

Socioeconomic Rights of Palestinian Refugees in Arab Countries

ASEM KHALIL*

Abstract

This article discusses the possible impact of global crisis on the economic and social rights of Palestinian refugees in host Arab countries. While the impact of global crisis is not felt only by refugees, this article will only address the case of Palestinian refugees in the Arab states that host the majority of Palestinian refugees; that is, in Egypt, Jordan, Lebanon, and Syria.

Historically speaking, crisis (political, economic and social) at the national, regional and international levels has had a negative impact on Palestinian refugees, not only in terms of political enforcement but also in terms of their legal recognition. Accordingly, there are no grounds to believe things will be different with the current global financial crisis. It may even be worse, given the natural increase in the number of Palestinian refugees in Arab countries and, accordingly, in their needs.

The reasons behind this difficult situation will be discussed in detail, including what is commonly referred to as the 'protection gap' for Palestinian refugees in host Arab states, on the international and regional level; the lack of clear legal texts providing and protecting basic rights; and the inclusion of discriminatory legal texts in the constitutions of Arab states. These matters may partly explain why the status of rights for Palestinian refugees in host Arab states is more fragile than for other categories of persons.

This article will also argue that political enforcement, effectuated by concerned countries or by international organizations, without legal recognition gives such actions the status of charitable acts, rather than the fulfillment of legal obligations. It is only in the case of legal obligations that rights become justiciable and states, as much as international organizations, become accountable. The nature of assistance provided to Palestinian refugees by concerned states proves that it is far from being considered as their legal obligation. As a consequence, such assistance is dependent on the resources and political willingness of donor communities for voluntary contributions. Accordingly, the negative impact of the financial crisis will be felt by Palestinian refugees, and donor communities are likely to offer humanitarian aid rather than development.

Finally, the article argues that the deterioration in the global economic context is no justification for states – whatever their level of income – to compromise on their fundamental human rights obligations. In such times it is even more important that states guarantee minimum essential levels of human rights; take deliberate measures targeted at the most vulnerable; avoid measures that are retrogressive or discriminatory; and orient public policy towards the progressive realization of the rights of the whole population through the equitable distribution of available resources.

* Asem Khalil, Assistant Professor, Faculty of Law and Public Administration, Director of Ibrahim Abu-Lughod Institute of International Studies, Birzeit University. The author is very grateful for suggestions made by the *IJRL* reviewers with respect to this article.

1. Introduction

The Palestinian refugee situation is protracted. Although there are unique legal and political aspects to the Palestinian refugee situation, there are general principles that can be applied to their situation. This is particularly so with regard to any analysis of their socioeconomic rights.

Enjoyment of socioeconomic rights by Palestinian refugees in countries in the region has long been precarious, notwithstanding the existence of an international legal framework for the protection of those rights and a dedicated international agency to provide support in the delivery of relevant assistance. This article deals, in particular, with Palestinian refugees in Egypt, Jordan, Lebanon and Syria.¹ An international legal framework provides for the protection of Palestinian refugees' socioeconomic rights; although socioeconomic rights are considered by some to be non-justiciable and therefore unenforceable, there is at least a core content in those rights from which no derogation is permitted; there is also an obligation to ensure the progressive realization of those rights.

However, in practice, these obligations are interpreted and applied inconsistently at a domestic level; this has been partly due to a political perception that integration will compromise the ultimate objective of the right to return. Although the right to return remains the central preoccupation of the Palestinian refugee population as a whole, this ultimate objective should not be regarded as compromised by the enjoyment of socioeconomic rights in the meantime.

In this regard, the problem of socioeconomic rights enjoyment is less a matter of recognition in international law than it is a matter of enforceability at a national level; because individual states have developed different frameworks applicable to this group of refugees, there is (a risk of) tension within the Palestinian refugee population in the region and within the national populations that host them. One of the key problems that Palestinian refugees encounter is that they lack a secure legal status (whether naturalisation/citizenship rights or some other form of secure residency). This has serious implications for their enjoyment of socioeconomic rights, particularly, the right to work.

¹ The selection of Egypt, Jordan, Lebanon, and Syria is justified by the simple fact of their being, with the West Bank and Gaza Strip, the main destinations for Palestinian refugees during the 1948 war (the *nakba*). They are the four countries adjacent to historic Palestine, and the places where most Palestinian refugees are still living and where most refugee camps are present. The West Bank and Gaza Strip are not covered in this article for two reasons. First, the West Bank and Gaza Strip are occupied territories and, as such, are territories where International Humanitarian Law applies, making the legal status and rights distribution map totally different from that of host Arab states. Secondly, Palestinian refugees and non-refugees fell under Israeli occupation in 1967 and were treated alike with regard to residency status. They are even treated alike under the Palestinian Authority, with regard to political, civil, economic and social rights. The only difference is the entitlement of registered Palestinian refugees to services provided by UNRWA, which will be indirectly referred to later, under the issue of UNRWA and the impact of the current crisis on it.

With an already bleak situation, the long-term impact of the global financial crisis could be serious; this may increase the vulnerability of Palestinian refugees, in particular, those whose enjoyment of socio-economic rights depends on support provided by what is likely to be a weakened United Nations Relief and Works Agency (UNRWA) and other aid agencies. Although the socio-political dimensions of its operations are highly contested, UNRWA remains a significant source of support for Palestinian refugees. Their vulnerability shows that the protection of Palestinian refugees is as much a problem of legal (un)enforceability as it is one of political (un)accountability.

The article will first present what is referred to as a 'protection gap', which describes best the status of rights and freedoms of Palestinian refugees in host countries (section 2). It will then discuss selected socio-economic rights based on standards determined by the international obligations of host countries (section 3). Finally, it will deal with the current global financial crisis, as an example of the continuing fragility of the Palestinian refugee situation, and will advance arguments in favour of supporting UNRWA and in favour of the recognition and enforcement of the socioeconomic rights of Palestinian refugees in host countries (section 4).

2. The protection gap

Palestinians are one of the largest national groups among refugees worldwide² and one of the largest stateless communities in the world.³ Displaced Palestinians fall *grosso modo* into three general categories:⁴ first, those displaced or expelled from their place of origin as a result of the *nakba* (and their descendants); second, those displaced from their places of origin as a result of the 1967 war (and their descendants); third, those who reside outside historic Palestine and are unable (due to revocation of residency, denial of family reunification, and deportation) or unwilling (owing to a well-founded fear of persecution) to return (and their descendants).

