
Over-stating Palestine's UN Membership Bid? An Ethnographic Study on the Narratives of Statehood

Michelle Leanne Burgis-Kasthala*

Abstract

This study employs a select ethnography of Palestinian workers in the field of international law and human rights to explore how an epistemic community gives content and meaning to international law in its professional and personal life. Through a series of interviews conducted in the West Bank in the wake of the Palestinian attempt to gain full United Nations membership in September 2011, the article constructs a meta-narrative about the nature of international legal discourse as spoken on the Palestinian periphery. It shows how speakers of international law are required to restate or over-state the distinction between law and politics so as to sustain their hope and desire for Palestinian statehood in the face of despair about its protracted denial. The article then is an exploration about the politics of meaning making through international law and a call for methodological hybridity within the discipline of international law.

Be assured that this support for our people is more valuable to them than you can imagine, for it makes them feel that someone is listening to their narrative and that ... [they] are not being ignored. And, it reinforces their hope that stems from the belief that justice is possible in this world ... The time has come for my courageous and proud people, after decades of displacement

* Lecturer in Public International Law, University of Edinburgh Law School. The reference to 'over-stating' is inspired by A. Ayubi, *Over-Stating the Arab State: Politics and Society in the Middle East* (1995).

I would like to thank the anonymous reviewers as well as Valentina Azarov, Sarah Burgis-Kasthala, Hilary Charlesworth and Emilio Dabed for their comments on this article. An earlier version was presented at the Institute for Global Law and Policy, Harvard Law School in June 2012 and I am grateful for feedback received from fellow workshop participants. I would also like to acknowledge the Carnegie Trust for financial support as well as the Abu-Lughod Institute for International Affairs at the University of Birzeit, Palestine, for hosting me as a visiting fellow in late 2011. In particular, I thank Roger Heacock and Asem Khalil for their guidance with the project as well as all of my interviewees. Email: m.burgis-kasthala@ed.ac.uk.

and colonial occupation and ceaseless suffering, to live like other peoples of the earth, free in a sovereign and independent homeland.

President Mahmoud Abbas before the United Nations General Assembly, 23 September 2011¹

I speak on behalf of an angry people, a people that feels that, at the same time that they continue with their calls for their right to freedom and their adoption of a culture of peace and adherence to the principles of international law and resolutions of international legitimacy, rewards continue to be illogically bestowed on Israel ...

President Mahmoud Abbas before the United Nations General Assembly, 27 September 2012²

1 Introduction

Despite the urgency and passion underlying these words, full Palestinian membership of the United Nations (UN) remains elusive, if not over-stated. In September 2011, the Palestinian Authority (PA) took its demands for full UN membership to New York and high hopes were held for a successful outcome. This initiative rode on a wave of diplomatic lobbying that had witnessed the majority of the world's states accept Palestine as a state. Regardless of these efforts, we can see from Palestinian President Abbas's second speech given to the UN General Assembly (UN GA) a year later that full membership had not been achieved. Although full Palestinian membership was placed on the UN Security Council's (SC's) agenda in late 2011, deep divisions within the Council have led to a stalemate; no vote has been taken on the matter.³ To circumvent this, Palestine then pursued non-member status through the UN GA, which voted by 138 to 9 (with 41 abstentions) in favour of its request on 26 November 2012.⁴ Whilst it remains to be seen whether Palestine's 'non-member observer State status' can be regarded as decisive for Palestine gaining full legal and political statehood, a doctrinal analysis is not the purpose of this article.⁵ Instead, I aim to explore the way in which Palestinian lawyers situated on the periphery are often required to over-state international law's promise and potential as played out within the centres of power.

As with other possible moments that together narrate Palestinian statehood, there are many ways of capturing the excitement, the despondency, as well as the fatigue that was apparent after this moment of 'going to the UN' in 2011, particularly with the benefit of

¹ The full text is available at: http://gadebate.un.org/sites/default/files/gastatements/66/PS_en.pdf.

² The full text is available at: www.jadaliyya.com/pages/index/7638/text-of-abbas-speech-to-the-un-general-assembly-20.

³ Eden, 'Palestinian Statehood: Trapped between Rhetoric and *Realpolitik*', 62 *ICLQ* (2013) 225, at 230.

⁴ 'Status of Palestine in the United Nations', UN GA Res. 67/19 (26 Nov. 2012), UN Doc. A/Res/67/19, available at: <http://unispal.un.org/unispal.nsf/0080ef30efce525585256c38006eacae/181c72112f4d0e0685257ac500515c6c?OpenDocument>.

⁵ For some legal analyses of the UN GA resolution see Akande, 'Palestine as a UN Observer State: Does this Make Palestine a State?', *EJIL:Talk!*, 3 Dec. 2012, available at: www.ejiltalk.org/palestine-as-a-un-observer-state-does-this-make-palestine-a-state/; and Vidmar, 'Does General Assembly Resolution 67/19 Have Any Implications for the Legal Status of Palestine?', *EJIL:Talk!*, 4 Dec. 2012, available at: www.ejiltalk.org/does-general-assembly-resolution-6719-have-any-implications-for-the-legal-status-of-palestine/.

hindsight on our side as academics detached from the quotidian realities of Israeli occupation. After decades of fruitless 'negotiations' (or politics) we can read this moment as a turn to law by certain Palestinian elites, and particularly a turn to *international law* for Palestinian policy makers, lawyers, and human rights activists. As spectators of and even participants in the events taking place in New York in support of the UN membership bid, the wider Palestinian populace lurched between hope and despair. It seemed that the common view expressed realism ('nothing will change'), tinged with a faint sense of pride in this momentary assertion of Palestinian self-confidence on the international stage. Although my interviewees were all too aware of the wider populace's disenchantment with international law, many believed that the momentum behind this gesture could sustain or even renew the possibility of international law's purchase in Palestine.

It was within this heady atmosphere that I conducted my study for two brief months, based on interviews with the aim of generating a select ethnography of Palestinian professionals and students working in the fields of international law and human rights.⁶ Recognizing the plenitude of scholarship of a doctrinal or strategic nature on the UN membership issue,⁷ this research also began with the membership moment to explore very different concerns about ways of narrating Palestinian statehood. International legal scholarship tends to be centred on moments that play out and affect the metropole – the membership bid taking place in New York, rather than somewhere on the Palestinian periphery. The following discussion aims to show how hearing from those working on the periphery can and should be a primary concern to the discipline of international law. Questions asked in the interviews as well as the narratives that emerge resonate with scholarship from *Third World Approaches to International Law (TWAIL)* that have sought to examine the implications of characterizing international law as now post-colonial and universal.⁸ In particular, we can use TWAIL understandings about the persisting (neo)colonial dynamics of international law to probe the extent to which this body of rules, practice, and belief can be reworked as a language not only of domination, but also of liberation.

The following discussion, then, is as much about method as it is about the membership moment as understood by a specific community – here, Palestinian workers in the field of international law and human rights. By collating, synthesizing, and analysing a series of semi-structured interviews that take September 2011 as their springboard, the following research can be best understood as an exploration of the politics of meaning-making, both within the field of international law as well as 'the field', that is, academic field-based social inquiry. In particular, I ask, how do Palestinians working in the field of international law reconcile the colonial origins of international law with Palestine's continuing occupation and their efforts to challenge this through law? In an ever-globalizing world, why is statehood still so important for Palestinians and how does international law inform such attitudes? Finally, what relationship

⁶ Thanks to Emilio Dabed for his notion of 'select ethnography' here.

⁷ As exemplified by J. Quigley, *The Statehood of Palestine: International Law in the Middle East Conflict* (2010).

⁸ See in particular A. Anghie *et al.* (eds), *The Third World and International Order: Law, Politics and Globalization* (2003); and A. Anghie, *Imperialism, Sovereignty and the Making of International Law* (2005).

between international law and international politics frames these narrative accounts of a conflict that has been both excessively legalized and excessively politicized?

To answer these questions, the article proceeds in four sections. First, some background to the bid sets the scene for the dramatic events leading up to September 2011 and their disappointing *dénouement*. I then outline my interview method and provide an overview of the subject group within the West Bank. In the third section, I construct meta-narratives generated from the various accounts collated and use these to answer the questions outlined above. From this basis, the final section reflects on the nature of narrative research and provides an opportunity to assess the potential benefits of such a methodology for the discipline of international law. In particular this article will explore how the law/politics binary informing international legal discourse as uttered in narrative form tends to over-state international law's liberatory potential and understate its links to power.

