

**The European Union's Role in the Palestinian
Territory: State-building through Security Sector
Reform?**

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Abstract

The aim of this paper is to shed light on the distinctive role of the EU as a state-builder in the case of the Palestinian Territory and examine how state-building can be conducted in a still on conflict society. Following the Oslo Accords, the EU engaged actively in the state-building project in the Palestinian Territory taking a number of initiatives on the ground. Ever since, security has been at the centre of Israeli-Palestinian relations as well as at the international community's effort to build a state called "Palestine". Security has been a key issue in all Israeli-Palestinian agreements concluded during the interim period up to 1999 and then, during the second *intifada* (2000), security became a cornerstone of all internationally-sponsored diplomatic initiatives and peace plans. Security also became synonymous with Palestinian statehood and it topped the diplomatic agenda in the recent re-launch of direct talks between Israelis and Palestinians on October 2, 2010. To this end, the central aim of this paper is to examine the distinctive initiatives that the EU has taken in order to help the Palestinian Authority reform both its security and judiciary sectors as part of its broader state-building strategy towards the Palestinian Territory, as well as provide explanations on why these policies had so little impact. In doing so, the paper seeks to provide answers to the following questions: what conclusions can we gather from a detailed study of EU initiatives on the ground? Has the EU been an effective and coherent actor in the Palestinian Territory as far as security and judiciary sector reform is concerned? How are all these initiatives on the ground linked to the "high politics" of this conflict?

Keywords: European Union, Palestinian Territory, State-building, Security Sector Reform, Judiciary Sector Reform

Introduction¹

Following the Oslo Accords in 1993, the EU engaged actively in the state-building project in the Palestinian Territory taking a number of initiatives on the ground. Ever since, security has been at the centre of Israeli-Palestinian relations as well as at the international community's effort to build a state called "Palestine". Security has been a key issue in all Israeli-Palestinian agreements concluded during the interim period up to 1999 and then, during the second *intifada* (2000), security became a cornerstone of all internationally-sponsored diplomatic initiatives and peace plans. Security also became synonymous with Palestinian statehood and it topped the diplomatic agenda in the recent re-launch of direct talks between Israelis and Palestinians on October 2, 2010 which were soon suspended. The importance of security sector reform was also acknowledged in the recently leaked Palestine papers.

While the international community in general and the EU in particular have been involved in various attempts at 'building' the Palestinian state the security sector reform (SSR) has attracted special attention because it is considered to be the 'alpha and omega' of the state-building project and the key aspect of any eventual peace agreement between the two conflicting parties. Despite the fact that SSR is moving forward swiftly, especially under the guidance of the emergency government of Salam Fayyad which was established in 2007, the degree of parliamentary and democratic civilian oversight and accountability is minimal. Therefore, while institutions are being built and the PA has achieved tangible improvements with regard to security sector, the situation remains far from ideal. Thus, the situation which is witnessed today can be characterized as ironic and paradoxical; on the one hand the EU expects the local actors to govern in accordance with the principle of good governance and the rule of law while on the other hand the EU itself does not feel obliged to adhere to the very same principle.

The paper is separated into six parts. It begins with an introduction to the concept of SSR, different definitions and approaches. The second part deals with the EU's approach with regard to SSR and the third part aims at offering a brief analysis of the

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security sector in the Palestinian Territory, its establishment and evolution. The fourth part analyses the two civilian missions that the EU has deployed in the Palestinian Territory in order to help the PA reform its security sector and the fifth part analyses the distinctive initiatives that the EU has taken with regard to Judiciary Sector Reform. The sixth part provides a critical assessment of the EU's initiatives and the last part offers some criticism on the EU's approach to SSR in the Palestinian Territory arguing that in reality, the EU has supported a technical and training approach rather than a genuine SSR process promoting democratic civilian oversight and accountability.

1. The term and notion of Security Sector Reform

The term 'security sector' is associated with different and often competing definitions, which include either a narrow or a broad set of actors. In the first case, 'security sector' refers only to these state organizations which are authorized to use force. With respect to the broader definition, the United Nations Development Programme (UNDP) suggested in 2002 a definition which also includes justice and law enforcement institutions, civil management oversight bodies, non-statutory security forces and civil society groups (UNDP 2002: 87).

The emergence over the 1990s of the concept of security sector reform (SSR) has its roots in the focus of Western governments and development agencies on 'poverty reduction' in developing countries and in the introduction of the concept of 'human security' in the 1994 Human Development Report published by the UNDP. This shift, reflected a growing awareness that the conventional focus on military threats overlooks "broader security concerns affecting a wider range of societal groups...and that security institutions significantly affect national prospects for social and economic progress" (Sayigh 2007b: 4).

Consequently, although there is a general agreement on the need for SSR in state-building projects, an important difference remains on whether SSR's main objective should be to improve the physical security of people or to improve democratic control over the security sector. This difference has led to a variation of terms defining SSR.

While some analysts prefer to use the term ‘transformation’ rather than reform (Cooper and Pugh 2002), the UNDP’s Crisis Prevention and Recovery Bureau uses the term ‘justice and security sector reform’. The OECD DAC defines ‘security sector reform’ as “the transformation of this sector so that it is managed and operates in a manner that is more consistent with democratic norms, the rule of law including well-functioning and just judicial and prison systems, and sound principles of governance” (Friedrich and Luethold 2007: 16).

As a result, most of the writers on SSR now recognize its holistic nature. Gross for example states that SSR should embrace both ‘pure’ security arrangements such as defence, police and judicial reform but also democracy, human rights and good governance (Gross 2009: 9). The presence of effective security structures, which are democratic and transparent, forms the key to sustained development. Without security a state can achieve neither development nor democracy, stability or peace. As Winkler puts it:

Democracy cannot develop if the population knows that the security apparatus is not under firm political and democratic control. If the security sector remains like an iceberg... then democracy cannot flourish, human rights, dignity and security are in jeopardy, and the road to good governance, socioeconomic development and the rule of law is blocked (Winkler 2002: 8).

Despite these differences, there is a broad agreement on an inclusive list of main areas of activity and general principles of SSR. In the first category, according to DAC the SSR-related activities are defined as followed: 1) Political and Policy Dialogue, 2) Armed Forces and Intelligence, 3) Justice and Internal Security Apparatus, 4) Non-state Security Forces, 5) Civil Oversight Mechanisms, 6) Civil Management Bodies, 7) Civilian Capacity Building, 8) Regional Initiatives and 9) Initiatives to Demilitarize Society (OECD 2004: 31). The internationally recognized principles for external support for SSR include the following: 1) the adoption of a broad definition of the security sector, 2) situate SSR in the context of providing a secure environment for people, 3) recognize

that all countries can benefit to varying degrees from SSR, 4) foster local ownership of reform processes, 5) develop comprehensive frameworks for promoting SSR and assist reforming countries to develop their own frameworks, 6) build capacity to undertake SSR in reforming countries, 7) adopt a long-term approach and 8) adopt a regional/sub-regional perspective (DfID 2004: 2).