It is worth noting that only the first group fits within the framework of the UNRWA operational definition: 'Palestine refugees are persons whose normal place of residence was Palestine between June 1946 and May 1948, who lost both their homes and means of livelihood as a result of the 1948 Arab-Israeli conflict'.⁵ Following the 1967 war the definition

² E. Zureik, 'Constructing Palestine through Surveillance Practices' (2001) 28 *British Journal of Middle Eastern Studies* 205-27 at 206; Badil, 'Survey of Palestinian Refugees and Internally Displaced Persons 2006-2007' (Badil Resource Center for Palestinian Residency and Refugee Rights, 2007), 42.

³ A. Shibli, 'Stateless Palestinians' (2006) 26 *Forced Migration Review* 8-9, 8.

⁴ Badil, above n. 2, 42.

⁵ Available at: <<http://www.un.org/unrwa/refugees/whois.html>>.

remained unaltered, but UNRWA's mandate was extended by the explicit authorization of United Nations (UN) General Assembly resolution 2252 of 1968, renewed in the UNRWA annual reports.⁶ The third group remains outside UNRWA's mandate *de jure* and *de facto*.

According to the latest published statistics from UNRWA, there are 4,766,670 registered Palestinian refugees (1,396,368 of whom are registered in camps).⁷ While registration is a *sine qua non* for receiving assistance from UNRWA,⁸ many Palestinian refugees – although they fall within the framework of the above operational definition – are not registered with UNRWA. According to some estimates they exceed one million.⁹

Many Palestinian refugees are unregistered because of their omission to register in one of UNRWA's five areas of operation (Jordan, Lebanon, Syria, the West Bank and the Gaza Strip). Others, such as Palestinian refugees in Egypt,¹⁰ are unregistered simply because they are present outside UNRWA's five areas of operation. Unregistered Palestinian refugees may have a legal document issued by a host country. Others may simply lack any paper documentation. Those undocumented Palestinian refugees are legally nonexistent for UNRWA's purposes, as well as for host countries.¹¹

In other words, Palestinian refugees (referring to all those Palestinians *de facto* unable to return to their home country) go beyond the operational definition UNRWA puts forward to determine who is entitled to its services. To a large extent, they also go beyond the definition set down by the 1951 Convention relating to the Status of Refugees (the 1951 Convention).¹² They continue to be candidates for UNRWA services despite having acquired the nationality of the host country, as is the case for most Palestinians in Jordan.

⁶ L. Takkenberg, *The Status of Palestinian Refugees in International Law* (Clarendon Press, 1998), 82.

⁷ They are distributed in UNRWA areas of operation as follows: 1,983,733 in Jordan, 425,640 in Lebanon, 472,109 in Syria, 778,993 in the West Bank and 1,106,195 in the Gaza Strip. Those figures represent the number of registered Palestinian refugees as of 1 Jan. 2010, published on the UNRWA website <<http://www.unrwa.org/userfiles/20100628261.pdf>>.

⁸ Palestinian refugees, according to the above definition, are entitled to assistance, but UNRWA services are not provided for all of them. Palestinian refugees need to satisfy three other conditions: 1) living in the UNRWA area of operations, 2) being registered with the Agency, 3) being in need of assistance.

⁹ W. Said, 'Facts, Rights and Remedies' (2005) 28 *Hastings Int'l & Comp. L. Rev.* 349-67, 350.

¹⁰ The number of Palestinian refugees in Egypt is estimated to be 50,000-70,000. According to Takkenberg, the total number of Palestinians in Egypt may amount to 50,000-100,000. Takkenberg, above n. 6, 150-4. For more about Palestinians in Egypt, see, O. El-Abed, 'The Forgotten Palestinians: How Palestinian Refugees Survive in Egypt' (2004) 20 *Forced Migration Review* 29-31.

¹¹ For more about the undocumented Palestinian refugees in Lebanon, see, C. Petrich, 'No freedom, no future: undocumented Palestinian refugees in Lebanon' (2006) 26 *Forced Migration Review* 15-16.

¹² Convention relating to the Status of Refugees of 1951, available at: <<http://www1.umn.edu/humanrts/instrree/v1crs.htm>>.

2.1 Palestinian exceptionalism

The large number of Palestinian refugees, their prolonged exile, their statelessness, and Israeli refusal to re-admit Palestinian refugees¹³ render their situation extraordinary and unique.¹⁴ This exceptionalism is manifest in two areas, the eventual solution of their refugeehood and the way they need to be treated in exile. Historically speaking, at least, the treatment of the Palestinian refugee issue as a 'case apart' was the express desire of their leadership, the scholars who study them, and the agencies and activists that sought to assist them.¹⁵

Besides, the international community and the Arab states have opted for keeping Palestinian refugees separate from the global refugee protection regime by maintaining a system of separate agencies to address their situation.¹⁶ While this exceptional consideration reflects the special interest dedicated by the international community to Palestinian refugees for more than sixty years,¹⁷ arguments that are built on this uniqueness alone to support refugee exclusion from international refugee protection, or the 'exclusion' interpretation of the 1951 Convention, are not convincing.

Rather, their exclusion from international protection mechanisms due to the assistance provided by UNRWA or by the (*de facto* inactive) UN Conciliation Commission for Palestine (UNCCP)¹⁸ is one of the reasons why they are considered a case apart – not the other way around. In other words, it is correct to conclude, based on the premise that Palestinian refugees are excluded from the international protection regime, that they are

¹³ As pointed out by Elsayed-Ali: 'The Palestinian refugee problem is uniquely complex, protracted and significant. One of its peculiar aspects is that most Palestinian refugees want to return to their homes and/or lands but are unable to do so not because of a fear of persecution – commonly found in other refugee situations – but because they will not be allowed to enter Israel by the Israeli authorities'. S. Elsayed-Ali, 'Palestinian Refugees in Lebanon', (2006) 26 *Forced Migration Review* 13-4, 13.

¹⁴ Introducing the book that he had edited, Dumper identified at least five unique aspects of the Palestinian refugee case: the longevity combined with non-integration, the demographic scale and ambiguity, the unique legal and administrative framework, the fact that Palestinian return is precluded by the ethno-religious nationalism of the Israeli government, and the Palestinians' lack of sovereignty over any of their historic territory. M. Dumper, *Palestinian Refugee Repatriation: Global Perspectives* (Routledge, 2005), cited in: M. Kagan, 'The (Relative) Decline of Palestinian Exceptionalism and its Consequences for Refugee Studies in the Middle East' (2009) 22 *JRS* 417-38, at 419-20.