2 Background to the Bid

The 2011 full UN membership bid followed a series of earlier efforts on the part of the Palestinian people to realize their statehood. In November 1988, the Palestinian National Council declared 'the establishment of the State of Palestine on our Palestinian territory with its capital Holy Jerusalem'.⁹ This was followed by widespread, if equivocal, recognition by many states, particularly within the forum of the UN GA.¹⁰ Despite such gestures, Palestine did not pursue full UN membership at that time, and to this day it continues to possess only observer status. Its quasi-state identity as a self-determination unit was affirmed most persuasively by the International Court of Justice (ICJ) in its 2004 Advisory Opinion on Israel's construction of a wall, which characterized the occupied Palestinian territories (oPt: the West Bank, the Gaza Strip, and East Jerusalem) as immune from Israeli sovereign expansion.¹¹

One reason for persisting perplexity about Palestinian personality is because it serves as a perfect example of the way in which the status of state creation remains unsettled in the face of revolving discussions over declaratory versus constitutive statehood. Is a state's birth simply announced or is it actually constructed in the act of characterizing it so? As Cassese pointed out,¹² the PA's recent move before the UN can be seen as an attempt to conflate these two approaches by aiming for simultaneous full UN membership *and* the official status of a 'state'. Although statehood and

⁹ Palestine Declaration of Independence, UN Doc. A/43/827 (1988), available at: <http://unispal.un.org/UNISPAL.NSF/0/6EB54A389E2DA6C6852560DE0070E392>.

¹⁰ Crawford, 'Israel (1948–1949) and Palestine (1998–1999): Two Studies in the Creation of States', in G. Goodwin-Gill and S. Talmon (eds), *The Reality of International Law: Essays in Honour of Ian Brownlie* (1999), at 95, 111–112. Also see J. Crawford, *The Creation of States in International Law* (2nd edn, 2006), at 421–448.

¹¹ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory (Advisory Opinion)* [2004] ICJ Rep. 136 (*Wall Opinion*).

¹² Cassese, 'The Birth of Israel and Palestine – The Ifs of History, Then and Now', 22 *EJIL* (2011) 621, at 622.

full UN membership are not synonymous. UN membership tends to create a presumption of full international legal personality. This would explain how certain far weaker member states within the UN, such as Somalia, enjoy fuller international rights and responsibilities than Palestine.

In terms of the territorial confines of a future state of Palestine, both the majority of commentators as well as the PA itself are agreed on its borders reflecting those of the 1967 Green Line, which equates to approximately 22 per cent of pre-1948 historic Palestine. Such a starting point rests on UN SC resolution 242 with its request for Israel to withdraw from territories it captured in the June 1967 war.¹³ The territory now variously identified as 'the Holy Land', Israel and the oPt or historic Palestine, was first delimited as a result of the creation of the League of Nations Palestine Mandate after World War I. This piece of land carved out from the former Ottoman Empire was administered by Britain from 1922 until its abandoning of the territory and its peoples in 1948. Despite Britain's mandate of looking after the interests of all the territory's inhabitants as a 'sacred trust',¹⁴ the inclusion of the 1917 Balfour Declaration in the 1922 Mandate document ensured a bifurcated form of rule that emphasized political and economic rights for Jews compared with civil and religious rights for Palestinian Arabs.¹⁵ Thus, even in its early stages, the territory was being divided through British policies with League acquiescence.

It is no wonder, then, that by 1947 when the newly established UN GA weighed the fate of the territory and its people that partition along ethnic lines was favoured by many. In spite of the Partition Plan's lack of implementation as a result of the breakout of hostilities in 1948 and the concomitant Israeli declaration of statehood,¹⁶ this blueprint is seized on by Palestinians today as its promise of 44 per cent of the territory is far more generous than what has now become the default two-state boundary: those territories first occupied by Jordan (the West Bank) and Egypt (Gaza) in 1948/1949 and then taken over by Israel in 1967 until the present day.

The most important UN resolution for Palestinians remains UN GA resolution 194, which was passed in 1948 during the Palestinian *Nakba*, or catastrophe, which ultimately saw over 450 Palestinian towns and villages destroyed as well as around

¹³ SC Res. 242, 22 Nov., available at: <http://unispal.un.org/unispal.nsf/d744b47860e5c97e85256c40005d01d6/7d35e1f729df491c85256ee700686136?OpenDocument>. In the June War of 1967, Israel not only occupied the Gaza Strip and West Bank (including East Jerusalem), but also the Sinai Peninsula and the Golan Heights. It withdrew from the Sinai by 1982.

¹⁴ Art. 22, Covenant of the League of Nations, 28 June 1919, 225 CTS 188.

¹⁵ This was a letter written by Lord Balfour, the British Foreign Secretary, to a prominent Zionist, Lord Rothschild, on 2 November 1917: 'His Majesty's Government view with favour the establishment in Palestine of a national home for the Jewish people, and will use their best endeavours to facilitate the achievement of this object, it being clearly understood that nothing shall be done which may prejudice the civil and religious rights of existing non-Jewish communities in Palestine or the rights and political status enjoyed by Jews in any other country.' These words were incorporated into the preamble to the Mandate for Palestine, 22 Aug. 1922, available at: <http://unispal.un.org/UNISPAL.NSF/0/2FCA2C68106F11AB05256BCF007BF3CB>.

¹⁶ GA Res. 181 (II), 29 Nov. 1947, available at: <http://unispal.un.org/unispal.nsf/a06f2943c226015c85256c40005d359c/7f0af2bd897689b785256c330061d253?OpenDocument>.

750,000 Palestinians pushed from their homes and barred from returning. The key provision in this resolution states that those

refugees wishing to return to their homes and live at peace with their neighbours should be permitted to do so at the earliest practicable date.¹⁷

The fulfilment of this provision today through the return of millions of Palestinian refugees would radically change the demographic make-up of Israel, and it is partly for this reason that the resolution is used as a form of counter-argument or threat by Palestinians doubtful of Israel's continuing support for the 1967-derived two-state solution.

In the wake of the first *Intifada* (1987–1993), along with the Madrid Conference convened in 1991 to herald the end of the Lebanese civil war and the Second Gulf War, both Palestinians and Israelis entered a phase of negotiations that seemingly centred on future Palestinian statehood. Secret talks held in Norway resulted in a series of agreements that collectively constitute the Oslo process.¹⁸ These agreements were the product of the first face-to-face negotiations between the two sides and were initially regarded by many as a significant step towards peace in the region.¹⁹ Although the handshake on the White House lawn in 1993 between Israeli Prime Minister Rabin and leader of the Palestinian Liberation Organization (PLO) Arafat was symbolically significant, the fine print of the agreements that ensued reveals that Palestinian statehood was actually impeded in many ways through the Oslo process.²⁰ Under Article I of the Declaration of Principles of September 1993 (or Oslo I), '[t]he aim of the Israeli–Palestinian negotiations ... is ... to establish a Palestinian Interim Self-Government Authority... for a transitional period not exceeding five years, leading to a permanent settlement based on Security Council Resolutions 242 and 338'.²¹ The details of this transitional period were elaborated in a series of agreements demarcating the respective spheres of authority for the Israeli army and the newly constituted PA. Despite containing the aim of encouraging self-government, the accords also ensured that Israeli 'security' and settlers could impede the exercise of Palestinian

¹⁷ GA Res. 194 (III), 11 Dec. 1948, available at: <http://unispal.un.org/unispal.nsf/a06f2943c226015c85256c40005d359c/c758572b78d1cd0085256bcf0077e51a?OpenDocument>.

¹⁸ Namely, Declaration of Principles on Interim Self-Government Agreements, Israel–Palestine Liberation Organization, 13 Sept. 1993, 32 ILM (1993) 1525 (Oslo I); Agreement on the Gaza Strip and Jericho Area, 4 May 1994, Israel–Palestine Liberation Organization, 33 ILM (1994) 622; the Israeli–Palestinian Interim Agreement on the West Bank and the Gaza Strip, Israel–Palestine Liberation Organization, 28 Sept. 1995, 36 ILM (1997) 551 (Oslo II). For an overview of the process see G.R. Watson, *The Oslo Accords: International Law and the Israeli–Palestinian Peace Agreements* (2000), at ch. 2, but for a rejection of Watson's legal analysis see Imseis, 'Watson: The Oslo Accords: International Law and the Israeli–Palestinian Peace Accords', 32 *J Palestine Studies* (2002) 110.

¹⁹ E.g., Jordan and Israel signed a peace treaty in 1994: Treaty of Peace, Israel–Jordan, 26 Oct. 1994, 34 ILM (1995) 43.

²⁰ Frisch and Hofnung explore the ways in which the Oslo regime institutionalized Israeli interference in Palestinian institutions, thus stunting the possibility of genuine autonomy: Frisch and Hofnung, 'Power or Justice? Rule and Law in the Palestinian Authority', 44 *J Peace Research* (2007) 331, at 334–336.

