty, this vote constituted one of the few direct legislative rebuffs of Arafat since the PLC's establishment. Mustafa Barghouthi, who worked long and hard to oppose Arafat's proposed changes to the already passed NGO law, described the vote as "a small victory". "Still, he said, it was a very important one" (Schenker 2000:68). The Law awaited Arafat's ratification and approval for publication in the *Official Gazette*. Several weeks later, however, the law had still not been signed. One reason for this could be that the *Official Gazette* is published by the Ministry of Justice, which is part of the EA and controlled by Arafat. According to Schenker (2000:30), nothing appears in the Gazette without Arafat's permission.

According to PCHR (2001:41), PLC violated its own by-laws, when it held the session on May 25. Article 70 states, that immediately after approving a law in the third reading, or two weeks after approving it in the second reading, the Speaker of the Council can present the draft law to the President, automatically bringing it into force. PCHR (Ibid) claims that on this basis, the law after the third reading (21.12.1998) must be considered in force, and hence be published immediately.

The 12 August 1999, at the end of a special session in Ramallah, attended by 56 members to discuss the 1999 public budget, the PLC speaker Abu Ala read a letter from the Legal Committee that effectively invalid the 25 May vote. The letter stated that the vote overriding the ra'is did not meet the quorum requirements (for an absolute majority) designated by PLC Standing Orders. Article 71 of the Standing Orders stipulates that if the President returns a law with comments, or with "justification for his rejection", the PLC shall re-discuss the law, and "then, if the draft law has been ratified by an absolute majority of the Council, it shall be considered law..." Accordingly, despite the vote results, the draft NGO law that included Arafat's changes- that is, the one in which registration procedures are handled through the Ministry of the Interior- would become a law (Schenker 2000:69). Interestingly enough, whereas many legislators were shocked by the 12 August letter, the Palestinian press had recognized the quorum issue and the potential for controversy immediately after the 25 May PLC vote (Schenker 2000:68). The

legal basis for this decision was, and continues to be, a subject of controversy in the PLC. Article 71 (b) of the Standing Orders is vague, and it is unclear whether proper procedure dictates that an absolute majority of the PLC is required to ratify or to veto the changes suggested by the President. In this case, the PLC voted against Arafat's suggested changes, voting instead to ratify the previous version of the law. No vote was taken to ratify Arafat's suggested changes (Schenker 2000:69).

PCHR claim (2001:41) that Abu Ala's announcement on 12 August 1999 also was illegal since it was based on an event that occurred during an illegal session. Yet even if one accepts his argument that there were insufficient votes to reject the comments, it is equally true that there were insufficient votes to accept the comments as well. Al-Haq,²⁰ on their side, is very clear in their statement that the August 12 session is in direct violation of the Standing Orders and the basic principles of parliamentary democracy. According to Al-Haq,²¹ Article 71 does not require an absolute majority of the PLC to reject the President's proposed amendments of a draft law. Instead, it requires that an absolute majority of the PLC must approve the President's proposed amendments for those amendments to go into effect. Otherwise, a law could take effect that contains amendments that were not approved by a majority of the PLC. Regarding the results of the voting in May 1999 when 38 members voted against the proposed amendments and 12 voted in favour of the amendments, the draft law, according to Al-Haq, did not receive an absolute majority vote of the PLC and thus, under the Standing Rules of the PLC, those amendments should not take effect. Furthermore, Article 71(b) does not specifically state that this vote is a vote on the ratified law, as proposed to be amended by the President. However, it is implicit in reading the entirety of Article 71, that this vote is on whether to accept the President's proposed amendments as part of the ratified law.²²

²⁰ Al-Haq, in English; Law in the service of man, established in 1979, and is a human right organisation which focuses primarily on legal and human rights issues.

²¹ Al-Haq 1999 Press Release, 2 September 1999. Press Release Index. Al-Haq's Position Regarding The Enactment Of The NGO Law By The Palestinian Legislative Council. Available [online]. http://www.alhaq.org/releases/pr_990902.htm.

²² Ibid.

The 2001 PCHR evaluation report makes a note that the emergence of a partnership between the Council Speaker and EA, with the aim of passing laws that include comments from the President without the approval of PLC, is dangerous and could negatively effect the future of NGOs and charitable organisations and Palestinian civil society as a whole (Ibid:42). What is certain is that PLC members were denied an opportunity to debate or vote on Abu Ala`s announcement. According to Dr. Mawaia al-Masri, "the announcement was not subject to voting from the members. The Speaker of the Council informed the members at the end of the session that the Council had approved the law, including the comments of the president, without subjecting the issue to discussion" (PCHR 2001:42). Al-Masri further stated that the partnership with the EA is not limited to the Speaker but also includes the whole Council (Ibid).

Whatever legal interpretation and number of "readings", it is clear that the procedures in which the NGO Law has been treated, does not bode well for a democratic development. Article 71 b can be interpreted in different ways, however Arafat chose to disregard the PLC, as he has done on a number of occasions. It is evident that this experience, from the point of view from Arafat, at best can be described as an opportunistic usage of a controversial and legally ambiguous regulation. At worst Arafat`s actions are in direct violation to the Standing Orders. Alltogether it tells us that good governance and the rule of law is not a top priority for Arafat. It follows his disregard for the PLC, and the lack of will to delegate/distribute power as outlined in chapter 5.2. In other words, the way Arafat has dealt with the Law legally does not detect an overall positive trend towards a more democratic society. The August 12, 1999, session exemplifies Arafat`s neglect, and the marginalisation of PLC. Yet some important incidents as the ratification of the Law in itself, the vote on May 25, 1999, in PLC can be regarded as small victories. Civil society`s monitoring of the procedures and lobbying for a more liberal NGO Law might give us a more optimistic look at the future. The next section will consider some important, and the most debated changes made to the Draft Law.

