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Palestinian Nationality and Citizenship
Current Challenges and Future Perspectives

ASEM KHALIL

CARIM

**EURO-MEDITERRANEAN CONSORTIUM FOR APPLIED RESEARCH ON INTERNATIONAL
MIGRATION**

RESEARCH REPORT, CARIM-RR 2007/07

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I Presenting the problem

A nation is constituted by the belief of belonging together, accompanied by a strong solidarity among its members. Nations, where they exist, are the product of a nation-building process. The concept of nation-building presupposes two elements: a common identity and concerted political action. Belonging to a particular nation is also related to a pre-existent common identity based on objective criteria. In the case of statehood, it is the people forming the whole citizenry who define 'national belonging'. In other words, the state is the outcome of the political action of a nation, but it is also be a creator of a new nation.

Nations are composed of human beings with their own history, language and culture. The legitimacy of the state depends on its respect of the nation's historical and human dimension and the degree to which its structure and institutions reflect the will of its constituencies. Once a state exists, it should not use these elements to discriminate against citizens who are not part of its cultural heritage. The challenge for contemporary states is their being *multi* in terms of the nations, cultures, languages and ethnicities within their borders. All constituent groups and individuals should be able to consider the state as their own, and should be able to identify with its constitution in order to preserve the unity of the state.

Those who belong to a particular nation (being French, German, Hungarian, Egyptian, Jordanian nationals etc.) may coincide with *parts of* the citizenry of a particular state (France, Germany, Hungary, Egypt, Jordan etc.), but they do not necessarily coincide with the *totality of* the citizens of that state, nor are they limited to its borders. Thus, one still talks of 'Algerians' living in France, although they have been French citizens for at least two generations. For the same reason, Germany facilitates citizenship for German nationals living abroad who apply for citizenship. In other words, since we no longer live in the era of *nation-states*, being French, German, Jordanian or Egyptian *nationals* does not mean necessarily being French, German, Jordanian, or Egyptian citizens, and *vice versa*.

This distinction applies in particular way to Palestinians. Self-determination can be expressed in statehood, and a Palestinian state may exist when the organs that represent the (indigenous or 'artificial') people exercise sovereign powers over a territory. Once the state exists, the constituent power is enacted.¹ The constituent power is related to popular sovereignty. As such, it cannot be enacted outside the state, since it is the expression and reflection of popular sovereignty.

When a state exists, popular sovereignty refers to the people who, as *demos*, hold the political rights, and exercise them through the state's institutions. In the words of Lerner (2004: 12–13)

In the context of the legitimacy issue, a paradox of constituent power is evident: constitutions on the one hand draw their legitimacy from the sovereign power of the people, yet on the other hand define who 'the people' is and how its will is to be expressed. If constitutional legitimacy stems from the principle of popular sovereignty, then the source of political legitimacy of a democratic constitution is not clear: Is it prior to the constitution, resting on the factual will of a presumably homogenous political entity which has the capacity to act as a collectivity; or does constitutional

1 Constituent Power is the power to frame a constitution (original Constituent Power), or to amend an existing one (derived constituent Power). Original constituent power can be enacted in a legal void that existed or is created. Derived constituent power is exercised within the limits provided by the constitution itself. Palestine cannot be classified using either definition and proves that classical theory of constituent power no longer fits the realities of states in the twenty-first century. In the Palestinian case constitution-making is conceived as a step towards statehood, not a consequence of it. Statehood is not now the outcome of a factual reality but is the summation of a negotiated solution of a conflict between Israel and the Palestinians. Moreover, regime change may cause a legal vacuum. In the Palestinian case, there is no new regime, but there would be a new state for a pre-existing people that had been subject to occupation. On the other hand, it is not a derived constituent power, since there is no precedent constitution in force. The draft constitution is an original one for a new state with no prior existence.

legitimacy derive from the constitution itself, i.e. from the legal order which itself serves as the source of the shared identity, so that ‘the people’ are in effect formed through the making of the constitution?

A ‘people’ (as *ethnos*) has the right to self-determination; the right to self-determination *may* lead to sovereignty; sovereignty is the prerogative of the ‘people’ (as *demos*); the latter is entitled to ‘constituent power’; and constituent power decides who constitutes the ‘people’ (as *demos* and as *ethnos*). The problem then is to understand the kind of relationship that exists between the people as *demos* and the people as *ethnos*.

Once the Palestinian state is created, the relationship between Palestinian nationals and Palestinian citizens will need to be defined. Those *entitled* to constituent power are those who reflect the totality of Palestinian *nationals*, but they are not necessarily the same as those who effectively exercise constituent power, that is, the Palestinian *citizens* and the institutions that represent them.

The definition of who is part of the *people* is the prerogative of the state, and citizenship regulation is the tool used by the state to make this definition. Regulating citizenship is the competence of the legislator, often at the constitutional level, since citizenship is connected to sovereignty; however the repercussions of citizenship go beyond the territoriality of the state whenever protection is provided for citizens residing outside the country.

What distinguishes Palestinian citizenship is not the way it is obtained or lost, but the absence of a clear understanding of precisely what it is. In the words of McCarthy (2001), ‘The evaluation of Palestinian population presents unique difficulties. Foremost of these is a lack of data. [...] a more fundamental problem is one of defining the Palestinians’. What then are the criteria to determine who has the right to Palestinian citizenship? McCarthy continues that, ‘The ultimate definition of nationality is personal. Those who consider themselves to be Palestinians are Palestinians. The only real measure of “national identity” is self-identification, not legal citizenship’. We need to distinguish between citizenship and national identity:

- Citizenship is a *legal* relationship between individual and state² or the ‘legal foundation of social membership’ (Jad 2004, 2). It is the criteria that distinguishes citizens from foreigners, citizen, in the words of Thomas Marshall it is ‘full membership in the community’ encompassing civil, political, and social rights and responsibilities (Jad 2004, 2). While national identity is related to a common understanding of a ‘we’ that may share same history, territory, language, culture or elements of these. This commonality may not include all citizens of one state and may go beyond its territorial limitations.
- Citizenship regulation follows the establishment of a state, but will be influenced by the state-building process that precedes this. Citizenship seeks to create equality between all those holding the same status and citizenship regulation must be clearly defined and regulated. By contrast, national identity follows a process of nation-building and is characterised by ambiguity. Identity processes are open-ended, often chaotic, and not always clear to the actors themselves. In her study on Palestinian nationalism, Helena Schulz stressed the ‘ambiguity of Palestinian nationalism and national identity. Even within one and the same political faction and within the official leadership, concepts of identity and nationalism are unevenly distributed’ (Jad 2004, 10).
- Citizenship is connected to individuals with legal consequences in terms of rights and duties vis-à-vis the outside world (other individuals, groups or communities, own and foreign state/s); while for national identity the centre of gravity is no longer the individual but is the community, with more (moral rather than legal) obligations imposed on individuals.

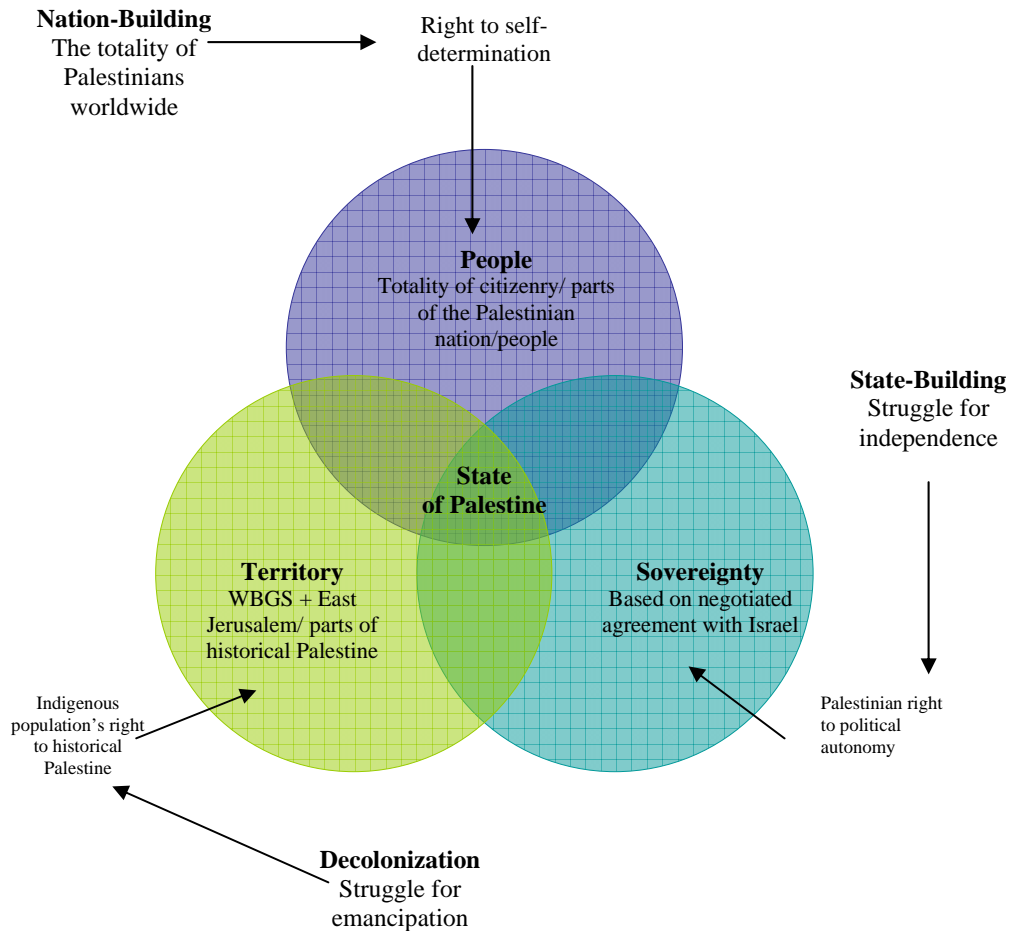
2 This was not always the case insofar as citizenship is the cornerstone of modern liberal democracies where it presupposes a rule that regulates the relationship between individual and state; not the tribe, family or sect, but citizenship. Affiliation of the individual to the state is direct and unmediated through any other identity or affiliation (Bishara 2004, 2).

- Citizenship is ‘voluntary’ for both individuals and states, and can be obtained and lost. Its regulation is subject to strict positive laws and regulations. Individuals may request another citizenship and relinquish their original nationality or maintain dual citizenship. States also have the right, in certain circumstances, to retract citizenship, whereas identity is a ‘status of being’ which individuals do not necessarily choose and cannot relinquish.
- Every person is supposed to have at least one citizenship (country of origin or place of normal residence); some countries allow dual citizenship while others may impose limitations or ban it. In the twenty-first century we are characterised by the diversity of our identities without being necessarily contradictory.

This report examines the repercussions of citizenship laws on Palestinian identity in the case of the establishment of a Palestinian ‘state-for-its-citizens’, and the possible relationship between the state and non-citizen Palestinian nationals, including those with another citizenship (Israeli Palestinians, Jordanian Palestinians). To do so, we trace the origin of ‘Palestinian nationhood’, common identity and people-hood. Then, we then examine key legislative texts relating to citizenship that were, or still are, in force in the oPt and/or territories under PA control and the influence of the citizenship laws of neighbouring Arab countries on Palestinian refugees and their right of return.

There is an implicit assumption that a ‘Palestinian citizenship’ existed (at least since the British Mandate), albeit with different political expression and connotations, but never, until now, within a sovereign Palestinian state. For this reason, we examine the impact of statehood on Palestinian nationalism and the possible relationship between Palestinian nation and Palestinian people. Here, again, there is the assumption that there is an inevitable tendency to distinguish between Palestinian *nationals* from Palestinian *citizens*.³

3 One may, on principle, reject the distinction between ‘Palestinian nationals’ and ‘Palestinian citizens’. We contend that this rejection is unfounded, particularly for those adopting the ‘two states solution’ which presupposes the acceptance that some Palestinian nationals will be Israeli citizens and that others (now refugees in neighbouring countries) have the right to return to their homes and land, i.e. in territories now part of Israel. Thus, the objective of their national activity is not necessarily the ‘Palestinian state’ where they would be citizens, but their ‘homeland’, now part of Israel. There is always the possibility that the Palestinian national will be used as a criterion to obtain Palestinian citizenship. Hence, providing Palestinian citizenship or the citizenship of any other neighbouring Arab country to Palestinian nationals does not mean renouncing their right to return. These positions are compatible. They also prove our point that Palestinian nationals are distinct from Palestinian citizens. Thus, when we talk of Palestinian nationals and citizens, we are not using synonyms, simply because the two words indicate distinct categories of persons, although they may share points in common. In other words, there is an incompletely matching relationship between Palestinian nationals and Palestinian citizens. This also applies to the other elements composing the state: territory and sovereignty. For example, there will be a territory for the future state of Palestine that will not necessarily cover all of historical Palestine.



‘Citizenship’ or ‘nationality’ laws are particularly important in the Palestinian context at least for three reasons:

First, there is the complicated body of legislative texts inherited from Ottoman, British Mandate, Jordanian (West Bank) and Egyptian (Gaza Strip) rule which is theoretically still in force in the oPt. Citizenship laws were not used necessarily for the benefit of the local population. During the Mandate, regulating citizenship was used to meet the mandate objectives, including ‘the establishment in Palestine of a national home for the Jewish people’.⁴ During Jordanian rule of the West Bank citizenship was also important, although intended to create a new (common) category of citizens: the ‘Jordanians’, a concept that covered residents of the East Bank (former Transjordan) *and* the West Bank indistinctly.⁵ Under Egyptian rule, although under quasi-complete control of the Egyptian army and administration, citizenship regulation was intended to ‘protect’ local identity (Gaza Palestinians) from assimilation with the Egyptian one. Thus, Egypt did not grant Egyptian citizenship for Gaza Palestinians. This was also the attitude of most Arab states to Palestinians and Palestinian refugees

4 The Palestine Mandate adopted by the Council of the League of Nations on 24 July 1922: <http://www.yale.edu/lawweb/avalon/mideast/palmanda.htm>

5 Albeit with the de facto reservation of senior military and political posts held by ‘pure Jordanians’, who are not in any case the West Bankers. This meant the hierarchisation of Jordanians in citizens of category A and citizens of Category B; the later have always been regarded with suspicion by the governmental power and security forces, mainly following the assassination of King Abdalla of Jordan in 1951.

within their borders: a refusal to naturalize often justified by their resolve to protect Palestinians' right to return and to preserve their national identity. In other words, Arab regimes act, or claim to act, *against Palestinians for the sake of Palestine*.⁶

Second, the presence of Israeli military declarations and orders that regulated all aspects of daily life for those living in the West Bank and Gaza Strip (WBGs), and Israeli legislation enforced on East Jerusalem (annexed counter to international law and UN resolutions). Legislative changes made by occupation power distinguished between Palestinians holding 'ID cards'⁷ and those who do not. Only the first category of Palestinians has the right to enter and exit from oPt borders (under complete Israeli control) without a visa.⁸ In other words, they are treated as WBGs citizens, the oPt. Thus, by refusing to confer Israeli citizenship on WBGs residents, Israel indirectly helped to crystallize 'Palestinian citizenship'. This is not an achievement since it also distinguished between the 'citizens' of WBGs and 'non-citizens'. The Palestinian refugees who are not WBGs citizens—with no (right to) ID number—would not be admitted to oPt without a visa or visiting permit.

Third, there is the presence of large numbers of Palestinian refugees in Arab and non-Arab countries, with or without citizenship of the country of residence. These enjoy the right to return to their country of origin under international law and hence to many UN resolutions. The right to citizenship (regulated by domestic law) is distinguished from the right of return (regulated by international law). However, nothing forbids adopting the 'right of return' as a criteria for obtaining Palestinian citizenship in the future, once the state is established. If this occurs, obtaining Palestinian citizenship shall not be translated as giving up the right to return to the homeland; the reference here is to the territory where they are originally from. The same applies if Palestinian refugees obtain the citizenship of the host countries. The right of refugees to return shall not diminish when obtaining a new citizenship, but this right shall not be used to discriminate them or to prevent them obtaining another citizenship.

II Palestinian nationhood and statehood

There is no single or exclusive definition of 'nation', 'people' or 'state'. The terms are often used interchangeably although sometimes meaning different things as, for example, in the Charter of the United Nations (UN) which states in its Preamble: 'we the *peoples* of the United Nations...', while the members of the organisation are *states*. However, the international personality of 'peoples' is limited to the recognition of a people's right to self-determination, which is not interpreted pacifically, especially when it means the right to statehood, since the UN is based on the sovereignty of its member states. The same confusion occurs in Arab terminology. The different definitions of 'nation' or '*umma*' are examined in the first two sections, followed by the application of these concepts to the Palestinian case.⁹

Nation, people and nation-state

L'Abbé Sieyès, the *father* of constituent power, argues that the constitution is not based or dependent on tradition, historical legacy or religious revelations, but originates in a 'secular willpower'.

The nation is prior to everything. It is the source of everything. Its will is always legal; indeed it is the law itself...Not only is the nation not subject to a constitution, but it cannot be and must not

6 See Lisa Raffonelli's article analysing the situation of Palestinians in Lebanon, 'With Palestine, Against the Palestinians', (2004).

7 ID cards issued by the Israeli Ministry of the Interior (blue for Jerusalemites), by the Israeli Civil Administration (orange for West Bankers, red for Gazans), or by the PA Ministry of the Interior (green).

8 West Bank and Gaza Strip Palestinians can obtain a PA passport which must also carry their ID number.

9 For earlier analyses of this topic, see the author's doctoral dissertation in public law (Khalil 2006b).

be...the manner in which a nation exercises its will does not matter... any procedure is adequate, and its will is the supreme law. (Preuss 1994, 149)

As such, the nation's will is a pre-constitutional source of the constitution, and the constitution is the institutionalisation of the nation's will. According to Sieyès, the nation is a body of associates living under common laws and represented by the same legislative assembly. In other words, it consists of the totality of its citizenry, as in the French concept of nation. By contrast, the German concept of nation perceives it as a pre-political community, constituted by the commonality of properties such as origin, race, language, religion, culture, history and so forth. In this sense, a nation is distinct from a nation-state insofar as the latter is a political organisation that incorporates a nation, whilst the nation can exist independently of a state (Preuss 1994, 149–50).

The definition of the state adopted here is a legal one: cumulatively the state consists of the interrelated elements of a people, a territory and sovereignty (Töpperwien 2001, 21). This minimalist definition covers most existing regimes including those that are illegitimate, authoritarian or undemocratic. The people are considered as subjects over whom the state exercises its sovereignty,¹⁰ and sovereignty in turn encompasses a *people based on a territory*.¹¹

One can make a distinction between the people as '*demos*' and the people as '*ethnos*'. *Demos* refers to the totality of citizens while *ethnos* is a community based on the belief in a common descent or culture (Töpperwien 2001, 4–5). When a nation substitutes the people as an element of the state, we have a nation-state. The term 'nation' is accepted as a central political concept of contemporary society, at times synonymous with a state, its inhabitants, or a group bound together by loyalty and solidarity (Vatikiotis 1987, 35). In the words of Töpperwien (2001, 57),¹²

The nation is a community of people united in solidarity who believe in a common identity and who decide or want to decide about their own destiny through concerted political action. The political action is directed at gaining, preserving, or strengthening statehood.

Sieyès defines the nation exclusively as *demos* (the French concept of nation) where every *demos* is a nation. More recently, some have defined the nation as *demos* but, whilst recognising that some nations began as ethnic groups, deny that nations exist as *ethnos*, so that once the state exists, all citizens are members of the nation (Lerner 2004, 45). Defining the concept of nation is essential for state-building (for a non-existent state), or for preservation of the state (if the state already exists), insofar as the nation provides identity for the individual and legitimacy for the state. Nation-building, as a reaction to a profound crisis of identity and legitimacy, goes hand in hand with the internationalisation and the application of theories of popular sovereignty (Lerner 2004, 23).

The French concept of nation, based on the notion of citizenship, is an example of a *state* nation (nation as *demos*). In contrast, the German perception is of a *culture* nation (the nation as *ethnos*). A nation based on common citizenship is necessarily a state-nation, whereas the culture-nation can be

10 The sovereignty of the contemporary state is no longer absolute. The state can impose self-limitations as for example when it limits itself by the law (the rule of law). The contemporary state can also concede elements that were always under its domestic jurisdiction to international or regional organisations.