²¹ Declaration of Principles (1993), *supra* note 18.

authority.²² This premise was affirmed in Article 11 of Oslo II, which divided the West Bank into Areas A (full Palestinian control), B (shared control), and C (full Israeli control). Area C amounts to over 60 per cent of the West Bank, and this regime continues to underwrite Israeli practices of land confiscation and concomitant settlement construction.²³ As a result of this regime, the West Bank has been described as Swiss cheese, bantustans, or an archipelago in an Israeli sea.²⁴ Thus, we can then see how it was under Oslo that Palestinian territorial and jurisdictional contiguity were quashed. Although Oslo did envisage the eventual handing over of all the territories to the PA, perhaps the main reason for this never happening was the result of fundamental flaws contained within the texts themselves which 'front-loaded' certain issues and 'back-loaded' other, more seminal points of contention, particularly relating to settlements, borders, East Jerusalem, water, and refugees.²⁵

The negotiations framework established at Oslo can be characterized as a *turning away* from international legal rights by the Palestinians. For despite Palestine having a firm basis on which to claim self-determination under international law (as recognized by the ICJ in 2004),²⁶ the Oslo Accords fractured the realization of this right.²⁷ Personal accounts reveal that international legal advisers for the Palestinian negotiations team were peculiarly absent from many meetings, and thus it is not surprising that the regime created failed to affirm fundamental legal principles such as self-determination and the integrity of the remaining Palestinian territories.²⁸ Simultaneously, Israel relied upon the rights afforded it as a belligerent occupying power to maintain its overall control of the Palestinian territories. This is captured in the 1994 Gaza–Jericho Agreement, which provides that 'Israel shall exercise its authority through its military government, which for that end, shall continue to have the necessary legislative, judicial and executive powers and responsibilities, *in accordance with international law*'.²⁹ Thus, 'the road *back to the occupation* begins in Oslo and is strengthened by subsequent agreements' undertaken throughout the 1990s.³⁰

²² E.g., Art. 5(1)(a) of the Gaza–Jericho Agreement (1994): 'The territorial jurisdiction covers the Gaza Strip and the Jericho Area territory ... except for Settlements and the Military Installation Areas.'

²³ Oslo II (1995), *supra* note 18. For maps of the West Bank see the website of the UN Office for the Coordination of Humanitarian Affairs in the occupied Palestinian territory: www.ochaopt.org/default.aspx. Gaza was also fragmented through settlements and military installations until Israel's 'withdrawal' in 2005.

²⁴ Julien Bousac refers to the West Bank and Gaza Strip as a Palestinian archipelago in an Israeli sea: www.obgeographiques.blogspot.co.uk/.

²⁵ See in particular B. Kimmerling and J.S. Migdal, *The Palestinian People: A History* (2nd edn, 2003), at 356–361.

²⁶ *Wall Opinion*, *supra* note 11, at para. 122. In fact the Court reads self-determination into the Oslo II agreement itself: *supra* note 18, at para. 118.

²⁷ Generally see Imseis, 'On the Fourth Geneva Conventions and Occupied Palestinian Territory', 44 *Harvard Int'l LJ* (2003) 65.

²⁸ Shehadeh, 'Questions of Jurisdiction: A Legal Analysis of the Gaza–Jericho Agreement', 23 *J Palestine Studies* (1994) 18, at 22–23.

²⁹ Art. 5(3)(b), Gaza–Jericho Agreement (1994), *supra* note 18 (emphasis added).

³⁰ Massad, 'Political Realists or Comprador Intelligentsia: Palestinian Intellectuals and the National Struggle', 6 *Middle East Critique* (1997) 21, at 28.

It was also within the crucible of Oslo that later Palestinian political divisions were forged. Hamas and various other groups opposed the Oslo framework from the beginning as it had failed to address central issues of the conflict and was not the product of popular consultation.³¹ By 1998 Gaza was effectively cut off from both the West Bank and Israel, and this reflected longer term plans of Israel that were facilitated under Oslo.³² The second *Intifada's* outbreak in 2000 only allowed for greater restrictions on movement within and between the oPt, the wholesale destruction of the PA itself, and political polarization.³³ The choices available to Palestinian leaders became increasingly stark: outright resistance to Israeli rule as championed by Hamas or negotiations leading to a peaceful land settlement. The clear electoral defeat of Fatah (rather than the victory of Hamas³⁴) in 2006 amplified divisions, especially when aid freezes, Israeli arrests of Hamas politicians, and a rift between Palestinian legislative and presidential bodies led to political and economic deadlock across the oPt. Israel and the West were opposed to a Hamas-led government, and so, according to Roy, the US supported Fatah in its attempt at a coup against Hamas in Gaza.³⁵ Such support backfired, resulting in hundreds of intra-Palestinian killings, the Hamas takeover of Gaza in 2007, and the effective split of the (internal) Palestinian populace and political field. Although support for Hamas within the West Bank persists, it has gone underground in the face of the PA's various security services trained by the US within the Oslo framework. In such a climate of division, discussion about the choices available to Palestinians for their future statehood has now become extremely constrained, if not silenced altogether.

While these divisions grew, the Fatah-dominated PA continued along a path of negotiations that brought foreign aid, but also more settlements and no statehood. As recognition of the failure of negotiations, the PA's more recent trajectory, as embodied in the figure of Prime Minister Salam Fayyad, has been to place far greater emphasis on international legal principles set within a wider discourse of neoliberal development. According to Khalidi and Samour, Fayyad's statehood plan is indicative of post-Washington Consensus neo-liberal orthodoxy's emphasis on tiny public sectors and expansive private power.³⁶ Such policies are linked to 'the U.S.-sponsored attempt to prop up a "moderate", more pliable, Palestinian leadership, integrate Israel in the wider region, and manage (not resolve) the conflict'.³⁷ For Khalidi and Samour, then,

³¹ A. Ghanem, *Palestinian Politics after Arafat: A Failed National Movement* (2010), at 144.

³² Roy, 'Reconceptualizing the Israeli-Palestinian Conflict: Key Paradigm Shifts', 41 *J Palestine Studies* (2012) 71, at 74.

³³ On political polarization see Hilal, 'The Polarization of the Palestinian Political Field', 39 *J Palestine Studies* (2010) 24.

³⁴ Shikaki, 'Sweeping Victory, Uncertain Mandate', 17 *J Democracy* (2006) 116.

³⁵ S. Roy, *Hamas and Civil Society in Gaza: Engaging the Islamist Social Sector* (2011), at 42–44.

³⁶ Khalidi and Samour, 'Neoliberalism as Liberation: the Statehood Program and the Remaking of Palestinian National Movement', 40 *J Palestine Studies* (2011) 6, at 9. According to Khalidi and Samour, the statehood plan rests on four 'interdependent and mutually reinforcing components' (at 9): (1) ensuring public security and the rule of law; (2) building accountable institutions; (3) 'effective service delivery as a means of gaining legitimacy from citizens and investors' (at 10); and (4) private sector growth, at 9–10.

³⁷ *Ibid.*, at 11–12.

this wider context means that there is very little room for manoeuvre even in those few instances when questions have been raised.³⁸ More disturbingly,

[u]nderlying ... [the] technical, neutral vocabulary [of the statehood program] is the *desire to escape politics* and, indeed, the very political nature of the question of Palestine. The statehood program encourages the idea that citizens may have to acquiesce in occupation but will not be denied the benefits of smoother running traffic, a liberal education curriculum, investor-friendly institutions, efficient public service delivery, and, for the middle class, access to luxury hotel chains and touring theatre performances.³⁹

The quest for UN membership, then, must be understood within the wider context of Palestinian realization that the framework of negotiations (as exemplified by Oslo, the Quartet, and US mediation) had only helped to stall any permanent settlement.⁴⁰ In addition, Oslo has hampered Palestinian (public) self-rule and (private) property rights while accommodating new public and private Israeli facts on the ground, especially via settlement construction and the concomitant confiscation of Palestinian land. The extent of direct and indirect Israeli control of the West Bank (and especially East Jerusalem, which was illegally annexed in 1980) is so extensive that many argue that any viable two-state solution is now impossible.⁴¹ Instead, models based around a bi-national or apartheid state seem more likely. As a way, then, of halting this drift away from the two-state solution, it has been the explicit policy of Fayyad's administration to have all necessary institutions of governance in place so that a Palestinian state could be arrived at by default. Fayyad declared his policy as such in August 2009 and set the date for the realization of Palestine's statehood by September 2011.⁴² Full UN membership would come in the wake of extensive diplomatic lobbying to gain recognition from as many states as possible. Rather than read the membership bid as a rejection of negotiations *per se*,⁴³ it is best to read this instance of Palestinian unilateralism as one last desperate attempt at re-igniting a more balanced approach to negotiations that would result in a final settlement rather than serve as a cover for continued settlements, fragmentation, and internal political polarization.