6.2. Changes Made: An Excerpt of the Most Important Changes Made to the NGO Law

The ratified NGO Law is the third Draft Law. The PA drafted two laws concerning NGOs in 1995. Both were, after extensive pressure both from civil society and international donors, abandoned. In 1996 the PNGO Network issued its own version of a draft NGO Law. At approximately the same time EA proposed another draft law to the PLC which seemed to favour the government's earlier proposals, although it had incorporated specific points from the PNGO Network's version (PCHR 1998:1). However, many of the Articles that have been controversial in the Third Draft Law resemble articles from past Draft Laws, like the issue of registration. In the Second Draft Law, the fourth article of the proposed law states that the NGOs must apply to get their licence and registration from MOSW (PCHR 1995:25). The civil society was very critical, and afraid that such a procedure would only lead to an emasculated civil society. Mustafa Barghouthi claims that one of the most controversial issues is that in order to obtain a permit, you must first obtain the approval of several ministries, including the ministry most involved, such as the Ministry of Health in the case of health NGOs, or the Ministry of Education in the case of those NGOs involved in education, in addition to the Ministry of Social Affairs and the Ministry of Interior. Then, the registration must be renewed every year (1997:67). This procedure would imply that NGOs could fulfil the registration conditions but still not get a licence to conduct their activities. Requiring both means that the EA will have two ways of controlling NGOs.

Another subject of controversy were the clauses stipulating that organisations must get the approval of the MOSW to accept external funding, and not just report such assistance to the Minister (Barghouthi 1997:67). A MOSW official explained this by stating: "Because we dont want Iran or other certain groups or countries sending money in to Palestine to undermine us, the government and society."²³

²³ www.passia.org/publications/research_studies/NGO/freedom_ass/chapter.htm

Some positive progress can also be seen in the second Draft Law, like the right of appeal by NGOs against the Minister of Social Welfare (MOSW). This right was explicitly not allowed in the first draft, and secondly the right of a general assembly to decide on combining/ integrating their boards, rather than keeping that right in the hands of the Minister of Social Welfare as in the first draft. This right of appeal is especially significant, since otherwise the Minister of Social Welfare had final say in allowing NGOs to register and provide services. The right of appeal gives the judicial branch a "check" on the power of the executive Branch.²⁴

According to PCHR (1995:56), the second Draft Law as a whole was not going to contribute to the development of a democratic pluralistic society in the autonomous areas. They considered its aim to bolster the power and control of the PA in all aspects of society within its jurisdiction; to remove any semblance of opposition or criticism to its activities.

6.2.1 The Third Draft Law

When the Council of Ministers initiated a Third Draft NGO Law in 1997, the NGO Law was regarded very restrictive by advocates of Palestinian democracy (Schenker 2000:66). The most controversial issues in the first and second readings were the basic principles of recognition of the work of NGOs, whether registration or licencing procedures would be required, and whether NGOs would be referred to the Ministry of Justice or the Ministry of Interior.²⁵

The Draft Law contained a number of articles that alarmed the Palestinian NGO community. In particular, Palestinians working with local NGOs were upset with the articles dealing with the NGO "registration" procedures. By compelling all NGOs to obtain the approval of the minister of Justice, the law seemed to imply "licensure" rather than registration. PCHR criticizes Article 4 after its second reading in PLC the

²⁴ Ibid.

²⁵ Palestinian NGO Project Newsletter. A quarterly publication of the Project Management Organization. Available [online] <http://www.pngo-project.org/newsletter/english/draft.html>.

30 July 1998. To them this article refers to nothing more than licencing and is undermining the legitimate right of a person to form associations (PCHR 1998:3). Moreover, according to Article 7, "Associations... may not practice any of their activities before completing registration procedures." PCHR claims that the role of the government should not exceed that of registration, which is necessary for the purpose of organising rather than controlling non-governmental activities (Ibid:3). Any prior approval for an organisation is considered, by PCHR, as a setback to the 1907 Ottoman Law, in particular Article 6, which requires the organisations to inform the government about the Association`s address, its purposes and its administrative centra etc (PCHR 1998:4). Regarding the issue of registration rather than licencing, the civil society lobbied extensive to change Article 4 in the NGO Law with the result that PLC preferred a simple registration procedure. PLC voted on the issue in the second reading, and even though the result was close, a simple registration procedure was preferred.²⁶ The Article has also been discussed several times in PLC. In addition of being controversial regarding the issue of licencing versus registration, focus has been on to whom these organisations should register. PLC and civil society has been in favour of the Minister of Justice, while Arafat has opposed. As we have seen Arafat won the battle. The result was, however, not entirely unexpected. A senior government spokesman said that he believes that the PA will insist on licencing by the security minded Interior Ministry and that he expects such a change to be eventually approved by the PLC.²⁷ It is interesting to note that he expected PLC to eventually approve the change. This can only mean that he did not think that PLC was strong enough to oppose Arafat, or that Arafat regardless of what PLC may decide still would force his will through.

The ratified NGO Law is, even with the change from the ministry of Justice to the Ministry of Interior, considered as a major achievement. Health Development Information and Policy Institute (HDIP) claimed after Arafat had ratified the Law that:

²⁶ Ibid.