11 The borders of a territory are not necessarily definitively delimited; this is the case for Israel which has never defined its territory or delimited its borders. For a different position see Töpperwien (2001, 14). A similar definition of the state is given by Carré de Malberg, who wrote that: 'Tout, ce que peut faire le juriste, c'est de constater que l'Etat se trouve formé à partir du moment où la collectivité nationale, fixée sur un certain territoire, possède, en fait, des organes exprimant sa volonté, établissant son ordre juridique, et imposant supérieurement sa puissance de commandement.' (Carré de Malberg 1922, 484).

12 For us, 'nation' is used mostly in sociological terms, while 'people' is more appropriate for legal use and we do not share the position of scholars who distinguish between nation and people by the existence or not of sovereignty. Nevertheless, it is true that a people/nation as *demos* is a sovereign people while the nation/people as *ethnos* means a unique people based on a unique culture (Töpperwien 2001, p. 5).

entirely stateless,¹³ and can be politically organised in a plurality of states.¹⁴ In contemporary states, it is rare and even impossible, that one homogeneous *ethnos* is politically organised in a nation; normally the *ethnos* and the *demos* of a state are incompatible. This incompatibility may influence the concept of self-determination, as shown by Preuss (1994, 150):

In Western Europe it [self-determination] meant that the demotic nation took over the government of an existing sovereign state, thereby safeguarding its self-determination. In the freedom movement that spread from Germany east and south, however, the term 'self-determination' meant the liberation of a pre-established ethnic society from alien influence and foreign domination.

It is generally accepted that the French monarchy claimed to embody the French nation, but evidently, this claim did not refer to the entire population living within the boundaries of the kingdom, nor to a pre-political entity such as the linguistic community of all Frenchmen. Politically speaking, there was no French nation before the Revolution, or before its establishment through the exercise of constituent power by the third estate. Therefore, it was not a common language that constituted the nation, but instead it was the nation that required and created the common language (Preuss 1994, 151–52).

According to the German concept of nation, the meaning of nation-state is that a nation (in its ethnic sense, defined in terms of a common language and/or religion, culture, origin, etc.), acquires its political existence in its own state. The nation is a pre-statal, pre-political, existential and almost an eternal entity, whereas the state is a quasi-accidental and ephemeral phenomenon which supports the survival of the nation in history, but does not embody its essence. However, the political self-determination of a nation requires statehood; but it is a statehood based on ethnic homogeneity.

What is relevant is the self-determination of *ethnos*, directed against alien influence, rather than the political self-rule and freedom of *demos*, directed against political pressure and social inequality (Preuss 1994, 152). In the debate on the affinity between constitutions and constituent power we can conclude that in the framework of the ethnic conception of nation the constituent power of the nation does not coincide with the principle of democratic sovereignty (just as national self-determination is not the same as democratic freedom).

Arabism, Islamism, and territorial Arab states

The relation between Arab nation and single Arab peoples is of particular significance as the relation may not be properly grasped using concepts such as 'nation' and 'people'. The two concepts must be understood in the light of the broader concept of the *umma*, a term originally used to indicate the Islamic community, or community of believers.¹⁵

Umma (translated as a nation) refers to Islamic and/or Arab nation, while *sha'b* (translated as people) refers to single Arab peoples, and *dawla* (translated as state) refers to the territorial Arab states (*dawla qutryya*). The term *dawla* is relatively modern and refers to a ruler's (or dynasty of rulers') administration in the recent past, similar to the Sultanate in the Ottoman Empire. The concept of *ard*

13 Such as the Polish Nation between 1795 and 1918 (Preuss 1994, 150).

14 As in the case of Germany before the foundation of the Bismarck Reich in 1871, and between 1949 and 1990 (Preuss 1994, 150). Many Arab nationalists believe that Arabs form a unique nation (in its ethnic sense) which is divided politically into different modern Arab states.

15 Indeed, there has been a return to shari'a, and an increasing reference to Islam as a justification of both the state's authority and its rejection, made respectively by the state apparatus and fundamentalist groups of Arab states. In contemporary Arab states, the relation between these three concepts (Islamic nation, Arab nation and the single Arab people) is becoming increasingly problematic. This apparent incompatibility explains the popular diffidence towards their regimes from the one side and the diffidence of Arab regimes towards movements promoting human rights and democracy (especially with regard to freedom of thought and expression), on the other. However, most Arab regimes justify their power by 'elections' or by popular legitimacy and representation, which are the basic elements of democracy.

or *arady* (territory or territories) refers to all the Arab territories as a single unit or to the territory of single Arab states, while the concept *qutur* refers to the territory of a single state.

In addition, the adjective of the word ‘nation’ (translated as ‘national’) is *qawmiyya* when it refers to the Arab nation, but *wataniyya* (also translated as ‘national’) when related to territorial Arab nationalism, also meaning patriotism. While the concept of *muwatana* refers to citizenship; this concept has its origin in *watan*, that is, homeland, although it is sometimes used to refer to Arab land, *alwatan al-arabi*! Consequently, we need to take in consideration these different concepts, and to understand them in their historical context and actual application, in order to understand the relation between nation and people in the Arab perspective.

In his book, *Az-Zahir fi ma’ani Kalimat an-Nas*, Ibn al-Anbari notes that the term *umma* (nation) occurs in eight different senses in Arabic. Some of these meanings are: a community or a group of people, a religion, or time (Bensaid 1987, 150). Besides, the terms nation (*umma*) and mother (*umm*) prove by virtue of their being derived from the same linguistic root, that ‘nation’ is an extension of one’s family—indeed, it is the bond of brotherhood *par excellence*. ‘A nation is a uterine experience’, says *al-Arsuzi*, meaning that it is an extension of foetal life (Bensaid 1987, 167). In the *al-muheit* dictionary the term *umma* means a group of people (*nas*)¹⁶ united by a common land, language, tradition, interests, emotions and aspirations. Thus, the Arabs are considered as one complete *umma*, although they may be distributed in different states, each exercising its own political sovereignty.

In the *al-Ghany* dictionary the term *umma* means a group of people (*nas*) united by common historical links that may be composed of language, religion or the economy and who have the same goals in their beliefs, politics or economy. It is used to indicate the Arabic *umma* and the *Islamic umma*. The same term is used in the plural (*umam*) to indicate, for example the United Nations. By contrast the term *watan* (fatherland, or *patrie*), is much narrower than *umma*. According to *Ibn Manzur*’s (*Lisan Al-‘Arab*, Vol. XIII: 451) *watan* is the house where one lives, one’s residence or birthplace, or the place where animals lie down to rest.¹⁷

The word *istawtana* means ‘to settle in a country’, but as noted by Bensaid (1987, 151):

There is a wide difference between the meaning of *watan* used by Ibn Manzur and the meanings which the term conveys in contemporary Arab use, where both *watan* and its derivative form *wataniyya* (patriotism), are highly charged emotionally. Besides, with reference to national territory itself, the term, in contemporary Arab usage implies the existence of linguistic, racial and cultural ties between different groups and individuals living in the same geographical area.

In the *al-Ghany* dictionary, the word ‘*sha’ab*’ means a group of people (*nas*) united by common liaisons and speaking one language. Here the concept of *sha’ab* is not distinguished from *umma* since this definition does not distinguish Palestinian *people* from the Jordanian *people* for example, considered in this definition as one Arab *sha’ab*. The term *sha’ab* here is equivalent to *umma*. The only difference is that *sha’ab* can be used to indicate distinct Arab populations (thus, it can be used in the plural) when referring to all Arab people considered as a single entity, while the concept of *umma* can only be used in the singular and in reference to the Arab nation as a single unit.¹⁸

16 As the French concept ‘gens’ and not ‘people’ which are both translated into English as ‘people’.

17 My belief is that the main difference between *umma* and *watan* is that the first relates to persons, that is, a community or group of people at the centre of relations between the governors and the governed, whereas the second refers to the place, where one (human or animal) lives, and rests. The term *watan* in contemporary Arabic reflects the evolution of the concept of state in Arab and Islamic culture.

18 The Arab terminology does not necessarily coincide with the terms normally used in English. In order to understand these concepts adapted to their Arab context, we will use the Palestinian case as an example. Palestinians are a community based on the belief in a common descent and culture (people as *ethnos*). The term *people* as *demos* means the residents of WBGS who will be the citizens of a future Palestinian state. The term Arab *umma* (corresponding to ‘nation’ in English) means a community that believes in belonging together and directed towards obtaining statehood (in the terms of Arab nationalists), or simply strengthening the existent territorial Arab states (territorial Arab nationalists).

The Palestinian concept of 'nation'

The Palestinian concept of nation is similar to the German concept where nation justifies the establishment and persistence of the state; here the state is related to the nation in the same way as accident is to substance. The state is an accident in a historical moment of the nation; the nation exists with a state or without it; but the state enhances and reinforces a nation. Thus, the cultural liaison which includes a common Palestinian history, language and traditions will be an important element in the future state.

According to the agreements being negotiated between the Palestinians and Israel, the consciousness of the Palestinians and their vision of their own state is changing, leaning towards the possible adoption of the civic concept of nation, similar to the French one, with its own national culture, and suppressing other concepts. The problem is that the French concept of nation is no better: modern states, including new-born states, face real challenges in relation to diversity and multiculturalism. This challenge is no different in the Palestinian case.

While the Palestinian state will have many things in common with other Arab countries, it remains a particular case and the concept of nation is shaped by these particularities. First, the Palestinian people are the only Arabs without their own state. Second, the Israeli occupation gave the Palestinians an identity connected to their struggle for independence. Third, the Israeli occupation generated a sense of injustice and delusion with Arab and Western countries alike. Fourth, there is the issue of the huge numbers of Palestinian refugees living abroad or in refugee camps.

Sovereignty is the original, supreme, and unconditional power of absolute authority that, together with the people and the territory, is one of the constitutive elements of a state. The Constitution of the future Palestinian state will not be much different from those of other Arab states, which are an imitation of western constitutional documents. Sovereignty, as provided in most Constitutions (including some Arab ones), belongs to the people. The people are part of the Arab and Muslim nations, and as such, have their particular way of understanding sovereignty. Sovereignty, therefore, belongs to the Palestinian people. The problem is knowing who is part of this 'people'.

Over time, Palestinians changed their concept of 'nation' or 'people', and this switch from people or nation as '*ethnos*' to people as '*demos*' is necessary in order to justify the Palestinian state, and to establish it on a part of historic Palestine and the homeland of the Palestinian people. This particular concept of nation will determine the content of the constituent power.

What makes Palestinians different from other Arab peoples, and what makes them one people? The answer to both questions is the same: what makes Palestinians different is what makes them a distinct, but *not* homogeneous, people insofar as Palestinians can be Muslim, Christian or Jewish, according to the 1968 Palestinian National Charter (*hereinafter* 'the Charter') (religious diversity); Palestinian territories have been shaped by different legal systems which reflect the distinction between the Gaza system (rooted in Anglo-Saxon law), Egyptian tradition and the West Bank system (rooted in French civil law), and the Jordanian tradition (legal diversity). Besides, Palestinians live in villages, cities or in refugee camps; refugees are dispersed in WBGs and in Lebanese, Jordanian, Egyptian and Syrian camps, with different legal status and rights (social and economic diversity).

According to the non-official Geneva Accord, the Palestinian state will mean the end of Palestinian claims (Art. 7.7). This means that the struggle for liberation, which legitimated Palestinian nationalism for almost a century, will face a serious crisis. This is without doubt, related to Palestinian identity, as will be shown in the following sections. Indeed, Palestinians distinguished and sharpened their own identity through their struggle with the Zionists in order to liberate their homeland. Palestinian nationalism existed independently and long before. In his book *The Palestinian Identity*, Rashid Khalidi (1997, 20–22) defended this position and wrote:

Although the Zionist challenge definitely helped to shape the specific form Palestinian national identification took, it is a serious mistake to suggest that Palestinian identity emerged mainly as a

response to Zionism. [...] As part of this universal process, moreover, Lebanese, Syrians, Egyptians, Iraqis and Jordanians all managed to develop their respective nation-state nationalisms during the same period without the dubious benefit of a Zionist challenge.

[...] most elements of Palestinian identity—particularly the enduring parochial, local ones—were well developed before the climatic events of 1948, although they continued to overlap and change both before and after that date. [...] These local loyalties served as the bedrock for an attachment to place, a love of country, and a local patriotism that were crucial elements in the construction of nation-state nationalism.

[t]he trauma of 1948 reinforced pre-existing elements of identity, sustaining and strengthening a Palestinian self-definition that was already present. The shared events of 1948 thus brought Palestinians closer together in terms of their collective consciousness, even as they were physically dispersed all over the Middle East and beyond.

In the event of a peaceful solution to the conflict, and the consequent disappearance of the ‘enemy’ from the national imaginary, there will be a need to develop (or invent) a replacement. In other words, the fact that yesterday’s ‘enemy’ becomes tomorrow’s the ‘friend’ and ‘neighbour’ is likely to have a serious impact on Palestinian identity. According to Schulz, nationalism differences do not necessarily lead to conflict, but on the contrary, it is only in relation to an ‘other’ that it becomes meaningful to identify a ‘self’. Thus, the Israeli–Jewish/Palestinian conflict is ‘ultimately a clash between two nationalist movements colliding on the same territory. One, Zionism, has been able to create a strong state on part of that territory and the other, Palestinian is struggling to do so, implying a grossly *unequal relationship and struggle*’ (1999, 229, 231).

For Schulz (1999: 233, 236–37), this struggle has become almost an ‘archetype’ of modern national/nationalist conflict, and plagued the peoples of both sides for almost a century.

Israeli and Palestinian societies and identities are mirror images of each other, and part of each other, although it needs to be pointed out that Zionism was initially formed as a European phenomenon, i.e. as a reaction against nationalism in Europe, anti-Semitism and pogroms, persecution and annihilation. There is today no Israeli society which ‘exists’ completely independent of the Palestinian and *vice versa*. It is as though both societies carry with them the other, as a perceived burden but also a potential asset [and that] Israeli–Jewish and Palestinian identities thus in fact constitute twin concepts and mirror images in a very concrete sense. Both are centred around the poles of victim-warrior/struggler... perhaps this is one of the most crucial aspects of the Palestinian-Israeli conflict as such, i.e. the way that identities are manifested through the duality of insecurities and strain.

She goes on to argue that what distinguishes Palestinians is homelessness, insecurity, catastrophes narratives and (armed) struggle which:

[c]onstitute the main representations of Palestinian identity, and it seems reasonable to claim that politicized identities, in general terms, arise out of peril and anxiety...Catastrophes have become crucial in structuring Palestinian narratives of identity... Armed struggle has been a basic foundation of Palestinian nation-building...It is in the action, in participation in resisting the occupation, that one becomes Palestinian. Palestinians perceived themselves as having inherent right in their resistance.

Schulz considers the Declaration of Principles (DoP), as a ‘mutual expression of peaceful intention’. The most important gain for Palestinians was that ‘Palestinian identity was recognised, that in the eyes of the world the Palestinians had become somebody’ (Schulz 1999, 239). This process, and any other future peace agreements, would have an affect on Palestinian identity (1999: 240–41).

One of the main effects of the peace process was thus the beginning of a deconstruction of enemy images... Israel was now to assist in Palestinian institution-building and to create economic bases for the agreements, and the Palestinians were to defend Israelis from violence and terror... when the stereotype change in character, it might actually provide problems since it is no longer as clear how to act and behave *vis-à-vis* the ‘other’.

A common Palestinian identity

According to the ethnic definition of nation, a common identity reflects a common culture. For some authors, this culture is the outcome of the need for homogeneity in the process of industrialisation. According to civic definitions, the nation's shared identity is based on common political institutions (Töpperwien 2001, 44–45). A nation is distinguished from other communities by its political action. Nationalism leads to political demands of self-governing that take the form of popular mobilisation and not solely élitist activity. This is why some consider the nation as a daily plebiscite. Nations aspire to statehood which is related to popular sovereignty and indicates independence externally and internally. However, a nation may exist *before* a unified state (German nation), or *within* a given territory or state (France, USA). Nationalism does not vanish when the state is established, on the contrary, nationalism continues to maintain and strengthen the state.

There are gaps in the purely ethnic or civic definitions of nation, since they rely on objective criteria and not on subjective feelings of identity or belonging (Töpperwien 2001, 45). The ethnic definition ignores the nation as *demos*, even though the people may have a strong feeling of belonging together. The civic definition disregards the notion that some *demos* have no common identity, and that others include groups with different identities who have citizenship, but who are not part of the constituencies of the state. On the other hand, a subjective functional approach suggests taking into account the sense of 'belonging together' rather than the reasons why this feeling exists. This means that many nations which are a mixture of ethnicities, would form one nation because each member has a sense of belonging, not only to the state, but also together with other members (Switzerland). Whereas there are other nations belonging to the same ethnicity which form different nations (Austrian and German nations).¹⁹

In the Palestinian context, besides the commonality of history, language, and culture, the belief of belonging together and the solidarity among Palestinians can be verified through the Palestinian consciousness of constituting a nation, and the international recognition of them as such.

Palestinian self-consciousness of being a nation

Thus, the subjective approach to a common identity is constituted by a shared belief and solidarity, which is evident in the Palestinian case. The Palestinian people's sense of identity is important, and may influence the concept of citizen in the future Palestinian state. The documents examined here are the Palestinian National Charter (1964, 1968), the Declaration of Independence (1988), the Declaration of Principles (1993), the Basic Law (2002, 2003), and the Draft Palestinian Constitution (2001–2003).²⁰

19 The consequences of this last approach can be summarised as follows. First, common identity does not necessarily depend on a language since a nation may have different languages, such as Switzerland, while some may have the same language as others, such as French-speaking or English-speaking nations. Second, customs and traditions, becoming increasingly standardised, are not a decisive factor and may differ in the same nation. Third, religion was a decisive factor in creating a common identity in some nations (e.g. when Pakistan was partitioned from India); but many nations have no common religion. Fourth, the common state or political institutions are not decisive factors since a nation may exist independently of a state and prior to it (the German nation) although it strives to create a state. Fifth, nationalism would create national identities from existing identities. National identity and consciousness are based on the transformation of already existing group-specific identities and values that may be cultural or political. Thus, a national movement stresses unifying factors in creating a new feeling of identity. Consequently nations are not (merely) natural communities: they come into existence and may vanish when the feeling of common identity falters. Sixth, the nation-building process stresses the differentiation of a nation from others; accordingly, the perception of this nation by others of forming 'different' nation may be decisive (Töpperwien 2001, 41–57).

20 Palestinian consciousness is not only expressed by the documents analysed here, but they are an example of the Palestinian consciousness of its own identity.

The Palestinian National Charter, 1964

The Palestinian conference which created the PLO, adopted the Charter in 1964. The participants in that conference, as representatives of the Palestinian people, put forward a charter which every Palestinian considers their own. The Palestinian National Council (PNC) amended the Charter twice: in its 4th session in 1968, following the 1967 War, and in 1996, during a special session, following the Oslo Agreements.

The Charter does not explain or justify the fact that the Palestinians are a people, but presents it as a *fait accompli*, but this fact is not evident to others. Nevertheless, with time, Palestinians consolidated their conviction of their specific identity, being internationally recognised, despite all their lost wars with Israel, despite internal conflicts and those with other Arab countries, and despite differences among the Palestinians themselves.

In the 1964 Charter,²¹ the word ‘people’ is used nineteen times when referring to Palestinians. It also mentioned: ‘The Palestinian Arab People’ seven times, ‘the people of Palestine’ five times, and ‘the Palestinian people’ seven times. Before listing the twenty-nine articles, the participants in that conference stated: ‘We, the Palestinian Arab People, dictate and declare this Palestinian National Charter and swear to realize it’. This is a curious sentence which brings to mind the prologue of other constitutional documents.

The 1968 amendment of the Charter came about after the Arabs had lost the war with Israel, and reflected the guerrillas’ emphasis on armed struggle based on popular support. What concerns us here, i.e. the concept of ‘Arab Palestinian people’, remains unchanged. In fact, it was increasingly emphasised: the Charter mentioned the term ‘Palestinian people’ or ‘the Arab Palestinian people’ twenty-nine times! The reference to the Arab Nation is also more frequent since it stresses the *national (qawmi) mobilitation* (in relation to Arabs) in order to realize *national (watani) unity and liberation* (in relation to Palestinians).

The concept of Palestinian people (*sha’b*) is mentioned in the singular regarding the Arab peoples (used in the plural), or in relation to other peoples in the world with whom they share the right to self-determination. The Palestinian people are part of the Arab Nation (in the singular, *al-umma al-arabyya*): ‘The Palestinian people... are an inseparable part of the Arab Nation. It shares the suffering and aspirations of the Arab Nation and its struggle for freedom, sovereignty, progress and unity’. This Palestinian position in relation to the Arab nation reflects the Pan-Arabism of the Egyptian Jamal Abd El-Nasser, the real supporter (or creator?) of the PLO at its inception.