³⁸ 'With surprising ease for a people that have struggled for their independence and identity for generations, the idea that there is no alternative to such an economic framework has gained traction and credibility. Equally perplexing, given the Palestinian traditions of vibrant and pluralistic political debate, is the fact that PA neoliberal policy preferences remain largely unquestioned, except by a handful of analysts and the occasional international NGO or UN agency (and even then, only elliptically)': *ibid.*, at 11.

³⁹ *Ibid.*, at 15–16.

⁴⁰ The Quartet was established in 2002 in an effort to kick-start a failing peace process between Israel and the Palestinians. It comprises the UN, the US, the EU, and Russia. Despite its many meetings, to date, this initiative has failed to deliver any results; in fact, it has arguably served to frustrate any lasting resolution of the conflict.

⁴¹ E.g., see Karmi, 'The One-State Solution: An Alternative Vision for Israeli-Palestinian Peace', 40 *J Palestine Studies* (2011) 62.

⁴² Generally see 'A Palestinian State in Two Years: Interview with Salam Fayyad, Palestinian Prime Minister', 39 *J Palestine Studies* (2009) 58.

⁴³ Gordon and Cohen, 'Western Interests, Israeli Unilateralism, and the Two-State Solution', 41 *J Palestine Studies* (2012) 6, at 8.

The binary between law and politics sustaining the PA's narrative about its move from Oslo (politics) to statehood at the UN (law) is an illusion. We can read the membership moment paradoxically both as an affirmation and as a rejection of legal principle. 'Law' *per se* cannot have any content in this instance, and instead relies on its opposite for definition. Is self-determination indicative of current legal doctrine as a *jus cogens* norm or as a desperate political and rhetorical⁴⁴ gesture to return to a mid-20th century ideal whose status for new states is now far from assured? Is the UN GA a political or a legal forum? Indeed, is statehood itself law affirming politics or vice versa?

Despite the fact that Palestine's request for full UN membership remains stalled, the wider fallout after September 2011 as well as more recent initiatives indicate that the question of Palestine's statehood continues to exercise both political and legal debate. For instance, full membership within the UN Educational, Scientific and Cultural Organization (UNESCO) came only shortly before the Prosecutor of the International Criminal Court (ICC) deferred a decision on defining Palestine as a 'state' for the purpose of becoming a party to the Rome Statute under Article 12. According to the Prosecutor, 'it is for the relevant bodies at the United Nations or the Assembly of States Parties to make the legal determination whether Palestine qualifies as a State for the purpose of acceding to the Rome Statute and thereby enabling the exercise of jurisdiction by the Court'.⁴⁵ In a seemingly endless loop, the ICC informs us that only once Palestine becomes a full member of the UN or is determined by the Assembly of States Parties to the Statute to be so will it be possible for its stateness to be secured.⁴⁶ Bilateral relations with 130 states and international organizations are not enough in the ICC's estimation for 'the capacity to enter into relations with other states'.⁴⁷ Perhaps Palestine's new UN 'non-member observer State status' as endorsed by the UN GA in November 2012 will persuade the ICC to regard Palestine as a state, and recent commentary tends to support this view.⁴⁸ Yet as it stands, Palestine's inability to achieve full UN membership indicates continuing ambiguity about its status. Palestine looks tantalizingly ever closer and yet further away from achieving 'statehood'. How best then can international lawyers narrate its statehood? How do they make sense of the relationship between law and politics?

⁴⁴ Eden, *supra* note 3, at 233.

⁴⁵ Office of the Prosecutor, International Criminal Court, 'Situation in Palestine', 3 Apr. 2012, available at: www.icc-cpi.int/NR/rdonlyres/C6162BBF-FEB9-4FAF-AFA9-836106D2694A/284387/SituationinPalestine030412ENG.pdf, at para. 6. Also see Azarov and Weill, 'Israel's Unwillingness? The Follow-Up Investigations to the UN Gaza Conflict Report and International Criminal Justice', 12 *Int'l Criminal L Rev* (2012) 905, at 907–908.

⁴⁶ *Ibid.*, at para. 7.

⁴⁷ Here I am quoting the fourth attribute of statehood as laid out in Art. 1 of the Montevideo Convention on the Rights and Duties of States, 1933, 165 LNTS 19.

⁴⁸ E.g., see Schabas, 'The Prosecutor and Palestine: Deference to the Security Council', *PhD Studies in Human Rights Blog*, 8 Apr. 2012, available at: <http://humanrightsdoctorate.blogspot.com.au/2012/04/prosecutor-and-palestine-deference-to.html>.

3 The Possibility of a Membership Moment Meta-narrative? Devising a Suitable Methodology

I spent two months in the West Bank in late 2011 just after the membership bid. Uncertain of the implications that would result, I developed a research project that would enable me not only to explore intricacies about this moment, but also to reflect more broadly on questions about the nature of international law in theory and practice in Palestine. My rationale centred on trying to gather general, reflective statements from Palestinians working in the field of international law, rather than specific and technical positions on the membership moment. I sought to use this event as a way of eliciting reactions as well as framing narratives. Interviewees were able to reframe their approaches to chronology and key events, but I regarded it as important to have the membership moment as a starting point for our discussion.

With this premise in mind, I then devised a series of questions and sought to interview a range of actors from those in government (the PA), international governance (inter-governmental organizations), civil society (human rights NGOs), as well as academia (teachers, students, and intellectuals). In total, I conducted and recorded (where permission was given) 23 substantive semi-structured interviews, of which five were with students in Arabic, while all the rest (apart from one in Arabic) were with professionals in English. This study considers international law only in the oPt of East Jerusalem and the West Bank. I did not have access to Gaza, and so this research cannot represent experiences there. Although superficially all of the oPt is marginalized from the international law metropole – New York especially here – it is important to break this down and recognize the many levels of fragmentation and distance, not only between the West Bank and Gaza, but between the West Bank and East Jerusalem, as well as within the West Bank itself.⁴⁹ I was based at Palestine's oldest and most elite university just outside Ramallah. People I spoke to beyond the Ramallah bubble expressed a sense of alienation and powerlessness in influencing Palestinian policy debates. This must be only more pronounced for those living in Gaza as well as within Israel or the diaspora. All interviews were conducted on the basis of anonymity. A general indicator of the field of employment as well as gender will be provided for any particular opinions cited below. All interviews centred on the following questions:

- What is your professional background, and in particular, why are you working in the field of international law?
- How do you understand the nature of international law in your work/study?
- Within the field of international law work in Palestine – amongst Palestinians and expatriates – is there a shared vision and a shared language being spoken in relation to international law?

⁴⁹ The difficulties of conducting research in Palestine, including the nature of ever-changing political, geographical, and demographic situations is also explored in Al-Malki, 'Researching in an Unsuitable Environment: The Palestinian Case', in R. Heacock and E. Conte (eds), *Critical Research in the Social Sciences: A Transdisciplinary East-West Handbook* (2011), at 191.

- How do you understand the role of international law in relation to the Palestinian struggle? What achievements and failures are of particular note?
- What is your opinion of the membership bid and what impact – if any – will it have on your work?
- What are the reasons for the timing of the membership bid?⁵⁰

As can be seen from the broad scope of these questions, interviewees could offer commentary on a wide variety of topics touching on their work in the field of international law within the Palestinian context. The membership moment was simply one among many in the narratives collated. Often what emerged then from interviews was just how insignificant this moment was and how important it was to locate it within a broader sweep of the many encounters Palestinians have had with international law and international legal institutions.

The process of conducting these interviews and reshaping them into a meta-narrative highlights the way in which we must be aware of how personal, professional, and general social dynamics for both the interviewer and interviewee fundamentally structure the data that emerge. Through the interview format, I chose to intervene for a brief moment in a complex web of relations which I inevitably reinterpreted as a researcher. The reflections generated from my interviews are the distilled product of a multiplicity of complexity, and, ultimately, stories that appear in the present tense will be rendered static by their conversion into a constructed past. Narratives uttered in interview will only ever be fragmentary and situational.⁵¹ Thus, the aim of my interviews was not about finding ‘a truth’, but only incomplete and indeterminate shards that can be interpreted by each interviewer in varied ways.⁵² Social research thus carries with it a *responsibility* on the part of the researcher to be reflexive about the way in which her categorization of social relations shapes her findings.⁵³

In considering the nature of interview-generated research, it is important to reflect on the dynamic between interviewer and interviewee. An interview is a very special sort of dialogue that is highly artificial. Ultimately, the ‘exchange’ between interviewer and interviewee can never be an equal one, as it relies on the largesse of the interviewees for their time and honesty while also being limited by the interviewer’s framework. It is difficult for the interview not to take on the trappings of an interrogation and, because of the way the questions are framed,⁵⁴ storytelling becomes constrained.