”Although the place of registration remains with the ministry of Interior instead of the Ministry of Justice, an alteration that is incompatible with the Palestinian Legislative Council’s procedures, we welcome this event as a major achievement for Palestinian civil society and its numerous NGOs and community organizations.”²⁸

Civil society’s extensive lobbying has resulted in several changes in the Draft Law during the various readings. Mustafa Barghouthi claims, after the law had past the second reading, that:

”Of the nine amendments we proposed, six have been adopted. The law, as it stands represent one of the most democratic in the developed world, and definitely the best in the Middle East.”²⁹

David Schenker states that the lobbying process, to change the law to afford more independence and less executive authority control over NGOs, was effective and that the changes that resulted from these efforts were reflected in the final draft of the NGO Law represented a healthy precedence for the functioning of Palestinian parliamentary democracy (2000:67). Civil society organisations held workshops and town hall meetings, in which NGO leaders and PLC members discussed specifics of the law, its deficiencies and proposed changes. Heads of prominent NGOs met with Palestinian legislators in the halls of PLC in al-Bireh and in home district offices. Starting in October 1997 and several months after, Mustafa Barghouthi met with more than 75 PLC members. By the time the Law passed its third reading in December 1998, one director of a leading Palestinian NGO privately boasted that the law had undergone a 95% revision (Schenker 2000:67-68). Before the 25 May votation in PLC 1999, the lobby coalition again mobilized and held a workshop attended by hundreds, during which a memorandum was drafted and signed by about 500 NGO leaders. The memorandum was later delivered to PLC members, which on

²⁷ Ibid.

²⁸HDIP. Arafat Signs The NGO Law. Memorandums&Press Releases. Available [online]-
<http://www.hdip.org/activities/legunit/Memorandums.htm>.

²⁹ UPMRC Community Pages. NGO Law Passes Second Hurdle. Available [online]-
http://www.upmrc.org/Health_in_Palestin...ns/Newsletter30/community_pages_30.htm.

the 25 May voted in favour of the memorandum to retain the Minister of Justice as responsible for registering NGOs (Schenker 2000:68).

Why was this lobbying effort so effective? The constant monitoring effort, all the meetings they attended, paper published etc., are obvious reasons. Ziad Abu Amr, head of the Political Committee in PLC, agrees with Schenker, that civil society organisations were very involved in drafting the NGO Law. He confirms that they held meetings with different committees involved with the Law, they called PLC members at their home, distributed papers and attended all meetings in PLC concerning the NGO Law. According to Abu Amr, the lobbying effort for a more liberal NGO Law is an excellent example how civil society organisations can exercise their role as interests groups (Telephon interview, 26.05 2001).

Much of the strength of civil society derives from their long history as service providers, which have made them popular among the average Palestinian. The mere fact that civil society had experience in providing services and a huge apparatus even before PA was established, gave civil society an advantage when it came to planning and implementation of various programs. In addition, civil society is the second largest employer in Palestine, provides more services than the interim government, and receive massive support, both economical and in form of training programs. Hammami claimed (see chapter 2,3) that civil society organisations (NGOs) in the 1990s had become development professionals. Standing projects were replaced by a focus on "human resources", carried out through training courses and educational workshops. This, she argues, was much set forth by donors (Hammami 1995:57). During several years of different training programs, civil society has become skilled lobbyists. This and, in addition, that Palestine is in a process of state-building and has no prior experience in drafting laws has left a "room" where skilled lobbyists can influence the PLC in general, and the law making process in particular. Isam A`ruri, a prominent PARC figure, explains that it is possible to influence PLC members because they are sensitive to their constituencies.

”A well organised lobbying strategi involves contacting a highly respected person within a constituency, and persuade them by etc. saying: If your constituency want our services talk to your PLC representative” (Interview 07.05.01).

We see that as a result of the establishment of PLC, civil society gained a wider field to lobby, and were therefore more able to contribute in the institution-building taking place. Another reason is that PLC members and civil society actors are well known to eachother. A PNGO Network representative said already in 1995 that:

”We lobby the PA as a group but also personally-i.e., any way we can. The PA isn` t just some anonymous, distant government. These are colleagues, friends, former students, classmates. It is such a luxury to deal with them compared to Israel. We couldn` t even speak to anyone there. They didn` t care what ouer problems were. The PA is different, of course. For example, with the proposed law on NGOs, I called Nabil Shaath and all the ministers I know to ask them to resist this law. I also called international leaders to tell Arafat to change the law.”³⁰

This comment raises an important third factor that must be considered when analyzing the way in which laws were proposed, amended, and generally implemented since the establishment of PA in 1994. In addition to the lobbying efforts of both societal actors and state representatives, this third source of pressure on the PA is that of international actors, donors in particular. International pressure on the PA is certainly a factor in the decision to suspend further considerations of the proposed NGO Law in 1995. This pressure was quite subtle but nevertheless strong during the fall of 1995 (Ibid). This subtle involvement continued during the process of drafting the third Draft Law and up to its ratification. The World Bank was even asked in 1996 by PA to perform as an advisor in the drafting of the third NGO Law. Moreover, the World Bank`s Trust Fund for Palestinian NGOs, established in 1996, decided to hire a project management organisation (PMO), which then could act on the bank`s behalf. The Welfare Association, a Switz NGO, was chosen. Among the priorities, 200 US million dollars were designated to strenghten the NGO sector,

³⁰ www.passia.org/publications/research_studies/NGO/freedom_ass/chapter.html

which included an attempt to draft a new NGO law that provided for the legal and regulatory environment for the NGOs being one that is liberal and supportive of NGOs, but also acceptable to the PA. The International Center for Non-profit Law, which had been working with the Egyptian government to reform Law 32, which regulates NGOs in Egypt, was brought to Palestine to convince the PA not to imitate Law 32, but rather draft a law that would improve relations between PA and NGOs, and provide a better legal environment for NGOs in which to work (Sullivan 1997:98). This indirect involvement from the World Bank, to perform as legal advisors, illustrates the growing interest on improving the rule of law sector as outlined in chapter 4. However, choosing a Welfare Association as an intermediate body, also tells us that the World Bank does not want to be directly connected with the NGO Law in order not to offend PA as being a partner with civil society against PA.