¹⁵ M. Kagan, 'The Decline of Palestinian Exceptionalism: Observation of a trend and its consequences for refugee studies in the Middle East' (The American University in Cairo, The Forced Migration & Refugee Studies Program, 2007), 6.

¹⁶ Kagan, above n. 14, 427.

¹⁷ It also explains why the UN General Assembly decided to have separate international agencies to provide protection and assistance for Palestinian refugees. S. Akram and G. S. Goodwin-Gill, 'Brief Amicus Curiae on the Status of Palestinian Refugees under International Law' in *The Palestine Yearbook of International Law* (Kluwer Law International, 2000/2001), 185-260, at 194.

¹⁸ The UNCCP was established by UN General Assembly Resolution 194, 11 Dec. 1948, with a protection mandate for Palestinian refugees. See, J. Suleiman, 'Marginalised Community: The Case of Palestinian Refugees in Lebanon' (University of Sussex, Development Research Centre on Migration, Globalisation and Poverty, 2006), 9.

treated as a case apart by all concerned actors (host countries, Palestinian leadership, UN refugee agencies). Scholars may even advance arguments considering the uniqueness of Palestinian refugees' case for didactic purposes (in order, for example, to avoid misleading comparisons and conclusions or erroneous reference to common principles, as those available in international refugee law). However, from that fact alone it is not possible – without committing a fatal logical error – to conclude that they ought to be excluded from the international protection regime.

The 'protection gap' is used here to describe what many scholars consider to be the position of Palestinian refugees in the region.¹⁹ It suggests that international protection mechanisms are rare, if not absent, and that Palestinian refugees are left without legal protection. The gap is the result of the non-applicability of the 1951 Convention to Palestinian refugees under the pretext of their being subject to separate international agencies.²⁰ It is also the result of non-ratification by concerned states of the 1951 Convention and the overall status of rights and freedoms therein.

2.2 Lack of ratification

Without undermining the applicability of customary international law on refugees,²¹ Jordan, Lebanon and Syria are not legally bound by the 1951 Convention and its Protocol.²² The government of Jordan, although not a signatory to the 1951 Convention, had signed the 1998 Memorandum of Understanding with the UN High Commissioner for Refugees (UNHCR) that outlines the major principles of international protection, including the definition of a refugee and the principle of non-refoulement.²³ This memorandum, for example, allows 'mandate refugees' a maximum stay of six months in Jordan.²⁴ The memorandum, however, does not

¹⁹ E.g., *ibid.*, S. Akram, 'Palestinian Refugees and Their Legal Status: Rights, Politics, and Implications for a Just Solution' (2002) 31 *Journal of Palestine Studies* 36-51; Badil, 'Closing Protection Gaps: Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention' (BADIL Resource Center for Palestinian Residency and Refugee Rights, 2005).

²⁰ T. Rempel, 'Who are Palestinian Refugees?' (2006) 26 *Forced Migration Review* 5-7, 5.

²¹ For more about applicability of customary international law on refugees, see, L. A. Reeds, 'Sixty Years in Limbo: The Duty of Host States to Integrate Palestinian Refugees under Customary International Law' (2006) 81 *NYUL Rev.* 351-76.

²² As noted by Said, 'Lebanon is not a signatory to either the Convention Relating to the Status of Refugees of 1951 or the 1967 Protocol Relating to the Status of Refugees, so the safeguards and guarantees of these documents are not legally binding on Lebanon with regard to its Palestinian population'. W. Said, 'The Palestinians in Lebanon: The Rights of the Victims of the Palestinian-Israeli Peace Process' (1999) 30 *Columbia Human Rights Law Review* 315-57, 325. The same applies to Syria and Jordan. This does not mean that they have no international legal obligations toward refugees, since in all circumstances customary international law related to refugees is binding on all states. For more, see, Reeds, above n. 21.

²³ For more, see, <<http://www.unhcr.org/cgi-bin/tcxis/vtx/page?page=49e486566>>.

²⁴ M. Olwan, 'Jordan: the Legal Dimension of Migration' in P. Fargues (ed.), 'Mediterranean Migration 2006-2007 Report' (European University Institute, Robert Schuman Centre for Advanced Studies, 2007), 97-104 at 99.

apply to Palestinian refugees (such as the 1967 Palestinian refugees from Gaza) who have a special temporary travel document issued by Jordanian authorities.²⁵

Of the four countries considered in this article, only Egypt has ratified both the 1951 Convention and its Protocol of 1967.²⁶ Under a 1954 agreement between UNHCR and the Egyptian government, UNHCR has assumed the responsibility for determining refugee status in Egypt. It also provides protection and assistance to refugees.²⁷ Available literature, nonetheless, suggests that only a small number of Palestinian refugees in Egypt are registered with UNHCR, and the vast majority are considered foreign nationals in terms of rights and entitlements, and they live unassisted.²⁸ According to UNHCR, Palestinian refugees are not considered 'people of concern'.²⁹ In other words, the ratification of Egypt did not change the *de facto* exclusion of Palestinian refugees from the protection system offered for refugees by conventional international law.

Arab states have been reluctant to ratify the 1951 Convention or to apply it to Palestinians because these states deem it inadequate for addressing the specificity of Palestinian displacement.³⁰ In fact, the League of Arab States (the League) and member states did not encourage UNHCR to play a formal role in protecting Palestinian refugees due to concerns that UNHCR involvement might result in a decrease of international support for UNRWA, and for fear of weakening the 'right of return'. Additionally, the League and UNHCR signed a cooperation agreement 'that provides for periodical consultation, mutual representation, exchange of documents and information, and co-operation with UNRWA'.³¹

The concern Arab states advance, according to Suleiman, is 'that the Palestinian refugee problem would not be adequately addressed if UNHCR's durable solutions were applied to Palestinian refugees, such as resettlement to a third country or settlement in the first country of asylum'.³² In fact, many of the articles of the 1951 Convention seem problematic if applied to Palestinians, especially article 1(C), which provides a list of cases

²⁵ For more about Gazans in Jordan, see, O. El-Abed, 'Immobile Palestinians: ongoing plight of Gazans in Jordan' (2006) 26 *Forced Migration Review* 17-18.