⁵⁰ In addition to these questions and especially as I gained more knowledge from earlier interviews, I also asked: Where and how does international law figure in a history of Palestine? How important is the Arab Spring for the membership bid? What has been the role of donors for your work? How have they affected civil society in Palestine more generally? In working on the UN membership bid, what dealings did the PA have with civil society?

⁵¹ This is illustrated in Kennedy, ‘Spring Break’, 63 *Texas L Rev* (1985) 1377.

⁵² E.g., see White and Rogne, ‘The Aim of Interpretation is to Create Perplexity in the Face of the Real: Hayden White in Conversation with Erlend Rogne’, 48 *History and Theory* (2009) 63, at 74.

⁵³ Conte and Heacock, ‘Disciplinary Building Blocks, Space-Time Reconfigurations’, in Heacock and Conte (eds), *supra* note 49, at 7, 12.

⁵⁴ Mosse, ‘Anti-social Anthropology? Objectivity, Objection, and the Ethnography of Public Policy and Professional Communities’, 12 *J Royal Anthropology Institute* (2006) 935, at 937.

Sharing a recognizable idiom structured by the disciplinary discourse of international law helped in dissolving some sense of hierarchy. Despite sharing a language of law, professionally I differed from most of my subjects as I was only *choosing* to parachute myself fleetingly into their everyday lives. With the luxury of my privileged passport, I could leave their space at any time, and thus the idea of us inhabiting the same social field was only ever partially felt.⁵⁵

Trust is also a vital element within the dynamic of any interview, and the situation of Palestine under occupation meant that the politics and partisanship of both interlocutors were central to the subtext. Interviewers must trust the sincerity of their subject, not expecting veracity as much as honesty within parameters peculiar to the dialogue. The interviewee has to trust that her words will be represented with integrity in some form, so that this becomes an ethical as well as an epistemological issue of research.⁵⁶ Academic writing requires that relationships are cut through the erection of boundaries between the writer and the written.⁵⁷ Given that the subject of discussion was the nature of international law's emancipatory potential for Palestinians as discussed between two international lawyers, it seemed that at times I was required to show sympathy and even support for this project. The very fact of my presence in the oPt already suggested certain allegiances, and many of my interviewees were known to me through my time working at a human rights NGO in Ramallah three years earlier. My position as a visiting scholar in a Palestinian university opened many doors, but this was contingent on me following a boycott of Israeli institutions.⁵⁸ Given the nature of my research into the attitudes of Palestinian workers within the sphere of international law, this never presented any personal or methodological difficulties, but the broader context meant that often unspoken assumptions informed our dialogue. This then makes the nature of any later criticism on my part even more sensitive as it

reveals ... the social (and emotional) effects of such acts of ethnographic description that pull apart socially constitutive knowledge, particularly when they take similar ... form and potentially exist within the same public space. We may not realize it, but our analyses can be experienced as profoundly disempowering; they may provoke claims of serious 'damage to professional reputations'.⁵⁹

The process of what Mosse refers to as 'objectification' after fieldwork – the transformation of speaking subjects into silenced objects – is something that scholars drawing

⁵⁵ Indeed my Australian passport was essential in allowing me to conduct interviews in different parts of the occupied Palestinian territory. Although checkpoints and roadblocks may be less restrictive in the West Bank than they have been in the past, the regime of the Wall has effectively cut off East Jerusalem from the rest of the West Bank. Many international NGO and IGO agencies are based in East Jerusalem, and yet most Palestinians can access these only with a permit, which can take months to receive and is not guaranteed. Journey times, too, are made painfully slow. Even with my passport, the 15 km journey by public transport between Ramallah and Jerusalem tended to take around two hours.

⁵⁶ Mosse, *supra* note 54, at 937.

⁵⁷ *Ibid.*, at 946.

⁵⁸ For an overview of these policies see 'Palestinian Campaign for the Academic and Cultural Boycott of Israel', available at: www.pacbi.org/.

⁵⁹ Mosse, *supra* note 54, at 945.

on ethnographic techniques must acknowledge to themselves, their subjects of study, and their audience(s).⁶⁰

With this overview of the membership bid as well as my research methods, engagement with and analysis of the narratives collected is now possible.

4 Generating a Meta-narrative about Statehood: Implicating International Law in Practices of Denial, Despair, and Desire

If we understand international law as a language and a practice of ordering the world around rights and responsibilities, then the study of international law must interrogate not only the normative implications of this language – the rules, but also the ways in which this language is generated *within specific contexts* by its principal interlocutors: judges, advocates, academics, law students, and practitioners in government and civil society. Understanding the import of a given rule or law also relies on particular interpretive methods that in turn are informed by wider disciplinary practices, social relations, and, especially, *narratives*. Thus, in the words of Robert Cover:

No set of legal institutions or prescriptions exists apart from the narratives that locate it and give it meaning. ... Once understood in the context of the narratives that give it meaning, law becomes not merely a system of rules to be observed, but a world in which we live.

In this normative world, law and narrative are inseparably related. Every prescription is insistent in its demand to be located in discourse – to be supplied with history and destiny, beginning and end, explanation and purpose.⁶¹

By limiting our focus, then, to those narratives uttered in interview by Palestinian workers in the field of international law, this section spins a general story, or a meta-narrative, from the many tales gathered. As stated by Cover, narratives create a moral world and provide an account of the relationship between an ‘is’, an ‘ought’, and a ‘what might be’, as well as between a past, a present, and a possible future. ‘Narratives are [therefore] models through which we study and experience *transformations* that result when a given simplified state of affairs is made to pass through the force field of a similarly simplified set of norms.’⁶² Here, we can use the membership moment as a potential ‘transformation’ or turning point to explore how it is and might be related in a narrative on Palestinian statehood. This moment will follow two earlier moments as possible completed and continuing transformations: the experience of Palestine under colonialism and the Oslo episode. By considering these three moments as well as the nature of professional identities, the three sub-sections below explore how speakers characterized international law at these junctures, and thus how and why the normative and narrative forms of law have shaped possible configurations of Palestinian statehood. In particular, we will see how often the law/politics binary (or

⁶⁰ *Ibid.*

⁶¹ Cover, ‘Nomos and Narrative’, 97 *Harvard L Rev* (1983–1984) 4, at 4, 5.

⁶² *Ibid.*, at 10 (emphasis added).

equivalents, such as law/violence; law/negotiations; and law/colonialism) informing international legal discourse compels many of its speakers to *over-state* the promise of international law.

A Maintaining Faith in International Law in the Shadow of Colonialism

All stories must begin somewhere, and when asked about Palestine's past and the role played by international law within it, most interviewees framed their narratives around the lasting influence of colonial rule. Whether in reference to the 1917 Balfour Declaration, the British Mandate, or Israeli (neo)colonialism, interviewees were united in their characterization of Palestine and its people as a story of foreign domination. Many chose to link this story with other examples from across the Third World so as to move away from exceptionalizing the Palestinian experience *vis-à-vis* other colonial struggles. It is not possible beyond this point, however, to identify agreement about international law in this story. As is the case with much TWAIL literature,⁶³ it seemed in many accounts that the speaker struggled with the colonial origins of international law.⁶⁴ A few respondents explicitly characterized international law as a colonial project in its past ('it was unjust and unfair'⁶⁵) and present guises,⁶⁶ and such a perspective also underlay a government lawyer's claim that 'Palestine is made and unmade by international law'.⁶⁷ Some speakers tried to ascribe redeeming features though to their own work by distinguishing between international law's focus on *states* and power, compared to basic universal values contained within *human rights*.⁶⁸

The majority sentiment, however, was very much one which sought to ascribe a positive quality to international law and thus quarantine it from any colonial practice through the familiar device of the law/politics binary.⁶⁹ Some speakers therefore characterized moments of suffering as instances of law's absence. Many of these statements displayed a quiet confidence in the idea of law as a weapon of the weak⁷⁰ that would work better if only it could be implemented more effectively.⁷¹ References to UN SC and UN GA resolutions, the ICJ, and general international legal principles were emphasized by these speakers as a way of speaking about the unrealized potential of international law.⁷² Such ideas about the problems of implementation riddle the

⁶³ See in particular Pahuja, 'Review: Antony Anghie, *Imperialism, Sovereignty and the Making of International Law*' 69 *Modern Law Review* (2006) 486.

⁶⁴ E.g., my conversation with law students studying in the West Bank; government worker 2, female.

⁶⁵ NGO worker 2, female.

⁶⁶ Academic 1, male; NGO worker 2, female; and Academic 7, male.

⁶⁷ Government worker 3, female.

⁶⁸ Especially Academic 1, male; and Academic 7, male.

⁶⁹ In general see M. Koskenniemi, *From Apology to Utopia: The Structure of International Legal Argument* (2005).

⁷⁰ NGO worker 3, female; government worker 1, female.