The marginalisation of PLC is another contributing effect. In order to maintain credibility and put more pressure on EA, they saw civil society as the only partner in order to achieve "godwill" from their constituencies, and increase the possibility of actually making a difference. Still, it is important to note that eventhough the relationship between civil society and PLC has been, at times, fruitful and characterised by cooperation, little real progress can be made if the EA continues to defy PLC's role in developing Palestine, and disregard the laws that exists.

6.3 Press Campaign Against Civil Society Actors

The relationship between EA and civil society organisations has been and still is, built on suspicion and contestation over money and influence. The relationship has improved in recent years due to joined workshops and meetings. Some EA departments, as The Minister of Agriculture and the Ministry of Health, have established working relationship with expert NGOs. Still much remains to be done. The press campaign initiated by the Minister of Justice in 1999 illustrates this point.

The campaign accused NGOs, in particular human rights organisations, of corruption, financial mismanagement, and of politisation. The campaign escalated after the publication of an UNSCO report concerning the rule of law in West Bank and Gaza Strip, which stated that donors had committed USD 100 million to support the rule of law sector. The report detailed where the money had been spent (see chapter 4.2). Some PA employees expressed their surprise at what was stated in the report, claiming that the funds received by the Minister of Justice in the last five years did not exceed more than 2 million US dollars. The remaining 98 million, had according to them, been distributed to Palestinian NGOs (PCHR 1999b). In June 1999, the minister of justice Freih Abu Meddien described directors of Palestinian NGOs as "fat cats whose job is to distort and discredit the PA.... Their role in Palestinian society should be re-examined" (Schenker 2000:67). The minister timed his public statements in an attempt to deflect attention away from a report published by Agence France Presse, which strongly criticized the Palestinian justice system (Hammami 2000:18). In the Palestinian Cabinet meeting the 11 June 1999, the discrepancy regarding donor money was debated, and they decided to form a ministerial committee with the aim of studying the NGO situation and legislation organising its work (PCHR 1999b). The 13 June 1999, the Palestinian NGOs network and the General Union of Charitable Organisations published a press release stating that the accusations raised about the funds received by NGOs from donors was "misleading and far from the truth". The press release stated that the funds received by NGOs according to the UNSCO report is about USD 8.7³¹ million during the last four years, with an average of USD 2.2 million yearly, and not USD 98 million as claimed by some PA officials (PCHR 1999b). In addition, the press release asserted that the NGO's Network and the Union of Charitable Organisations support in full the principles of transparency and accountability, and that the Law of Charitable Associations and Community Organisations should be implemented immediately (Ibid). Significantly, Fateh was one of the signatories. Hamas did not sign the press release, but defended the NGOs in their newspaper, Al-Risala (Hammami 2000:19)

³¹ The 1999 UNSCO report operates with a total sum of 16 million US dollars. See chapter 4.2

The 15 June 1999, Palestinian human rights organisations published a press release condemning the accusations as an attempt to bring their credibility under suspicion, defame their leadership, and bring their national loyalty into question. The press release expressed their regret over the participation of the minister of justice in the campaign, and raised concern that “the campaign had been designed by some executive parties with the aim of not passing the NGO Law”. The press release added that the clear goal of the campaign also was to put human rights organisations into the position of defending themselves, distracting them from their daily work (PCHR 1999b). The Palestinian Initiative for the Promotion of Global Dialogue and Democracy (MIFTAH) and LAW (and all other signatories to the press release) also make a connection between the NGO Law and the campaign set forth by the minister of justice. They claim that the campaign is undermining the passage of the NGO Law, and that it coincides with the President Arafat’s suggestion to keep the NGOs under the jurisdiction of the Minister of Interior.³²

According to Fateh Online Editorials,³³ intensive press campaigns do not come out of a vacuum; there is always a reason behind them. They claim that it was not surprising that the PLC’s endorsement of the new NGO Law coincided with the declaration made by UN about the large sums of money that Palestinian NGOs have received.

”When one questions the NGOs about their use, or misuse, of funds one receives in reply similar criticisms of the PA. The PA, it is pointed out, is unable to pay its employees or even to cover the PA’s health budget, yet some are rolling in government money.”³⁴

The Editorial, however, admits that the recent press campaign was intended to harm the Palestinian national project. First by shaking peoples trust regarding PLC, which endorsed the NGO Law, but secondly it aimed to create a conflict between the EA

³² Miftah - The Palestinian Initiative for the Promotion of Global Dialogue and Democracy (1999): Palestinian Human rights Organisations Denounce Campaign Pledge to Continue Human Rights Activities Undeterred. June 16, 1999. Available [online]- <http://www.miftah.org/Forum/statements/16-06.htm>.

³³ Fateh Online Editorials (1999): NGOs: Yes to the Law; No to Chaos. 30.06.1999. Available [online]:<
http://www.fateh.net/e_editor/99/300699.html

³⁴ Ibid.

and other governmental institutions, on the one hand, and NGOs on the other.³⁵ The accusations, however clearly opportunistic, touched on a growing and uneasy realization within the NGO community that they have come to be perceived as the employment sector of the economically privileged (Hammami 2000:16).

In the end of May 1999, Khalil-al Zabin published an article in Issue 14 of Al Nashra Magazine entitled: "The Fat Cats and the NGO's Kings." Al Zabin claimed in his article that Haidar Abdul Shafi and Mustafa Barghouthi, prominent NGO leaders, with the help of legal professionals like Iyad El Sarraj, Raji Sourani, and Khader Shkirat, have built an elite network of people who are skilled in seizing opportunities to monopolize the million of dollars available for charity work (PCHR 1999b). The 24 June 1999, al-Jadida published an interview with Khalil al-Zabin in which he claimed that LAW had signed an agreement with the Israeli occupation forces under which LAW committed itself to move its offices from Jerusalem to Ramallah, and to move its work away from Israeli violations of human rights and focus solely on PA's violations (Ibid).