The *oneness* of the Palestinian people is stressed in order to defend their right to their homeland in Mandatory Palestine and against Zionist claims. In terms of the Charter, the Jews are not one people with an independent personality just because they are citizens of their states. The same article of the Charter provides that ‘Judaism, because it is a divine religion is not a nationality with independent existence.’ (Art. 35 20). As such, Jews who normally resided in Palestine until the beginning of the Zionist invasion were considered Palestinians. This vision changed totally following the Palestinians’ recognition of the right to existence of the State of Israel. This recognition explains the amendment to the Charter in 1996 by the Palestinian National Council in a special session (21st), which, for the first time, was held on Palestinian territory, and in the presence of President Clinton.

However, *Palestinians have never recognised the right of the Jewish people on a homeland in Palestine, but rather the right of Israel to exist*. Israel, in this sense, is considered *de facto* entity that enjoys international recognition as an independent and sovereign state, whose territory is part of historical Palestine. This is why Palestinians declared independence in 1988, also basing their rights on UN Resolution 181, as they considered it a *historical injustice* towards the Palestinian people; it

21 The ‘1964 Charter’ is used to distinguish it from the ‘1968 Charter’. Where ‘Charter’ only is mentioned, it refers to the 1968 text.

seems that the Palestinians accepted the existence of Israel as a pragmatic step towards the ‘two states solution’. On some occasions, Palestinians have recognised the liaison that exists between Judaism—or the Jewish ‘people’—and Palestine but this recognition was never translated into an acceptance of the Zionists’ rights to Palestinian land.

The text mentions Arab Palestinians in relation to a lost ‘homeland’ which Palestinians intend to ‘restore’. The term *watan* used here (translated as homeland) refers to that territory, as a part of the land belonging to Arabs, where a specific and distinguished Arab people live. In other words, the term homeland in modern Arab culture refers to a specific territory belonging to a specific Arab people. Others use the term, *watan*, when they speak of an Arab homeland (*alwatan al-arabi*). Certainly, the term here has different connotations, and its indiscriminate use usually refers to the sort of pan-Arabism which at the time had advocates in the Arab world and among the Palestinians.

The Declaration of Independence, 1988

The Declaration of Independence (Algiers, 1988) was the first formal indirect recognition of Israel’s right to exist, and was based on the Palestinian right to self-determination and statehood in terms of the same UN General Assembly Resolution 181. This recognition was possible because of the internal shift in the PLO, following the 1974 Arab–Israeli war. The 12th Palestinian National Council (PNC) advocated the establishment of a national authority over all areas of the Palestinian territories. This occurred in conjunction with the Arabs’ recognition of PLO as the sole representative of the Palestinian people, and its international recognition expressed by the UN General Assembly. As Chairman of the PLO, Arafat was invited, to address the Assembly in November 1974.

In its 19th session, the PNC declared the independence of the State of Palestine which was followed by its recognition by a hundred countries, and the change of the name from ‘PLO’ to ‘Palestine’ in UN institutions. This event did not change the ‘observer’ position of Palestinian representatives to the UN since *full membership is exclusively the right of a state*. According to the definition given by international public law, a state is a community of people established in a territory with a sovereignty expressed as autonomy vis-à-vis the outside and independence vis-à-vis the inside. This was not the case with the All-Palestine government since it lacked sovereign jurisdiction over the population and the territory; nor was it the case with the PLO, which lacked a territory, or with the PA which lacked sovereignty.

A Palestinian state exists, only hypothetically; for its realization it requires a sovereign authority over the Palestinian people and their territory (or at least a part of it). On the other hand, it is true that sovereignty is seriously challenged. Sovereignty is no longer an absolute element of contemporary states as it was for the post-Westphalia states. In reality, there is a tendency in contemporary states to concede parts of their sovereignty in favour of regional integration or to local entities within the same state. Besides, international humanitarian intervention limits a state’s sovereignty in its domestic affairs such as the treatment of minorities, especially when it attempts serious violations of international law. Therefore, a state may exist with limited sovereignty.

The Palestinian people, as reflected in the Declaration, have the right to statehood, and the PNC declared the state in the name of God and the Palestinian Arab people.²² The difference with previous

22 The Declaration of Independence depicts the Palestinian peoples as a person born in Palestine, where they are nurtured, developed and prosper. The image enhances the Palestinian peoples’ oneness and unity, as a human and the disintegration of the Palestinian peoples means its death, as it would for a human being. One’s life is related to a land and to a history, and as in the case of the Palestinian peoples; it is related to a specific land and history, continuously and without interruption. As such, the Palestinian Arab peoples forged a national identity throughout history, in its constant relationship to a land and to a history, despite external invasions that deprived it of its political independence. This identity is related then, to the Palestinians battle to liberate the Palestinian homeland. The idea of ‘a land without people’

documents (such as the Charter) is that historical or mandatory Palestine is not mentioned. By contrast, there is only a vague concept of ‘Palestinian territory’. Palestinians in fact, adapted their request and expressed their will to accept part of the Palestinian territories in which to build the state. The Declaration, as previously mentioned, is in line with previous PNC sessions.

In terms of the Declaration, UN Resolution 181 is a historical injustice because it deprives Palestinians of their right to self-determination. Nevertheless, it does provide international legitimacy for their enjoyment of sovereignty and national independence.

In terms of the Declaration the International Charter recognises Palestinian national rights, including the right to return and to independence. The precise reference that Palestinian national rights are related to sovereignty over ‘territory (*ard*) and homeland (*watan*)’, made by the PNC, is not mere rhetoric. It means that Palestinian national rights are not related to any land (e.g. any Arab land), but to a specific land, their homeland. This relationship to a specific territory—the Palestinian homeland—is emphasised, since some people in recent history, suggested that Palestinians could establish their state in one of the other Arab countries (such as Jordan!), but the Palestinians (and the Arab countries) categorically refused these proposals.

The battles, wars, and occupation of the Palestinian territories, sharpened and consolidated the identity of the Palestinian people. Their consciousness of this identity was reinforced by the Palestinian popular uprising (*intifada*), and the resistance of the Palestinians living in refugee camps. This national identity took political form in the PLO, the Palestinian people’s sole, legitimate representative. This role of the PLO was related to the Palestinian people’s inalienable rights: Arab national consensus, and international recognition. Palestinian national rights, in terms of the Declaration, are natural and historical.

Their rights are legal, and are related to international recognition consolidating their rights on these different bases, the Palestinian people, represented by the PNC, declared the independence of the State of Palestine on Palestinian territory. However, this Declaration does not specify which territory, and Palestine remains a state without a specified territory, without citizens, and without its own jurisdiction.

The realization of these rights would mean the end of Israeli occupation. International law and UN resolutions went (at times vaguely and at other times clearly) in this direction. However the UN system lacks enforcement mechanisms other than the free will of states to enforce international law. In this context bilateral negotiations between the PLO and Israelis proved the only remaining option. This led to secret negotiations between the PLO and Israel, which culminated in the Oslo Agreements. The key result of these Agreements was the creation of the PA, a non-sovereign Palestinian entity over parts of the West Bank and Gaza.

The Declaration of Principles, 1993

The Palestinian people were mentioned indirectly in the Declaration of Principles (DoP), signed in Washington on 13 September 1993. The recognition of the PLO by Israel and the decision to start negotiations between the two were the main Palestinian achievements of the Declaration (the PLO recognised Israel indirectly, in the Declaration of Independence of 1988).

The PLO represents the Palestinian people, and as such, constitutes a legitimate partner in the negotiations with Israel in resolving the question of the ‘disputed territories’ (an Israeli term), or the occupied Palestinian territories, that is, WBGS (Jerusalem will be considered in the final negotiations). The parties to this Declaration (PLO and Israel) decided that bilateral negotiations, and not violence, would be the best option to resolve the conflict.

(Contd.) _____

was a mere pretence, since a people did exist—the Palestinians—who are the (original) Jewish, Christian and Muslim residents of Palestine.

After the Declaration of Principles, a fragmentation occurred, not only in the Palestinian territories, but also in the concept of Palestinians as a united and single people. The Palestinians were now divided, and the PLO negotiations with Israel were limited during the transitional period of transfer of powers in the WBGS, where some Palestinians were living. The Palestinians of Jerusalem were partially included in this process, and the Palestinian refugee problem was left for the negotiations on the final settlement. Besides, Palestinians with Israeli citizenship were indirectly excluded from any PLO and Israeli negotiations.

This division of the Palestinian people aggravated the problem. It was clear that the PLO (especially the PNC, in the shape of a Parliament acting on behalf of all Palestinians) represented the Palestinian people wherever they lived, but following the Oslo Agreements the PLO's representative character vis-à-vis the Palestinian people became less obvious. Theoretically, nobody had questioned the status of the PLO as the sole legitimate representative of the Palestinian people, but it was clear that the PLO was rendered practically void of its prerogatives, especially as the PA apparatus was continually being given an increasingly powerful role with institutions, government and departments, assuming a state-like aspect.

The PLO remained the sole representative of the Palestinian people, when they were considered as one and united. It gradually lost this position, especially regarding the Palestinians in the WBGS, who increasingly found themselves under the jurisdiction of the PA, although members of the PA institutions or those living in the WBGS would doubt or attack the liaison with the PLO. Rather, the legitimacy of most PA institutions originates in the PLO rather than in the Oslo Agreements.²³

There is still a liaison (overlap or confusion) of the PA with the PLO, at least through its President, who is Chairman of the PLO Executive Committee *and* President of the Palestinian State. We must stress that in the future these three positions would not necessarily be held by the same person.²⁴

Israel acknowledges that the Palestinians do have *some* rights; this was mentioned when considering elections as a step towards the realization of legitimate Palestinian rights. The parties agreed to negotiate the details although the method followed by the parties in the Oslo Agreements provoked much criticism. For many Palestinians, it consisted of negotiating Palestinian rights, rather than making those rights effective. These same rights had already been recognised and legitimated by international law and UN Resolutions.²⁵

The Basic Law for the Palestinian Authority, 2002

The Basic Law (BL) is intended to regulate the relations between the powers in the PA during the transitional period. It was approved by the Palestinian Legislative Council (PLC), and its implementation would also be applicable to the Palestinian autonomous territories. A Constitution for the state would replace it and regulate many arguments that the BL could not—and cannot—deal with because they are beyond the competency of the authority from which they emanated. The BL was passed by the Legislative Council on 2 October 1997, but only endorsed by the President on 29 May 2002. It was amended by the PLC on 18 March 2003, to include the office of Prime Minister and to regulate its duties and powers. In 2005 it was again amended to include revisions to the electoral system.

23 At least, before the 1996 elections; legitimation by the PLO mandate became the central point of discussion following the second legislative elections in 2006 that brought Hamas—which is not represented in the PLO institutions—to power.

24 With the election of Mahmoud Abbas as President of the PA, Palestinians have opted for unity rather than separation of the two institutions that represent them: the PLO and the PA. However, the electoral success of Hamas in the 2006 legislative elections aggravated the split between the two institutions.

25 The criticisms are quite logical when seen in the light of the collapse of negotiations with Israel in 2000.

Article 1 of the BL declared the Palestinian people to be part of the Arab nation, without specifying who is a Palestinian. The Israeli–Palestinian Agreements authorised the election of the PLC, whose duty it was to prepare a BL. This was also mentioned in the same election law (13/1995, Art. 3(2)). The PLC objected that it originated in the Oslo Agreements, and rejected the notion that the authority of the PA originated from the transfer of powers from the Israeli military governor or civil administrator. In its second article, the BL declared the Palestinian people to be the source of the PA’s authority.²⁶

The concept of a Palestinian people usually refers to all Palestinians. However, in the BL, it sometimes refers to the Palestinians of the West Bank and Gaza Strip only. For example, the BL states that the President shall be elected by the people; in this case, those who elected the president were the Palestinians of the WBGS and East Jerusalem. The same president would swear to preserve the rights and interests of the people and the nation. Here ‘people’ refers to the Palestinians of the WBGS, since he is their President, elected to represent and govern them, but what about the nation? Does it mean that all Palestinians should be considered as a nation?

The same thing occurs when the BL states that the police and security forces must serve the people; they already do so in the Palestinian territories, and their powers extend to the Palestinians in the WBGS. The BL states that the judgements shall be announced and executed in the name of the Palestinian Arab people; the source of jurisdiction, i.e. of judicial authority, is the Palestinian people. Those powers are exercised in the name and for the benefit of the Palestinians of WBGS. A further example is that the Attorney General assumes public office in the name of the Palestinian people, and that laws will be promulgated in the name of the Arab Palestinian people.

In brief, the notion of the Palestinian people switches from a ‘people’ as *ethnos* (*Volk*), that is, a community based on the belief in a common descent or culture, to a ‘people’ as *demos* (*Staatsvolk*), that is, citizens of particular state, in their entirety. However, the BL did not formalize the separation between Palestinian nationality/identity and Palestinian citizenship (Jad 2004, 6), but left the definition of citizenship to some future period of legislation, simply stating that it was to be regulated by law.

In the interim period and according to the provisions of the BL, the Palestinians of WBGS are treated as a single unit (as in the various drafts of the Palestinian Constitution). This ‘theoretical’ unity is challenged by the legal and administrative division between the West Bank and Gaza Strip that followed the 1948 war; Gaza came under Egyptian control, which left the situation almost as it was in the Mandate period, while the West Bank was united with ‘Transjordan’ in the Hashemite Kingdom of Jordan. These legal divisions and differences were maintained after the Israeli occupation in 1967. Moreover, the West Bank cities were under Israeli siege from 2000 and were divided into different zones and sections. The separation wall built by Israel, in the name of security, further divided and disintegrated the West Bank into zones and ghettos.

The PA’s first challenge was to unify the legal systems of WBGS. This was not an easy task as the unification of the legal systems was done by adopting laws that would be applicable to both the West Bank and Gaza Strip; however, this unification through the law was not sufficient. Geographically speaking, the Gaza Strip is separate from the other Palestinian territories, and the Israeli occupation reinforced this isolation. Its isolation meant a consolidation of the division, which some consider as being also a cultural, social, and economic division! This is partially true, since there are concrete differences between the West Bank and Gaza, but they were produced by accidental circumstances

26 In recent German history the state did not incorporate all members of the German nation, and as such, it adopted a Basic Law; a constitution was supposed to be adopted only when all of Germany was united; this occurred in the 1990s when the Basic Law became applicable to all Germans. The same appears to apply in the Palestinian context, the only difference being that the Palestinian state (in terms of the proposals for a final agreement) would mean the end of Palestinian claims and the end of the conflict with Israel.

and did not correspond to ethnic divisions as the Palestinians, wherever they lived, had always believed that they constituted one people.

Observers of Palestinian society are often struck by its multifaceted nature. Its unity is challenged by the distinction between outsider and insider Palestinians, between refugees and non-refugees, between town-dwellers and rural communities, between Gazans and West Bankers, and between Christians and Muslims. This heterogeneity of the Palestinian population means that any future Palestinian entity will have to respect this diversity in its entirety, including religion, legal systems, social and economic situation, customs, traditions and recent history.

This Palestinian entity—a perpetually limited, autonomous authority or a State—will be challenged by this existing diversity among the Palestinian people. At the same time, its unity may be reinforced by this diversity. We are speaking about a unity based on heterogeneity and not on homogeneity; a unity that respects these differences and diversities without attempting to assimilate them into a single amalgam. The politics of the future Palestinian entity will have to respect this diversity in Palestinian society.²⁷

The Draft Palestinian Constitution, 2001–2003

Within the framework of the PLO, but with the involvement of key figures in the PA and independent experts, a special constitutional committee was appointed by former president Arafat with the task of preparing a draft of the Palestinian constitution. The committee had prepared three drafts on 14 February 2001, 9 February 2003, and 14 May 2003.²⁸ The concept of ‘people’ in the Draft Constitution is the same as that adopted in the BL: ‘people’ refers to that portion of Palestinians living in the Palestinian territories and/or those who will enjoy citizenship of the State of Palestine. The same examples and arguments made above can be repeated here (election of the State President, the swearing-in on behalf of the Palestinian people, judgements and laws in the name of the Palestinian people).

The concept of segmentation of the ‘Palestinian people’ in the BL can be tolerated, since the BL is a temporary document. On the other hand, a Palestinian state will mark the end of the conflict and the end of Palestinian claims, and as such, the concept of a people previously divided, will be consolidated within the state; this would be unacceptable.

The State of Palestine will be the ‘state of its citizens’. Palestinian nationals (as per the Charter definition) will not necessarily coincide with Palestinian citizens (according to the Constitution); as such, the state of Palestine will only represent its citizens.²⁹ In this sense, it appears that the role of the PLO will always be necessary since it represents *all* Palestinians.

According to the Draft Constitution, the Palestinian State would incorporate the PLO and the PA. Palestinian nationals who are not citizens will be represented by (150) members of the Advisory Council and their duties will be specified in the Constitution. In response to the question of whether PNC approval of the Constitution is equivalent to its automatic self-extinction, there is good reason to believe that this will not occur for the simple reason that the Constitution needs to be legitimated by popular approval directly or through their representatives (PLC). This needs time and the PNC cannot ‘extinguish itself’ before the constitution is adopted. Besides, there is always a chance that the

27 Christian Palestinians do not differ culturally from Muslim Palestinians, since they enjoyed and constructed the same Arab culture together. This argument is dealt with later in the report.

28 The context in which these different drafts were prepared, and the changes made, are dealt with in a separate section. This part of the report focuses on the concept of ‘people’ in the third draft, with reference to previous drafts in cases where there have been drastic changes.

29 The way the Draft Constitution treated the question of citizenship is examined later.

Constitution may not be accepted and that there may be a new draft; accordingly, the two phases need to be distinguished.

International recognition of the Palestinian people

After considering the Palestinian awareness of their identity as a people, we will examine documents produced by non-Palestinians before *and* after the establishment of the UN which demonstrate the progress in the recognition of the Palestinian issue. Examples of the first category are the Balfour Declaration and the Palestinian Mandate. Examples of the second are the Partition Plan and UN Resolution 242 which recognise the Palestinian people's right to self-determination. These changes in the international consideration of the question of Palestine and the Palestinians explain the invitation to the President of the PLO to address the UN General Assembly in 1974.³⁰

The Balfour Declaration of 2 November 1917

The Balfour Declaration was made by the British Foreign Office in the name of 'His Majesty's Government' and approved by the Cabinet. The declaration was the object of the letter to Lord Rothschild, signed by Arthur James Balfour 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 the 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.

The Declaration ignores the rights of Palestinians as indigenous inhabitants of Palestine, but does not adopt the Zionist propaganda of Palestine as 'a land without a people'. The Declaration expressed sympathy towards the Zionist request to set up a homeland in Palestine, and confirmed that the rights of existing non-Jewish communities would not be prejudiced by the Declaration, or its execution. The Palestinians are mentioned in the negative, as existing non-Jewish (Muslim and Christian) communities.

The Mandate over Palestine

The League of Nations (Art. 22, 28 June 1919) provided that 'peoples not yet able to stand by themselves under the strenuous conditions of the modern world' were to come under a temporary Mandate. The Palestinians were indirectly recognised to establish a community or as a part of those communities mentioned in the same article. In other words, the communities formerly belonging to the Turkish Empire which:

[h]ave reached a stage of development where their existence as independent nations can be provisionally recognised subject to the rendering of administrative advice and assistance by a Mandatory until such time as they are able to stand alone. The wishes of these communities must be a principal consideration in the selection of the Mandatory.

In the Mandatory text and in the reports made by the British Mandatory power, Palestine was regarded as a territorial unit, set apart from others. Its inhabitants were called 'the Arabs of Palestine' and were considered as part of, or a community within, the inhabitants or population of Palestine. Each time the Mandate mentioned the Arabs of Palestine it did so in relation to the Jewish community in Palestine. This is because the Mandate was established to meet the conditions of the Balfour

³⁰ These documents were selected as being representative of a shift in the consideration of the Palestinian people, following an extraordinary event (such as war). This selection intends to highlight the changes and the progress in the international consciousness of the Palestinians as a people. These documents are available in the UN information system on the question of Palestine <http://domino.un.org/UNISPAL.NSF/>

Declaration and the creation of a homeland for Jews in Palestine. Palestinians as a people, whose identity is distinct from other Arab peoples, was not yet clear, in the terms of the Mandate.