⁷¹ Academic 2, male; NGO worker 1, male; student 1, female; academic 5, male; and government worker 3, male. Cf NGO worker 4, male who vehemently stated that the problem is not one of implementation, but internalization of international law.

⁷² Government worker 2, female.

accounts of those speakers possessing the greatest commitment to the potential for Palestine's liberation through (over-)stating the law.

Rather than acknowledge the inter-relationship between international law and domination, it seemed to be easier to continue to see law in either evangelical or instrumental modes. The difficulty of maintaining such a stance was well expressed by one NGO worker, who acknowledged the shaping of international law through power, and yet in his account he was unable to attribute any international legal dimension to Palestine's partition (as planned by the UN GA in 1947). It was important for him *not* to 'take the radical side'; instead he felt compelled to present a picture of law as justice, distinct from and untainted by politics.⁷³ Such tropes encapsulate a recurring theme in many of the narratives: the dynamic between *despair*, *denial*, and *desire*. In this instance, despair about Palestine's predicament was countered by the desire for 'more law' in the shadow of denial about how international law was and is implicated in this very despair.

As well as relying on momentum to link the past and the present, narratives must also emphasize certain actors and events over and above others. We can understand this as the dynamic of speech and silence, or under-statement and over-statement. It is useful at this juncture to reflect on how interviewees tended to converge around the centrality of the Oslo moment while quickly skipping over events which, at least in the scholarly literature on Palestine, tend to receive as much or more attention. Particularly noteworthy were the silences about the West Bank/Gaza and Hamas/Fatah split and what this entailed for the Palestinian national movement. Perhaps because of the way my premise for the interview was structured around the membership moment, my interviewees tended to offer a story about international institutions and diplomacy. Overlooked in most accounts, then, was any detailed treatment of Palestine's history as one of national liberation through violence.⁷⁴ Here again, narratives were structured through a binary – law versus violence – in an admission that to speak for law must then entail a rejection of violence (or politics) on the part of the Palestinians.⁷⁵ Nuances about how national liberation struggles can be constructed as legal and in sharp contrast to 'terrorism' were not explored. The possible inter-dependence, too, between law and violence was overlooked.⁷⁶ We can identify a common refrain here suggesting that violence (national liberation) had failed; politics (Oslo and the negotiations track generally) had failed; international law therefore was

⁷³ NGO worker 1, male. This was echoed by IGO worker 1, male, who pointed out to me that international law 'should be' favourable to the case of Palestine.

⁷⁴ The idea of national liberation and its negation through the governance of managerialism was noted by Academic 7, male. NGO worker 4, male also noted that it was necessary for the PA to pursue non-violent options, such as law, so as to counter Hamas' pursuit of resistance as the only legitimate option. For an exploration of the politics of factionalism, clientelism, and violence in the context of the PA/Hamas split see Tuastad, 'The Role of International Clientelism in the National Factionalism of Palestine', 31 *Third World Q* (2010) 791.

⁷⁵ Government worker 1, female.

⁷⁶ See Derrida, 'Force of Law: The "Mystical Foundation of Authority"', in J. Derrida, *Acts of Religion* (2002), at 228; Berman, 'Privileging Combat? Contemporary Conflict and the Legal Construction of War', 43 *Columbia J Transnat'l L* (2004) 1; and D. Kennedy, *Of Law and War* (2006).

the answer for Palestine. Discordantly, a minority of voices would tell me time and again about the past and on-going failures of international law for the Palestinian struggle. Such perspectives shook me out of my complacency and desire for finding a unified Palestinian community of international lawyers able to speak with one voice.

B *The Oslo Accords and the Development of Donor Dependency*

As in the case of colonialism, discussions about the Oslo framework were prominent, and many interviewees relied on the law/politics binary in their accounts to single out Oslo as the greatest denial of international law for Palestine. After two decades of the Oslo process, it is easy to understand how these interviewees placed special blame on a framework that has served to institutionalize donor dependence, corruption, and the continuation of Israel's occupation contracted out on the cheap to the PA.⁷⁷ Where Oslo was derided, the contrast provided by international law meant that politics, negotiations, and the creation of facts on the ground (especially settlements) could be contrasted with justice, self-determination, and international law.⁷⁸ The Oslo moment was thus a clear instance of denying law's promise, with the concomitant result being a testament for some speakers about the dangers of pursuing a path far from legal principle.⁷⁹ It was also easy to look back on the Oslo years and regard them as a product of a Palestinian leadership now either dead or unwilling to repeat any more negotiation failures.

One particularly significant legacy of the Oslo era was identified as the rise of donor influence, aid dependency and cultures of managerialism, not only within government, but also civil society.⁸⁰ There was widespread recognition that the shift in Palestinian society towards consumerism and alienation from international legal ideals was a result of donors shaping the agendas of both government and NGOs.⁸¹ Some speakers therefore presented the current period as one of neo-colonialism directly attributable to donors within the overarching framework of Israeli occupation. PA malaise in acting to end the occupation was partly attributed to donor pressures, which sought to maintain an impasse via 'negotiations'.⁸² Divergences emerged about

⁷⁷ On this last point, it has meant that it is now far harder for human rights advocates to attribute direct responsibility to Israel: NGO worker 3, female. Also see Khalidi and Samour, *supra* note 36.

⁷⁸ Especially IGO worker 1, male; and government worker 4, male; government worker 3, male; NGO worker 1, male; Academic 1, male. This was also the characterization by NGO worker 1, male, who pointed out that Palestinians still live under the Oslo regime, but are trying to push past it. They thus find themselves in a moment of transition, or limbo.

⁷⁹ For Academic 5, male, it was not Oslo *per se* that was the problem, but the building of settlements that has been so problematic. Because settlement construction was acquiesced to through the Oslo framework, it is for this reason that interviewees like IGO worker 1, male, are so scathing of the entire Oslo process.

⁸⁰ According to Khalidi and Samour, since 2007, 'donor funding to PA coffers has exceeded \$1.5 billion annually': Khalidi and Samour, *supra* note 36, at 8.

⁸¹ Academic 6, male.

⁸² Government Worker 3, male, spoke in detail about how his unit had tried to insulate staff from donor pressures. Because donors were generally supportive of the negotiations track and the two-state solution, it was important that his work always have a negotiations spin on it to placate the donors – who indirectly finance much of the PA. Also NGO worker 4, male.

how to implicate international law in this general condemnation of donor dependence. A minority view made a direct link between international law and donor agendas. It was through the rule of experts (including lawyers) that substantive grievances could be translated into a terminology alien and alienating to average Palestinians.⁸³ In fact it had been the peace process ushered in through Oslo that had managed to transform the popular resistance witnessed during the first *intifada* (1987–1993) into a highly expert, elitist, and exclusivist project.

Donor pressures were also recognized for their negative impact on the shaping of the ‘human rights project’ within Palestinian civil society, as well as international legal discourse in general.⁸⁴ Although many interviewees were ready to admit a general lack of legal education and consciousness within Palestinian society,⁸⁵ few regarded donor support to alleviate this with little more than suspicion. One interviewee even characterized the establishment of Palestine’s first law school as a ‘donor darling’, premised on training experts in international cultures of neo-liberal governance.⁸⁶ Some interviewees recounted how donor influence has led to the co-optation and even corruption of local human rights organizations.⁸⁷

C Turning from Politics and Violence to Law: Explaining the Membership Moment

For most interviewees, it was thus for reasons of foreign control and frustrations arising from Oslo that the PA chose to reacquaint itself with international law and take Palestine’s case for membership to the UN. If for many Oslo was a turn *away* from law, then the membership moment was a turn *to* law,⁸⁸ ‘a game changer’,⁸⁹ and an attempt to alter the ‘status quo minus’ for Palestinians who had not seen any positive results from the endless cycle of negotiations.⁹⁰ Those supportive of the move lurched between desiring its success in New York and despairing about its probable failure or lack of impact on their daily lives. Some went so far as to consider the bid potentially harmful if it ultimately only left a sense of further dissatisfaction on the ground.⁹¹ For those who had spent many months working on the bid directly, there was a keen sense of pride and excitement (‘like a kid in a candy store’⁹²), and interviewees painted a picture of frenzied work and expectations surrounding September. This was tempered with some self-restraint, but there was a deep commitment to this ‘international law

⁸³ Academic 7, male. As discussed specifically by Khalidi and Samour, *supra* note 36, and in general by Koskeniemi, ‘The Fate of Public International Law: Between Technique and Politics’, 70 *MLR* (2007) 1.

⁸⁴ IGO worker 1, male.

⁸⁵ Especially Academic 6, male; and Intellectual 1, male.

⁸⁶ Academic 7, male.

⁸⁷ Intellectual 1, male; and Academic 7, male. These perspectives should be contrasted with Government worker 2, female, who argued that generally donors were not able to impose their agendas on NGOs.

⁸⁸ Academic 3, male; Academic 5, male; Intellectual 1, male.