As an answer to the allegations, PCHR submitted a complaint to the Attorney General against both Al Nashra Magazine, and its editing director Khalil-al Zabin, and al-Hayat al-Jadida newspaper, its editing director Hafiz al-Barghouthi and journalist Munir Abu Riziq. Law filed a petition to the Ramallah Conciliation Court against Khalil-al Zabin, co-ordinator of the NGO council set up in 1995 by the EA to confront the PNGO Network, Munir Abu Riziq, the newspapers publisher, director general and editor in chief.³⁶ This shows that civil society organisations use, at least in this incident, legal procedures and the media as means to make a statement and respond to allegations, and in doing so follows the rules established by law.

³⁵ Ibid.

³⁶ LAW (1999b): Law Society Sues Al-Hayat Al-Jadida Newspaper and the NGO Co-ordinator. Press Release June 29 1999. Available [online]- http://www.lawsociety.org/Press/press/1999/jun_29.html.

6.4 The Establishment of a Ministry of NGOs Affairs

The Ministry of NGOs Affairs (MONGOA) was established as a result of Presidential Decree no. (4), issued 6 October 1999. The Ministry of NGOs Affairs aims at:

Coordinating and organizing work between all Palestinian and Foreign NGOs, and other various governmental parties” (Article 1, Presidential decree no. (4), 1999).

According to MONGOA,³⁷ the main goal behind establishing this specialized Ministry is to ”Guarantee the freedom and independence of NGO work to complement and integrate the government work for the service of the various sectors.”

The Ministry was established in time of turmoil. After using his power to insist on having the Minister of Interior in charge of the NGOs, Arafat suddenly established a new ministerial post. Hasan Asfour, a former PPP activist and a member of the negotiation department, was appointed as the new minister. Why this sudden action by Arafat, and why did he appoint Asfour as the new minister? Was his intentions to indulge civil society, giving them a partner in the EA, or to create a Ministry which ”looks good on paper”, and/or as a payback to a friend?

When reading the MONGOA`s website it looks as this Ministry is there only to assist civil society in the struggle for democracy. The plan of action is to:” ...provide all the possible aid to these organizations to continue playing their important role in the building process of the Democratic Palestinian State, and to cope with the challenge facing the national development plan.”³⁸ Furthermore, they claim that the establishment of the Ministry, which is the first of its kind in the Arab world, came as a recognition from the PA to the crucial and unique role NGOs played in the liberation movement and the development process during the occupation period, and to highlight the concern of PA on the importance of developing a healthy, productive and active civil society work in Palestine, as a first step towards democratic society.³⁹

³⁷ <http://www.mongoa.gov>

³⁸ Ibid.

Ziad Abu Amr's view is in sharp contrast to that of the Ministry's. He claims that the ministry was a present to Hasan Asfour, and that it was created by default, to please Asfour. However, Arafat had no intentions of giving the ministry any real power (Telephon interview, 26.05.01). Isam A`ruri expresses a similar view:

"The reason for appointing Hasan Asfour was to resolve problems within the negotiation department between Asfour and the mentor in the peace process Abu Mazen. Establishing this Ministry was a way of pleasing both parties and resolve a problem" (Interview PARC, 07.05.01).

Another reason for appointing Asfour might be his affiliation with PPP, and the fact that he has close friends within civil society and know how the civil society works. Many of his former party comrades holds strong positions within civil society organisations, like Khader Shkirat (former head of LAW) and Mustafa Barghouthi (head of HDIP).

The sudden establishment of MONGOA, and the fact that Arafat had insisted on having the Interior in charge of NGOs made it unclear what the mandatory of this new ministry was about. According to Hammami (2000:19), the establishment was a tactical maneuver around the law to regain direct control of NGOs. The establishment could have been a "safety-line" if the pressure regarding the issue of registration had proven to be too overwhelming. With the establishment of MONGOA he could divert or at least postpone the controversy regarding the place of register.

At first civil society organisations were in general optimistic. Khader Shkirat greeted the appointment of Hasan Asfour as the new Minister "as a step in the right direction."⁴⁰ However, it did not take long time before the issue of registration again emerged as a subject of controversy. This time, however, not only between EA and civil society, but also between MONGOA and EA, and civil society and MONGOA.

³⁹ Ibid.

⁴⁰ LAW (1999c): Law welcomes the appointment Hassan Asfour as Minister of NGOs. Press Release July 13 1999. Available [online]- http://www.lawsociety.org/Press/press/1999/jul_13.html.

Apparently Hasan Asfour presented Arafat with an ultimatum: Get the registration or I will resign. Off the record he got a letter from Arafat accepting the ultimatum. Work began on a by-law of which the most important and radical change was that Hasan Asfour would be in charge of registering NGOs. A MONGOA source claims that five cabinet ministers approved moving the registration from the minister of Interior to the Minister of NGOs. Among them were Saeb Erekat, Nabil Amr, Abdul Rahman Hamad, and Hasan Asfour (Interview MONGOA Official, 20.05.2001). Isam A`ruri, on the other hand, is sceptical to such a change. He sees Asfour's attempt of getting the NGOs to register under him as a way to centralize power. More power for Asfour means less power for civil society (Interview, 07.05.01). Earlier the different NGOs had to contact the respective minister, which handles issues related to the work the organisation does, then get acceptance from the Minister of Interior. With the proposed changes all organisations will have to get acceptance from one Minister only, Hasan Asfour. According to civil society this would make it more difficult for civil society organisations to influence the outcome because the space of lobbying becomes less. Isam A`ruri also claim that Asfour's attempt to get NGOs to register under him, is because he is looking for a role to play in the political arena (interview 07.05.01). In the past civil society organisations had the possibility of lobbying/influencing two ministers before getting a final result to the question at hand, and therefore had a wider field to play in. Such a system is also much less transparent and more difficult to monitor than having one Minister in charge of the NGOs (Interview Isam A`ruri, 07.05.01).