The Partition Plan of Palestine. 1947

The British government sent a letter to the UN on 2 April 1947, requesting the question of the future of Palestine to be included in the agenda of the General Assembly. Later on, many Arab governments (Egypt, Iraq, Syria, Lebanon, and Saudi Arabia) sent letters to the Secretary General requesting the question of termination of the Mandate and the independence of Palestine, to be included in the agenda. A hearing was granted to the Jewish Agency and the Arab Higher Committee in the first session of the General Assembly.

The terms used by the Special Committee on Palestine and in UN Resolution 181 of 29 November 1947 were no different from those in previous documents as the Resolution refers to Palestinians as ‘those Arabs of Palestine’, and opted for the partition of Palestine into two states: *Arab* and *Jewish*.

Security Council Resolutions 242/1967 and 338/1973

Following the war of 1967 the UN Security Council requested the Israeli armed forces to withdraw from ‘*territories occupied*’ in the recent conflict. In the English version, these territories were mentioned in indefinite form (the text does not use ‘*the*’ to indicate the Palestinian territories occupied after the 1967 war). The Resolution required the parties to respect the integrity and sovereignty of all states; it did not mention the Palestinians or the Arabs of Palestine, but asked for a just solution for the refugees. The same occurs in Security Council Resolution No. 338 that followed the 1973 war, in which the Security Council called on the parties to reach a cease-fire agreement, without any reference to the Palestinians.

General Assembly Resolutions 3070/30 November 1973 and 3175/17 December 1973

Based on the UN Charter, UN Resolution 3070 stressed the importance of a universal realization of the right of a people to self-determination and the rapid granting of independence to colonial countries and their peoples, for the effective guarantee and observance of human rights. It also reaffirmed the legitimacy of a people’s struggle, by whatever means, for liberation from colonial and foreign domination, including armed struggle, and condemned all governments which did not recognise the right to self-determination and independence of their peoples, notably the peoples of Africa still under colonial domination, and *the Palestinian people*.

UN Resolution 3175 mentioned the terms ‘*Palestinians of the Occupied Territories*’, and affirmed the right of the Arab states and peoples whose territories were under foreign occupation, to permanent sovereignty over all their natural resources.

General Assembly Resolution 3210/14 October 1974

A shift in the UN consideration of the Palestinian question was observed in Resolution 3210, when the General Assembly invited the PLO as ‘the representative of the Palestinian people’ to participate in its plenary sessions on this question. The invitation reasoned that the ‘*Palestinian people is the principle party to the question of Palestine*’. The Palestinians are considered as distinct from other Arabs, and the PLO was their legitimate representative in the General Assembly. When Arafat addressed the UN General Assembly on 13 November 1974 he did so ‘in the name of the people of Palestine and as the leader of its national struggle, the Palestine Liberation Organization’. He stressed that ‘neither the Palestinians’ allegiance to Palestine nor his determination to return had waned; nothing could persuade him to relinquish his Palestinian identity or to forsake his homeland. The passage of time did not make

him forget, as some had hoped he would'. He then explained the source of PLO legitimacy, as the representative of the Palestinian people:

The PLO has also gained its legitimacy by representing every faction, union or group as well as every Palestinian talent, either in the National Council or in the people's institutions. This legitimacy was further strengthened by the support of the entire Arab nation, and it was consecrated during the last Arab Summit Conference, which reiterated the right of the PLO, in its capacity as the sole representative of the Palestinian people, to establish an independent national State on all liberated Palestinian territory.

In Resolution 3236 of 22 November 1974, the General Assembly reaffirmed the inalienable rights of the Palestinian people in Palestine, including the right to self-determination without external interference, and the right to national independence and sovereignty. Then the General Assembly adopted Resolution 3237 of 22 November 1974 and invited the PLO to participate in the sessions and the work of the General Assembly as an observer.

General Assembly Resolution 54/152 of 17 December 1999

The right of a people to self-determination, when it means a right to statehood, is controversial. The right of Palestinians as a people to statehood was clearly mentioned in the above Resolution: '*the right of the Palestinian people to self-determination, including the option of a State*'. The same Resolution expressed the hope that the Palestinian people would soon be able to exercise their right to self-determination, which would not be subject to any veto, in the peace process.

III The historical development of Palestinian citizenship

Palestine was part of the Ottoman Empire for over four centuries (1516–1917). Under Ottoman rule Palestine was not a single unit but was divided into different Ottoman administrative units or 'Sanjaks' (Shehadeh 1997, 74). Within the extensive reform movements, the Ottoman Sultan, Abd al-Hamid I, adopted a written Constitution in 1869 that was influenced by western ones. The inhabitants of Palestine were thus Ottoman citizens (Qafesha 2006, 13). A second Constitution was adopted, after the 'Young Turks' revolution in 1908, and was not explicitly abolished but suspended implicitly (Khalil 2006b, 210).

This section deals with Palestinian citizenship under the British Mandate, Jordanian rule of West Bank and Egyptian control of Gaza. In the light of endorsed legislative texts, we will try to answer the following questions: How is Palestinian citizenship is granted and lost? What is the position on dual nationality? Are there gender differentiations with regard to Palestinian citizenship?

Palestinian citizenship under the British Mandate

The British forces assumed control of Palestine in 1917. Until the adoption of the Mandate by the League of Nations in 1922, Britain was an occupation force and was not supposed to change legal system in the occupied territories, unless for reasons of public order or for the benefit of the local population. Accordingly, during the period of British occupation (1917–1922) Palestinians remained—*de jure*—Ottoman citizens. The Mandate resolution incorporated the Balfour Declaration and in order to accommodate these provisions, the British mandatory power accelerated legal change and nationality law was an important component of this accommodation.

The Administration of Palestine shall be responsible for enacting a nationality law. There shall be included in this law provisions framed so as to facilitate the acquisition of Palestinian citizenship by Jews who take up their permanent residence in Palestine. (British Mandate for Palestine, Art. 7)

Under the British Mandate, and for the first time in modern Palestinian history, Palestine became a single and unique entity, with legislative, judicial and executive powers, concentrated in the British

High Commissioner. In 1922, the British government issued the Palestine Order-in-Council, or '*dustour falasteen*' (Constitution of Palestine), which could be amended by successive acts.³¹ The Order-in-Council did not tackle the issue of citizenship directly. However, in Article 59 it refers to it indirectly when it considers that the term 'foreigner' *shall not* include, *inter alia*, Ottoman citizens without defining who are deemed Ottoman citizens, and why. It takes for granted that, as in all cases of succession of states, citizenship of the new state will be granted to citizens of the old one.

The Palestine (Amendment) Order-in-Council of 1935 amended Article 59 stating that 'foreigner' means all these non-Palestinian citizens. This has been a logical amendment since, according to the Palestinian Citizenship Order of 1925, those 'Ottomans' resident in Palestine are considered 'Palestinian citizens'. However, foreigners are not only non-Ottomans, but also cover those who do not enjoy Palestinian citizenship, the later being a concept that also covers *naturalised* Palestinian citizens. However, this gradual understanding and the differentiation between Palestinian citizens and foreigners occurred in several stages (see *infra*).

Who counts as Palestinian?

The Palestinian Nationality Order of 1925 included for the first time, a clear reference to 'Palestinian citizenship'. It defined who is 'Palestinian' and how Palestinian citizenship can be granted or lost. The Order gave the British Mandate all the necessary legal tools to enable newly-emigrated Zionists to obtain Palestinian citizenship (Qafesha 2000, 18), and to help Ottoman-Palestinians obtain other citizenships (and thus to relinquish their Ottoman, then Palestinian, citizenship). In other words, British Mandate citizenship laws tried to crystallize new Palestinian citizenship-based community, but contributed to the dispersion of Palestinian national identity.

According to Article 1(1), Ottoman citizens who are usually residing in Palestine on 1 August 1925 are to be considered Palestinians. However, the same article regulates the possibilities for adults (over 18 years) to choose Turkish or other nationalities and thus lose the Palestinian one (on obtaining the new citizenship). Ottoman citizens born in Palestine, but not usually living in Palestine on 1 August 1925 may apply for Palestinian citizenship and the government of Palestine has the right to accept or reject the application (Art. 2).

This article was amended by Palestinian Nationality Order (Amendment) of 1931 providing that those Ottoman citizens who did not normally reside in Palestine on the 1 August 1925 (Citizenship Order came into force), but who were usually resident in Palestine on the 6 August 1924 (Lausanne Convention came into force, where Palestine was officially detached from Ottoman Empire) are deemed Palestinians unless, by the date the 1931 Amendment Order came into force, they have obtained another citizenship. However, in successive amendment (Palestinian Nationality Order (Amendment) 1939), a second paragraph was added to the original Article 2 of the Citizenship Law, providing that those who satisfy previous provisions, but who had obtained another citizenship and kept personal constant connections with Palestine may apply for Palestinian citizenship which the Palestinian government has the power to accept or reject. A consolidated version of all Palestinian Nationality Orders of 1925–1941 was endorsed in 1944.³²

How can Palestinian citizenship acquired and lost?

Besides the Ottoman citizens who are considered Palestinians or who can apply for Palestinian citizenship in line with international law on the succession of states, Palestinian citizenship can be acquired by birth, naturalisation, marriage, or permission.

31 The High Commissioner has the power to amend the Order-in-Council (Order-in-Council, Arts. 87–88).

32 This text is the focus of analyses in the following sections.

By birth (Arts. 3–6): those meeting any of the following conditions are considered Palestinians:

- born in Palestine from a legitimate marriage where the father was, by then, Palestinian
- born outside Palestine from a legitimate marriage where the father was Palestinian or naturalised Palestine and was present in Palestine on the date of birth of the child
- born in Palestine to a legitimate/illegitimate marriage and did not obtain another nationality.

By naturalisation (Arts. 7–11): any person who is a naturalised Palestinian enjoys the same rights and duties as Palestinian citizens. The High Commissioner may issue a naturalisation certificate if there is proof that the applicant:

- has lived in Palestine for at least two to three years prior to applying to be naturalised;
- is of good moral standing and has a sufficient knowledge of one of the three official Mandate languages, English, Arabic or Hebrew.
- intends to reside in Palestine if their application is accepted.

There is, however, the High Commissioner is not under obligation to grant a naturalisation certificate on presentation of proof of having met the conditions imposed by law. He does not need to justify his refusal and his decision is final. There is also a margin of discretion left to the High Commissioner with regard to those conditions and he may also cancel the naturalisation certificate so that the person is considered as a foreigner.

By marriage (Arts. 12–13): The general rule is that the wife of a Palestinian is considered Palestinian, and the wife of foreigner is considered a foreigner, in line with Article 6 that stipulates that the wife takes the citizenship of the husband. This general rule should, however, be read in the light of the following:

The foreign woman who marries a Palestinian before 25 July 1939 (entry in force of the Palestinian Nationality Order (Amendment) of 1939), becomes Palestinian. After that date, the High Commissioner may provide a naturalisation certificate upon request.

The Palestinian woman who marries a foreigner does not lose her Palestinian citizenship automatically, but on acquisition of the citizenship of her husband. Here the general rule applies of forbidding dual nationality. In case of permanent separation from her foreign husband, an originally Palestinian woman can be granted naturalisation as if the marriage has ended.

If the husband loses his Palestinian nationality, the wife does not lose automatically hers unless she acquires her husband's new nationality. If the new nationality of the husband provides for her automatic citizenship of the new state, the wife can apply to keep her Palestinian nationality. Divorce or death of the husband does not entail the automatic loss of the husband's nationality.

By permission (Arts. 12(6), 14): When a husband loses his Palestinian nationality and his wife acquires his new nationality automatically, she can request permission to maintain her Palestinian nationality. The same applies to minors who lose their Palestinian citizenship upon the paternal acquisition of a new citizenship and the order provides that they can request permission to maintain their Palestinian citizenship within a year of maturity, i.e. 18 years (Art. 21).

Palestinian citizenship following the 1948 war

The period that followed the British Mandate was the beginning of the division of Palestine into three territorial-political zones (Israel, West Bank and Gaza Strip); this division explains the different legal systems which now exist in those areas:

- The *West Bank* and the Transjordan were unified to form the Hashemite Kingdom of Jordan; the Jordanian parliament, including an equal number of representatives from the two banks of the Jordan River, adopted a new Constitution in 1952 which abrogated (expressly, in its Art. 129-2)

the Palestine Order-in-Council of 1922. The unity between the two sides of the River continued theoretically after 1967, until the two banks were officially separated in 1988.³³

- The *Gaza Strip* came under Egyptian control but was never annexed to Egypt and remained a separate entity. The Egyptian government adopted the BL for the Gaza Strip in 1955 but did not abolish the Palestine Order-in-Council, unless it was in direct contradiction to the 1955 Basic Law (Art. 45); the Law was implicitly abrogated following the adoption of the Declaration of Constitutional Order for Gaza of 1962.
- The *State of Israel* was created on parts of historical Palestine. The first Knesset was elected as a constituent assembly but never adopted a constitution; one of the reasons for this was the impossibility of agreeing on a common definition of ‘a Jew’ and/or ‘an Israeli’ in addition to the impossibility to agree on the issue of borders. The Knesset became the first legislative assembly and the new state started a systematic process of legislative modernisation. According to the Declaration of Independence, the State of Israel was both democratic and Jewish. Two concepts that are difficult—almost impossible—to accommodate in the same state. The status of Arab Palestinians who remained within the territory of the new State of Israel proved how complicated the question of citizenship is.

It is important to remember that the division of Palestine was a result of war and of imposition of events on the ground, and *not* a result of a compromise, peace treaty or in implementation of the UN Partition Resolution.³⁴ The British Mandate on Palestine came to an end *de facto* by unilateral British withdrawal from Palestine, but theoretically ends *de jure* with the realization of mandate objectives.³⁵ The Jewish State was established, but no Arab State has since been created in Palestine. Hence, the Mandate did not end *de jure* in Palestine, since its objectives were never achieved. The Palestinian leadership appears to have ignored this point. Besides, following the 1948 *nakba*, a new ‘category’ of Palestinians was created. These are not the residents of the West Bank (who became Jordanian citizens), the Gaza Strip (who remained *de jure* Palestinian citizens but *de facto* stateless), or Israel (who successively obtained Israeli citizenship), but are Palestinian refugees. They had different destinies: some may have acquired a new citizenship (mostly Jordanian), but others remained, and still are, stateless.³⁶

33 From 1967 onwards historical Palestine has been under occupation. This occupation was accompanied by a negation of Palestinian identity. Despite this, Palestinians survived and expressed on different occasions their right to self-determination and to a state. The status of Palestinian citizenship after 1967 is discussed in the following section.

34 According to international law the only official borders of the State of Israel are those of the Partition Plan (the Jewish State would cover, on Palestinian territory, a surface slightly larger than that of the Arab state, and Jerusalem would remain as an international city), and not the ‘green line’, which merely indicated the ceasefire line, in which case Israel would cover 77.5% of historical Palestine. The war could not in any case, create territorial rights and modify borders, whatever the time lapse since the conflict.

35 In his article, ‘The Legal Boundaries of Israel in International Law’, Professor Anthony D’Amato, a specialist in international law, stated that the Mandate is a concept close to that of ‘Trust’, in the Anglo-Saxon system. He quoted Article 22, which stated that although Palestine was considered as a Mandate which was ‘provisionally’ recognised as an independent nation, it would, nevertheless, require the ‘administrative advice and assistance’ of a Mandatory Power on its road to statehood, and that this would be in the interests of the inhabitants of Palestine. Great Britain was appointed as Mandatory Power–Trustee. On the dissolution of the League of Nations in 1946, its mandate responsibilities were transferred to the newly-founded UN. In the case of a Trusteeship, the mandated territory remains intact, following the replacement of the League of Nations and the subsequent withdrawal of the Mandatory Power (Great Britain). The administration only comes to an end when the goals set by the Mandate have been achieved, that is, when the people of Palestine are (considered) competent to govern themselves. Consequently, the British withdrawal from Palestine only meant that the Mandate on Palestine was, *de facto*, once more entrusted to the UN, or more precisely, to its General Assembly, which had adopted the Partition Plan for Palestine, in Resolution No. 171, of 29 November 1947. See Jurist official website.

36 The issue of Palestinian refugees is dealt with in the next section.

The Palestinians, who convened in Gaza, under the auspices of Egypt, in September 1948, rejected the division of Palestine; this rejection was expressed through their self-declared All-Palestine Government. Nevertheless, this government had not had real jurisdiction over the land and disappeared with the death of its Prime Minister in 1963. In 1964, some Palestinians were invited to convene in Cairo where the Palestine Liberation Organization (PLO) was established and the Charter was adopted. This charter was amended twice: once in 1968 after the defeat in the Six Day War and again in 1996, following the Oslo Agreements. In 1964 the Arab League and the UN (in 1974) recognised the PLO as the sole legitimate representative of the Palestinian people.

We highlight that there was a switch in the concept of nationality and/or citizenship: with the establishment of the Mandate on Palestine until 1948, Palestinian nationality was mainly tied to the land. Palestinians were those who lived in Palestine and they were all (albeit, under certain conditions) entitled to (British Mandate) Palestinian citizenship. However, British mandate nationality laws allowed the acquisition of citizenship by new arrivals (mainly Zionist-Jews, in fulfilling the Mandate resolution that incorporates the Balfour Declaration) thus enlarging the concept of citizen to cover naturalised Palestinians who meet the conditions provided in the Mandate nationality law. On the contrary, after 1948 and the division of Palestine into three parts, Palestinians either became citizens of the state in control of the territories where they lived or stateless. Thus, Palestinian nationals became Jordanian citizens if they were Westbankers, or Israeli citizens if they remained within the 1948 armistice line. In Gaza, Palestinians became *de facto* stateless people holding Egyptian travel documents (Jad 2004, 5). Palestinian refugees in Lebanon, Syria, Egypt, and North Africa simply became stateless.

West Bank Palestinians

According to the Jordanian Constitution of 1952, all Jordanians are equal before the law (Art. 6), but the specific issue of Jordanian citizenship regulation is left to the law (Art. 5). Two years later, a Jordanian Citizenship Law 6/1954 was endorsed, conferring Jordanian citizenship, *inter alia*, on non-Jews who had held Palestinian citizenship prior to 15 May 1948 and lived normally in the Hashemite Kingdom of Jordan on the date of Law 6/1954 (Art. 3), i.e. 16 February 1954. A special *Diwan* interpreted these conditions restrictively (Decision 18/1957); accordingly, the nationality of the father is irrelevant for those who meet the above conditions.³⁷

Article 2 contains the definition of terms used in the law. It differentiates between Jordanians and foreigners, but also uses two other words to indicate two different categories of persons treated differently by the Citizenship Law: ‘Arabs’, that is, the descendent of an Arab father who holds the citizenship of one of the Arab League states; and ‘expatriates’ (*mugtareb*), that is, all Arabs born in the Hashemite Kingdom of Jordan or in the part of historical Palestine that was occupied by force and who emigrated or were deported, or their children. For both categories (Arabs and expatriates) applications for Jordanian citizenship can only be made through the Minister of the Interior, on the condition that they relinquish any previous citizenship and that they are resident in Jordan on the date of the law’s adoption (Art. 6). However, only Arabs (expatriates excluded) can obtain Jordanian citizenship through residence in Jordan for 15 years (Art. 5).

However, conferring Jordanian citizenship or naturalising Arabs or foreigners into Jordanian citizens does not mean eradicating previous nationalities or citizenships. For example, Articles 15–17 that regulate the renunciation of Jordanian citizenship: only Jordanian citizens of Arab origin who apply for foreign citizenship need a permission of the Council of Ministers. Jordanians of foreign origin who apply for foreign citizenship, and Jordanians of Arab origin who apply for Arab nationality, do not need such permission.

37 For more details on the 1952 Nationality Law see Mohamed Y. Olwan, *The Legal Framework of International Migration in Jordan*, Analytic and Synthetic Notes 2006/1–Legal Module, RSCAS.

Under Jordanian nationality law (as was the case during the British Mandate), wives take the citizenship of their husbands, Article 8: ‘wives of Jordanians are Jordanians and wives of foreigners are foreigners’. These (naturalised Jordanian) women have the right to relinquish their Jordanian citizenship in the case of divorce or the death of the Jordanian husband, and (originally Jordanian) women have the right to reacquire their Jordanian citizenship in the case of divorce or death of a foreign husband. The children of Jordanians are considered Jordanians, wherever they are born (Art. 9), but in Jordan, as in most other Middle-Eastern countries, women cannot pass their citizenship on to their children. Citizenship is not granted to a child of a foreign father born on Jordanian territory. Married women have depended on their fathers or husbands to process documents for their children (El-Abed 2006).