²⁶ Egypt had expressed a number of reservations, including on arts. 20 (dealing with rationing system); 22, para. 1 (dealing with public education); 23 (dealing with public relief); and, 24 (dealing with labour legislation and social security), 'because these articles consider the refugee as equal to the national'. Available at: <http://treaties.un.org/Pages/ViewDetailsII.aspx?&src=TREATY&mtdsg_no=V~2&chapter=5&Temp=mtdsg2&lang=en#EndDec>.

²⁷ K. Grabska, 'Who Asked Them Anyway? Rights, Policies and Wellbeing of Refugees in Egypt' (University of Sussex, Development Research Centre on Migration, Globalisation and Poverty, 2006), 25.

²⁸ *Ibid.*, 26-7.

²⁹ See, UNHCR website: <<http://www.unhcr.org/cgi-bin/texis/vtx/page?page=49e486356>>.

³⁰ Suleiman, above n. 18, 11.

³¹ Badil, above n. 2, 124.

³² Suleiman, above n. 18, 11.

in which the convention ceases to apply to any person falling under the terms of section A, which include, *inter alia*, where he/she 'has acquired a new nationality, and enjoys the protection of the country of his new nationality'.

It is undeniable that the 1951 Convention contains many shortcomings where the issue of Palestinian refugees is concerned. If Palestinian refugees in Jordan, for example, were covered by the 1951 Convention, they would automatically lose their status of 'refugee' by virtue of accepting Jordanian citizenship.³³ Under UNRWA regulations, on the contrary, obtaining citizenship does not terminate refugee status. They remain, as much as their descendants, refugees and entitled to return to the lands from which they were driven, and to receive compensation for their dispossession. This is one of the reasons why UNRWA's definition seems more attractive and more appropriate for Palestinians and Arab states alike.

For Said, '[t]he exclusion of Palestinians derived from the fact that their predicament differs from that of other refugees who are covered by the Convention – the Palestinians are striving to be repatriated to their homeland, not to be assimilated into the country in which they currently reside. The status of most refugees is that they are fleeing their country to win asylum, and subsequently absorption, into another country. The status of the Palestinian refugees is quite the opposite'.³⁴ This explains why Palestinian refugees and their leadership resisted being labeled or treated as refugees: because 'they feared that the refugee label would render them an anonymous mass of exiles rather than recognize their national identity and desire to return',³⁵ taking into consideration that they did not choose to flee in the first place, but were actually forced out.

Nevertheless, the 1951 Convention contains a minimum of rights and freedoms that Arab states to various degrees failed to abide by in many respects – apparent from the review of socioeconomic rights in the four countries considered below. The 1951 Convention imposes on contracting parties the requirement to ensure the most favourable treatment possible. It should not be less favourable than that accorded to aliens in the same circumstances with regard to 'the acquisition of movable and immovable property' (article 13), the right to practice a liberal profession (article 19), housing (article 21) and 'education other than elementary education' (article 22). The convention also demands that contracting parties give refugees the same rights with regard to 'the right to engage in wage-earning employment' (article 17) as enjoyed by the most favoured nationals.

³³ Said, above n. 9, 351-2.

³⁴ Said, above n. 22, 325.

³⁵ Kagan, above n. 14, 421. Kagan reached this conclusion following the historical account advanced by Khalidi (R. Khalidi, 'Observations on the Right of Return' (1992) 21 *Journal of Palestine Studies* 29-40) of the way Palestinians dealt with the issue of refugeehood, fearing implications for their right of return.

2.3 A matter of interpretation

Central to the debate over the applicability of the international protection regime to Palestinian refugees is article 1(D) of the 1951 Convention, which was interpreted to exclude some categories of refugees from the benefits of the Convention.³⁶ A similar provision was inserted into article 7 of the 1950 Statute of UNHCR.³⁷ According to some authors, article 1(D) was inserted during the drafting process to address the specific circumstances of Palestinian refugees.³⁸ Although it may be difficult – but not for that reason impossible³⁹ – to determine in a definitive way what the intentions behind article 1(D) were, it is nevertheless clear that it has been interpreted by states in a way that excludes Palestinians from receiving protection or assistance from other UN agencies. A note issued by UNHCR states that, '[i]n today's context, this excludes from the benefits of the 1951 Convention those Palestinians who are refugees as a result of the 1948 or 1967 Arab-Israeli conflicts, and who are receiving protection or assistance from the UNRWA'.⁴⁰

It should be outlined here that the UNRWA definition referred to earlier regarding who is a Palestinian refugee is only 'operational', in other words, it exclusively serves the purpose of defining those entitled to assistance, UNRWA does not pretend or aspire to define the legal status of Palestinian refugees. This is related to its mandate, which does not provide for legal protection. As pointed out by Akram, UNRWA's operational definition of

³⁶ Art. 1D: 'This Convention shall not apply to persons who are at present receiving from organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees protection or assistance. 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 this Convention'. See Convention, available at: <<http://www1.umn.edu/humanrts/instrree/v1crs.htm>>.

³⁷ 'Provided that the competence of the High Commissioner . . . shall not extend to a person . . . (c) Who continues to receive from other organs or agencies of the United Nations protection or assistance'. The statute is available at: <<http://www.unhcr.org/3b66c39e1.html>>.

³⁸ Rempel, above n. 20, 6.

³⁹ Some scholars indeed have used the *travaux préparatoires* and official declarations and statements to determine signatories' intentions. See, Akram and Goodwin-Gill, above n. 17. According to Kagan, the original text of art. 1D of the 1951 Convention was proposed by Egypt, Lebanon and Saudi Arabia. As for the second sentence of art. 1D, it was proposed by Egypt. Kagan, above n. 14, 428, making reference to Akram and Goodwin-Gill, above n. 17, 247-8. The fact that this article was suggested by Arab states does not mean that it serves the interests of Palestinian refugees. As suggested earlier, Arab states may have different goals that may oppose those of Palestinian refugees. Sometimes Palestinian refugees were targeted by host Arab states, such as in Lebanon (see, Akram and Goodwin-Gill, above n. 17, 226) and Jordan (D. Arzt, *Refugees into Citizen: Palestinians and the End of the Arab Israeli Conflict* (A Council of Foreign Relations Book, 1996), 44). This means that it is wrong to believe that the drafters of the 1951 Convention had only good intentions, including those who proposed art. 1D; this assumption may be misleading or simply incorrect.