One important question arises. What are the real intentions behind the reluctance towards the Minister of NGOs Affairs. Are they afraid that Asfour is even less democratic than Arafat or, are they afraid of getting less power in dealing with Asfour?

One reason for the reluctance of having Asfour in charge of registration is that civil society has grown accustomed to addressing the Minister of Interior in matters related to them. The Minister of Interior had no prior knowledge about civil society

organisations, and how they worked. Consequently, civil society organisations were able to adapt their work in such a way that the Interior couldn't follow. A MONGOA official expresses such a view. According to this person, civil society are afraid that Hasan Asfour knows the game too well and might be able to influence and control their work to a greater extent than the Minister of Interior. His leftist mentality makes it easier to address civil society actors because they share the same background, like for instance with Mustafa Barghouthi. The very same MONGOA official added that another reason could be that it is easier to complain over lack of cooperation with the Minister of Interior than with Hasan Asfour, who is supposed to be aiding civil society organisations (Interview MONGOA Official, 20.05.2001).

After first giving in to the minister of NGOs to get organisations to register under him, Arafat supposedly changed his mind. The reason given varies. According to the Ministry of NGOs Affairs it was the PNGO Network that lobbied Arafat to change his mind. Another reason might be that Arafat was talked into changing his mind from his own staff in the Interior. Ahmad Said Tamimi, the Deputy Minister, for instance, own at least one NGO in Hebron. The risk of losing control over both NGOs and so-called Governmental Non-Governmental Organisations (GNGOs) might have affected Arafat's judgement.

As we have seen most of the controversy are based on unofficial rumors. The second intifada postponed the work on the by law, and we will have to wait and see whether the by law contains articles that undermine the ratified law, and if it involves a shift from the Ministry of Interior to the Ministry of NGOs Affairs regarding registration. Ziad Abu Amr expressed in an interview, that he would not be surprised if the by law contains articles that would undermine the ratified NGO Law. He added that he expected a tough battle in the PLC regarding the by law (interview 07.05.01). The current mandate consists of aiding and training civil society organisations, in particular those who are not able to allocate funds for themselves to become more professional and self-reliant (Interview MONGOA Official, 20.05.2001). Whether MONGOA can contribute and become a partner for civil society is all too early to

say. However, some important conclusions can be drawn. The way in which Arafat has dealt with the issue of registration tells us that he had no clear opinion to what the mandatory of MONGOA was to be about. This indicates that the establishment was more a result of conflict resolving than that of aiding and helping civil society organisations. The MONGOA webpages stands in sharp contrast to the way in which ministers have treated civil society organisations in the past. PA officials are adept at using the appropriate language when discussing matters of interest to the donors. This web page, and even this ministry can be a way of pleasing donor countries, and building a positive image.

6.5 Applying the Institutional Criterion in Civil Society Theory in a Palestinian Context

A sound and viable civil society is dependent upon state regulations, although it should enjoy a high degree of autonomy. In chapter 3.2.2, Hall claimed that civil society is dependent upon governmental regulations that set the limit and framework within which the civil society can operate (1995:16). Cohen and Arato argued that:

”.....Second, the very power of the modern state to intervene in society cannot be contained without self – imposed limits on the state. In other words, rights become limits in this sense only through being legally posited” (1995:414).

The ratification of the NGO Law provides civil society with such a legal framework. Should this automatically lead to the conclusion that the institutional criterion is fulfilled in a Palestinian context? Giacaman claims that:

”Without constitutional and legal guarantees, but more importantly, without the separation of powers, independence of the judiciary, rule of law, accountability and rotation in government, any expansion into the sphere of civil society will remain vulnerable” (1998:13).

This statement makes an additional claim to that of Hall above. In order for the law to have any real effect you need institutions that respects and protect the law. As we have seen throughout this thesis, the Palestinian institutions do not reflect that of separation of powers, independence and good governance. It also supports Walzer in that only a democratic state can create a democratic civil society (Beiner 1995:170). In this section we will discuss whether the law, and the circumstances in which it came into being can give us an indication to whether this law can provide a positive legal platform for civil society organisations, and fulfill the institutional criterion.

A Pax Christi International Report⁴¹ concentrated on three elements, which should be taken into consideration when studying and criticizing NGO legislation. The first element has to do with the system of limiting the powers of NGOs. "The right to restrict activities should be based on a written law, with a clear description of circumstances and grounds in/on which limitation can be permitted. In doing so, one is tackling the risk that a government is forbidding NGO activities on political grounds etc." The second is the respect for international law. "Are the national laws as to the NGO activities in conformity with internationally binding principles, for instance in the field of freedom of association and freedom of expression?" The third element is related to the question what should happen in case an NGO is of the opinion that the National Government is acting in contradiction to the national/or international law. In that case, one must have access to a judiciary, which is prepared and able to take an independent position towards the government (1997:13-14). The Pax Christi report claims that when these criteria are met, one can argue that any given NGO-legislation is basically sound. However, these assumptions might not be applicable in a Palestinian context. The first criteria, raises questions such as: What does it mean in today's Palestinian society that something is arranged by law? Is the PLC strong enough to be seen as a body that can make laws independent from the PA, or is it functioning as a "democratic sauce" on Arafat's power? The 1999 August