Gaza Strip Palestinians

Things are different for Gaza Strip Palestinians; even though it maintained complete control of internal affairs of the strip, through its military Governor General then the Administrative Governor General under the authority of the Egyptian Minister of Defense, Egypt never annexed, or attempted to annex, the Gaza Strip. There was no attempt to assimilate Gaza Palestinians. For this reason there was a systematic reference to Palestinian citizenship in various Egyptian legislative texts,³⁸ and Egypt had always refused to grant Egyptian citizenship for Gazans, providing them simply with travel documents. In other words, Palestinians of Gaza were *de jure* Palestinian citizens but *de facto* stateless since there was no state that was their own. For this reason, there were no amendments to British mandate citizenship laws and regulations in Gaza and the two ‘constitutional’ documents (1955 and 1962) enacted for the Gaza Strip did not make any reference to citizenship although each had its own particularity related to the political environment.

The Basic Law for the Gaza Strip 255/1955 makes no mention of the Palestinians; Article 1 simply states that the ‘The people of Gaza Strip are equal before the law’ and that they enjoy equal civic and political rights. The 1962 Declaration of Constitutional Order for Gaza was declared by Jamal Abdel Nasser himself, following the establishment of the United Arab Republic (UAR) between Egypt and Syria in 1958.³⁹ The Declaration underlines the Arab character of Palestine and of the Palestinian people. Article 1 states that ‘The Gaza Strip is an indivisible part of Palestine’ but goes on to specify that ‘the people of Gaza are part of the Arab nation’ (and not of the Palestinian people), thus reflecting the pan-Arabism advocated by Nasser. However, the same declaration contains several references to ‘Palestinians’ (Arts. 3, 14, 20, 30, 32, 54) meaning the Gaza Strip Palestinians (as mentioned expressly in Art. 2).

Israeli Palestinians

Israel succeeded the British Mandate government on parts of what was Palestine. Refusing the return of Palestinians who had crossed what became the borders of the new State of Israel, to their lands and property also meant the refusal to grant them the citizenship of the successor state. As stated by Shiblak, ‘Israeli policy has been, and still is, to reduce the number of Palestinian Arabs while increasing the number of Jewish immigrants, who, it must be remembered, were the minority, even in the areas originally demarcated for the Jewish State under the Partition Plan’. He added: ‘To ensure

38 For example, Law on Educational Profession Syndicate (9/1964), Law of Municipality Functionaries and Workers (1966), Decree Relating to Conditions Required in the Person Nominated to the Office of Mukhtar (1961), Decree-law Concerning the Police (6/1963), Decree-law Relating to Holders of Palestine Citizenship from the Graduates of the Faculties of Engineering (11/1964), Decree of the Administrative Governor General, Relating to Reverting to Palestine Citizenship (3/1959), and the Notice Regarding Foreigners Residing in the Gaza Strip (1957).

39 The union remained until 1961 after Syrian coup d’état and secession from the United Arab Republic. Egypt continued to use the name until 1971.

Judaisation, Israel issued three laws within four years of its foundation: the Absentees' Property Law, the Law of Return and the Israeli Citizenship Law. These nullified the rights of the displaced non-Jewish population to return to their homes while endorsing the right of any Jew—regardless of place of origin—to unrestricted immigration and automatic citizenship.' (2006, 8).

However, according to international law, in the case of succession, citizens of the previous state are granted the citizenship of the successor. Accordingly, depriving persons of their citizenship and forcible expulsion (both are interrelated) are forbidden under international law. Palestinians who remained within the borders of the State of Israel and, thus, granted Israeli citizenship, were not allowed to return to their villages and land/property; for this reason they were called the 'present absentees'.⁴⁰ The right of refugees to return to their homes and land/property⁴¹ had achieved a customary status by 1948. However, the individual right of return is separate from the collective right of return; under international law, the exercise of one right does not exclude the other since they are not mutually exclusive, but supplementary and complementary (Boling 2001).

The General Assembly [...] resolves that the 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, and that compensation should be paid for the property of those choosing not to return and for loss of or damage to property which, under principles of international law or in equity, should be made good by the Governments or authorities responsible. (UN Resolution 194 (III), Dec. 1948: par. 11, sub-par. 1) (italics added)

The right to return is anchored in four separate bodies of international law: nationality law, as applied upon state succession; humanitarian law; human rights law; and refugee law. The following section presents nationality regulations in successor states. States have domestic discretion in regulating their nationality status, but this is limited by several binding obligations under international law.⁴² There are three main rights-obligations with regard to nationality law that some may urge obtaining a customary status, thus binding upon all states: *First, the right to obtain the nationality of the successor state*: according to international law on the succession of states,⁴³ the habitual inhabitants, regardless of their physical presence, of the geographical territory coming under new sovereignty are offered nationality by the new state.⁴⁴ *Second, the right of return is an obligation owed by a state to all other states*: states are required to readmit their own nationals as refusal to do so would impose an obligation to receive or host, the rejected individual on another state (the rule of readmission). *Third, the prohibition against (mass) denationalisation* prohibits a state from using revocation of nationality status (i.e. denationalisation) as a way to avoid its obligation to admit its own nationals (Boling 2001).⁴⁵

40 See BADIL Occasional Bulletin No. 18, June 2004.

41 Sometimes referred to as their last place of habitual residence (Boling 2001).

42 As stated by Boling (2001), 'This principle is universally recognised and has been reaffirmed by a 1923 Advisory Opinion of the Permanent Court of International Justice, in the authoritative 1930 Hague Convention on Certain Questions Relating to Conflict of Nationality Laws, and by the International Court of Justice in 1955. It has also been clearly formulated by UN bodies, including the General Assembly's Sixth (Legal) Committee and the UN High Commissioner for Refugees.'

43 This applies 'whenever one state (a predecessor state) is followed in the international administration of a geographical territory by another state (the successor state).' (Boling 2001).

44 We can argue that the 1952 Israeli Nationality Law violates international law since it effectively denationalizes Palestinian refugees, while allowing Jews from anywhere in the world to acquire 'nationality' status through the generous terms of Israel's Law of Return. By failing to allow Palestinian refugees to re-enter Israel, it denies them the opportunity to be heard in a court of law to challenge the legality—particularly under international law—of Israel's 1952 Nationality Law (Boling 2001).

45 The prohibition against denationalisation exists in an authoritative draft international convention of 1930, various regional declarations (such as the 1986 Strasbourg Declaration on the Right to Leave and Return), in resolutions by UN organs, and numerous respected commentators have written of the prohibition against denationalisation as a binding norm of customary law since 1927. The entry for 'Population, Expulsion and Transfer' in the authoritative Encyclopedia

One should bear in mind that these are three inter-related components of nationality law and that being deprived of one right can be used to deprive a person of others. Consequently, when a Palestinian is deprived of the right to obtain the citizenship of the successor sovereign state, they are also deprived of their right to readmission because they are simply not considered a co-national. When doing so, a mass process of denationalisation is in act. For Uri Davis,⁴⁶ UN Resolution 181 (Partition Plan) provides useful tools for the right of return advocacy in the international arena. Based on the argument that citizenship and nationality are two different concepts, Davis encouraged Palestinian refugees to claim Israeli citizenship.

To conclude, we may urge that the Law of Return (5710/1950,⁴⁷ with amendments in 1954 and 1970),⁴⁸ and the Israeli Nationality Law (5712/1952)⁴⁹ contradict the limits imposed by international law on the freedom of states to regulate nationality in the succession of states.⁵⁰ The newly adopted Citizenship and Entry into Israel Law (Temporary Provision) 5763/2003 imposes further restrictions on family reunification forbidding granting Israeli citizenship under Israeli nationality law to the inhabitants of Judea and Samaria (the biblical name still used by Israel to indicate the occupied West Bank), and the Gaza Strip. The Israeli High Court upheld the law and on 14 May 2006 it dismissed the petition presented by Adalah and the Israeli Association for Civil Rights calling for the annulment of the Nationality Law and in particular of its discriminatory provisions.⁵¹

‘Palestinian citizenship’ after 1967

The period from 1967 onwards has been an era of occupation. Israel is the occupying power and as such, is obliged to practice its authority in respect of the international laws of occupation in the occupied Palestinian territories (oPt). Nevertheless, Israel maintained, and intensified, the division between the West Bank and the Gaza Strip, and established military governments and civil administrations for each. All three powers were concentrated in the Military Governor, and used for the benefit of Israel and not necessarily for that of the local population. After the Six Days War, Israel started to ‘colonize’ them, in spite of this being considered illegal by the UN and a large part of international community.

Israeli policies immediately targeted Palestinian inhabitants (always considered as non-Israeli citizens) with military declarations and orders. The 250,000 Palestinians who happened to be outside the oPt when occupied were not allowed to return. Several IDs were withdrawn from thousands of Palestinians as a result of the expiry of exit visas they were required to obtain each time they travel abroad. Following illegal annexation of East Jerusalem in 1967 and the Golan Heights in 1981, Israeli

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of Public International Law puts the rule categorically, stating that nationals may not be denied re-admission on the rationale that they are no longer nationals (Boling 2001).

46 Uri Davis is from Al-Beit Association. See ‘Ten Thesis for the Right of Return’. See report from the Third BADIL Expert Forum, 5–8 March 2004, Cairo, the Al-Ahram Center for Strategic and Political Studies: ‘Closing the Gaps: from Protection to Durable Solutions for Palestinian Refugees’. See BADIL’s quarterly publication, Al-Majdal (Resource Center for Palestinian Residency and Refugees’ Rights), No. 21, March 2004, p. 8. <http://www.badil.org/al-majdal/2004/majdal21.pdf>.

47 This law applies retroactively since (Art. 4) every Jew, even if born in Israel, is considered to have come to Israel by exercising their rights under the Law of Return. See Bishara (2004, 3).

48 For complete text of the law, see the official website of the Israeli Knesset: <http://www.knesset.gov.il/laws/special/eng/return.htm>.

49 For complete text of the law, see <http://www.geocities.com/savepalestinenow/israellaws/fulltext/nationalitylaw.htm>

50 The 1952 Israeli Nationality Law carefully avoids the use of the term ‘non-Jew’ in describing the narrowly defined categories of persons who may be eligible for Israeli citizenship. However, the vast majority of Palestinian refugees are de facto incapable of meeting the strict requirements of Israel’s 1952 Nationality Law and have therefore been effectively denationalised (Boling 2001).

51 For more details see: http://www.fidh.org/article.php?id_article=2134

civil legislation started to apply and residents found themselves declared to be permanent residents—but not citizens—of Israel.

Israel has employed a 1974 regulation as a ‘legal’ instrument to deprive many Jerusalemite Arabs of their IDs and residency rights if they are absent from the city for more than seven years, have acquired other citizenship or been granted permanent residency rights elsewhere. This can only be described as administrative ‘ethnic cleansing’. (Shiblak 2006, 9)

The Palestinian National Council (PNC) declared the independence of the state of Palestine on 15 November 1988, without creating any particular authority over the land. Although considered favourably and recognised by a large number of states, the recognition was only a political act that did not affect or create any concrete legal changes. Negotiations between Israel and the Palestinians began on 30 October 1991 at the Middle East Peace Conference in Madrid, sponsored by the USA and Russia. The U.S.–Soviet letter of invitation to the Madrid Conference included the agenda and terms of reference for the talks: ‘*Negotiations will be conducted in phases, beginning in talks on Interim-Self government arrangements*’. In a joint Palestinian–Jordanian delegation, Dr. Haidar Abdul Shafi headed the Palestinian delegation.⁵² Palestinians formulated different drafts and proposals that reflected the way in which they envisaged their negotiated Interim Self-Government Authority. The key issue for Palestinians was to extend its jurisdiction to all territories occupied in 1967, that is, a single territorial unity (Shehadeh 1997, 103–31). The Israeli side proposed different drafts for their discussions and insisted that negotiating territorial jurisdiction ‘*starts from the premise that issues relating to the exercise of sovereignty are outside the scope of the Interim status negotiations.*’ (Shehadeh 1997, 114).

Negotiations between the two delegations continued in Washington while others were held secretly in Oslo, between Israel and PLO. The Government of Israel and the PLO, ‘the representative of the Palestinian people’, signed the DoP on Interim Self-Government in Washington on 13 September 1993 (also known as Oslo I).⁵³ This gave birth to the phased ‘peace process’: the interim period and the permanent status settlement. It may be useful to mention here that the phased peace process was first projected in the Camp David Agreement between Egypt and Israel.⁵⁴

IV The legal status of Palestinian refugees in host states

‘Palestinians are the largest stateless community in the world’ (Shiblak 2006, 8), and the lack of basic formal citizenship remains, at the beginning of the 21st century, a key concern for more than half the global Palestinian population (Hammami and Johnson 1999, 316). This fact is related to the non-existence of a Palestinian state over parts of historical Palestine, in conformity with the Partition Plan and the right to self-determination. During the British Mandate, all Palestinians (a concept covering original residents of Palestine—originally Ottoman citizens, and Jews who were naturalised Palestinians) were granted British (Palestine) passports. Following 1948 exodus Palestinians are circling in stateless orbit. Today, more than half the Palestinians are considered to be *de jure* stateless. They fall into three categories: holders of the ‘Refugee Travel Document’ issued by Syria, Lebanon, Egypt, Iraq and some other Arab countries; holders of nationalities of convenience—mainly temporary Jordanian passports; and holders of the Palestinian passport issued by the Palestinian Authority (PA)

52 Some consider the Oslo peace process as dead, and they may be right. Nevertheless, the consequences of this uncompleted process are still evident, in particular, the PA, the main creation of those agreements, as the administrative authority—within geographical, functional and personal limits—over the so-called ‘autonomous territories’ that were re-occupied. Thus, the reference to Oslo is still relevant.

53 The Knesset ratified the agreement by a vote of 61–50 with 8 abstentions, on 23 Sept. 1993. The PLO Central Council approved the DoP on 11 Oct. 1993, at the meeting in Tunis, 63–8 with 8 abstentions (27 of the 107-member Council did not attend).

54 For more details, see Khalil (2003, 34ff.).

which is considered as a travel document pending the creation of a fully-fledged Palestinian state (Shiblak 2006, 8).

This section examines the citizenship laws and regulations of Arab states regarding Palestinian refugees,⁵⁵ in particular, their legal status, rights and duties. We also consider Arab policies for Palestinians mainly in cases of discrimination of positive actions and argue that the main focus of Arab governments with regard to Palestinians is to prevent primary responsibility towards Palestinian refugees being shifted from the source country (Israel) to host states (Shiblak 2006, 8).

At the regional level, the League of Arab States adopted the 1965 Casablanca Protocol which is the basis for treatment of Palestinians in Arab states. *First*, Palestinian refugees shall be granted full citizenship rights without being naturalised by host Arab states. *Second*, Palestinian refugees shall be granted a Refugee Travel Documents (RTD) in order to maintain their refugee status. Two states (Jordan and Syria) had fully applied the Protocol (Abu Zuhera 2002). Other Arab countries expressed reserves concerning the Protocol or shown no interest in applying it, mainly with regard to employment (Shiblak 2006). On the other hand, most host Arab states have set up agencies or directorates to administer the affairs of Palestinian refugees residing temporarily in their country.⁵⁶

However, a common characteristic of Palestinian refugees in most host Arab states is the (almost total) absence of guarantees for basic rights for Palestinian refugees in the Arab world. ‘National’ belonging has been used to sacrifice civil and political rights and discriminate Palestinians in their countries of residence in the name of their right to return in their country of origin. Palestinians’ rights as individuals were sacrificed for the sake of ‘Palestinian national interest’. This lack of protection is mainly the result of the refusal by Arab states of involuntary refugee re-settlement in their countries,⁵⁷ combined with the general weakness of democracy and respect for the rule of law and human rights in Arab states and societies:

In most Arab countries citizenship [...] it is perceived as a privilege granted by the ruler and not as a matter of right. Citizenship and passports are not a means to facilitate people’s movement, but rather a means to ensure control by the government and its security apparatus.⁵⁸

Arab states policies towards Palestinians have been determined much more by political events and the relationship between governments and the PLO, than by legal instruments and mechanisms (Abu Zuhera 2002). For Shiblak (2006, 8),

55 ‘Palestinian refugees’ is a term used to designate all Palestinians who have become (and continue to be) externally displaced (with regard to 1948 refugees, outside the area that became the State of Israel, and with regard to 1967 displaced persons, outside the oPT) in the context of the ongoing Israeli–Palestinian/Arab conflict, and their descendants. The term refers to: 1) 1948 refugees under UNGA Resolution 194(III) (‘Palestine Refugees’ in UNRWA terminology, including both registered and non-registered refugees); 2) 1967 refugees under UNSC Resolution 237 (‘Displaced Persons’ in UN terminology and used by UNRWA with particular reference to UNGA Resolution 2252); 3) other Palestinians from the West Bank and Gaza who have been forced to leave these areas owing to a well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion, and who are unable or unwilling to return to these areas (BADIL 2005, XVIII).

56 In Lebanon this is the Department for Palestinian Refugee Affairs within the Ministry of the Interior, in Jordan it is the Department of Palestinian Affairs which is part of the Foreign Ministry and linked to the Prime Ministry, and in Syria it is the General Authority for Palestine Refugees (GAPAR). The heads of these departments meet biannually to discuss current issues facing Palestinian refugees in the region. See BADIL website: <http://www.badil.org/Protection/LAS%20.htm>.

57 Arab countries refuse to grant Palestinians citizenship in order to preserve their Palestinian identity and to remind Israel of its responsibility towards those it expelled (El-Abed 2006).

58 See report of the Third BADIL Expert Forum, 5–8 March 2004, Cairo, Al-Ahram Center for Strategic and Political Studies: ‘Closing the Gaps: from Protection to Durable Solutions for Palestinian Refugees’. See Al-Majdal, BADIL’s quarterly magazine (Resource Center for Palestinian Residency and Refugees’ Rights), No. 21, March 2004, p. 22. <http://www.badil.org/al-majdal/2004/majdal21.pdf>.

The legal status, residency and civil rights of Palestinian communities in the Arab World are increasingly uncertain, particularly in Lebanon and Egypt where they are denied rights to secure residency, employment, property, communal interaction and family unification. Procedures to allow non-residents to apply for naturalisation in Lebanon, Egypt and Saudi Arabia do not apply to stateless Palestinians.

The following sections examine the legal status of Palestinian refugees in the five areas of UNWRA jurisdiction, i.e. Jordan, Lebanon, Syria, the West Bank and Gaza Strip. The case of Egypt is also examined in detail. For more information on the Palestinian diaspora in Europe, see Shiblak (2003).

Palestinian refugees in Jordan

The legal status of Palestinian refugees in Jordan differs according to the origin and time of their displacement.

Palestinian refugees arriving in Jordan in the wake of the *nakba* (catastrophe) of 1948

They, and their descendents, were granted Jordanian citizenship and have the same access to political and civil rights as other Jordanian citizens. This includes holding passports valid for five years and a 'national number', i.e. a civil registration number issued at birth or upon naturalisation which is recorded on national ID cards and on the family registration books issued to citizens (El-Abed 2006). However these Palestinians, despite obtaining Jordanian nationality are still denied equal political participation and subject to subtle forms of discrimination (Shiblak 2006).

Following the 1988 unilateral Royal decision to separate the two banks of the Jordan, the West Bankers became *ipso facto* stateless as their Jordanian citizenship ceased to be valid. The West Bankers whom Jordan accepted for residency hold 'green cards' indicating that they are temporary residents. Papers had to be processed for them to reside in Jordan through *El Mutaaba wal Taftesh* and the Department of Palestinian Affairs, a government body that deals with the paperwork for Palestinians in the West Bank and Gaza Strip.⁵⁹

Since 1988, West Bank Palestinians were given temporary passports renewable every two years instead of regular passports that granted them full citizenship rights in Jordan. The renewal period was extended to five years in 1995 by royal decree. This placed West Bankers on a par with ex-Gaza refugees, who had been granted temporary passports since 1968 (El-Abed 2004c, 16).

Palestinian refugees who came to Jordan after the 1967 six days war⁶⁰

Few obtained Jordanian citizenship through naturalisation or had the financial resources to acquire one. Upon arrival, the ex-residents of Gaza were granted temporary Jordanian passports valid for two years serving as temporary residence documents and an international travel document potentially giving them access to the few countries that recognised them.⁶¹ They are treated as foreigners in Jordan and the renewal of their residence requires clearance from the Jordanian security authorities; any delay in renewing the temporary passport or in applying for one puts an individual at risk of becoming undocumented (El-Abed 2006; Shiblak 2006). Besides, because of the patriarchal

59 See Oroub El-Abed, 'Stateless Gazans: Temporary Passports in Jordan', unpublished manuscript for SHAML, Ramallah.

60 Oroub El-Abed is an Amman-based independent researcher working on Middle East refugee issues who, has made many studies of the Gazans in Jordan. This report on Gazans in Jordan is based on her analyses.