⁴⁰ UNHCR, 'Note on the Applicability of Article 1D of the 1951 Convention relating to the Status of Refugees to Palestinian refugees' (2002), available at: <<http://domino.un.org/unispal.nsf/0/68c845adcf3671a85256c85005a4592?OpenDocument>>.

a Palestinian refugee is limited to needy persons, and is thus markedly different from the protection-related definitions of a refugee found in the 1951 Convention and the UNHCR statute, 'As a result . . . the agency beneficiaries receive basic subsistence . . . but none of the protections for a wide range of human rights and fundamental freedoms that were to be guaranteed by the 1951 Convention and UNHCR'.⁴¹ Moreover, assistance is limited by certain conditions, including the need to be in one of its areas of operation.

Therefore, the Convention and the UNHCR mandate are relevant to Palestinian refugees for two other reasons, at least. Firstly, UNRWA presence and assistance is limited to its five areas of operation. Palestinian refugees in Egypt, for example, are not (or ought not to be) excluded by article 1(D) because they do not receive protection or assistance from any other UN agency. Secondly, many Palestinian refugees residing in the five UNRWA operational areas are not UNRWA registered because they do not fall within its operational definition. As a result, they do not fall under its mandate, though assistance is sometimes granted on a humanitarian basis.

2.4 Legal Distortion

The UNRWA's *de jure* protection-free mandate whenever accompanied by a *de facto* ineffective UNCCP create what Akram rightly describes as a 'legal distortion': 'Palestinian refugees fall into a legal lacuna that sets them outside minimal international protections available for all other refugee groups in the world'.⁴²

The 'legal distortion', it seems, is not that article 1(D) is interpreted to exclude Palestinian refugees who receive assistance by UNRWA from the application of the international refugee protection regime; the wording and the history of article 1(D) may indeed support that interpretation. Instead, it lies in making this exception the rule, namely, in concluding that Palestinians as a national group are *ipso facto* excluded from the mandate of the 1951 Convention, wherever they are and wherever they go.

If, for example, a Palestinian holding a refugee travel document issued by Egypt, Jordan, Lebanon, or Syria is prevented from returning to the country that issued the travel document, it would be a legal distortion to argue that the 1951 Convention does not apply because the refugee is registered with UNRWA.⁴³ Such an attitude is not only discriminatory but has no basis in the 1951 Convention. According to the second sentence of article 1(D), '[w]hen such protection or assistance has ceased for any reason

⁴¹ Akram, above n. 19, 39.

⁴² *Ibid.*, 36.

⁴³ This is a real example. It was a case defended in front of German courts. Akram and Goodwin-Gill, above n. 17.

without the position of the refugees being definitively settled in accordance with relevant resolutions adopted by the UN General Assembly, these persons shall *ipso facto* be entitled to the benefits of this Convention’.

This paragraph may be interpreted as mandating UNHCR to serve as an alternative, in order to ensure continuity of protection for Palestinian refugees.⁴⁴ It also means that the 1951 Convention shall apply to those Palestinians who had their habitual residence in one of the five areas of operation of the UNRWA, but who are no longer in a position to receive assistance from UNRWA. This holistic, or integrated, analysis of article 1 seems to be the official position of UNHCR.⁴⁵ Most importantly, in countries where UNRWA does not operate, the only international agency available to Palestinian refugees, as it is for other refugees, is UNHCR. Even in countries of UNRWA operation, many undocumented refugees may not be in a position to enjoy UNRWA assistance, or access to any other international agency.

The remaining question is whether the 1951 Convention and UNHCR mandate extend also to Palestinian refugees who receive UNRWA’s assistance. The absence of any UNRWA protection mandate and the ineffective UNCCP is interpreted by some to mean the *ipso facto* application of the 1951 Convention and the extension of the UNHCR mandate to all Palestinian refugees.⁴⁶ A more moderate position is adopted by those who argue for extending the 1951 Convention and the UNHCR mandate only to those refugees who do not have access to UNRWA assistance.⁴⁷ Both positions are problematic, the first simply ignores the simple fact that the concerned states (Jordan, Lebanon and Syria) did not ratify the 1951 Convention in the first place, while the second simply avoids dealing with the lack of protection mandate of UNRWA. This article argues for extending UNRWA’s protection mandate. First, it will show how the protection gap is widened by the lack of regional protection mechanisms.

2.5 The lack of regional protection mechanisms

Given the lack of international protection, regional mechanisms, such as those presented through the League – of which the four countries considered here are members – may provide an alternative.⁴⁸ Two

⁴⁴ Suleiman, above n. 18, 10.

⁴⁵ UNHCR, above n. 40.

⁴⁶ This is the thesis arguably defended by Akram (‘Reinterpreting Palestinian Refugee Rights under International Law’ in N. Aruri (ed.), *Palestinian Refugees and the Right of Return* (Pluto Press, 2001), 165–94), cited in Kagan, above n. 14, 428.

⁴⁷ Kagan, *ibid.*

⁴⁸ Egypt is also part of the African Union. The 1969 Convention Governing Specific Aspects of Refugee Problems in Africa includes provisions for residency, travel documents, and voluntary repatriation. Badil, above n. 2, 123. The Convention, however, does not apply to all Palestinian refugees, since only refugees originally from an African state or those who have a travel document from an African country (such as Egypt) enjoy the protection given in the Convention. The Convention is available at: <http://www.africa-union.org/Official_documents/Treaties_%20Conventions_%20Protocols/Refugee_Convention.pdf>.

approaches have largely characterized the response of the League to the Palestinian refugee issue since 1948. Firstly, Arab states are invited to show solidarity by hosting Palestinian refugees and granting them rights similar to citizens – but without naturalizing them. Secondly, Arab states are invited to preserve Palestinian identity through preserving the status of refugees. In practice, this meant denying them access to nationality and issuing them with Refugee Travel Documents.⁴⁹

These approaches were reflected in the Casablanca Protocol and successive resolutions of the League.⁵⁰ Such approaches to the question of Palestinian refugees are not necessarily compatible but they reflect the perspective of ‘temporality’ Arab states had for the presence of Palestinian refugees. Why integrate Palestinian refugees, if their presence was perceived to be temporary in the first place?⁵¹

The most important of various initiatives⁵² undertaken by the League was the Casablanca Protocol of 1965.⁵³ This protocol is rightly considered to be one of the earliest regional experiments in refugee protection; indeed, rights accorded to Palestinian refugees under the Casablanca Protocol are fewer and narrower in scope than those provided under the 1951 Convention.⁵⁴ However, as pointed out by Badil, ‘some of its provisions grant greater rights in theory than those set out in the 1951 Convention’. In support of this claim, Badil provides two examples. First, in the arena of self-employment and employment in the liberal professions, the Casablanca Protocol provides for the same treatment as that given to nationals, whereas the 1951 Convention only provides for treatment as favourable as possible, and not less than that accorded to resident aliens. Second, article 26 of the 1951 Convention provides for freedom of movement within the host country, whereas articles 2 and 3 of the Casablanca Protocol also provide for freedom of movement between Arab states.⁵⁵ Takkenberg also provides an interesting comparison between the Casablanca Protocol and the 1951 Convention concerning travel documents. He mentions, for example,

⁴⁹ Shibliak, above n. 3, 8.