However, David Chuter objects that all these definitions of the security sector and its reform “make any serious SSR program impossibly large and complex, and turn SSR questions themselves into more general questions of ‘governance’” (quoted in Sayigh 2007b: 5). Chuter defines the security sector as consisting “of all those institutions whose primary role is the provision of internal and external security, together with bodies responsible for their administration, tasking and control. In practice, this means the military, the police, the intelligence services, paramilitary forces and the government agencies responsible for them” (Chuter 2006: 7). This definition will be used for the main part of this paper because a governance and development perspective seems more efficient for this research. The reason for this is that in the Palestinian context, where the role of non-statutory actors is of big importance and there is a still ongoing state formation process underway, a narrow definition of the security sector would fail to explain and understand the forces that shape it.

2. The EU’s approach to Security Sector Reform

The argument that the EU should start developing guidelines on SSR gained prominence in 2000. Thus, in 2003 the EU recognized that it had all the instruments at its disposal in order to adopt a clear strategy which would enable the serving of its strategic interests and objectives; the European Security Strategy (ESS). The ESS states that “...none of these threats is purely military [and] each requires a mixture of instruments” and “as we increase capabilities in the different areas, we should think in terms of a wider spectrum of missions. This might include joint disarmament operations, support for third countries in combating terrorism and security sector reform. The last of these would be part of a broader institution building” (European Council 2003: 12).

To this end, SSR was linked to institution and state-building as well as conflict prevention and conflict resolution. Although the original ESDP did not mention SSR, a subsequent ‘Action Plan for Civilian Aspects of ESDP’ was adopted so as to coordinate the EU activities on SSR (Sedra 2006: 327). The ESS was also complemented by more specific reports on SSR and texts on Disarmament, Demobilization and Reintegration (DDR). These include the EU Concept for ESDP support to Security Sector Reform, the ‘European Consensus’ of 2005 which links development with security, the Council Conclusions of June 2006 on a Policy framework for SSR and the EU Concept for support to Disarmament, Demobilization and Reintegration (DDR) approved by the Council of the European Union in December 2006.

Another important document came in 2006. On 24 May the European Commission sent a Communication to the Council and the European Parliament entitled ‘A Concept for European Community Support for Security Sector Reform’ which was accompanied by a Staff Working Document containing annexes on EC Policy relevant for support in the Area of SSR, areas of European Community Support to SSR, the European Commission Programming cycle and examples of international standards relevant for supporting the area of SSR. (European Commission 2006).

The European Commission, in its Communication adopted the term ‘security system reform’ rather than the term ‘security sector reform’. By this, the Commission made clear that it conceives the reform process not only as a pure reform of those state institutions that provide individual services such as the military, the police, the judicial institutions etc but also as an holistic approach, strengthening security for all citizens and focusing “on the overall functioning of the security system as part of governance reform policy and strategy of the public sector” (ibid.). Based on the OECD-DAC definition, the security system was defined as all those ‘state institutions and other entities with a role in ensuring the security of the state and its people’ (ibid.). Four main categories were presented as constituting the security system:

- The core security actors such as armed forces, police, gendarmeries, paramilitary forces, presidential guards, intelligence services, coast guards, border guards, customs authorities, reserve or local security units.

- Security Management and oversight bodies such as the Executive, including ministries of defence, internal affairs and foreign affairs, the Legislative including the parliament and the legislature, national security advisory bodies, customary and traditional authorities, financial management bodies, and civil society including the media, academia and NGOs.
- Justice Institutions such as the judiciary, Ministry of Justice, prisons, criminal investigation and prosecution services, human rights commissions and ombudsmen, customary and traditional justice systems, implementation justice services (bailiffs and ushers).
- Non-statutory security forces such as liberation armies, guerilla armies, private bodyguard units, private security companies etc.

Apart from the second pillar and ESDP, the EU can also lean on its remaining two pillars in order to address the issue of SSR, through the external relations' competences of the Community pillar (first pillar) and the external aspects of Justice and Home Affairs policies (third pillar) (Weiler 2009: 6). More specifically, the 'aim and content' of the action is what determines the framework for EU intervention; if a developmental, general rule of law or institutional strengthening role is pursued then the European Commission takes the leading role. If a security goal is to be achieved such as state failure, creating institutions from 'scratch' or military mission then the European Council leads the 'intervention' (European Commission Official, interview 20 May 2010). This is the reason why the two civilian missions deployed in the PT are mainly under the Council's mandate while the Judiciary Sector Reform (JCR) which is part of the broader SSR strategy in the PT remains under the Commission's supervision. The split in competences of different missions between the European Commission and the European Council has a direct impact on policy implementation on the ground and coordination issues which will be analysed in the next part.

The EU seems to support the belief that the primary objective for the success of a state is the security sector. In contrast with other factors which are equally important, security is not something that can be built gradually but has to be present at the beginning of a new state. Security seems to be the 'alpha and omega' in the state-building process

as in its absence, political, economic and cultural ‘building’ would be impossible (Bouris 2010b: 382). Moreover, the security sector reform is considered to be an action which supports structures “which will tend to strengthen and solidify peace in order to avoid a relapse to conflict” (Boutros-Ghali 1992). This is the reason why the EU has deployed so many security forces across the world as an element of state-building; from the Western Balkans to Africa and from South Caucasus to the Middle East and Asia².

3. The Security Sector in the Palestinian Territory

The Palestinian internal security system has always been in disarray. Although it has never been highly functional, its efficiency has further been eroded though the years because of the destroying of facilities and killing of personnel. Prior to 1993 and the Oslo Accords, the Israeli government was the one responsible for the police force and the justice system in the Palestinian Territory. But since the Oslo Accords and the Agreement on the Gaza Strip and the Jericho Area signed in 1994, Palestinians were given a limited autonomy in the domain of internal security.

In 1995, under the Oslo II Agreement the West Bank and the Gaza Strip were divided into three areas; A, B and C. It was only in the Area A that the PA was given full administrative and security control³. In Area B which includes some 450 villages and cities of the West Bank the PA was only given civil control while Israel would maintain security control. Finally, in Area C Israel would retain full responsibility and control in all aspects. It should be noted that Area C constitutes almost 61 per cent of the total area of West Bank.

Trying to reform the Palestinian security forces was not an easy task as the Oslo years and Arafat’s leadership combined with the outburst of the second intifada had left the security sector in a chaotic situation. According to the Palestinian Israeli Interim Agreement of 1995, the Palestinian police force was to be composed of six branches: Civil Police, Public Security Force, General Intelligence, Civil Defence, Preventative

² For details about all these operations see <http://www.consilium.europa.eu/showPage.aspx?id=268&lang=en>

³ Area A includes the areas of Gaza and Jericho and seven major Palestinian populations centers namely Nablus, Kalkilya, Tulkarem, Ramallah, Bethlehem, Jenin and Hebron. Special arrangements about Hebron were concluded in January 1997.

Security and Presidential Security (The Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip 1995: Annex I). In reality though, more branches existed, which instead of providing security to the Palestinians resulted in developing capabilities with the aim of threatening Israel. In 2002, George Bush made clear to the PA that statehood would be synonymous with reform of security forces. More specifically he argued that

Palestinian Authorities are encouraging, not opposing, terrorism. This is unacceptable. The United States will not support the establishment of a Palestinian state until its leaders engage in sustained fight against terrorists and dismantle their infrastructure. This will require an externally supervised effort to rebuild and reform the Palestinian security services (Bush 2002).