61 Syria, Lebanon, Egypt and some Gulf states do not recognise the document (El-Abed 2006).

conception of citizenship, children of Jordanian women married to Gazans risk being left without a legal existence (El-Abed 2006).⁶² Gazans in Jordan are doubly-displaced refugees.

Thus, in Jordan there are several ‘categories of Palestinians’ holding a range of papers according to place of residence, kind of passport held, and whether or not they have a family registration book.⁶³

Palestinian refugees in Lebanon

The Republic of Lebanon signed the Casablanca Protocol on 3 August 1966, with the reservations on the five articles of the Protocol rendering it void of content; the reservations are expressed, for example, with regard to employment of refugees on a par with citizens, their freedom of entry, stay and exit. The justification for the denial of refugees’ rights presented by successive Lebanese governments is that ‘implantation’ in society (*tawteen*) will tip the political balance of religious and ethnic groups in the country. In other words, Lebanon regards Palestinian refugees as a security problem (Raffonelli 2004, 66). In order to deal with this, Lebanon introduced a number of regulations based on reciprocity that limit the enjoyment of certain rights to foreigners from recognised states that offer the same opportunities to Lebanese nationals. The reciprocity doctrine is enshrined in Lebanese labour, association, social security, and property ownership laws, and effectively singles out the stateless Palestinian refugees for exclusion (Raffonelli 2004, 68).

Lebanon issues travel documents to Palestinian refugees,⁶⁴ but did not always guarantee their readmission. In 1995, Order No. 478 of the Ministry of Internal Affairs required Palestinian refugees living in Lebanon to obtain exit and re-entry permits (Shafie 2003a, 7). In 1999, the government lifted this requirement and eased visa restrictions. However, this precedent discourages both Palestinian refugees from going abroad and other states from granting them visas, for fear that a new revision may suddenly require a return visa to Lebanon (Raffonelli 2004, 69).

Palestinian refugees in Syria

Syria, like Lebanon, is a firm opponent of permanent settlement of Palestinian refugees. However, it is diametrically the opposite example of Lebanon in its treatment of Palestinians (Raffonelli 2004, 70). Palestinian refugees in Syria are granted freedom of movement in all parts of Syria and their legal status is regulated by:

- Law 260/1957: Palestinians living in Syria have almost the same rights and duties as Syrian citizens, except citizenship and political participation.
- Decree 28/1960:⁶⁵ Palestinians in Syria are granted Palestinian Travel Documents.
- Law 1311/1963: regulating the issue of Syrian *laissez-passer* or travel documents to Palestinians residing in Syria, on condition that they were registered with General Administration for Palestine Arab Refugees and held Syrian provisional identity cards.⁶⁶ In 1999, a new law was

62 See the reasoning and position of the Immigration Appeal Court in London concerning an asylum seeker from Jordan (presented by a Palestinian born in Gaza, holding a temporary Jordanian Passport) in 2005, available on-line at http://www.ait.gov.uk/Public/Upload/j1741/00094_ukiat_2005_na_jordan_cg.DOC

63 See the table on different kinds of papers held by Palestinians presented by Al-Abed in the FMO Research Guide (El-Abed 2004c, 11–12).

64 Refugees from 1948 are given a Travel Document valid for a five-year period, while 1967 displaced persons are entitled to a one-year travel document (Shafie 2003a, 7).

65 Issued by President Gamal Abdel-Nasser (then President of the UAR).

66 The Palestinian Travel Document is valid for six years, like Syrian passports, and, according to Art. 20 of Law 1311, enables its holder to return to Syria without a visa. Travel Documents can also be reissued by any Syrian representative office outside Syria (Shafie 2003b, 3).

passed allowing Palestinian refugees in Syria to travel to and from Lebanon using their identity cards (Shafie 2003b, 3).⁶⁷

Palestinian refugees in Egypt

The Egyptian case illustrates how Palestinian rights can be subordinated to political reason and granted or revoked accordingly.⁶⁸ In 2003, the government granted citizenship to children born to Egyptian mothers married to foreign fathers—except Palestinian men (Raffonelli 2004, 70). However, an Egyptian wife becomes a guarantor for her Palestinian husband and an Egyptian husband enables his his Palestinian wife to have Egyptian nationality after two years' marriage (El-Abed 2003, 8).

There are two main groups of Palestinians who arrived in Egypt: those seeking protection from the wars in Palestine in 1948, 1956 and 1967, and those who came for trade and professional purposes, particularly those from Gaza recruited by Nasser to work for the Egyptian government. However, following 1967, when Israel occupied the remaining Palestinian territories, all those Palestinians present in Egypt were prevented from returning to their homes. Moreover, Palestinian refugees in Egypt are excluded from the relief and assistance provided by the United Nations Relief and Works Agency (UNRWA)—in contrast to Palestinian refugees residing in the five UNRWA areas of operation: Jordan, Syria, Lebanon, the West Bank and Gaza—or protection by the Office of the UN High Commissioner for Refugees (UNHCR) (El-Abed 2003, 1–3).⁶⁹

Egypt, as other Arab states, refused naturalisation of Palestinian refugees and pledged the preservation of Palestinian nationality as an excuse. Consequently, Palestinians even needed a visa to travel between Syria and Egypt (El-Abed 2003, 8). In Syria, Decision 28/1960, adopted during the UAR's short lifetime, stipulated the provision of travel documents for Palestinians. This document allows Palestinians to travel, but for re-entry they must return within six months or apply for a one-year return visa. Delay in return will mean entry is denied (El-Abed 2003, 8).

67 This free passage for Palestinians was effected by the Syrian Lebanon crisis following the assassination of Rafik Hariri in February 2005 and the withdrawal of Syrian forces from Lebanon.

68 Until 1978, some 50,000 Palestinian refugees in Egypt enjoyed most basic rights, but when a Palestinian faction associated with Abu Nidal assassinated Egyptian writer Yousef Al-Sibai—close friend of then-President Anwar Sadat—the government rescinded all these rights (Raffonelli 2004, 70).

69 As explained by El-Abed, the UNRWA, established in 1949, defined a Palestinian refugee as 'any person whose normal place of residence was Palestine during the period June 1, 1946 to May 15, 1948 and who lost both home and means of livelihood as a result of the 1948 conflict.' The definition covered some of the Palestinians in Egypt, but Egypt had already refused to create refugee camps since the arrival of refugees in 1948, except for the several temporary facilities that were soon evacuated. Egypt also did not allow UNRWA to operate on its territories (excluding Gaza, which was under Egyptian administrative rule). On the other hand, the 1951 Refugee Convention defined refugees as persons 'owing to well founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return.' In Art. 1D however, it states that, '1: This Convention shall not apply to persons who are at present receiving from organs or agencies of the United Nations other than that United Nations High Commissioner for Refugees (UNHCR) protection or assistance. 2: When such protection or assistance has ceased for any reason, without the position of such persons being definitively settled in accordance with the relevant resolutions adopted by the General Assembly of the United Nations, these persons shall ipso facto be entitled to the benefits of the this Convention'. Accordingly, Palestinians have been excluded from the protection of UNHCR, based on the fact that they receive assistance from UNRWA, regardless of the fact that only those who live within its areas of operation are assisted. It was only in September 2002 that the UNHCR reinterpreted Article 1D of the 1951 Refugee Convention in order to emphasise that Palestinian refugees are ipso facto refugees and are to be protected by UNHCR if the assistance or protection of the other UN body ceases. In the light of this, it has included those Palestinians not living in the countries of UNRWA field operations within UNHCR's protection mandate. Despite this, UNHCR's office in Egypt has as yet done nothing except interview a few Palestinians cases (El Abed 2003, 2–3, 2004a, 30). See also Rempel (2006a, 16).

In order to receive such a document, a Palestinian had to prove refugee status by producing an earlier ID issued by the Egyptian Department of Passports and Nationality and also had to prove legal residence in Egypt (El-Abed 2004*b*, 10–11). The ‘Egyptian Travel Document for Palestinian Refugees’ is valid for five years. Its validity, however, is contingent upon the renewal of a residence permit. Renewal requirements vary according to the year of arrival (see El-Abed 2004*c*, 2003, 8).

However, being granted a residence permit is conditional on providing a reason for remaining in Egypt (such as attending school or university, legal employment, a business partnership with an Egyptian, or a marriage with an Egyptian woman). Furthermore, the renewal of Palestinian residency permits in Egypt is conditional on payment of a fee and proof of a valid reason to be there. If the applicant has none of these, they can present a bank statement showing they have \$5,000. As a result there are many Palestinians living illegally without residency in Egypt and they all risk being jailed or deported (El-Abed 2004*b*, 10–11).

Following the establishment of the PA, and due to the most difficult life of Palestinians in Egypt, many Palestinians tried to return to Gaza and obtain PA passport.⁷⁰ Three possible means were used: first, through employment with the Palestinian Authority; second, through the family reunification programme if they meet the Israeli-imposed conditions;⁷¹ third, by applying for a visiting permit (*tasrieh zyara*), through families living in Palestine (El-Abed 2003, 8).⁷²

Palestinian Refugees in the West Bank and Gaza Strip

Palestinian refugees in WBGS are within the UNRWA area for relief and assistance. For this reason, they are not considered as ‘Convention refugees’ by the UNHCR even though there is no UN agency with an explicit mandate to protect refugees in the 1967 oPt (Rempel 2006*a*, 16; see *supra*). However, they differ from other Palestinian refugees because they are protected persons under the Fourth Geneva Convention, as are other WBGS Palestinians (including East Jerusalemites). There is a consensus in international law affirming the *de jure* applicability of the Fourth Geneva Convention to these areas, despite the Israeli contestation. Recently the International Court of Justice (ICJ), in its advisory opinion on the ‘*Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*’ issued on 9 July 2004,⁷³ confirmed that:

[t]he Fourth Geneva Convention is applicable in any occupied territory in the event of an armed conflict arising between two or more High Contracting Parties. Israel and Jordan were parties to that Convention when the 1967 armed conflict broke out. The Court accordingly finds that that Convention is applicable in the Palestinian territories which before the conflict lay to the east of the Green Line and which, during that conflict, were occupied by Israel, there being no need for any enquiry into the precise prior status of those territories.⁷⁴

Putting aside the relief and assistance provided by UNRWA to Palestinian refugees and Internally Displaced Persons in WBGS,⁷⁵ there is no distinction between Palestinians of WBGS with regard to

70 When granted a Palestinian travel document, the Egyptian authorities required Palestinians to relinquish their Egyptian travel documents; thereafter they were treated as foreigners in Egypt (El-Abed 2003, 8).

71 The person must have been registered in the Israeli census in the newly occupied territories in 1967, hold an Israeli ID card, and have been visiting the territories at least once every six years (El-Abed 2003, 8).

72 The permit is usually valid for three months and is issued by the Israeli Governor. Many Palestinians have overstayed the time limit and are living illegally in Gaza (El-Abed 2003, 8).

73 See par. 101. Available online at: http://www.icj-cij.org/icjwww/idocket/imwp/imwp_advisory_opinion/imwp_advisory_opinion_20040709.htm

74 Despite this, the High Contracting Parties to the Fourth Geneva Convention have not taken robust measures to ensure implementation of the Convention in the 1967 oPt (Rempel 2006*a*, 16).

75 ‘Displaced persons’ is UN terminology for Palestinians displaced in/from the West Bank and the Gaza Strip in the context of the 1967 Israeli–Arab conflict and falling within the scope of UNSC Resolution 237 (1967). The term includes

residency regulations,⁷⁶ entitlement to PA passports,⁷⁷ and access to basic civil and political and social, economic and cultural rights.⁷⁸

V Palestinian citizenship since 1993

The Declaration of Principles between PLO and Israel and the subsequent agreements, often called the ‘Oslo Agreements’ distinguished for the first time between political and national rights; indeed, the Oslo Agreements did not even mention national rights.⁷⁹ Palestinians’ right to self-determination and statehood were the focal point of several UN resolutions. They are also characterised by their attachment to their national identity and the recognition of states and nations of those rights. Nonetheless, the Palestinians—or at least their legal representatives—accepted to limit their territorial pretension to the 1967 ‘borders’ when they accepted the UN Resolution 242, as being a strategic choice, although they continued to be emotionally attached to all historical Palestine. The PLO had accepted the ‘two states solution’—intrinsicly but officially—with the 1988 Declaration of Independence that may not necessarily recognise Israel’s right to exist, but, as a result of concrete facts, its right to persist. According to PLO discourses the Oslo Agreements are part of the Palestinian liberation process, and the entity that resulted from it, the Palestinian Authority, fits within the Palestinian *national* agenda.⁸⁰

Putting aside all the negative aspects with relation to peace process, the Agreements had repercussions on Palestinian unity and the representative character of the PLO being the unique representative of the Palestinian people. Besides, with the Oslo peace process, a quasi-citizenship is formed with regard to the Palestinians who come under the PA authority and jurisdiction. These are entitled to obtain a PA passport under the indirect, but complete, control of Israel. The same applies to the Israeli control of borders that limited access and exits to oPt according to Israeli regulations. As confirmed by Jad (2004, 5):

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persons displaced externally and internally at that time, and their descendants. The term is also used by UNRWA to refer to persons falling under its mandate in accordance with UNGA Resolution 2252 (1967). Internally Displaced Palestinians are those who have not crossed an internationally recognised border, i.e. four groups of persons: 1) Palestinians displaced during the first Israeli–Arab conflict in 1947–48 from their homes in that part of Palestine which became Israel on 15 May 1948, and unable to return to their homes; 2) Palestinians who were (and continue to be) displaced from their homes inside Israel after 1948 and unable to return to their homes; 3) Palestinians originating from the West Bank or the Gaza Strip, who were internally displaced for the first time during the 1967 Israeli–Arab conflict and unable to return to their homes; 4) Palestinians originating from the West Bank or the Gaza Strip who were (and continue to be) internally displaced for the first time as a result of human rights violations by the Israeli occupation regime occurring after the 1967 Israeli–Arab conflict (e.g. home demolition, land confiscation, ‘separation wall’) (BADIL 2005, XV).

76 All Palestinians of WBGS are considered resident aliens or foreigners under Israeli civil and military law. Residency status in the oPt is administered by the PA but Israel retained the authority to make the final decision on requests for permanent residency and family reunification rendering the authority transferred to the PA largely meaningless (Rempel 2006a, 16).

77 The PA has the power to issue passports that function as travel documents to Palestinians residing in the 1967 oPt (excluding East Jerusalem) which must show both Israeli-issued ID cards numbers and Palestinian serial numbers. Indirectly this means that only those with Israeli-issued ID cards numbers (excluded East Jerusalem) are entitled to a PA passport. Since January 2002 holders of Palestinian passports from WBGS, including Palestinians with dual citizenship, are not permitted to enter or leave Israel through Ben Gurion International Airport in Tel Aviv (Rempel 2006a, 17).

78 For more details on WBGS Palestinians, see the section dealing with the impact of the Oslo Agreements on WBGS Palestinians. On the status of oPt following the instauration of PA, see Khalil (2003, 2006b). For more details on the regulation of entry and exit in the oPt, see Khalil (2006a).

79 On the contrary, the PA added the term national in between, becoming the PNA in order to enhance the role of the PA within the overall Palestinian national project.

80 For this reason Palestinians insist on calling it the Palestinian National Authority. However, for the Israelis, although they share the process, they do not agree on modalities, objectives, and most importantly, the envisaged outcome. The failure of Oslo process proved how erroneous it may be to negotiate while there is no minimal agreement on the possible outcome of such an agreement.

As far as citizenship is concerned, no Palestinian may hold a passport without Israeli approval. Palestinian refugees in the diaspora cannot visit or return to their homeland and they remain stateless. A Palestinian resident in Gaza cannot join his/her fellow citizen in the West Bank unless he/she has a permit issued by the Israeli security; the same applies to the 'citizen' of the West Bank. If both have permits to visit each other, they cannot reach their fellow citizens in Arab Jerusalem, considered after its 'unification' in 1967 the eternal capital of the state of Israel with its Palestinian residents given a special, revocable status.

The impact of Oslo on West Bank and Gaza Strip Palestinians

These are the Palestinians currently the subject of the Oslo peace process. They are entitled to obtain PA passports that are no more than travel documents or 'slightly upgraded Israeli identity cards' (Hammami and Johnson 1999, 317). Accordingly, granting a PA passport is not an expression of Palestinian citizenship (although it may be considered as its embryo). The existence of citizenship is not determined by a passport, or legislation regulating citizenship, but by the existence of a state. The Oslo Agreements did not tackle the issue of citizenship and the Interim Agreements did not lead to the creation of a state (Addajani 2004).

The WBGS Palestinians (including Jerusalem) are those living under occupation and who enjoy the protection of Fourth Geneva Convention of 1949, despite the Israeli refusal of its *de jure* applicability (Khalil 2005).⁸¹ The contradiction here is that the Oslo Agreements consolidated the Israeli occupation and, despite its contradiction to international law of occupation, Palestinians accepted to maintain (temporarily at least) the legal changes made by the occupation power. Thus, the system created following Oslo maintained the duality of legal treatment of residents of WBGS according to nationality. Israelis (settlers included) would always be outside the jurisdiction of the Palestinian 'Council' and exempt from the jurisdiction of Palestinian courts. The different treatment underlines a key aspect of the Agreements signed between Israel and the PLO, which avoid frameworks of international law, universal rights, and principles of equality in order to conclude a series of transitional arrangements based on a series of differences and exclusions (Hammami and Johnson 1999, 315). The Israeli-Palestinian Agreements also legalised the powers of the Israeli military government to legislate and accepted the limitation of the legislative authority of the 'Council' on powers transferred to it by the Israeli military governor. Last, Palestinians accepted the persistence of existing settlements during the transition period. The Agreements also provide that the West Bank and Gaza are treated as a single unit; in reality, the declaration was voided of content, at least with the territorial continuity that resulted from events imposed by Israel.

These are the Palestinians who are entitled to participate in political life within the PA institutions: they participate in elections positively (they can vote), and negatively (they can be elected). Palestinian residents of East Jerusalem may vote under certain conditions, but cannot stand as candidates if their official domicile is Jerusalem (Rempel 2006a, 13). They can also take up senior (administrative and governmental) positions in PA institutions. In addition there are the Palestinians who obtained Israeli approval for their return. These Palestinians enjoy political rights similar (not identical) to those of a citizen of a state. The difference between the two is that the PA is not a state and PA citizenship is not accomplished citizenship for the persistence of occupation. It is true that Electoral Law (9/2005) had granted the right to participate in elections to those holding a Palestinian nationality or citizenship,⁸² a concept that may be broader than the 'WBGS citizens' (Jerusalemites

81 The Palestinians consider the territories conquered by Israel in 1967 as 'occupied territories'. UN Resolutions and the international community adopted this position. The only protagonist to refuse it is the State of Israel, which considers them 'disputed territories'. It is the status of these territories which is disputed and not the territories themselves, which are indeed occupied, following the Six Day War and recognised as such by the international community. According to the Hague Regulations (Art. 42) a territory is deemed occupied when it is placed under the authority of a hostile army.

82 The word used 'jenseyeh' can be translated as nationality or citizenship.

included). However, the other conditions (the need to be registered and to be on the electoral list) only allow it for WBGS Palestinians.⁸³ *De facto*, the only Palestinian nationals who would be able to elect or be elected are WBGS Palestinians.

The election process posed a problem with regard to the participation of Palestinian refugees in the West Bank and Gaza. The first municipal elections in the West Bank since 1976 and the Gaza Strip since 1946 were held in 2005 (Rempel 2006a, 13).⁸⁴ Those against electoral participation justified this on the grounds of maintaining the refugee identity, resisting attempts to assimilate them, and maintaining the services of the UNRWA. The advocates of electoral participation argued for the need to enhance unity between citizens and refugees, to improve services in refugee camps in order to maintain resistance and opportunities to advocate the refugees causes, and continued UNRWA services since related to the end of the overall Palestinian problem, including refugees.⁸⁵

The impact of Oslo on Palestinians with Israeli citizenship

Palestinians with Israeli citizenship were excluded from any possible negotiations between the PLO and Israel for the transitional period. Accordingly, the PLO accepted not to play a representative role on behalf of those Palestinians and their interests. Palestinians inside the 'green line' (sometimes called 'Arab Israelis' or '1948 Palestinians') understood that their fate was now separated from that of their co-nationals. They also understood that the difference was not limited to the diagnosis of the problems, but included the ways to resolve them (Zrek 2004, 91, 93). The Palestinians inside the 'green line' share the same national belonging with WBGS and *diaspora* Palestinians: they are all Palestinians and they form the 'Palestinian people' and are part of the Arab nation. However, they are distinct from other Palestinians in that they hold Israeli citizenship. In other words, from being an Arab majority in Palestine they became an Arab minority in Israel. Palestinians are the largest national minority in Israel (although never recognised as such). The dialectic between the *national* concept of the state and the civic belonging or citizenship decides the place of Arabs and determines their legal status in Israel (Akkawe 2004, 89).