⁴¹ Pax Christie International is a non-profit, non-governmental organisation. Its headquarters are in Brussels, and the current President is H.B. Michel Sabbah, the Latin Patriarch in Jerusalem. This report is a co-operation between Dutch Pax Christi and Pax Christi International in 1997, and they studied among other things the second 1995 Draft NGO Law, and the 1996 reaction to this prepared by PNGO Network.

session, in which the May voting result was disregarded, indicates that PLC is not an independent body. On the other hand, civil society organisations and PLC regards this law as a victory, and claim that it is the most liberal law of its kind in the Arab world. Schenker even states that the changes in the various drafts that resulted from the extensive lobbying effort from civil society, represents a healthy precedence for the functioning of a Palestinian parliamentary democracy (2000:67). The strongest optimists claim that the law went through a 95% revision before it was ratified. This enthusiasm indicates that the NGO Law can be seen as independent from the PA, and in that regard, constitute a positive legal platform for civil society organisations.

Regarding Pax Christies second element, international law, it can be added that serious parts of it are not yet officially binding in the Palestinian context, as long as there is no independent sovereign Palestinian state. PLO have pledged to obey international human rights and democracy, and eventhough that promise falls well short, the NGO Law does not, in present form, violate international standards of freedom of associations, freedom of speach etc.

The third point, the positon of the judiciary in today`s Palestinian society, is very important in order to understand the importance of the NGO Law. The Judiciary is far from being in accordance with generally recognised principles (se chapter 5.2) (Pax Christi 1997:14). Palestine does not have a judiciary that is capable of exercising oversight over the executive and legislative branches of government. This means that in cases where PA violates the NGO Law, there is no independent judiciary to serve justice. It is reasonable to think that any violations of the NGO Law will be disregarded, put on hold, or disappear in the already overworked judiciary. The interference from EA in the tenure of judges, firing and hiring judges without regard to democratic principles in addition to lack of sufficient material, expertise and staff, makes Giacamans statement, that without an independent judiciary etc., any expansion in the sphere of civil society is vulnerable, understandable. When evaluating the law within the legal framework, ie. the legal context in which it

prosper, the NGO Law cannot be said to constitute a constitutional guarantee for civil society organisations. Then, does this exclude civil society in a Palestinian context, or can one law lead to the conclusion that the criterion is met? Both versions sound overly simplistic. The question according to Schwedler is not whether these organisations seek reform or governmental changes, but whether they do so by working within the system (1995:11). Schwedler has a normative approach to the concept of civil society, and this brings us to the second criterion listed in chapter 3.2.2.

6.6 A Normative Evaluation of the NGO Law

The normative criterion claims that civil society must exhibit and enhance values such as tolerance, equality, liberty, participation and political inclusion. In short, obey democratic rules of the game. In Chapter 3.2 I summed up that in order to be part of civil society, in a normative understanding, one has to act in an acceptable manner and work within the system, meaning following the rules established by law or common law. To analyse the "civility" of every civil society organisations is favourable, however impossible in this thesis, for concluding that civil society indeed fulfills the normative criterion. The NGO Law, and the events related to it, will instead serve as a measure of civil society's normative values. This means that large part of civil society is excluded from this analysis. This of course makes it difficult to generalize that if the organisations in this thesis are democratic, that the entire civil society is democratic. The organisations that took part in the debate and work regarding the NGO law constitute a minority of the total number of organisations. In addition I have not analysed the structure of these organisations, whether they elect board members on a regular basis etc. According to the Palestinian NGO Network By-Laws, approved on November 2, 1995, the members of the Network's Executive Committee is to be elected every two years. Furthermore, in order to become a member, an organisation has to fulfill certain requirements among which transparency and accountability are crucial factors (PNGO Network 1996:7-16). The

NGO Law should, however, give us an *indication* to whether the organisations in question work within the established system and promotes democratic values.

The first question that arises is: Does the NGO Law, as it stands today, exhibit democratical principles in itself? In other words, does it make it more likely that civil society organisations can operate more independently and freely, and thus become more able to promote democratic principles? The law does provide a legal framework which details what civil society organisations can and cannot do. It also serves as a point of reference in case PA violates the law. Instead of having several laws to adhere to and consider in an eventual confrontation with PA, the current situation is far more transparent for civil society organisations. Secondly, it makes it more difficult for PA to find legal loopholes to cover up eventual violations. The law defines the space in which civil society can operate, and thus contributes to the independence of civil society. In short, the NGO Law contributes to a more transparent and independent civil society, and will therefore strengthen civil society.

The next, and obvious question, if the civil society should contribute in the making of a more pluralistic society it has to use democratic methods as means to an objective. In the theoretical chapter I agreed with Schwedler that if one focuses on analysing what organisations arrive at, how people come together to affect and be included in the political discourse and struggle; in other words, if one addresses how citizens and communities address their interests and grievances vis a vis government policies, civil society is applicable as an analytic tool, because it helps visualizing a broad spectre of social interaction otherwise invisible or looked upon as irrelevant (Schwedler 1995:16). An interesting note is the way civil society reacted against the allegations put forward by members of the PA. They used the legal system and the media to defend themselves (see chapter 6.3). According to Hammami (2000:18), the NGO “movement” has been at the forefront of using the law as its front line of self-defence. Also, the focus and the “success” of lobbying as means to gain influence is one important characteristic of “western” organisations. The way in which civil society mobilised to get a liberal NGO Law indicates that they do work within the system,

meaning that they use "appropriate" channels to exert pressure, like lobbying, lawsuits etc. Some negative remarks are also apparent in the Palestinian context. Brynen stated that NGOs were quick to change their agendas in order to attain donor money. Is that "acceptable manner"? Furthermore, Isam A`ruri reasons for opposing the establishment of MONGOA impedes that of transparency.