His argument was adopted by the Quartet one year later and the demand for reforming the Palestinian security forces was repeated with the “Performance-based Road Map to a Permanent Two-State Solution to the Israeli-Palestinian Conflict”. The Quartet, demanded that

all Palestinian security organizations are consolidated into three services reporting to an empowered Interior Minister [and] rebuilt and refocused Palestinian Authority security apparatus begins sustained, targeted, and effective operations aimed at confronting all those engaged in terror and dismantlement of terrorist capabilities and infrastructure (Quartet 2003).

Until his death in 2004, Yasser Arafat, operating under a ‘divide and conquer’ strategy “built his forces in such a way that only he could arbitrate between them, giving none of them enough power to threaten his regime” (Luft 2004: 1). Although Arafat did some steps in reforming the Palestinian security services this effort “was at best cosmetic” (ibid.: 31). He supported the reducing of Palestinian forces and restructuring of the police and he also appointed Gen. Abdel Razak al-Yahya as an Interior Minister to oversee the coordination of security forces. But although he removed some of his key

people from the security establishment this removal was not made because of their bad record but due to their popular support which could have challenged his rule. The new appointees were not those who would be capable of restructuring and reforming the Palestinian security forces but people who were linked to terrorist organizations in the Palestinian Territory such as Rashid Abu-Shabak and Mahmoud Damara (ibid.). Consequently, Arafat lost the chance to make a real security sector reform by appointing people who would not threaten his regime and were closely linked with terrorism.

Unfortunately, the situation did not improve dramatically after Arafat's death and Abbas' taking office. Although Abbas made some positive steps towards reforming the security forces in the framework of the Roadmap these initiatives did not prove to be enough while at the same time, Israel seemed unwilling to do any positive steps and respect its obligations under the Roadmap. The situation deteriorated after the 2006 elections which brought Hamas to the power. Although Hamas signed the reconciliation Mecca Accord and agreed to a power-sharing arrangement with Fatah, the US and Israel seemed unwilling to accept this fragile balance. Thus, US promoted the training of battalions of National Security Forces (NSF) and Presidential Guards (PG) which were loyal to President Mahmoud Abbas, at the Jordan International Police Training Center (JIPTC) outside Amman. Israel on the other hand, allowed them to return to the West Bank where they deployed and started imposing security measures mainly against Hamas supporters. As Friendrich and Luethold argue:

By establishing security forces outside governmental and parliamentary control, the US not only ignored principles of good practice for SSR assistance, but also helped create the conditions which led to the bloody clashes in the Gaza Strip in 2006 and 2007 and the subsequent takeover of the Strip by Hamas (Friendrich and Luethold 2008: 195)

When Mohammad Dahlan, one of the strongest Fatah men, was put in charge in order to coordinate the deployment of Fatah forces at various crossings around Gaza, Hamas responded violently and took over Gaza. Abbas responded by calling this action coup d'état, declared a 'state of emergency' and appointed Salam Fayyad as Prime

Minister. Since then two governments both considering themselves as the legitimate representatives exist in the Palestinian Territory; the one under Salam Fayyad in the West Bank and the other under Ismail Haniya in Gaza. The latter on June 16, 2007 declared Said Fanuna as the new security Chief in the Gaza Strip while Kamal el-Sheikh of Fatah was nominated as the police Chief in the West Bank.

To sum up, the security situation in the Palestinian Territory has always been in disorder and has long remained an externally-led reform process which several times made things more complicated without taking local ownership into account. For example, the Roadmap as well as previous agreements and workplans responded mainly to US and Israeli security concerns rather than Palestinian needs and demands. The Roadmap does not demonstrate at any point “concern for the security services that Palestinian security forces will have to provide for Palestinians themselves” (ibid.: 200). Moreover, the context in which SSR is taking place in the PT should not be neglected either. Palestinians are expected to reform their Security Sector under continuous occupation and without having control over their borders, airspace and seaspace. Within the West Bank Israeli restrictions such as checkpoints, travel restrictions and the Wall further complicate the situation.

4. The EU and Security Sector Reform in the Palestinian Territory

As mentioned above, the security sector has attracted only recently EU attention because of the fact that “rapid Palestinian economic revival is essential...but it will only come true if there is a drastic improvement in the security environment” (World Bank 2005: i). Recognizing the importance of an efficient security sector, the EU has deployed two missions in the Palestinian Territory; the first is a police mission named EUPOL COPPS which aims at supporting the Palestinian Authority in establishing effective policing arrangements and the second a border assistance mission named EUBAM Rafah.

4.1 European Union Police Co-ordination Office for Palestinian Police Support (EUPOL COPPS)

EUPOL COPPS was established upon request from the PA which needed support in taking responsibility for law and order and, in particular, in improving its capacity in civil police and law enforcement (European Union Council Secretariat 2009b). Referring to this, the Ministry of Interior in Palestine argued that “a professionally trained and self sufficient Palestinian Civil Police is the corner stone of law and order leading to a secure and independent Palestinian state” (Palestinian Ministry of Interior 2008: 1). While the mission had a three year mandate and started its operation in January 2006 it was extended two times: in 2008 until 31 December 2010 and in 2010 until 31 December 2011 (Council of the European Union 2010). Its main tasks are threefold; to assist the Palestinian Civil Police mentoring and advising it, to co-ordinate and facilitate EU member financial assistance to the Palestinian Civil Police and to give advice on politically related Criminal Justice elements (European Council 2005b). As a result, “EUPOL COPPS is an expression of the EU’s continued readiness to support the Palestinian Authority in complying with its Roadmap obligations, in particular with regard to ‘security’ and ‘institution building’” (ibid.).

Following the Berlin Conference in Support of Palestinian Civil Security and Rule of Law (June 2008), EUPOL COPPS has expanded its mission so as to include a rule of law component in order to establish a more comprehensive approach to security for Palestinians (EUPOL COPPS Information Brochure 2009). The rule of law section, after producing a comprehensive Assessment Report on the Palestinian Criminal Justice System, is trying to address the most important actors in the ‘criminal chain’: prosecution, courts, High Judicial Council, Penitentiary, Ministry of Justice (MoJ), the Bar Association, Civil Society (NGOs) and the scientific legal community (law faculties). By this, “we have adopted a really comprehensive approach to SSR always in partnership with Palestinian stakeholders and in close co-ordination with other international stakeholders” says a rule of law expert (EUPOL COPPS Headquarters, interview 28 May 2010). EUPOL COPPS has helped rapidly professionalize the civil police in the West Bank which now numbers over 7000 officers and has demonstrated an important capability in maintaining public order. EUPOL COPPS is also helping the civil police

develop more sophisticated crime investigation techniques and Canada is expanding the PA's forensic capabilities.