The status of Arab Palestinians in Israel became an internal issue for a state which claims to treat all its citizens equally. The relationship of Arab Palestinians in Israel with the Jews is one between an ethnic, linguistic and cultural minority with a majority within a state that defines itself as both Jewish and democratic! In the words of Azmi Bishara (2004, 1), citizenship of a part of the citizens of the State of Israel (almost 20%) is considered, *per se*, the problem.

Israel is not going to give the Palestinian Authority any hold in the areas within the green line. Of interest is only the fact that Israel is ready to negotiate away the citizenship of some of its citizens, to draw a question mark concerning their citizenship, using any opportunity to raise the issue, means that it deals with them as a problem.

Palestinians could only obtain Israeli citizenship in 1980 when Law No. 4/1980 amended the 1952 Nationality Law (Shiblak and Davis 1995, 95). However, granting citizenship *per se* does not guarantee the absence of discrimination related to ethnicity or nationality. Despite the fact that Arab Palestinians became Israeli citizens, discrimination persisted at the institutional, political, legal, social and economic levels. Israeli citizenship for Palestinians inside the 'green line' was meaningless except for that fact that it was a guarantee against the risk of deportation outside the borders of the State of Israel. However, the nature of the Israeli state made two categories of citizenship: incidental citizenship for Arabs who happened to remain in Israel, and essential citizenship given to Jews *qua*

83 See Electoral Law 13/1995, Art. 7 and Electoral Law 9/2005, Art. 9. The later replaced the former in regulating elections.

84 In the oPt, there are 521 local authorities (491 in the West Bank and 30 in the Gaza Strip) comprising 107 municipalities, 11 local councils, 374 village councils and 27 refugee camps (Passia, 2005).

85 See the article by Dr. Yousef Ibrahim in Al-Quds Newspaper of 18 Oct. 2004, p. 19, available on-line at <http://pdf.alquds.com/2004/10/18/page19.pdf>.

Jews. The first group can be stripped of their citizenship, while one cannot separate a Jew from his right to become an Israeli citizen (Bishara 2003, 3).⁸⁶

There is a tendency among Arab Palestinians in Israel to support the ‘state for its citizens’ approach.⁸⁷ However, the realisation of this formula would not necessarily be a Palestinian gain since it excludes other Palestinians (non-citizens) from the project of the state. In this same direction, John Quigley (1998, 205) asserted that under Israel nationality law:

[o]nly those Palestinians who in 1948 remained within the territory that became Israel, and stayed until 1952, acquired Israeli citizenship. This provision excluded from citizenship the Palestinians of the 1948 exodus. Thus, Israel does not deem the displaced Palestinians to be its nationals. This fact, according to some analysts, negates any right for the displaced Palestinians to return to the territory that became Israel.

The State of Israel is a Jewish-Zionist project not an Israeli one. The establishment of the state was not originally intended to serve the people living within its borders (its citizens), but rather directed towards a nation that is mostly present in the *diaspora* (the Jewish nation). Moreover, Israel does not express the Jewish majority in Israel, but expresses the existence of the trans-historical, trans-geographical Jewish people; and the Jewish people are not all in Israel (Bishara 2004, 2–3). In other words, the centre of gravity of the State of Israel since its establishment, has been outside Israel and the establishment of the state was a step towards the realization of the final objective: the regrouping of the Jewish *diaspora* in Israel. For this reason, when Ben Gurion presented the Law of Return (which he described as ‘not a law of the state’ but a law that *constitutes* the state), he asserted that the basis of the law was the ‘right of return for Jews’ (Bishara 2004, 2).

The experiences of both communities (Arab-Palestinians and the Jews in Israel) lack common elements and discourses of equality within the State of Israel, until now, remained purely theoretical (Zrek 2004, 92). When Israel cancels all kinds of discrimination against individuals, discrimination against communities and groups may persist. Israel in fact had always considered the Palestinians as ‘individuals who lack a common identity’ (Zrek 2004, 91), and not as a national minority. Equality also means that in addition to combating discrimination against individuals, the State of Israel shall recognise national minorities within its borders, and respect their cultural and linguistic heritage. National identity shall not substitute citizenship but should reinforce it. This does not mean reducing individual civil rights, but adding group/community rights (Zrek 2004, 100–106). The demands of 1948 Palestinians can be resumed as follows: the cancellation of *de jure* and *de facto* discrimination against Arab Israelis (individual rights) and, the recognition of Arab Palestinians as a national minority (group rights) (Akkawee 2004, 100).

86 Azmi Bishara presented his interesting analysis in a paper at Oxford on 6 February 2004: ‘Israel does not recognise the existence of an Israeli nationality, but emphasizes a Jewish nationality. Where does that leave the Arab citizens of Israel? Non-Jews. They are non-Jews. You know, Spinoza’s “omnis determinatio est negatio”, every definition is a negation. So we are non-Jews. This is our definition. Sometimes I call my colleagues the non-Arab members of the Knesset. Then it sounds provocative. Anyway, Arab citizens are non-Jews because the hegemonic ideology does not recognise an Israeli nationality or the Arabs as a separate nationality. Arabs, in this sense, are members of a group of religions. They are Christians, Jews, Muslims, etc. They are still confined in a pre-national phase of development. And if you claim to be an Arab, you are a nationalist. If you want to take it a step further, and say we are not simply pre-nationals, religions and tribes, there is a higher degree of organisation of society called nation, nationality, and we are Arabs, then you become, especially in the eyes of left-Zionists, you become a nationalist.’ (Bishara 2004, 6).

87 Bishara wrote: ‘The main enemy, as it is seen today, I believe, in the Zionist establishment...are people who think that Israel should become a normal country, a normal state of its citizens, with citizenship regulating the relationship between individual and state. It means actually de-Zionising the state. They think that this is the real danger. When, more than a decade ago, we threw the phrase “the state of all its citizens” into the political arena, we firmly believed that the political culture in which such a principle can be embedded would open the way for the Palestinians in the whole area that is ruled by Israel for equality: Citizenship as the basis for living together in equality.’ (Bishara 2004, 14).

The impact of Oslo on Palestinian refugees

Palestinian refugees, residing in host Arab states or dispersed in the *diaspora*, are part of the Palestinian nation. They share with all Palestinians the enjoyment of national rights (right to self-determination), but their destiny was left to final status negotiations. In other words, during the 'interim period', the status of Palestinians dispersed all over the world (refugees who are stateless, and those who obtained the citizenship of their host country) is expected to remain the same. Palestinian refugees only accept this approach as a transitional accommodation and not as a final settlement of the conflict. In the Israeli–Palestinian case, there was unfortunately no clear vision of the outcome of the negotiation, so that:

[n]egotiations presume agreement on a mutually acceptable outcome. The process that ensues is geared toward structuring the modalities of such an outcome, determining the timetable by which it is realized. In other words, negotiations are not intended to discover what a party's rights are, but rather, how to achieve them. (Maksoud 1994, 297).

The Oslo peace process took exactly the opposite approach and was doomed to failure.

In the case of the establishment of a Palestinian state over parts of historical/Mandate Palestine, granting Palestinian citizenship will be a way to diminish statelessness for the Palestinians. This option is more attractive for host neighbour states that refuse to naturalize Palestinian refugees, fearing internal political instability and domestic imbalances. However, granting Palestinian citizenship for Palestinian refugees does not mean renouncing their right to return to their country of origin (1948 territories, now Israel).⁸⁸ At the same time, this should not lead to the deportation of Palestinian refugees to the Palestinian state. In other words, the Palestinian refugee who obtains Palestinian citizenship will be free to remain in the country where they settle; in that case, the host country should not discriminate against that individual for their decision, or prevent them from integrating; the host country should treat the Palestinian refugee in the same way as any other foreigner residing legally on its territory. If the Palestinian refugee decides to settle in the Palestinian state, they shall be allowed to do so. However, they may also continue to demand their individual right of return to their country of origin (now Israel). In other words, the *group* right of return will be met once the Palestinian state exists, but not the *individual* right of return. In any case, it is the state that will negotiate ways to satisfy that right with those demanding it, most probably after absorbing the PLO and PA institutions. However, the Palestinian state is not entitled to take decisions in the name of individual Palestinians (the refugees) who will continue to have an inherent right to return, irrespective of the political accommodation that states may agree upon.⁸⁹

This thesis is not, evidently, shared by those who are more worried about the 'Jewishness' of the State of Israel and for whom talking about a Palestinian 'right to return' to their homeland (now Israel) is considered politically incorrect.⁹⁰ However, if authors disagree on how to settle the issue of refugees, they all acknowledge that the Palestinian refugee issue is the key to any settlement in the Arab–Israeli conflict. Some authors sought a solution to the problem of refugees that does not include satisfying their right to return to their homeland whenever their homeland is now part of the State of Israel. For Donna E. Arzt, for example, this could be done through citizenship: converting refugees

88 An opposite opinion is defended by Lewis Saidman who wrote: '[A]ll Palestinians who have accepted new nationality at any time since the 1948 war, including West Bankers who accepted Jordanian citizenship, have waived their right of return because their "own country" is no longer Israel. Termination of the right of return by acceptance of new nationality has substantial implications for the Palestinian claim; approximately 60% of all Palestinians and their descendants who fled or were expelled in 1948 have lost their right of return because of their new nationality, not including those whose right is limited by Israeli national security considerations.' (Saidman 2004, 833).

89 In reality, the right of return is not a Palestinian-made right; it was drafted by the UN and recognised before even the Palestinian right to self-determination (Bishara 2004, 11).

90 This vision even seems to have been adopted by US officials, including President Bush in his recent statements and speeches.

into citizens would be the magic formula to end the Arab–Israeli conflict.⁹¹ In his review of the book Abbas Shibliak (1998, 336) from SHAML commented:

The main thesis of Arzt's book is that a permanent and viable solution to the Arab- Israeli conflict must include the granting of citizenship to Palestinian refugees throughout the Middle East. Why should refugee status be replaced with citizenship? Arzt answers that citizenship symbolizes—and concretely establishes—'the indices of permanent absorption, peace and regional stability'. She makes the point, however, that citizenship is not only defined in the formal legal sense, but, as she puts it, 'in the moral, political, social, and psychological senses' as well, or what sociologist Rogers Brubaker has called 'substantive citizenship'.

He argues that Arzt combines academic scholarship with a practical policy prescription where Palestinian refugees would be offered dual citizenship, compensation for lost property, and a choice of voluntary absorption in a future Palestinian state, other Arab state, the international community, or repatriation to Israel on the grounds of family reunification. Shibliak (1998, 336) concluded:

Despite these shortcomings, Arzt has nevertheless produced an exciting and valuable work whose main thesis, that full citizenship rights for Palestinian refugees are essential to a permanent solution to the Arab–Israeli conflict, is compelling.

VI Citizenship under limited sovereignty

The existence of a state requires objective elements and does not depend on recognition by other states. If citizenship is intrinsically connected to the state, then the *inexistence* of the state means the inexistence of citizenship. This logical consequence of the traditional reasoning contradicts the reality of 21st century states where sovereignty is less 'pure' than in the 18th century. The result of incomplete or limited sovereignty is incomplete and limited regulation of citizenship, but not its total absence. Thus, states resulting from the dismemberment of the Ottoman Empire that fall under occupation or the Mandate (legal occupation, where legal refers to League of Nations legitimacy) have limited sovereignty, but still regulated citizenship. Moreover, those holding sovereign powers (occupation power) had used citizenship regulations for colonial purposes.

In Israel, alongside the question of territorial extension of the newly established state, was the question of 'who is Jew' and thus 'who is entitled to Israeli citizenship'. This was not an easy problem for the first constituent assembly (the Knesset). The Knesset was rapidly converted to a legislative assembly without adopting a constitution, leaving the question to be resolved later by the Basic Laws. Palestinians who remained within that part of Mandate Palestine which had been subjugated by war, and formed the territorial extension of the State of Israel, have been negated political and civic rights until recently, when their existence could no longer be negated. However, their citizenship continues to be regarded with suspicion, seeing in them as a danger to the Jewish character of the State of Israel. It is clear, however, that their belonging to the State of Israel meant a complete detachment within the Palestinian nation.

The same applies, *mutatis mutandis*, with the PA, in relation to legislating in citizenship issue. This task is not within the PA's limited administrative power or that of the PLO, which is a liberation movement and not a state. Citizenship law cannot be adopted without a state. Otherwise, it would only have a declarative content rather than the creative content of rights and duties. In the Palestinian case, the observance of official documents, those adopted or still in draft version, may give us some idea of who would qualify as a Palestinian national, and who would not. This may give an indirect hint of how *some* Palestinians view the issue of refugees.

91 Donna E. Arzt, *Refugees into Citizens: Palestinians and the End of the Arab-Israeli Conflict*, New York: Council on Foreign Relations and Washington DC: Brookings Publications, 1996.

The distinction between WBGs (including Jerusalemites) and other Palestinians has been totally institutionalised with the establishment of PA. The later were banned from participating in the electoral process, and thus, from any involvement in the political life of the PA era (unless through PLO representative delegations in other countries, although they have no right to access the oPt). This scenario cannot persist following the creation of the state; however, the PA institutions would exert huge weight on determining the nature of the Palestinian state institutions and who would be entitled to enjoy political rights.

However, many social problems can be dealt with using citizenship, mainly with regard to gender. In the Palestinian case, ‘the unachieved national rights remain of paramount concern, thus re-posing questions about the relationship between the national and the social. This may explain the limited utility of citizenship as a tool for social change in a situation of prolonged occupation. Citizenship requires a well-defined and established state, which is not the case in Palestine.’ (Jad 2004, 1).

The Palestinian state and citizenship

Citizenship is a legal-political relationship between individuals and ‘*their* state’. However, all citizenship regulations contain an element of inclusion and an element of exclusion with inevitable repercussions on individuals in terms of rights and duties. Through citizenship, individuals demarcate their legal status: they become citizens as opposed to foreigners. In other words, every citizenship law includes the germs of discrimination against those not entitled to some political, and sometimes social, rights in a given country.

Citizenship presumes the existence of the state and the state is a precondition of citizenship. Taking citizenship seriously means taking the state seriously. The project of state-for-its-citizens means accepting the state, not as merely a fact, but as a right. It is a project that concentrates on the future not on the past, on individual rights, rather than on group and communities’ rights. This means the passage from the concept of historical justice to that of distributive justice (Zrek 2004, 95). However, if citizenship does not exist outside the ‘state’, it is defined in relation to human beings, and not as a despotic state’s gift to selected individuals.

The regulation of the acquisition and loss of citizenship best expresses the state’s sovereignty in imposing limitations on who is part of the *demos* or the *polis*. Hence the importance of citizenship laws for modern states is that they regulate the ways in which individuals are part of ‘the people’, one of the three elements of the state. Definitions of citizenships are based on the assumption that there is a nation state with a clearly delineated community and boundaries. However:

[t]he crisis of the modern nation state is that the exception is everywhere becoming the rule. We increasingly live in a time where populations’ ontological status as legal subjects is suspended. The failure of laws that govern citizenship marks a decisive turning point in the life of the modern nation-state and a definitive emancipation from the naive notions of ‘people’ and ‘citizen’. (Hanafi, 2003)

The Palestinian state cannot define its community or its rights, nor can it delineate or control its borders. Accordingly, in the Palestinian context, the ‘state’ cannot determine who is a Palestinian and who is not under the Oslo Agreements, since ‘the nascent state is lacking some fundamental elements of a fully-fledged state’. (Jad 2004, 4).

In the past, the criterion of subjects ‘belonging’ was membership of a particular religion or *fatherland*. Since the time of Westphalia’s nation-states, the criteria have shifted to belonging to a political entity that is the outcome of three co-present elements: people, territory and sovereignty. Thus, most citizenship laws allow people to obtain the citizenship in three distinct cases:

- The *territorial* element, that is, obtaining citizenship based on *jus soli*
- The *human* element, that is, obtaining citizenship based on *jus sanguinis*

- The *sovereignty element*, that is, obtaining citizenship based on supreme powers of state organs on conferring or cancelling citizenship.

If a state defines itself in terms of race, religion, culture and/or language, these elements may help *similar* individuals to access citizenship. If the state is composed of a group of persons sharing common elements, the determination of belonging according to those similarities is not problematic. However, modern states are characterised by being ‘multi’ in terms of ethnicity, culture and language and conferring citizenship based on these elements may indeed be problematic.

Regulating Palestinian citizenship

In the Palestinian National Charter (Art. 5), a Palestinian is any Arab who normally resided in Palestine until 1947. This Article was included in earlier drafts of the Basic Law, but the version approved by the PLC in 1997 and endorsed by the President in 2002, and the Draft Palestinian Constitution (DPC) did not include a definition of a Palestinian.⁹² The Declaration of Principles and successive agreements between Israel and the PLO are also silent on the question of Palestinian nationality and/or citizenship. There is only an indirect admittance of the existence of a Palestinian people, with the PLO as legitimate representative, although dealing, at least in the interim period, exclusively with the affairs of Palestinians of WBGs and partially of East Jerusalem. Regulating the question of nationality does not depend on agreements between Israel and the PLO, and the drafters of the BL drafters preferred to leave this issue for later; so that BL citizenship shall be regulated by law (Art. 7). However, it stipulated one unique limit to the legislator’s right to regulate citizenship: ‘No Palestinian may be deported from the homeland, prevented or prohibited from returning to or leaving it, deprived of citizenship, or handed over to any foreign entity.’ (Art. 28).

Nationality/citizenship issue is one of the areas where the PA intentionally did not legislate. A draft citizenship law circulated in the early years of the PA’s existence (1995), before the election of the first PLC, but was never adopted.⁹³ Accordingly pre-PA constitutional documents, laws and regulations (with regard to citizenship) remain, theoretically, in force. However, they are often contradictory and some did not serve Palestinian national objectives. The main task of PA institutions is to harmonise the texts in the Palestinian legal system: citizenship is thus one of the issues where the PA is tempted to intervene. However, there is good reason to believe that blocking the draft Palestinian Nationality Law was a wise decision since citizenship is related to the state, and the Palestinian state does not yet exist and will not be established under continuing Israeli occupation of the West Bank and Gaza Strip. Adopting a Palestinian nationality law now would be, at best, void of content, and worse still, counterproductive insofar as it may be yet another reason for complication, misinterpretation, and division.

92 We believe the Charter definition of Palestinian nationality is still valid. Several Arab Constitutions leave the task of deciding who is part of the nation, to the law; for example, Egypt, Art. 6: ‘The Egyptian Nationality is defined by the Law’; Jordan, Art. 5: ‘Jordanian Nationality shall be defined by law’; Lebanon, Art. 6 (in this article nationality appears to be synonymous with citizenship): ‘The Lebanese Nationality... shall be determined by law’; Syria, Art. 43: ‘The law regulates Syrian Arab citizenship’.

93 A conference held in Ramallah on 26 January 1997 on ‘Draft Palestinian Citizenship Law’ organised by SHAML (Palestinian Diaspora & Refugee Centre). In his presentation, lawyer Anis Kassim analysed the draft citizenship law and the many similarities between the Draft Palestinian Nationality Law and the Jordanian Nationality Law 6/1954, which is in turn, similar to other nationality laws in the region. These similarities are related to the acquisition of citizenship by birth (*jus sanguinis* and *jus soli*), naturalisation, marriage, dual citizenship, relinquishing or being stripped of citizenship. However, for the speaker, there are many gaps in the draft mainly due to the extensive powers given to the executive to grant or strip citizenship without judicial review. The judiciary is excluded from any role in the issue of citizenship. Citizenship is presented, as in most Arab states, as a gift from the state and not as an individual right. The report of the conference was published in *majallat asseyassa al-Falasteniya*, No. 13 (1997), pp. 212–17.

The way in which the concept of Palestinian citizenship has developed and the problematic legal issues relating to Palestinian citizenship/nationality pose a challenge to the Palestinian legislator. The legislator will need to intervene on the question of citizenship, but within a general framework of political compromise and a peace agreement based on the ‘two states solution’. Regulating the issues of borders, refugees and citizenship will depend on the successful outcome of permanent status talks with Israel, settlement of the Israeli–Palestinian conflict and an end to military occupation rather than on the introduction of specific legislative texts by the PA (Khalil 2006a).