⁵⁰ A. Shibliak, ‘Residency Status and Civil Rights of Palestinian Refugees in Arab Countries’ (1996) 25 *Journal of Palestine Studies* 36-45, at 38-9.

⁵¹ For more about Arab states’ attitudes towards granting citizenship for Palestinian refugees, see, Akram and Goodwin-Gill, above n. 17, 222.

⁵² Other resolutions have been adopted by the League, such as Resolution 424, 14 Sept. 1952, related to the reunification of divided families; and Resolution 714, 27 Jan. 1952, related to the issuance of a standard travel document. However, no uniform identity paper or travel document has ever been designed or issued by the League. Travel documents are issued by individual member states. Resolution 2600 of 1970 states that acquisition of another nationality would not trigger the cessation of refugee status in LAS member states. For more, see, Badil, above n. 2, 123-4.

⁵³ The text of the Casablanca Protocol and the reservations expressed by states are available at: <<http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=country&docid=460a2b252&skip=0&category=LEGAL&coi=SYR&searchin=title&display=50&sort=date>>.

⁵⁴ Suleiman, above n. 18, 11.

⁵⁵ Badil, above n. 2, 123-4.

that contrary to the Convention, the Casablanca Protocol leaves responsibility for renewing or re-issuing travel documents to first refuge states.⁵⁶

The Casablanca Protocol was adopted by a majority decision of the Council of the Arab League. This means that its contents are only binding upon those member states willing to accept them, either in full or subject to reservations.⁵⁷ Only seven member states have ratified the Protocol without reservation, including two of the major host countries: Syria and Jordan. Egypt ratified the Protocol without reservation, but according to Shiblak,⁵⁸ once fully committed, Egypt effectively withdrew from the Protocol. Lebanon has endorsed the Casablanca Protocol with reservations expressed on three articles out of five.⁵⁹

The Protocol calls for granting Palestinian refugees equal treatment as nationals with regard to work. Palestinians should have the right to leave the country and return to it, and to enter another Arab country and leave it. Palestinians shall be provided with valid travel documents, and the holders of those documents shall be granted the same treatment as nationals in terms of the issuing of visas. The Casablanca protocol was clear about the fact that Palestinians should keep their nationality. Interestingly, as outlined by Takkenberg,⁶⁰ the Casablanca protocol contains a change in language, from 'Palestinian refugees' to 'Palestinians'. He argues that this change is 'apparently initiated by the realization that the legal position of non-refugee Palestinians is much the same as that of those who had become refugees in 1948-49. Both categories of persons being largely composed of *de facto* or *de jure* stateless persons, they are equally in need of the status provided for in the Protocol'.

A special resolution on the treatment of Palestinians in Arab countries was adopted by the Council of Arab Ministers of the Interior in December 1982.⁶¹ According to that resolution, '[t]he Travel Document for Palestinian Refugees issued by any Arab country is to be accorded the same treatment as the passport of the citizens of that country', and 'the bearer of a Travel Document for Palestine refugees shall be accorded the same treatment as nationals of the state issuing this document, as regards freedom of residence, work and movement'.

Those constituted relatively high standards for the treatment of Palestinians, at least on the theoretical level.⁶² Since 1991, and the PLO's

⁵⁶ Takkenberg, above n. 6, 142-3.

⁵⁷ *Ibid.*, 144.

⁵⁸ Shiblak, above n. 3, 8.

⁵⁹ Takkenberg, above n. 6, 374.

⁶⁰ *Ibid.*, 141.

⁶¹ *Ibid.*, 147.

⁶² It is an improvement, at least in theory. However, in reality, this resolution was not necessarily implemented. According to Badil, investigations conducted by the League of Arab States Supervisors Conference have concluded that implementation of the standards set up by the League for the treatment of Palestinians in member states is poor. According to Shiblak, Arab states had been annulling, on an individual basis and through administrative decree, the rights accorded to Palestinians under the Casablanca Protocol. Shiblak, above n. 50, 42. See also, Badil, above n. 2, 125.

position on the Iraqi invasion of Kuwait, the standards have decreased.⁶³ In fact, the League adopted Resolution 5093, which 'authorized states to treat Palestinian refugees in accordance with domestic law rather than under the provisions set forth in the 1965 Protocol'.⁶⁴ The resolution weakened respect for the Casablanca Protocol. Since then, restrictions of residency rights, freedom of movement, employment, property ownership rights, and access to government services are now imposed on Travel Document holders in all Arab countries. In addition, education, health, and social benefits for Palestinians are increasingly being curtailed, if not disposed of outright.⁶⁵

Takkenberg, however, after having referred to Shiblak's point of view, considering Resolution 5093 as an official revocation of the Protocol, argued, *a contrario*, that it is 'questionable whether member states are able by mere recommendation to nullify an international agreement which was officially ratified by the member states or to which the member state became bound by other means . . . Whatever the formal position may be, it is obvious, however, that the spirit to live up to the obligations embodied in the Protocol has been severely weakened'.⁶⁶

This article agrees with this last position from the legal point of view. In practice, however, any agreement or resolution reached by the Arab League – given the nature of the organization – will continue to depend completely on each state's willingness to apply it. It will be suggested below that the host countries adopted completely different approaches to Palestinian refugees and that they are far from abiding by the theoretically attractive construction set forward by the Casablanca Protocol. They are, of course, far from reaching the minimum required by the 1951 Convention. International human right law continues, however, to provide minimum standards by which Arab states should abide.

3. Palestinian refugees' socioeconomic rights

The 'protection gap' and the 'legal distortion' meant in practice one thing: Palestinians are completely dependent on the domestic legal systems of concerned states. The national law of host countries matters for Palestinian refugees, as legal status matters for the realization of rights and freedoms. In other words, legal status matters because it is related to the 'right to have rights'.⁶⁷ A clarification needs to be made, though. While this article talks about 'legal status', it may be more appropriate to use the plural of status. Since the distribution of rights depends on

⁶³ Badil, *ibid.*

⁶⁴ *Ibid.*, 123-4.