Insofar, despite some serious difficulties faced during its establishment, EUPOL COPPS is seen as “a good success story” (Berger, interview 14 May 2010). Except for Brussels, Israeli officials also seem to be fairly satisfied by the mission arguing that “EUPOL COPPS has been very successful until now. There are very positive remarks and the improvement of the security in the West Bank has been translated to our removal of checkpoints which helps the improvement of the Palestinian economy” (Assaraf, interview 12 May 2010).

However, the operational challenges of the mission that commenced in January 2006 (just a few days before Hamas' electoral victory in the Palestinian Legislative elections) should not be neglected. Consequently, in the words of a EUPOL COPPS official: “from our first days in the mission we were hostages of the political situation without being able to do our job” (EUPOL COPPS Headquarters, interview 28 May 2010). The mission resumed its operations after the establishment of the Salam Fayyad government in June 2007 and since then “Palestinians have started witnessing a massive change in their security” (Ozreil, interview 29 May 2010).

Except for providing training, EUPOL COPPS has made tangible contributions to equipment, infrastructure and assessment (Bulut 2009: 291). One of the most important achievements is the Jericho Police Training School in which the UK Department for International Development (DFID) also played an important role by providing \$409.000 out of the total \$545.000 for its first phase (CITpax: 20). The Jericho Police Training School constitutes a really useful tool in the hands of the Palestinian Civil Police as far as training is concerned. As an official from the Palestinian Civil Police argued “we now have the ability to train our people for free without having to pay everything that include their training in Egypt or Jordan; we have the ability to recruit and train our policemen...that's what local ownership means” (Ozreil, interview 29 May 2010).

Although it is true that the security situation in the West Bank has been improved, it still remains far from ideal even if in the words of current Israeli Defense Minister “2010 has proven to be the quietest in many years in terms of Israel's security” (Haaretz, 2011). At least eight major and possibly as many as eighteen smaller different Palestinian

security services are active in the West Bank at the moment (Persson 2010: 50). The eight major security services include: a) General Intelligence, b) Military Intelligence, c) National Security Forces, d) Palestinian Civil Defense, e) Palestinian Civil Police, f) Palestinian Navy, g) Presidential Guard and h) Preventive Security. Some labor division exists between the EU and the US which is a blue-green division, where the EU assists civil security structures and more specifically the Palestinian Civil Police, while the US assists militant security structures such as the Palestinian National Security Forces and the Presidential Guard.

Esra Bulut argues that the EU trained PCP is considered to be the least abusive (Bulut 2009: 295). The EU seems to have made a wise choice training the civil police as this is less controversial than reforming intelligence services or the militant security forces. At the same time it is less political and in general people tend to applaud efforts to combat crimes and other ordinary police services (International crisis Group 2010: 13). Neil Page, an advisor to the US Security Coordinator General Keith Dayton (now replaced by Lt. Gen. Michael Moeller) argues to Anders Persson “in ideal circumstances, we would probably not have started with three intelligence services but we are not dealing with Sweden or Finland here, so it is important to recognize things are not always done the way we are doing it at home” (quoted in Persson 2010: 50).

4.2 European Union Border Assistance Mission in Rafah (EUBAM Rafah)

The second civil mission under the European Union’s Security and Defence Policy is the European Union Border Assistance Mission Rafah (EUBAM Rafah) which was established after Israel’s decision to withdraw from the Gaza Strip. On 15 November 2005, Israel and the Palestinian Authority signed an ‘Agreement on Movement and Access’ and six days later the Council of the EU welcomed the agreement and decided to undertake the third party role (after US unwillingness to do so) which meant that, together with Egypt, Israel and the PA, would be responsible for monitoring the Rafah border crossing point. “Nobody was really satisfied but we didn’t have another option so we thought it would be good to give Europeans a role to play” says an Israeli official (Israeli Ministry of Foreign Affairs, interview 12 May 2010). On the other hand, the EU

was also satisfied as for the first time it was given not the typical role of being a payer but the one on being an on-the-ground player. “We couldn’t be there without Israel’s permission” says an EU Council official (Council of the European Union, interview 3 February 2010) but although Sharon signed the agreement “he was never really willing to implement it” (European Parliament, interview 12 February 2010).

EUBAM Rafah started operating on 30 November 2005 and it sought to reconcile Israel’s security concerns with both the Palestinian demands for an autonomous border management and the need for Gaza’s economic recovery, which requires open borders (Del Sarto 2007: 71). The mission initially had a one year mandate which has been extended until now (European Council 2005a). Its main aims were to assist the PA to build capacity-training on border management and customs, to evaluate and assess the PA’s application of the procedures, to contribute to confidence building between the parties, to contribute to the building institutional capacity in the PA to ensure effective border control and to contribute to the liaison between the Palestinian, Israeli and Egyptian authorities in all aspects of border management at Rafah.

Although supervising the Rafah border crossing is “neither a high-profile nor a particularly glorious task...the EU mission is nonetheless politically relevant” (Del Sarto 2007: 71) and it has significance for EU-Israeli relations. Yossi Alfer argues that:

When a guy like Ariel Sharon who had nothing but contempt for the Europeans, when he agrees...that there will be no Israelis at the Rafah crossing and there will be Europeans there, and to place this in the hands of the EU, this was an extraordinary breakthrough in European-Israeli relations, that Israel would show this degree of trust the first time, the first crossing between a Palestinian entity and a neighboring Arab state is going to be entrusted to the Europeans, that was really quite extraordinary (quoted in Persson 2010: 51).

In the same line of the argument, a member of the European Parliament (MEP), argues that “with this civilian mission we were able to dismiss the Israeli reluctance for our presence and this mission can be used as an incentive to expand our international presence” (European Parliament, interview 2 March 2010). This

argument is also supported by Christian Berger, head of the European Commission Technical Assistance Office (ECTAO) in Jerusalem who supports the idea that “the example of Rafah and experience gained could be used in the future in other crossing points as well” (Berger, interview 14 May 2010).

The mission had some success until the Hamas’s takeover of Gaza on June 13, 2007⁴ as from the start of the Mission until the last day a total of 443,975 passengers crossed the border between the Gaza Strip and Egypt at the Rafah Crossing Point (RCP) (EUBAM Rafah 2010). A mission official argues that:

Until its suspension EUBAM Rafah was the most successful ESDP mission. Visibility was really high and you could see development. If we were not there people who were depressed and desperate would not be able to cross. We were there not for our own sake but because we had the strong belief that, in contrast to the critic you mentioned [about Del Sarto’s argument], doing human rights is a glorious task (EUBAM Rafah Headquarters, interview 13 May 2010).

Since June 2007 EUBAM Rafah has declared a temporary suspension of operations at the Rafah Crossing Point because Israel blocked access to the EU observers following the abduction of Corporal Gilad Shalit by Palestinian militants (Sayigh 2007a: 11) but it remains in the region with the operational capacity to deploy at short notice (European Union Council Secretariat 2009a). The total staff of the mission has significantly been reduced though. In July 2006, 81 staff from 16 different countries constituted the mission (CITpax 2006: 37) and in 2007 there was a 28 staff reduction (53 officials) while 2 countries withdrew their support namely Austria and Luxemburg (Martinez, interview 13 May 2010). In 2008 only 18 international and 6 locals represented the personnel of the mission while in 2009 there was a light increase to 23 international and 8 local staff (ibid.). As of June 2010, the mission was only constituted by 13 staff (Reigeluth and Bouris 2010).