In light of the discussion above how does this apply to the institutional and normative criteria listed in chapter 3.2.2. Can one law lead to the conclusion that civil society exists in a Palestinian context? I think a "sober" view would be that one has to wait until the law is implemented and then tried in the courts to draw a conclusion to whether the institutional criterion is met. Still, to claim that civil society does not exist because the NGO Law does not protect civil society in accordance with the provisions of the law is too narrow. Although it would make it difficult, if not impossible, for civil society to become the decisive force in a democratisational process, I am more obliged to agree with Schwedler, than for instance Walzer, that instead of abandoning the idea of civil society one has to ask what is it that civil society achieves vis a vis the regime? The way in which this law came into being is remarkable in a Palestinian and Middle East perspective. Extensive lobbying has resulted in a law, which according to Hammami (2000:18), is extremely liberal in the Arab context, because it allows organizations to form relatively freely, permits access to foreign and other funds without informing the government, and also protects organizations abilities to set their agendas and control their budgets without government interference, thus proving that civil society can influence the political sphere. This leads us to answer the overall question that I proposed in the introduction chapter, and to the very conclusion of this thesis.

7 Concluding Remarks/Summing Up

In this thesis I have tried to examine whether there is correlation between civil society and political development (democratic institution-building). This has been done by analysing the environment in which civil society prosper and the role of civil society in promoting development, exemplified by a study of the NGO Law. The intention was that the struggle for a new and liberal NGO Law could tell us something about the prospects for a "more" democratic institution-building and shed some lights on the relationship between the Executive Authority, the Palestinian Legislative Council and civil society. In Chapter 1 I asked the question: *What significance have voluntary organisations in Palestine had in building increasingly democratic political institutions?*

The analysis of the first independent variable, the donor community, has shown that donor support has been vital to the establishment of PA and to the continued existence of civil society. Donors have focused increasingly on supporting the rule of law sector primarily by providing training and technical assistance. This thesis has, however, shown that the structure of PLC, the highly EA dominance in the rule of law sector, and in the PLC is not affected by this support. Hence, such support is not likely to lead to any substantive improvement in the area of good governance. Lia claims (1999:169) that the donor support has been driven with the belief that there was basically a technical solution (more training and better equipment) to the problem of human rights abuses and the absence of rule of law. This has proved to be mistaken.

The analysis of the second independent variable has illustrated that, firstly, the Oslo Accords and institution-building from a "top-down" perspective have contributed to the establishment of institutions that are undemocratic, and secondly that democratic institution-building has to depend on other factors than the established regime and the Oslo Accords. Eventhough Arafat ratified the NGO Law, this thesis has demonstrated

that human rights and the rule of law is not Arafat's main concern. In chapter one I raised the following assumption: *the way in which PA operates (deals with civil society now) indicates a lack of will to democratize comprehensively*. One can argue that Arafat is willing to liberalise the political system, like the ratification of the NGO Law, the Judicial Authority Law and the Basic Law, however, this thesis has shown that he is not willing to democratise comprehensively. The ratification of the Judicial Authority Law and the Basic Law happened right after Arafat was "released" from isolation by Israeli military forces and after extensive international pressure for reform, in particular from USA. Furthermore, the procedure in which the Interior Ministry, headed by Arafat himself, obtained the responsibility for the registration of civil society organisations is a grave example of the relentness to delegate power and responsibilities.

The analysis of the third independent variable, civil society and the NGO Law, has shown that civil society can contribute positively in enhancing democratic principles and lobby for democratic reforms. Norton (1995:4) argues that: "There is little prospects for sustainable democratic reform in the absence of a viable and reasonably autonomous civil society." In a Palestinian context it is reasonable to think that without civil society, democracy or democratic principles would be far worse off. This confirms the assumption proposed in chapter 1 that; *the development of a viable and free civil society is an important step for a further democratisation*.

Civil society has taken the role as a monitoring group of PA violations, and in doing so taken over responsibilities that should be carried out by political parties. The NGO Law is considered to be liberal, and does provide civil society with a clearer set of rules and obligations. However, I argue, the circumstances in which the law came into being and the uncertainties that still prevail, like the by law and implementation procedures, but more importantly because the NGO Law cannot constitute a guarantee against PA violations, it is impossible for civil society to be the main contributing factor in developing democratic institutions. In other, words I agree with Norton in that the emergence of a civil society is a necessary, though not sufficient condition for the development of democracy (1993:211-212). The second assumption

raised in the thesis was: *To investigate the law making process, the public debate and incidents closely related to this law will give an idea as to whether the civil society is the more or the only likely candidate to bring about democracy.* As long as there is insufficient political will on the part of the political leadership in both Israel and the Palestinian Authority to deal decisively with human rights abuses, the rule of law etc, there can be no truly democratic institutions in Palestine. Without changed focus from Arafat, Israel or donors, civil society remains, together with a minority of PLC members, as the only factor that can contribute to any substantive improvements by continue fighting for a more pluralistic, transparent and democratic society. This statement is supported by the fact that international donors, though supportive of Palestinian NGOs and democracy, will not jeopardize the peace process by creating instability by being overly critical of Arafat. The way the donors have supported NGOs in particular, indicate that even though they are afraid that they are partners in creating an undemocratic Palestinian state, the establishment itself is more important than the initial structure of the state. In other words, without stronger and more direct pressure from donor countries, there will be no truly democratic institutions in Palestine before a Palestinian state is established.

This thesis has shown that civil society has contributed *significantly* in the development of a liberal NGO Law, but it has also shown that civil society, under the prevailing circumstances, is not strong enough to force through a comprehensive democratic development.

Appendix 1: Aid Coordination Structure

Appendix 2: Procedural Path of Draft Law (Bill) in the PLC

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