⁶⁵ Shiblak, above n. 50, 42.

⁶⁶ Takkenberg, above n. 6, 149.

⁶⁷ Shiblak, above n. 3, 9.

national laws, there is definitively not ‘one’ legal status, but rather various legal statuses (depending on the state), and various types of ‘Palestinians’ (depending on the conditions of refugeehood).

3.1 Legal matrix

The most appropriate metaphor to describe this plurality is not a ‘map’, but a matrix, in which legal status is not defined in general and abstract norms, but is largely dependent on contingent conditions related to the kind of Palestinians whose status is being defined. Distributing rights and freedoms according to this matrix inevitably means that rights and freedoms may be more easily subject to host country manipulation. This manipulation could depend on government politics and local concerns, on the one hand, and the unstable relationship host countries have with the PLO, on the other. Accordingly, it is simply erroneous to speak about the legal status of Palestinian refugees in host countries. There are as many legal statuses as there are countries concerned. This article, for example, should consider at least four different legal statuses of Palestinian refugees;⁶⁸ one for each of the four countries discussed. In each country there are different sub-categories, according to the different criteria that different states have set out using their discretionary power.

This is not merely a theoretical point, but one that has concrete consequences for Palestinian refugees. Among these consequences are: first, satisfying UNRWA conditions, and registration with UNRWA does not convert Palestinian refugees into ‘one category’ of persons, governed by the same set of rules and for that reason subject to similar treatment in all countries where UNRWA is operating. Accordingly, a Palestinian refugee registered by UNRWA in Lebanon has a different legal status from one registered by UNRWA in Jordan or Syria. Second, although registration by UNRWA may be necessary as a condition for recognition by the host state, it is only one of many conditions imposed arbitrarily by the state. In Egypt, where UNRWA is not present, it is only the state that sets out the conditions for recognizing a Palestinian refugee and granting him or her certain rights.

This explains why even countries that apply largely favourable treatment to Palestinian refugees do not extend this treatment to all Palestinians but only to *their* Palestinians. This is why Jordan did not extend the same treatment to the Palestinian refugees of Gaza following the 1967 war, and

⁶⁸ [A]t least’ because there may be different legal statuses accorded to different Palestinian refugees; in Jordan, e.g., there is a difference between Palestinian refugees of 1948 and those who arrived from the Gaza Strip in 1967. Also, because, historically, the way the issue of Palestinian refugees has been regulated has changed over time (e.g. the Palestinians in Egypt before and after the assassination of Sadat).

Syria had little to offer Palestinian refugees from Iraq following the 2003 war and their subsequent persecution.⁶⁹

While favourable treatment is not always granted to Palestinian refugees – and when granted it applies only to small portion of them, namely those satisfying conditions set down by host states – it is important to keep in mind an almost forgotten element in this formulation: there is a correlation between the kind of rights and freedoms granted to Palestinian refugees in the host countries with the rights and freedoms enjoyed by citizens of these countries. The political and legal systems can at best be described as engaging in their first steps towards democracy, rule of law, and respect of human rights and freedoms.⁷⁰

The first criterion for the determination of a legal status is related to the idea of the 'first refuge'. The first refuge is particularly relevant for Palestinians in that it determines the country responsible for re-issuing travel documents for them. In order to be a Palestinian refugee in Jordan, Lebanon, Syria or Egypt, the person needs to satisfy the terms of the UNRWA definition and/or those imposed by host states, which entitles certain (but not all) Palestinian refugees to refugee status. This depends largely on where they happened to be able to flee to in 1948, and, in some cases, in 1967.

This status sometimes involves favourable treatment,⁷¹ such as in Syria, where Palestinians are treated as nationals, though with some exceptions.⁷² It is also the case in Jordan, at least for those having obtained Jordanian nationality.⁷³ In other countries, they are treated like other foreign nationals,

⁶⁹ The approx. 30,000 Palestinians of Iraq, mostly Muslim Sunnis, are not registered with a UN agency. They were caught in sectarian violence and suffered particularly because of preferential treatment, real or perceived, under Saddam. Many Palestinians from Iraq came to Syria between 2003-5 and settled in northern Syria. In early 2006, the Syrian government started to apply a more restrictive policy toward Palestinians coming from Iraq. In April-May 2006, UNHCR, the International Organization for Migration, and UNRWA organized a convoy to Syria for Palestinians who had been stranded on the Iraqi-Jordanian border, where Jordanian authorities had refused them entry. After negotiations with the Syrian government, these people were allowed into Syria and then settled in a camp at al-Hoi, near Hasaka, in northeastern Syria. A. Al-Khalidi, S. Hoffmann and V. Tanner, 'Iraqi Refugees in the Syrian Arab Republic: A Field-Based Snapshot' (University of Bern, The Brookings Institution, Occasional Paper, 2007), 14.

⁷⁰ Grabska, above n. 27, 52.

⁷¹ See, Badil, above n. 2, 125.

⁷² One of those exceptions is the right to own multiple homes, not to mention the right to vote, which is of course limited to Syrian nationals alone. See, generally, Reeds, above n. 21, 374.

⁷³ Many 1948 Palestinian refugees obtained Jordanian nationality based on the territorial jurisdiction of the state of Jordan in the West Bank and Transjordan. As for those who were displaced in 1967 and arrived in Jordan, a distinction is made between those who fled the West Bank (deemed internally displaced because the West Bank was part of Jordan) and those who fled from the Gaza Strip, until then under Egyptian administration. Only the first group had access to nationality. Within the latter group, however, a further distinction is made based on place of residence, especially following the late King Hussein's 1988 decision to sever legal and administrative liaison with the West Bank.

such as is the case in Egypt⁷⁴ and Lebanon.⁷⁵ In many cases, Palestinian refugees are not only denied rights as citizens (as the Casablanca Protocol recommended), but are subjected to restrictions much more stringent than other foreign residents.