⁴ From June 2006 until June 2007 the crossing was open 23.5 percent of the time which although not efficient is still something important so as to help the free movement (Lazaroff 2009). According to statistics, during the 18 months that the EUBAM was present a total of 443.975 passengers crossed through the Rafah Crossing Point (European Union Council Secretariat 2009a).

While there are a lot of critics about the necessity of ‘keeping the mission alive’ the official EU response to that is twofold:

Firstly, EUBAM Rafah is a good complementarity between physical presence and politics. By staying there we make the point that we expect things to change in Gaza. Secondly, if we withdraw that is going to be considered as a failure; and this is definitely something we don’t want (European Commission Official, interview 11 May 2010).

Although the mission staff would be willing to run some projects such as training on border management, human rights, gender issues, customs and capacity building this proves to be impossible because of mandate restrictions; possible trainings in Jordan or in the West Bank cannot take place because the mission is geographically limited in Rafah. At the same time, an EU member state official argues that:

The Agreement on Movement and Access is definitely not implemented by Israel. So why should we still implement it and not give the chance to EUBAM Rafah to run several projects which would may prove effective in other crossing points in the future? (EU member state official, interview 19 May 2010).

While some pressure has been put upon Israel and Egypt as far as the opening of the Rafah crossing is concerned, there seemed to be a refusal on the change of policy at least until recently. Although Egypt, after the June 2010 flotilla incident has opened the crossing ‘indefinitely’, which attracted a lot of publicity, in the words of an EUBAM Rafah official:

what has been published these days in the media regarding the opening of the border crossing in Rafah is nothing but what has been regular since Rafah was closed: From time to time it is opened to allow a very limited number of people to leave Gaza in order to receive medical treatment in Egypt. Nothing out of “normal”. Like in previous occasions, EUBAM was not deployed. The border

remains open but who knows until when. (Martinez, communication 7 June 2010).

Despite the fact that in the last few months the argument that the border closure has failed to achieve its goals and that the overall Gaza blockade policy is ‘unsustainable’ (Haaretz 2010) the future of EUBAM Rafah is still unclear. Some sources mention that “the recent flotilla incident has already brought some changes as everybody speaks now about the need to lift the blockade and the EU accepted the principle of actively contributing to monitoring the crossings. Rafah first and then Kerem Shalom and re-opening of Karni” (Member of the office of the Quartet Representative, communication 12 June 2010). While both the EU and the Quartet Special Representatives Ashton and Blair have tried during the second half of 2010 to convince Israel to open the Gaza crossing points, such a decision has not been taken yet. The re-opening of the crossings was also the main aim of Catherine Ashton’s first official trip for 2011 in the Middle East. Israel asked for the deployment of a new EU-sponsored force which would help with the re-opening of the crossings. More specifically, Israeli foreign Minister Avigdor Lieberman said in a communique to press after meeting Ashton that:

If you want to bring about a lifting of the closure around Gaza you should take responsibility and establish a strong, real and effective force to prevent smuggling there ... I can promise you that the minute the smuggling of arms into Gaza stops, the closure will be lifted (Rettman 2011).

Until this proposal becomes a reality EUBAM Rafah will remain, in the words of Anis Nacur, Political and Security Sector Adviser at the Office of the Quartet Representative “EU’s sleeping beauty” (Nacur, interview 31 May 2010). It remains to be seen if the international community will be effective in playing the role of prince and give to the EUBAM Rafah the kiss which will wake her up from her eternal slumber.

5. The EU and Judiciary Sector Reform in the Palestinian Territory

In 2005, the EU and PA signed an Action Plan in which, among others, they agreed on the “establishment of an independent, impartial and fully functioning judiciary in line with international standards and strengthen the separation of powers” (European Commission 2005). The EU supported the need for developing a strong and independent judiciary by the ‘Empowerment of the Judicial System’ programme which “addresses the most urgent needs of the judiciary through institutional support, development of a permanent professional training system, refurbishment of courts and the provision of equipment” (European Commission Technical Assistance Office for the West Bank and Gaza Strip 2007).

The Palestinian Reform and Development Plan (PRDP) which was presented at an International Donors’ Conference in Paris in December 2007 launched the ‘Justice Now’ reform process with the aim of strengthening the criminal and civil justice system and to train and appoint an impartial and efficient judiciary (ECTAO leaflet 2009). The PRDP is updated annually by the Ministry of Planning and puts special emphasis on government, social development, infrastructure and economic development. The EU supported the PRDP with a programme known as ‘Seyada’. In the words of a Palestinian Official “Seyada is the best project ever taken by the international community which seriously takes into consideration the institutional building in the Palestinian Territories” (Milhem, interview 24 May 2010). Seyada is a European Commission-run programme and its first phase was implemented from 2005 to 2009 with a budget of €3.75 million. During this period major programmes were launched by the EU which include the establishment of the Palestinian Judicial Training Institute, a permanent professional training system; providing legal training for judges and prosecutors and IT training for the staff; setting up an inspection department and legal library that supports the High Judicial Council; the provision of IT equipment for the judiciary (€1 million additional support for this reason). Finally, a 300.000 euro project was supported separately by the European Commission to the Birzeit University of law for the development of “Al Muqtafi” legislative database and the prototype of a case law database system of all

Palestinian court judgements (ECTAO 2009). (European Commission, interview 25 May 2010).

Moreover, from 2006 to 2008 Seyada I supported the training department at the HJC by conducting numerous ad hoc trainings. Newly appointed judges and prosecutors were trained and a ‘train the trainers’ programme was also supported and financed by Seyada I. Following the installation of a case management system by the United Nations Development Programme (UNDP) and the High Judicial Council in the first instance courts, Seyada I finalised in 2008 the computerization of the Higher Courts and provided the MoJ with necessary hardware for a criminal record system (Seyada II 2009: Annex II). The hardware provided in order to improve the electronic case management is called Mizan. Its first phase was funded by the European Commission with €600.000 and Mizan II, implemented now, aims at providing the necessary hardware for linking all the courts with the Ministry of Justice with a budget of €200.000 (Clausing, interview 25 May 2010). The establishment of a Law Library located in Ramallah in the HJC was also supported by the Seyada I as well as the setting up of an Inspection Office within the HJC. Finally, in 2006 and 2007 all court staff in the Gaza Strip (141) and West Bank (185) was trained on basic ECDL skills.

While Seyada I managed to make distinctive contributions to the Palestinian Judiciary Sector Reform (especially if we keep in mind the political situation which occurred after Hamas’ election and the general strike between 2006 and 2007), some important weaknesses should also be mentioned. Although the European Commission has the reputation of being good with designing programmes and weak with their implementation, in the case of Seyada I the design was not that good as it seems that it did not take into account the needs of the beneficiary and the realities on the ground (Seyada Programme Official, interview 24 May 2010). For example, Seyada I aimed at establishing a Constitutional Court but there was neither a political consensus, nor the right time for something like that and as a result the HJC was not interested in co-operation (Clausing, interview 25 May 2010). Moreover, the people working on its implementation were mainly contracted internationals who despite the fact that they were distinguished professionals, did not have the specific/local knowledge of the real needs of

the Palestinian Judiciary Sector. To this end, the necessity of hiring people who have knowledge on local developments and needs should always be taken into account.