⁸⁹ IGO worker 1, male. Also expressed by Government worker 1, female.

⁹⁰ Government worker 4, male.

⁹¹ Government worker 2, female; Academic 1, male; Academic 3, male.

⁹² IGO worker 1, male.

project', which was identified as marking not only a quantitative shift ('more law'), but a qualitative one through the way in which a Palestinian future was being considered anew. I was assured by an inter-governmental lawyer that 'we're all doing this in good faith after all'.⁹³

Reflections on the way in which the membership bid had changed their professional interactions highlight how many interviewees were also aware of a growing legal culture and discourse in their work, as well as for the PA and wider society. Some interviewees ascribed to Palestinian society a profound naïveté in the heyday of its national struggle;⁹⁴ the experience under occupation, however, had inculcated a growing sense of rights as articulated through legal claims.⁹⁵ Part of these characterizations must be recognized for the way in which they reflect the individual histories of my interviewees: often these were central legal figures in Palestine who were presenting Palestinian legal history through personal accounts of trail-blazing and institution-building. It is interesting to note the way in which many interviewees came to international law or human rights advocacy circuitously, often not initially studying law, and only stumbling upon it later by chance or as a reaction to their lived realities under occupation. As was the case for Palestine's legal education system, those working with the PA on the bid described a government fumbling in the dark, unsure about where to place its international legal foot. Some interviewees characterized the PA as being open to engage with civil society over the membership moment; others that it did so only grudgingly when it needed assistance;⁹⁶ but, regardless, all were in agreement about how both PA and NGO workers through the membership moment have developed a more mature legal culture and idiom amongst themselves.

In spite of deepening interactions and awareness, only a small number of interviewees were able to identify and to endorse a shared language and vision about international law. Most accounts depicted only an embryonic discursive community, divided over the relationship between law and politics and its own responsibility in maintaining such discursive structures. Perhaps working in the international law and human rights professions in the context of such palpable social cynicism, faith is needed to sustain oneself; this, or a highly reflexive and critical stance *vis-à-vis* international law and one's relationship with it.⁹⁷ Furthermore, the way my subjects had made a political choice about their professional posture meant that it was easier to preserve the binary of law/politics and hold out hope in international law, rather than to confront its 'dark sides'.⁹⁸

⁹³ *Ibid.*

⁹⁴ Academic 6, male; Intellectual 1, male.

⁹⁵ Academic 7, male.

⁹⁶ According to NGO worker 3, female, the PA did indeed rely on NGO assistance for the bid, but this is best regarded as co-optation especially so that the PA could later claim that its trip to New York had widespread public support.

⁹⁷ As called for by NGO worker 4, male.

⁹⁸ Kennedy, 'Reassessing International Humanitarianism: the Dark Sides', in A. Orford (ed.), *International Law and its Others* (2006), at 131.

It seemed at least for most of those professing a commitment to international law that they felt compelled to support and re-state its embodiment in the UN membership bid. After failures through colonialism, violence, and negotiations, ‘law’, as understood by formal international legal mechanisms, was one last hope for liberation. Yet, as one interviewee put it to me in counterpoint, the UN gesture, coming at a time *after* decolonization for the rest of the Third World, must be understood as illustrative of the very limited choices (or, ‘legibilities of struggle’) now available to the PA.⁹⁹

If, like him, we understand international law as implicated in the neo-colonial governance of Palestine, then the membership moment can only ever achieve liberation for Palestine once deeper international legal structures of domination are recognized, broken down, and recreated. Content will need to be given to terms like ‘self-determination’, ‘sovereignty’, and ‘statehood’ whose meaning seems to have been lost in the formalist quest of distinguishing law from politics and in over-stating Palestinian statehood. The meta-narrative generated thus spoke of *despair* about international law’s imperfect application in Palestine, and thus aroused in many interviewees *denial* about the relationship between law and power and a *desire* for law’s centrality for Palestine’s future.

5 The Merits of this Method? Reflections on the Nature of International Legal Research

Gaps, silences, and narrative dissonances that shaped the meta-narrative crafted above call for reflection on the nature of international legal inquiry, rather than the pursuit of their resolution. This sample of international lawyers interviewed in Palestine can be understood as representative of *particularities* – a group of individuals in a very specific context, as well as more *universal* ideas about professional identity, disciplinary performances, and, here, the nature of international law projects. This interview group in many ways reflects tendencies within the wider international law community that, as Eslava and Pahuja point out, straddles a spectrum of postures from conservation to reform and then on to revolution. Almost wholly absent from the first two positions as well as the majority of those interviewed is a self-reflective or reflexive stance that engages in a critique to implicate international law and international lawyers themselves in relations of power and knowledge.¹⁰⁰

In this final section, I use my *particular* research on the Palestinian full UN membership bid to explore in *general* the constitution of international legal communities and their accompanying narratives. To what extent can international lawyers identify shared disciplinary identities across space and situation? How can we link the particular and the universal in this instance? What can international lawyers learn from a narrative method about the discipline and their relationship with it? To help us answer these questions, this section considers the possible contribution of legal anthropology

⁹⁹ Academic 7, male.

¹⁰⁰ Eslava and Pahuja, ‘Between Resistance and Reform: TWAIL and the Universality of International Law’, 3 *Trade, Law and Development* (2011) 103, at 111–116. For a taxonomy based on 7 archetypes of lawyers see Jakab, ‘Seven Role Models of Legal Scholars’, 12 *German LJ* (2011) 757.

as well as certain critical international law scholarship on the nature of international lawyers in general and human rights workers in particular.

'International law' by definition seeks to generate 'answers that reflect global positions and actions'.¹⁰¹ Furthermore, according to Schachter, 'the invisible college [of international lawyers] assumes that the field of international law is a unified discipline, notwithstanding its range of subject matter and its many subdivisions'.¹⁰² Because of this, much of the time international lawyers do not consider how local realities are reproduced and internationalized. According to Riles, international lawyers can overcome the 'locality of daily life' by appealing to a universal or global perspective.¹⁰³ Continuing the spatial metaphor, Orford argues that the 'character of the lawyer is constituted through creating a distance, both from the "victim" of human rights abuses or the client, and from activists whose relationship with those clients or victims is much more engaged'.¹⁰⁴

By classifying my interviewees as linked to 'international law', my study in some ways also seeks to collapse the intricacies of local spaces and appeal to a globalized community. In regard to the reproduction of subjects, the nature of my enquiry has already established a binary of sorts: a general international law community as 'self' and the Palestinian international law community as 'other'. In trying to reveal both the similarities and differences between these two 'groups', we must recognize the contingent nature of their constitution and the possibility for their transformation. By including these interviewees within the international law community, we also see them as part of 'us', part of the 'self', and thus potential proof of Schachter's 'invisible college'. Yet by speaking of their particular predicament, we are reminded of the gulf that divides international lawyers. We can bridge this professionally – surely we all speak the same language and generally peruse the same journals? – but it is important to recognize the way in which the international law community itself contains the scope for both solidarity and separation. On this point, Sa'id's exhortation resonates both professionally and personally:

what is now before us ... is the deep, the profoundly perturbing question of our relationship to others – other cultures, other states, other histories, other experiences, traditions, peoples and destinies. The difficulty with the question is that there is no vantage point *outside* the actuality of relationships between cultures, between unequal imperial and nonimperial powers, between different Others, a vantage that might allow one the epistemological privilege of somehow judging, evaluating, and interpreting free of the encumbering interests, emotions, and engagements of the ongoing relationships themselves.¹⁰⁵

¹⁰¹ Schachter, 'The Invisible College of International Lawyers', 72 *Northwestern U L Rev* (1977–1978) 217, at 223.

¹⁰² *Ibid.*, at 221.

¹⁰³ Riles, 'The View from the International Plane: Perspective and Scale in the Architecture of Colonial International Law', 6 *L and Critique* (1995) 39, at 47.

¹⁰⁴ Orford, 'Embodying Internationalism: The Making of International Lawyers', 19 *Australian Yrbk Int'l L* (1998) 1, at 9.

¹⁰⁵ Said, 'Representing the Colonized: Anthropology's Interlocutors', 15 *Critical Inquiry* (1989) 205, at 216–217.