The Draft Palestinian Constitution (DPC)⁹⁴ could not ignore the issue of citizenship, since theoretically, it is the second step to statehood; achieving statehood means that certain issues, such as refugees, are already resolved, and that certain concepts, such as Palestinian citizenship, are already clarified.

According to the first DPC: ‘Palestinian citizenship is secure and permanent for any Arab who lived in Palestine before May 1948. It is passed down from father to child. It endures and is not cancelled by the passage of time. The law shall determine the ways of gaining and losing it and the rights and duties of multinational citizens’ (Art. 25). While the Palestinian Charter provided that: ‘Palestinians are those Arab nationals who, until 1947, normally resided in Palestine regardless of whether they were evicted from it or stayed there. Anyone born after that date to a Palestinian father—whether inside or outside Palestine—is also a Palestinian’ (Art. 5). If we compare the article on Palestinian nationals with the one on Palestinian citizenship, we note four things.

First, in the first DPC the year-limit is extended to May 1948, when the State of Israel was proclaimed, and not 1947 (as in the Charter), the year of the UN Partition Plan. This apparently meaningless change totally alters the concept of Palestine: in the Charter, Palestine is synonymous with historical Palestine, since Israel did not exist in 1947, and covers current Israel and the occupied territories of WBGS in its totality. In the DPC, on the contrary, Palestine could be considered simply as the rest of historical Palestine, i.e. what remained of Palestine after the creation of the State of Israel. This detail may have, rightly, excluded Palestinians with Israeli citizenship from the right to obtain Palestinian citizenship automatically. This is, however, a dangerous argument since it excludes all those Palestinians who had been living within the 1948 territories, but who left or were forced to leave. Those Palestinian nationals—refugees, mostly stateless—would not have the right to Palestinian citizenship according to the DPC.

Second, in various articles the Charter called for the destruction of Zionism and the liberation of Palestine (including the current Israel), considered as the Palestinians’ exclusive homeland. Nevertheless, it established that ‘Jews who had normally resided in Palestine until the beginning of the Zionist invasion would be considered Palestinians’ (Art. 6). This article can be considered superfluous in the DPC, since the Palestinians now recognise the existence of Israel (as a fact); the State of Israel, in line with Zionist beliefs, according to the Law of Return grants Israeli citizenship to all Jewish men or women as members of the Jewish nation.⁹⁵

Third, according to the first DPC the right to citizenship is transferred from father to son, thus excluding all sons of Palestinian women and daughters of Palestinian fathers. This limitation on entitlement to Palestinian citizenship only applied to Arabs who lived in Palestine before May 1948. After that date, Palestinian sons or daughters of Palestinian fathers and mothers were considered

94 For more details on Palestinian constitutional development, see Khalil (2003, 2006).

95 For example: the Old City of Jerusalem was only occupied in 1967; the Jews there were an indigenous population who had been living in Palestine before 1947. According to the Charter these Jews are considered Palestinians, but according to the DPC they are not entitled to Palestinian citizenship and are excluded from any chance of obtaining Palestinian citizenship; a blatant discrimination. However, this is hypothetical, as these Jews now enjoy full Israeli citizenship and are unlikely to want a Palestinian one. This does not rule out that in the future some Jews may opt for Palestinian citizenship or dual citizenship.

Israeli or Palestinian citizens, according to their place of birth. This citizenship is permanent, and cannot be cancelled with the passage of time. Ways of losing or gaining Palestinian citizenship would be determined by law. Palestinian refugees living abroad would have the same right to participate in shaping national policy decisions as Palestinians living in the Palestinian state.

Fourth, in the first DPC, only those Palestinians who are Arab, regardless of sex or religion, and who lived in Palestine before 1948 are automatically considered Palestinian. When the DPC refers to 'Arab', national minorities, according to the strict interpretation of the article, would have no right to Palestinian citizenship.

These points were put to the committee in charge of re-drafting the Constitution. The 2nd and 3rd DPC took some of these into consideration and the relevant articles were reformulated as follows:

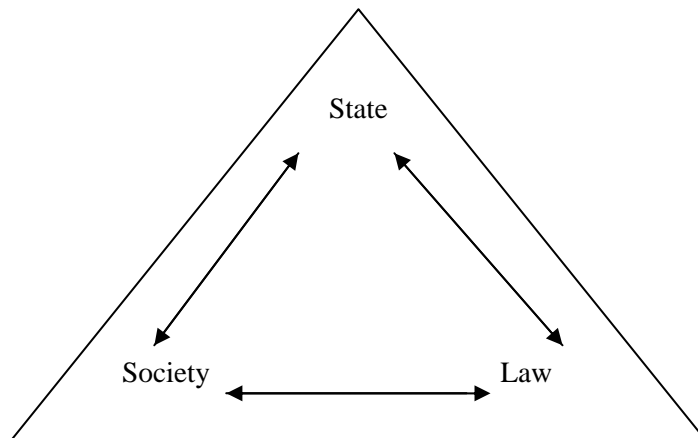
Art. 12: Palestinian nationality shall be regulated by law without prejudice to the rights of those who legally acquired it prior to 10 May 1948 or the rights of the Palestinians residing in Palestine prior to this date, and who were forced into exile, or departed from there and denied return thereto. This right is passed on from fathers and mothers to their progenitor. It neither disappears nor lapses unless voluntarily relinquished. A Palestinian cannot be deprived of his citizenship. The acquisition and relinquishment of Palestinian citizenship shall be regulated by law. The rights and duties of citizens are founded in the Constitution and governed by law.

Art. 13: Palestinians who left Palestine after 1948 and who were denied return shall have the right to return to the Palestinian State and bear its nationality. It is a permanent, inalienable, and irrevocable right. The State of Palestine shall strive to apply the legitimate right of return of the Palestinian refugees to their homes and villages, and to obtain compensation, through negotiations and political and legal channels, in accordance with the 1948 UN General Assembly Resolution 194, and the Principles of International Law.

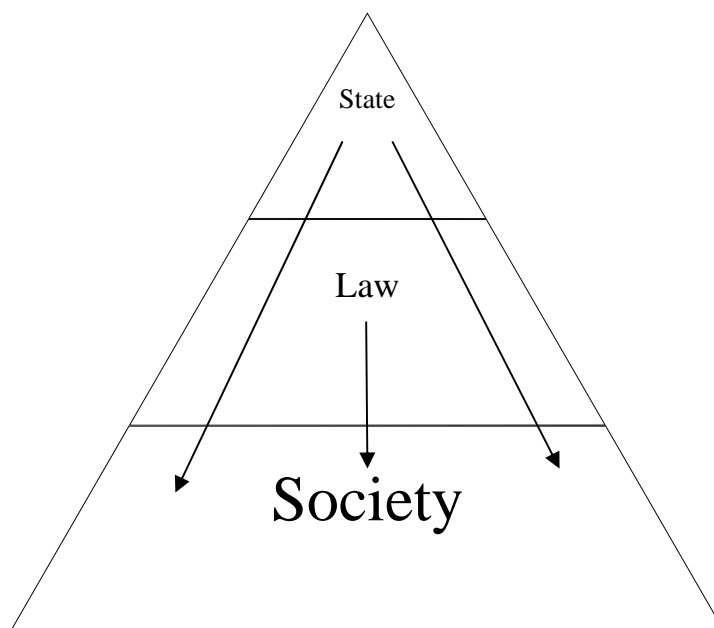
VII Conclusion

In democratic countries it is assumed that state institutions are representative of the population and that law expresses *la volonté générale*, and set limits to state and individuals' rights within the framework of the law. Citizenship is the legal connection between individuals and their state and entitles individuals to practice certain political and civic rights that empower them, through regular elections, to replace those exercising sovereign powers in the state's institutions.⁹⁶

⁹⁶ The state-society-law relationship in the Israeli-Palestinian case and the repercussions on citizenship crystallised in discussions with Lisa Hajjar, Associate Professor and Chair of Law and Society Program at the University of California and researchers at the Institute of Law, Birzeit University, on 6 January 2007.



In dictatorships or under foreign occupation, self-determination is hindered and a disconnection occurs in the triangle. State organs are not representative of the local population, their interests or identity, whilst law becomes a tool to control individuals and groups. A state continues to exist, although neither democratic, nor representative of the local population; the state originates law, but does not abide by it. Citizenship, with the rights it realizes, expresses this disconnection best.



Currently, the only sovereign state in historical Palestine is, *de facto*, the ‘Jewish and democratic’ State of Israel. Putting aside any reserves on this combination of characteristics in the same state, and reservations as to the status of non-Jews in a state that defines itself as ‘Jewish’, individuals inside the 1948 borders that meet the conditions of the 1952 Nationality Law, are citizens and the state (should) allow them to express their will in free and democratic elections.

By contrast, (Israeli) state power is detached from Palestinian society. Law is used to control local population(s), but is not observed by the state itself. Law thus becomes the origin of obligations rather than the generator of rights; legitimacy is confused with the legality of acts while equity and justice are limited to a formal minimum of judicial procedures. There is indeed a link between the (Israeli) state and the local population, but it is not a sovereignty–citizenship relationship; for the State of Israel (occupation force) the West Bank and Gaza Palestinians are the recipients of actions and regulations, and law serves to impose the best interests of the foreign occupier.

There are two ways to end this anomaly. The first is to grant all Palestinians the citizenship of the state and to re-create a connection between the state's sovereign organs and institutions and individuals through the installation of a representative system. This is the main argument used by the advocates of the unpopular (on both sides) 'bi-national state' solution. The second option is to establish a Palestinian state within historical Palestine, in order to realize the Partition Plan and successive UN resolutions, in line with international law and the right to self-determination. By doing so, WBGS Palestinians will be the citizens of the newly established state of Palestine. This 'two states solution' is the thesis now prevailing in the international and national arena.

A frequent counter argument to the 'two states solution' is the impossibility of dividing historical Palestine into two territories and populations. The question of refugees remains the cornerstone for any peace agreement between Israelis and Palestinians for future settlement of the conflict. However, There is no simple solution for the Palestinian refugee problem—only a creative one' and 'One must first begin by questioning the nature of both the Palestinian and the Israeli nation-states, the concept of state sovereignty and its inherent violence, and the inclusion/exclusion that the state exercises to determine who is a citizen.' (Hanafi 2003).⁹⁷

References

- Abu Zuhera, Issa (2002), *Refugees Rights in Current Arrangement*, 17 Roya, <http://www.sis.gov.ps/arabic/roya/17/page4.html> (in Arabic).
- Addajani, Ahmad S. (2004), *The Future of Outside Palestinians in the Context of Arrangement's Agreements*, Palestinian Center of Return, <http://www.prc.org.uk/data/asp/d5/595.aspx>.
- Akkawe, Deeb (2004), 'Legal Status of 1948 Palestinians in Public International Law', 26 *Majallat al-aswar*, 88–108 (in Arabic).
- Al-Mawed, Hamad Said (2000), *The Palestinian Refugees in Syria: Their Past, Present and Future*, paper prepared for the Expert and Advisory Services Fund International Development Research Centre, <http://www.arts.mcgill.ca/MEPP/PRRN/al-mawed.pdf>.
- Antonius, Rachad (2003), 'The Relevance of Principles of International Law to the Israeli–Palestine Conflict', March 2003, http://www.er.uqam.ca/nobel/ieim/IMG/pdf/Int_1_Law_and_the_Israeli-Pales.pdf.
- BADIL (Resource Centre for Palestinian Residency and Refugees' Rights) (2005), *Closing Protection Gaps: Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention*, <http://www.badil.org/Publications/Books/Handbook.pdf>.
- Bensaid, S. (1987), 'Al-Watan and Al-Umma in Contemporary Arab Use', in Gh. Salamé (ed.), *The Foundations of the Arab State*, London, Croom Helm, pp. 149–74.

97 This calls for both bona fide and a very fertile imagination; Hanafi concludes: 'The model of two extraterritorial nation states—Israeli and Palestinian—[...] falls somewhere between the two-state solution which due to power inequities is now leading to an apartheid system, and the absolutely unpopular solution of a bi-national state. A sort of "confederation" may be a more feasible solution: two extraterritorial nation states, with Jerusalem as their capital, contemporaneously forming, without territorial divisions, two different states.' (Hanafi 2003).

- Bishara, Azmi (2004), *Israel, Palestine and the Question of Citizenship*, revised web version of 6 Feb. 2004, <http://www.sant.ox.ac.uk/areastudies/lecturesarchive/Bishara.pdf>.
- Boling, Gail J. (2001), *Palestinian Refugees and the Right of Return: An International Law Analysis*, BADIL, Information & Discussion Brief, No. 8, Jan. 2001, <http://www.badil.org/Publications/Briefs/Brief-No-08.htm>.
- Carré De Malberg, R. (1922), *Contribution à la théorie générale de l'état*, Paris, Librairie de la Société du Recueil Sirey, Vol. II.
- El-Abed, Oroub (2003), 'Palestinians in Egypt', International Development Research Centre Stocktaking II Conference on Palestinian Refugee Research, Ottawa, 17–20 June 2003. http://network.idrc.ca/uploads/user-S/10576075960Session_1-AL-ABED_-_PAPER.doc.
- _____. (2004a), 'The Forgotten Palestinians: How Palestinian Refugees Survive in Egypt', *Forced Migration Review* 20. <http://www.fmreview.org/FMRpdfs/FMR20/FMR2013.pdf>
- _____. (2004b), 'Palestinian Refugees in Egypt', *FMO Research Guide*, <http://www.forcedmigration.org/guides/fmo028/fmo028.pdf>
- _____. (2004c), 'Palestinian Refugees in Jordan', *FMO Research Guide*, <http://www.forcedmigration.org/guides/fmo025/fmo025.pdf>
- _____. (2006), 'Immobile Palestinians: ongoing plight of Gazans in Jordan', *Forced Migration Review*, No. 26, August 2006, <http://www.fmreview.org/text/FMR/26/07.doc>
- _____. (n.d.), 'Stateless Gazans: Temporary Passports in Jordan, paper for SHAML, Ramallah.
- Elsayed-Ali, Sherif (2006), 'Palestinian Refugees in Lebanon', *Forced Migration Review*, No. 26, August 2006, <http://www.fmreview.org/text/FMR/26/05.doc>.
- Jad, Islah (2004), *Citizenship under a Prolonged Occupation: The Case of Palestine*, Berkeley Electronic Press, <http://www.kit.nl/smartsite.shtml?ch=fab&id=6184>.
- Hammami, Rema and Penny Johnson (1999), 'Equality with a Difference: Gender and Citizenship in Transitional Palestine', *Social Politics*, Autumn 1999, 314–43.
- Hanafi, Sari (2003), 'The broken boundaries of statehood and citizenship', *Borderlands e-journal*, 2(3), http://www.borderlandsejournal.adelaide.edu.au/vol2no3_2003/hanafi_boundaries.htm.
- Khalidi, R. (1997), *Palestinian Identity: the Construction of Modern National Consciousness*, New York, Columbia University Press.
- Khalil, Asem (2003), *Which Constitution for the Palestinian Legal System*, PhD. thesis, PUL.
- _____. (2005), 'Israel, Palestine, and International Law', *Miskolc Journal of International Law*, Vol. 2, No. 3, pp. 20–39, <http://www.uni-miskolc.hu/~wwwdrint/MJIL5/20053khalil1.pdf>.
- _____. (2006a), *Legislating on Migration: the Anomalous Case of the Palestinian Authority*, Analytical and Synthetic Notes 2006/11, Legal Module, Florence, RSCAS, http://www.iue.it/RSCAS/e-texts/CARIM-AS06_11-Khalil.pdf.
- _____. (2006b), *The Enactment of Constituent Power in the Arab World: the Palestinian Case*, PIFF 47, Helbing & Lichtenhahn.
- Lerner, H. (2004), *The People of the Constitution: Constitution-making, Legitimacy and Identity*, paper presented at the mini-APSA, Department of Political Science, Columbia University, 30 April 2004, <http://www.mada-research.org/programs/constitution/lerner.pdf>
- Loewenstein, Jennifer (2006), 'Identity and Movement Control in the oPt', *Forced Migration Review*, No. 26, August 2006, available on-line at <http://www.fmreview.org/text/FMR/26/11.doc>.

- Maksoud, Clovis (1994), 'Autonomy and Minorities: the Status of the Kurds and the Palestinians', 16 *Loy. L.A. International Law and Comparative Law Journal*, pp. 291–98.
- Olwan, Mohamed Y. (2006), *The Legal Framework of International Migration in Jordan*, Analytic and Synthetic Notes 2006/1, Legal Module, Florence, RSCAS.
- Passia (2005), *Diary*, Jerusalem: PASSIA, Palestinian Academic Society for the Study of International Affairs.
- Preuss, U.K. (1994), 'Constitutional Power-making of the New Polity', in M. Rosenfeld (ed.), *Constitutionalism, Identity, Difference, and Legitimacy: Theoretical Perspectives*, Durham, Durham University Press, 1994, pp. 140–70.
- Qafisheh, Mutaz (2000), *Report on Palestinian Citizenship (1917–2000)*, Legal Reports Series (15), PICCR (in Arabic).
- Quigley, John (1998), 'Displaced Palestinians and a Right to Return', *Harvard International Law Journal*, 171–229.
- Raffonelli, Lisa (2004), 'With Palestine, Against the Palestinians', *World Refugee Survey* 66–73.
- Rempel, Terry M. (2006a), 'Palestinian Refugees in the West Bank and the Gaza Strip', *FMO Research Guide*, <http://www.forcedmigration.org/guides/fmo043/fmo043.pdf>.
- _____. (2006b), 'Who are Palestinian Refugees?' *Forced Migration Review*, No. 26, August 2006, <http://www.fmreview.org/text/FMR/26/02.doc>.
- Saidman, Lewis (2004), 'Do Palestinian Refugees have a Right of Return to Israel? An Examination of the Scope of and Limitations on the Right of Return', 44 *Va. Journal of International Law*, pp. 829–77.
- Schulz, Helena (1999), 'Identity Conflicts and their Resolution: the Oslo Agreement and Palestinian National Identities' in H. Wiberg and Ch. P. Scherrer (eds.), *Ethnicity and Intra-State Conflict*, Aldershot: Ashgate, pp. 229–47.
- Shafie, Sherifa (2003a), *Palestinian Refugees in Lebanon*, FMO Research Guide, <http://www.forcedmigration.org/guides/fmo018/fmo018.pdf>.
- _____. (2003b), *Palestinian Refugees in Syria*, FMO Research Guide, <http://www.forcedmigration.org/guides/fmo017/fmo017.pdf>.
- Shearer, David (2006), 'Territorial Fragmentation of the West Bank', *Forced Migration Review*, No. 26, August 2006, <http://www.fmreview.org/text/FMR/26/10.doc>.
- Shehadeh, Raja (1997), *From Occupation to Interim Accords: Israel and the Palestinian Territories*, London, Kluwer Law International.
- Shiblak, Abbas (1998), Book Review: 'Refugees into Citizen: Palestinians and the End of the Arab Israeli Conflict, by Donna E. Arzt (1996)', *Journal of Refugee Studies* 1998 11(3): 337–38.
- _____. (ed.) (2003), 'The Palestinian Diaspora in Europe, Challenges of Dual Identity and Adaptation', *Refugee and Diaspora Studies*, No. 2.
- _____. (2006), 'Stateless Palestinians', *Forced Migration Review*, 26.
- _____. and Davis, Uri (1995), *Civil and Citizenship Rights of Palestinian Refugees*, paper presented at the Palestinian Diaspora & Refugee Centre (SHAML), workshop on Palestinian Refugees and International Law, Ramallah, 14 Dec. 1995.
- Scobbie, Iain (2007), 'Is Gaza still occupied territory?', *Forced Migration Review*, No. 26, August 2006. <http://www.fmreview.org/text/FMR/26/08.doc>.

Tabet, Gihane (2005), 'Women in Personal Status Laws: Iraq, Jordan, Lebanon, Palestine, Syria', SHS Papers in Women's Studies/Gender Research, No. 4, <http://portal.unesco.org/shs/>.

Töpperwien, N. (2001), *Nation-State and Normative Diversity*, Bâle/Genève/Munich, Helbing & Lichtenhahn.

Vatikiotis, P. (1987), *Islam and the State*, London, Croom Helm.

Zrek, Raef (2004), 'Palestinians in Israel after Oslo: the Dilemma of Justice and Force' 58 *Majallat Adderassat al-falasteeneya*, 91–102 (in Arabic).