As a result, the European Commission seems to have drawn lessons and Seyada II which is being implemented at the moment (2009-2012) has started with a completely new staff comprised by only 1 European team leader and the rest is local staff. Seyada II, with around a €4 million budget is a “demand driven process and responds to the objectives of the PA’s ‘Justice Now Programme’ in the Palestinian Reform and Development Plan (PRDP)” (ibid.). Its overall objective is to

develop a more independent, impartial, efficient, professional, transparent and modern justice system through institutional strengthening and capacity building of the judiciary and the bar association, and to support the proper functioning of the courts, while preserving the freedoms and fundamental rights of citizens by ensuring a fair trial, including the right to access to justice and the right to defence (Seyada Office, Information Brochure).

Seyada II is implemented by a consortium led by ICON-INSTITUT Public Sector GmbH and including the Belgian Development cooperation agency (BTC-CTB) and the Centre for International Legal Cooperation (CILC) (Lentze, interview 23 May 2010). It has five components which include institutional building in a) HJC by supporting its Inspection Office’s work in quality control and by assisting its Technical Office in compiling and publishing court judgements, b) Palestinian Judicial Institute (PJI) by developing a judicial training system for judges and public prosecutors and a two-year Judicial Studies Diploma Programme, c) Palestinian Bar Association (PBA), d) Legal aid so as all Palestinians to be able to access justice regardless of their financial means and e) Constitutional Review. (Seyada Office, Information Brochure). Last but not least, Seyada II is funding the establishment of seven Law Libraries within the courts in Hebron, Bethlehem, Jericho, Nablus, Qalqilya, Toulkarem and Jenin for the use of judges, prosecutors and lawyers at the same time providing training on their use.

The PA has now with the help of the international community recruited and trained substantial numbers of new judges and prosecutors and has built new courts in Jenin, Nablus, Bethlehem and Jericho. As a sign of growing public confidence, the number of cases being referred to the courts has also grown rapidly and the courts have been able to deal with influx and make some inroads into the substantial "backlog" which accumulated in worse times. Seyada I's role to this was instrumental as it facilitated the successful completion of entering 13.500 of backlogged cases into a unified database available in all public prosecution offices in the West Bank.

As far as the situation of JSR in Gaza is concerned things remain the same as with the rest of the state-building project there; everything has stopped. This is confirmed by the recent ENP Country Progress Report for the Occupied Palestinian Territory published in May 2010 which states that: "the reforms were limited to institutions in the West Bank, and could not be implemented in Gaza where the PA has de facto no authority" (European Commission 2010). Consequently, the Seyada office in Gaza had to be closed following the broader EU policy towards Hamas and the latter established a parallel structure throughout the Gaza Strip, including institutions like a Judicial Training Institute. A large majority of judges refused to continue working with the Hamas-established government and they are currently being paid by the PA government in the West Bank.

As mentioned in the previous part, EUPOL COPPS, since September 2008 has a Rule of Law Section to assist the Palestinian Justice System and the penitentiary sector. But, while Seyada and EUPOL COPPS were supposed to co-operate "through exchange and sharing of information concerning planned activities like trainings and conferences, and regular meetings so as to reinforce enhanced EU action in the justice sector in Palestine" (Seyada II 2009: Annex II) that was not the case in reality. It seems that competences between the European Commission and the European Council in Brussels level were well transferred on the two EU "missions" on the ground. As a rule of law expert in the EUPOL COPPS argues: "We do not work hand in hand. From the beginning Seyada had a broader mandate while the rule of law mandate is more clear and specific" (EUPOL COPPS Headquarters, interview 28 May 2010). On the other hand, officials

from Seyada argue that “the mandate of the rule of law section was not clear and there was a lot of tension between the European Commission and the European Council in Brussels” (European Commission, interview 25 May 2010). Some others added EUPOL COPPS’ unwillingness and arrogance as reasons of no co-operation between them. (Seyada Programme Official, interview 24 May 2010). It is true that the rule of law section of EUPOL COPPS started wrong, with 20 experts but without tools, budget and more specifically, locals. Things started improving in 2010 and this is mainly due to the appointment of a new Head of the rule of law section who demonstrated the willingness to work closer with Seyada (European Commission, interview 25 May 2010). It seems that some cooperation has only recently started with the aim of creating a unified ‘EU block’. A project initiated by EUPOL COPPS for Juvenile Justice which is of a €3 million cost is co-funded by the European Commission. According to Feras Milhem “EUPOL COPPS and Seyada can form a strong coalition and demonstrate that as EU, we are stronger when we are together” (Milhem, interview 24 May 2010).

6. Assessment of the European Union’s Contribution to the Security Sector Reform in the Palestinian Territory

Both EU civilian missions initially produced positive results. EUBAM Rafah was instrumental at substantially increasing the flow of persons between Egypt and Gaza and EUPOL COPPS commenced refurbishing the Jericho Training Center a facility of big importance for the Palestinian Civil Police (CITpax 2006: 5). EUBAM Rafah until its suspension in the summer of 2007 was considered to be the most successful CFSP (now called CSDP mission) because it managed to be deployed rapidly, it made a difference on the ground, it gave the EU visibility at a comparatively low cost and it established an important precedent (Bulut 2009: 307). More significantly, because of its non-executive mandate the mission achieved local ownership at a significant level; it was the Palestinian security and customs officials who did the actual work at the crossing while the EU mission officials were helping, advising and supervising the process. This was a wise choice for the EU in every aspect; on the one hand the risks of failure were reduced because of the limited mandate and on the other hand the EU had a “clean hands”

approach which means that it would not have to take any actual responsibility. An EU Commission official argues that “the Israelis wanted the Europeans to take full responsibility but Europeans did not want to risk being blamed for tunnels” (European Commission official, interview 14 May 2010).

Due to circumstances on the ground, which were mentioned in the previous sections, EUBAM Rafah has not been operational for almost four years. While the majority of the European officials are in favour of keeping the mission alive arguing that “the presence of the mission is symbolic that the EU considers the situation temporary (Council of the European Union, interview 4 February 2010), that the mission “demonstrates the EU’s commitment to the resolution of the conflict and it provides visibility” (Council of the European Union, interview 2 February 2010) and that “EUBAM Rafah is still there because it demonstrates the EU’s continuous readiness to follow possible progress on the ground” (British Representation, interview 10 March 2010) at the same time it seems that there is not enough pressure from the EU to Egypt and Israel in order to open the Rafah crossing point. (European Commission, interview 11 February 2010). Additionally, there is the fear that “if the mission closes then it will not be possible to deploy there again” (European Commission, interview 12 February 2010; EUBAM Rafah Officials, interview 13 May 2010). Some other EU officials argue in favour of the political meaning of the mission. Anis Nacrou, Political and Security Advisor to the Quarter Representative Tony Blair, says that he would personally see it as a setback if EUBAM Rafah was pulled out, because this is the first time that the EU is so actively involved in important security issues in the conflict (Persson 2010: 51). After all says Nacrou, EUBAM Rafah is about border control, which is one of the conflict’s final status issues (ibid.).