Entangled as I am with my subject, my findings are implicated in broader professional and personal relationships. As in the case of anthropology for Sa'id, the discipline of international law must be able to confront the ways in which the results of scholarship are quotidian as well as doctrinal and theoretical.¹⁰⁶

To understand the constitution of the Palestinian international law profession and the way it is internationalized better, anthropological and ethnographic approaches are particularly helpful. According to Merry, anthropological methods can help us 'understand how international law is produced and how it works'; '[m]oreover, an anthropological perspective on international law leads to greater attention on the systems of meaning that shape international actions and their historical and structural origins'.¹⁰⁷ One area of research that has explored the relationship between human rights workers and donor funding, whether in the case of Palestine or beyond, is of use here and tends to support the findings above. Human rights work is an 'elite enterprise'¹⁰⁸ that requires educational capital. In the Palestinian case, many of my interviewees were Western-educated, which facilitated not only their fluency in foreign languages (especially English), but also disciplinary fluency. A relationship of dependency develops between many human rights lawyers and 'the international community' not only in terms of donor funds, but also as an audience for their work, such that 'Western actors (governments, media, organizations) have become the *primary constituencies* for ... [such] activism'.¹⁰⁹ This is echoed in the work of Massoud, who has documented the way in which some NGOs operating in Sudan 'frame programs in international human rights language to obtain funding from high-impact donors such as the UN'.¹¹⁰ Yet, as Kennedy has also shown us,¹¹¹ 'rights talk tends to narrow or limit the discursive resources available'.¹¹²

Working in a context such as Palestine requires perseverance in the face of protracted conflict and a society deeply cynical about legal forms of redress.¹¹³ Many of my interviewees were all too aware of the disillusionment felt by the majority of the population *vis-à-vis* human rights and international law, and yet in some ways this only galvanized them more in their endeavours of (re)stating the law. The resulting 'existential insecurity'¹¹⁴ closely reflected the posture of the international lawyer

¹⁰⁶ *Ibid.*, at 219.

¹⁰⁷ Merry, 'Anthropology and International Law', 35 *Annual Rev Anthropology* (2006) 99, at 100, 106.

¹⁰⁸ Hajjar, 'Cause Lawyering in Transnational Perspective: National Conflict and Human Rights in Israel/Palestine', 31 *Law & Society Rev* (1997) 473, at 497.

¹⁰⁹ Hajjar, 'Law against Order: Human Rights Organizations and (versus?) the Palestinian Authority', 56 *U Miami L Rev* (2001–2002) 59, at 68.

¹¹⁰ Massoud, 'Do Victims of War Need International Law? Human Rights Education Programs in Authoritarian Sudan', 45 *L and Society Rev* (2011) 1, at 17.

¹¹¹ Kennedy, 'The International Human Rights Movement: Part of the Problem?', 15 *Harvard Hmn Rts J* (2002) 101.

¹¹² Massoud, *supra* note 110, at 17.

¹¹³ In particular, see L. Allen, *The Rise and Fall of Human Rights: Cynicism and Politics in Occupied Palestine* (2013).

¹¹⁴ Charlesworth, 'Saddam Hussein: My Part in His Downfall', 23 *Wisconsin Int'l LJ* (2005) 127, at 130.

discussed by both Koskenniemi and Charlesworth, who have depicted the way that international lawyers must straddle 'public commitment and private cynicism'.¹¹⁵ Yet, in the context of my interviews, being as they were between two individuals working in *and* working for the field of international law, it also seemed necessary for the interviewee often to uphold a commitment even more fervently, perhaps because of public expectations for them to display cynical or realist poses, at least occasionally. Such a stance is recognized in critical international law literature, which seeks to reveal the way in which much scholarship is sustained by a 'secular faith'¹¹⁶ in international law, even when the discipline's relations with and as power have been revealed and digested. Thus, the required stance of the international lawyer will depend on the context in which she finds herself, whether with international donors, still-starry-eyed students, or policy-makers.¹¹⁷ The aim here would be to strive to live 'with the intellectual and emotional pendulum between commitment and cynicism inherent in the practice of international law'.¹¹⁸

The striking of such poses can only be understood within the wider context of those narratives of the international law discipline that provide meaning and purpose to the lives of international lawyers. Disciplined by pedagogies that often fail to instil critical awareness about our own responsibilities within the echelons of power, Orford has highlighted the way in which narratives reliant on the law/politics binary inform professional practices. Workers for human rights or international law therefore often see themselves as against power in their efforts to save victims through the 'neutral' weapon of law. In the research discussed above, however, we have seen how in fact narratives informing the worldview of Palestinian workers in the field of international law are more complex and variegated than this. Perhaps living under occupation does produce different professional postures and the generation of narratives that must include to an extent the positions of the people as more than passive objectors. Such a methodology provides us not only with a mode of inquiry, but with an explanation¹¹⁹ – even if partial and contingent – about the nature of international law as a lived and living narrative practice. More than the register of rights-talk, it is with storytelling that it may be possible to assign responsibility¹²⁰ and authority to the speaker as situated within a disciplinary dialogue.

¹¹⁵ *Ibid.*, at 136.

¹¹⁶ Koskenniemi, *supra* note 83, at 30.

¹¹⁷ See in particular Riles, 'Anthropology, Human Rights, and Legal Knowledge: Culture in the Iron Case', 108 *American Anthropologist* (2006) 52, at 59–62. I encountered in my student interviewees deep-seated hope in the promise of international law. Yet, this is not representative. Interviewee NGO worker 3, female, who also taught human rights law at a Palestinian university spoke of her difficulties in persuading her students about the merits of the class. Interviewee government worker 4, male, an economist by training and part of the PA team that went to New York in Sept. 2011, confessed that he could see no role for international law in Palestine's past and only a very small one for its future. He seemed unable or unwilling to regard international law as much more than an occasionally useful tool of conscience.

¹¹⁸ Charlesworth, *supra* note 114, at 141.

¹¹⁹ French, 'Review: Of Narrative in Law and Anthropology', 30 *L and Society Rev* (1996) 417, at 431.

¹²⁰ *Ibid.*, at 425.

6 Conclusion

This article has highlighted the ways in which professionals working in Palestine within the fields of international law and human rights must constantly negotiate the dialectic of international law's constraining and enabling qualities. We saw that Palestinian lawyers struggle to represent the law and imbue it with meaning in a context of often profound popular cynicism and despair. In pursuing their professional and personal struggle as it related to the UN full membership bid in September 2011, speakers had to balance hope, despair, and denial about the limits of international law. We saw that an evolving discourse and practice within Palestine does suggest that international legal ideals are being embraced, often in contrast with earlier, unsuccessful, politically-characterized ventures. Through their acts of stating and sometimes over-stating the centrality of international law in shaping and perhaps solving the conflict, Palestinian lawyers, activists, and intellectuals are contributing to a growing *legalization* of political debate within Palestine. Yet the outcomes of speaking the law to power remain unrealized. Living in a context that has seen the ideals of 'self-determination' and 'statehood' emptied of their content and passion means that it is difficult for those I interviewed to maintain unwavering faith in international law. Despite this, none of my interviewees seemed ready to abandon their desire to continue to speak the law. In deploying the law/politics binary in ever more divergent ways, interviewees have shown us how the discursive boundaries of international law can subtly change. Thus, it is through engaging with narrative accounts in this way that we, as international lawyers, can start to explore our own discipline's narratives more honestly and more reflexively.

Appendix: Example Coding of Interview Findings

Themes	Categories/ definitions	Interviews (Academic; Intellectual; Government worker; IGO worker; Student; NGO worker)	Example quotation(s)
Defining international law: the law-politics binary	Faith in the promise of international law: Participants described IL as the most important tool of liberation, often critical of its lack of implementation. International law is inherently political: Participants characterized international law as a political instrument for Palestinians, whilst drawing parallels with other cases in the third world.	IG1; A2/3/5/6; G1/4; N1/3; S1/4; I1.	A2: 'What is needed is to implement these decisions' [of the UN] G3: that international law of way of 'leveling the playing field' G1: 'International Law for Palestinians is a political instrument <i>par excellence</i> ...Palestine is made and unmade by international law'
Oslo and the development of donor dependency	Using law in political moments: Participants described how law abandoned under Oslo, and also how negotiations ultimately failed. Relationship with donors and local actors: Donor pressures on the nature of government and non-government discourse and activism	A1/2/3/7; N2/4; S2; G1/2/4; IG1; I1. IG1; A1/2/5/6; N1; G1/2/3/4; S1; I1. I1; A6/7; IG1; N4; G3.	I1, for Arafat, 'law was just a slogan' IG1 'Each of these moments is a legal moment' A7: that now only 'certain rights are legible'
Turning from politics to law: The UN membership moment	Turning to law: Participants talked about an emerging legal consciousness as a result of the occupation, whilst anxious about its limitations. Developing a legal culture and shared language: Participants narrated their personal and shared journeys as international lawyers.	IG1; A1/2/3/5/6/7; N1/3/4; S1/3; I1; G2/3. A2/4/6; N1/3/4; IG1; I1; G2/3/4	IG1: that a common view is that Palestine 'is an international law free zone'; N3F: 'it is a matter of keeping your fingers crossed every day'; N1: 'we see the impact of collective and joint work' IG1: that the membership bid was 'a very exciting time for a Palestinian lawyer.... Palestine for me is always a question of international law'