On the other hand there are also well founded criticisms as far as the need of keeping the mission is concerned. A European Parliament official argues that “Rafah is a mess. The argument that EUBAM Rafah is there because the EU wants to express its belief that this is a temporary situation is completely stupid. There are more meaningful ways to express this policy” (European Parliament, interview 12 February 2010). Another European Parliament official speaking about the “visibility” argument poses the following question: “What kind of visibility is this? Since when is having cars locked into

a garage considered to be visibility?” (European Parliament, interview 25 February 2010). Along the same lines of the argument, an EU member state official in Jerusalem argues that “EUBAM Rafah is only important from the symbolic point of view. In our capital, these missions are seen as really important. For us who are here, these missions seem a bit exaggerated. EUBAM Rafah’s reputation is really bad now”. (European Union member state official, interview 19 May 2010).

While both arguments are of importance it should be mentioned that although the reasons for not closing down the mission are of political nature, in reality the EU does not put any meaningful political pressure on the parties concerned regarding the need of reactivating EUBAM Rafah. Catherine Ashton, following the flotilla fiasco, declared that:

The humanitarian situation in Gaza remains a source of grave concern. The EU does not accept the continued policy of closure. It is unacceptable and politically counterproductive. We need to urgently achieve a durable solution to the situation in Gaza. The EU underlines its call for an immediate, sustained and unconditional opening of crossings for the flow of humanitarian aid, commercial goods and persons to and from Gaza (Ashton 2010).

More recently, in January 2011, Catherine Ashton expressed again the EU’s readiness to help to crossing point arrangements.

I have reiterated the EU's commitment to help and have discussed with both Israelis and Palestinians how to take forward the EU's comprehensive package of support, which includes improvements to the crossings infrastructure, equipment and training for the Palestinian Authority (PA) border and crossings personnel (Ashton 2011).

In this respect, EUBAM Rafah can be seen as a glimpse of the future in the sense that if enough political pressure is put then we could witness similar arrangements at Israel’s borders. Another incentive for the EU would also be to adopt a more innovative

policy towards Gaza and “deploy a European naval mission to monitor the international and Palestinian waters along Gaza, just as the UN does off the coast of Lebanon” (Reigeluth and Bouris 2010). Either as a part of reactivating EUBAM Rafah or as a separate CSDP mission, the EU could deploy this maritime force in order to lift the siege in Gaza. Such a force “would be a courageous step for Brussels to ensure Israeli security, Palestinian trade and avoiding other unnecessary flotilla incidents while also advancing a more comprehensive approach to SSR” (Bouris 2010a).

As far as EUPOL COPPS is concerned it is characterized as “a good success story” (Berger, interview 14 May 2010). Although the mission started its operation in a very difficult environment given the facts on the ground that followed Hamas’s electoral win and the international community’s policies, it has managed to make “tangible and concrete contributions to the Security Sector in the PT” (Council of the European Union, interview 2 February 2010). The mission seems to have the support of all parties concerned despite the fact that “training police under occupation is a very ugly business” (Council of the European Union, interview 8 March 2010). EU officials argue that “EUPOL COPPS have done a great job” (European Commission, interview 11 February 2010) and that “EUPOL COPPS matches the scope of the Fayyad plan and the shift to the rule of law and judiciary is a political signal” (Council of the European Union, interview 12 February 2010). Israeli officials also seem satisfied with the mission. “EUPOL COPPS seems quite successful until now and it is a good example on how the EU can contribute positively on the ground” argues an Israeli official in Brussels (Israeli official, interview 11 March 2010). Another Israeli official from the Ministry of Foreign Affairs in Jerusalem also argues that “the situation is much better now and this is because EUPOL COPPS’ success” (Israeli Ministry of Foreign Affairs, interview 12 May 2010).

The mission has now been expanded to include a rule of law component in order to establish a more comprehensive approach to security for Palestinians (EUPOL COPPS Information Brochure 2009). Although this has been a positive step from Brussels some weaknesses should be mentioned. First of all, the expansion took place without a proper planning and without a clear mandate (European Commission, interview 25 May 2010). As a result there have been a lot of critics that they were not properly equipped for such a role and they were not capable of doing serious developmental work (European

Commission, interview 20 May 2010). An EU official argues that “the rule of law section started really wrong consisting of 20 experts but without tools, without budget and most importantly...without locals” (European Commission, interview 24 May 2010). Some others, such as Anis Nacur and Christian Berger prefer to keep a distance from these critics and argue that it’s too early to measure the rule of law section achievements and it would be immature to judge (Nacur, interview 31 May 2010; Berger, interview 14 May 2010). While different perspectives exist, we could argue that in general EUPOL COPPS is probably trying to do much more than they should and that transferring experience from Europe to the Middle East and more specifically to the PT does not always work.

The lack of local ownership has been one more criticism to EUPOL COPPS. From a number of interviews it is revealed that at least in the beginning of the mission’s deployment its officials were trying to impose their models of running of a civilian police. “They were not really deeply linked with the Palestinian Police” says an EU official in Jerusalem while some others go as far as to argue that “they were quite arrogant and isolated without taking into account the principle of ownership and the Palestinian needs” (PLO official, interview 22 May 2010).

As far as the JSR is concerned before evaluating the EU’s performance, a number of external and internal challenges should be mentioned. First and foremost one has to bear in mind that Palestine is a “nonstate”, whereby its sovereignty, the capacity of governance institutions and the rights of its citizens, are seriously constrained by the presence of an occupying power. As a result, the Palestinian judiciary is working under limited sovereignty, within a framework of agreements that restrict a number of jurisdictions, an unstable security environment dominated by the Israeli occupation and political instability in general (Palestinian National Authority, High Judicial Council 2010). The Israeli occupation in particular had severe effects on the functioning of the judiciary during these years. The insulting of judges by the IDF in checkpoints and movement restrictions applied in the PT had as a result the judges often not being able to arrive to their work. Moreover, destruction of infrastructure and prisons as well as the closure restrictions and the limits on where the Palestinian police can or cannot go have

further complicated the judiciary sector as for example police is unable to move detainees from one court to another (ibid.).

Internal challenges include a really low budget on behalf of the PNA towards the judiciary sector which is only 0.37 per cent of the total budget (ibid.). Consequently, low salaries do not provide judges with financial incentives and this leads to the inability of attracting new judges and developing their skills. The lack of infrastructure to accommodate the necessary institutions and people as well as the inability to maintain them constitute two more fundamental problems that the judiciary in the PT should deal with.

While the judiciary sector reform in the Palestinian Territory seems to be on the right track and the EU's contribution to it is significant, a number of problems confronting the judiciary remain in place. It is true that due to shortage of judges and in some cases their unwillingness to work as many hours as required, an enormous backlog of cases remains despite the improvement of the situation. Although more judges have been appointed during the last three years they are still not enough to address the backlog (Aman Transparency Palestine 2009). Moreover, a large number of these appointments were made on the basis of favoritism and nepotism rather than objective criteria. Finally, the weakness of the executive to be fast to execute the rulings of the courts has further complicated the situation.

The lack of coordination among the numerous donors and projects should also be mentioned as an important factor which has not helped the judiciary sector reform in the Palestinian Territory despite their good intentions. In light of this, better coordination is needed between the different actors trying to reform the judiciary sector in the Palestinian Territory such as the European Commission with Seyada, the European Council with EUPOL COPPS and its rule of law component, the United Nations Development Programme (UNDP), the Canadian International Development Agency (CIDA), the United States Agency for International Development (USAID), the Netherlands Representative Office (NRO) with its development cooperation programme which focuses on the criminal justice system and the Local Aid Coordination Secretariat (LACS) just to name a few.

Better coordination is not only needed among these actors but also between the European Commission and the European Council if the EU wants to become a really effective, competitive and comprehensive actor in the Judiciary Sector Reform in the Palestinian Territory. Although it is true that the EU has played an important role in this domain mainly with the Seyada project, there is still a big room for improvement. Overall, despite the fact that Seyada has made tangible contributions to judiciary sector reform in the Palestinian Territory as it responded to specific needs of the PRDP and took into account the local needs unlike other projects which aimed only at “scoring points” (Seyada Programme Official, interview 24 May 2010), it has also had a few weaknesses especially in its first phase. Coordination and cooperation between Seyada and the Rule of Law section of EUPOL COPPS is crucial in terms of coherence. While Seyada is working on judiciary reform, EUPOL COPPS is working on the whole chain of the criminal justice system and there should be complementarity between them rather than competition.

Conclusion

Security Sector Reform has become the ‘alpha and omega’ of the state-building process in general and in the Palestinian Territory in particular. “The security argument by the Israelis has been there since ever and it is the only argument that we have bought in with such a big willingness” argues an EU member state official in Jerusalem (European Union member state official, interview 19 May 2010). The main question should thus be “security for whom”?

Since the Oslo Accords and the actual creation of the Palestinian Police Force (PPF) the aim was one: the PPF’s central goal would be to ensure law and order in the West Bank and Gaza strip while preventing any attacks on Israeli settlers and troops. This was the reason behind Israel’s willingness to allow the expansion of the PPF from 9.000, agreed in 1994, to 30.000 under Oslo II (Sayigh 2000). Consequently, when we refer to security sector reform in the Palestinian Territory we mean ‘reform’ that would enhance Israel’s security first and secondly Palestinian internal security. “When the Palestinians take care of our security, this is the best kind of security arrangement we can achieve”

argues a former senior Israeli defence official (International Crisis Group 2010: 17). Thus the central aim was to “produce a system of Palestinian policing too weak to constitute a danger [but] strong enough to confront the ‘infrastructure of terror’” (Friendrich and Luethold 2007: 12).

As a result, since Oslo and in subsequent agreements such as the Roadmap, the need for working hand in hand with the IDF has become a pre-requisite for the PA. Although Prime Minister Fayyad puts forward the argument that “by working in tandem with Israel to bring back security, Palestinians can gain the international community’s and Israel’s confidence, neutralise a key Israeli argument against statehood and thus pave the way for independence” (International Crisis Group 2010: i) in reality the Palestinian security services have long been criticized as cooperating with their occupier. “The line between cooperation and collaboration is a thin one, which poses a virtually insurmountable challenge for the PSF’s efforts to win Palestinian hearts and minds” argues a recent ICG Report (ibid.: 36). At the same time, IDF’s late night humiliating incursions into Palestinian cities and villages as well as strict limitations imposed to the PSF by the IDF “undermine the symbols and reality of indigenous empowerment” (ibid: i).

Moreover, the EU has not followed a comprehensive SSR approach as far as the PT is concerned mainly because it was never one of the actors who defined what SSR means and should aim at in the Palestinian context. Although SSR is considered to be a part of a broader state-building project and it has come to “resemble both a first and a last step in international statebuilding operations” (Boas and Stig 2010: 290), yet in practice the EU has approached it quite single-handedly. The prioritization of technical assistance and training, although important, has weakened an effective SSR where political initiatives should have been taken in order to bring security under democratic control. Thus, while the EU has provided technical support and training, this was targeted toward counterterrorist capabilities rather than genuine SSR. Human Rights Watch concluded in 2008 that “the focus of outside support is clearly on strengthening the forces loyal to Abbas as a counter-weight to Hamas, despite the abuses that these forces routinely commit” (Human Rights Watch 2008: 10).

And here comes another EU inconsistency; while the EU has strongly supported the rule of law perspective in the Palestinian SSR, at least in theory, in reality the EU has not paid much attention to helping the improvement of democratic civilian oversight and accountability. “The rule of law cannot be established in the absence of a functioning parliament and judicial system” (Sayigh 2009: 3) argues Yezid Sayigh, one of the leading writers on SSR, and he is right. While the EU is trying to establish the rule of law at the same time it faces a democratic deficit as it should not be neglected that since 2007 the leading Palestinian Government under Salam Fayyad is an emergency one and not democratically elected. This means that all new laws have been issued under Presidential decree. As a result the true meaning of accountability and oversight has been eluded. In other words, as Prof. Sayigh puts it bluntly “official US and EU discourse promoting democratic governance and human rights describes more a virtual reality than actual policy” (ibid. 25).

Thus, while a fundamental problem of political legitimacy exists in the West Bank, the same is not true with regard to Hamas’s rule in Gaza. Hamas has been able to adopt a form of uncontested control within the borders in Gaza where policies are applied throughout. As Yezid Sayigh argued in a recent talk at LSE “Hamas’s form of control which we associate with sovereign states is totally non-existent in the West Bank. In many respects what Hamas has achieved in Gaza looks much more like a state than anything in the West Bank” (Sayigh 2010). And this is true. The Weberian definition of a state which has been broadly accepted by the international community, argues that the state should have the monopoly of the legitimate use of physical force/power within a given territory.

To sum up, while there has been an important progress on the front of SSR with regard to the Palestinian Territory, the pitfall has been that the overall EU approach is mainly technical while it should be a fundamentally political one. As mentioned in the introduction, SSR is supposedly part of a broader peace/state-building framework but in the case of the PT it has been approached quite single-handedly. While the reform has reached a number of technical benchmarks the holistic approach and the political aspect have been neglected. Even though the EU and the international community are expecting the PA to govern in accordance with the principles of democratic governance at the same

time themselves do not feel obliged to adhere to the very same principle. Finally, the lack of decisions at “high politics” level can be considered the main obstacle to the SSR in the PT. While the PA has made good progress and has adhered to its Roadmap obligations, Israel has done little in order to fulfill its own. As a recently leaked Palestine paper demonstrates, the PA has either completely fulfilled or working to fulfill its obligations while Israel has yet to complete any (Al Jazeera 2011). Consequently, no major progress with regard to SSR is expected, until the EU and the international community press Israel to adhere to its Roadmap obligations and promote a more genuine and holistic approach to SSR.

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