Whether treated as nationals (such as in Syria or Jordan) or as foreigners (such as in Egypt and Lebanon), Palestinian refugees certainly have not been treated in ways similar to other refugees. In principle, Palestinians might either be advantaged or disadvantaged by receiving treatment different from the treatment of other refugees. Based on the data cited in this article, it appears that, on balance, they have been disadvantaged, and have enjoyed less protection than other refugees - to the point that, as eloquently expressed by Kagan, '[Palestinian refugees] are increasingly asking to be recognized as just refugees, full stop'.⁷⁶

3.2 International obligations on host countries

The current international system is still based on sovereign states. A state's sovereignty is challenged by refugees, who force international actors to consider ethical principles and issues of human rights that are part of their international obligations.⁷⁷ The Universal Declaration of Human Rights - a non-treaty based document, but not for that reason less relevant - grants rights to everyone 'without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status' (article 2).⁷⁸

Other provisions relevant for refugees are found in the International Covenant on Economic, Social and Cultural Rights 1966 (ICESCR) and the International Covenant on Civil and Political Rights 1966 (ICCPR). Both treaties have been ratified by all four states of concern in this article,⁷⁹ as has the Convention on the Rights of the Child 1990, the International Convention on the Elimination of All Forms of Racial Discrimination 1966, the Convention on the Elimination of All Forms of Discrimination against Women 1979, the Convention concerning Forced or Compulsory

⁷⁴ For more about Palestinians in Egypt, see, El-Abed, above n. 25.

⁷⁵ According to Takkenberg, Palestinians in Lebanon are, in principle, subject to the same legal status as other foreign nationals, with the exception of the period 1969-1987 that was to a limited extent regulated under the Cairo Agreement and its annexes. Takkenberg, above n. 6, 162.

⁷⁶ Kagan, above n. 14, 434.

⁷⁷ Rempel, above n. 20, 7.

⁷⁸ Those rights include 'the right to own property alone as well as in association with others' (art. 17), 'the right to social security' (art. 22), 'the right to work' (art. 23) 'the right to a standard of living adequate for the health and well-being' (art. 25), and 'the right to education' (art. 26). All shall be 'equal before the law and are entitled without any discrimination to equal protection of the law . . . against any discrimination in violation of this Declaration and against any incitement to such discrimination' (art. 7).

⁷⁹ The ICESCR and the ICCPR were ratified by all concerned countries, Egypt in 1982, Jordan in 1975, Syria in 1969, and Lebanon in 1972.

Labour 1932, the Equal Remuneration Convention 1951, the Abolition of Forced Labour Convention 1957, and the Discrimination (Employment and Occupation) Convention 1959.

The rights included in these international treaties – whenever ratified – are applicable to Palestinian refugees, too. The Committee on the Rights of the Child, for example, referred to Palestinian refugees more than twenty times in its Concluding Observations in 2006.⁸⁰ Many scholars have asserted that host states (to various degrees) failed to abide by the obligations included in the treaties they had ratified with regard to Palestinians, and did not integrate such provisions into national law.⁸¹ The concluding observations of the Committee of on the Elimination of Racial Discrimination issued in 2004 reached this conclusion about the status of the rights of Palestinian refugees in Lebanon, for example.⁸²

When states ratify international conventions, even when they are reticent to enforce them, this helps to individualize the standards to which they aspire (in the present or in the future), setting a benchmark against which the performance of state authority may be judged. That is the value of referring to international treaties. Provisions included therein serve as standards against which national regulations can be measured.

3.3 Socioeconomic rights of Palestinian refugees

While many other examples of socioeconomic rights can be cited and studied, this section will be limited to examining the regulations on Palestinian refugees' rights to work, education, health, and property in host Arab states.⁸³ Arab states regulate access of Palestinian refugees to work, education, health and housing differently. Most importantly, in each country, there have often been changes in the regulation of those issues during the six decades of Palestinian refugees.⁸⁴

⁸⁰ The Concluding Observations (CRC/C/LBN/CO/3) of 8 June 2006 are available at: <<http://www.unhcr.org/refworld/country,,CONCOBSERVATIONS,LBN,4562d8cf2,45377ee70,0.html>>.

⁸¹ Shiblak, above n. 50, 38.

⁸² '12. While acknowledging the political factors related to the presence of Palestinian refugees in Lebanon, the Committee reiterates its concern with regard to the enjoyment by the Palestinian population present in the country of all rights stipulated in the Convention on the basis of non-discrimination, in particular access to work, health care, housing and social services as well as the right to effective legal remedies. The Committee notes the statement of the delegation that the 2001 property law does not apply retroactively and that Palestinians' right to inherit remains in force'. The concluding observations published as (CERD/C/64/CO/03) are available at: <<http://www.unhcr.org/refworld/docid/411765094.html>>.

⁸³ A disclaimer needs to be added here, regarding the availability of data, and the continuous need to update it. The collection of those legal texts was made during research for a previous paper, see, A. Khalil, 'Palestinian Refugees in Arab States: A Rights-Based Approach' (European University Institute, Robert Schuman Centre for Advanced Studies, CARIM Research Report 2009/08, 2009).

⁸⁴ It is not possible to trace here the history of each country's regulation of all socioeconomic rights considered in this article. This was done in an earlier publication; see, *ibid*.

3.3.1 *The right to work*

According to article 6 of the ICESCR, the 'States Parties . . . recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he/she freely chooses or accepts, and will take appropriate steps to safeguard this right'. Of course, this does not mean having a right to a job, but having access to equal opportunity to work and not being deprived unfairly of work.⁸⁵

In Syria, Palestinian refugees duly registered in Syria are treated as nationals with regard to access to the labour market, whether in the private or the public sector. Other refugees (including those registered by UNRWA in other areas of operation and having a Refugee Travel Document issued by other countries) need a visa of entry and need to receive permits in order to be able to work. Contrary to other Arab nationals (including those Palestinians who have obtained the nationality of an Arab country, such as Jordan), who are exempt from obtaining a visa, Palestinian refugees who hold refugee status in another Arab country (from Jordan and Egypt, for example) are obliged, if they wish to enter Syria, to obtain a visa prior to arrival. In order to work in Syria, they first need to obtain a permit from the Ministry of Social Affairs and Work.⁸⁶

In Jordan, there is no restriction on the right to work, either in the private or the public sector, for those Palestinians having obtained Jordanian nationality – despite the subtle and largely informal discrimination some authors have pointed out.⁸⁷ This equal access to work does not apply to Gazans in Jordan (those displaced following the 1967 war). These Gazans are treated as foreigners when it comes to access to work in both the private and public sector. Most importantly, their temporary residency status (renewed each couple of years) limits their right to move outside Jordan, because it does not entail a right to return to Jordan.⁸⁸

In Lebanon and Egypt, Palestinian refugees continue to be treated as foreign nationals, despite residence therein for decades – and, for many of them, despite being born and raised in the host country. In Egypt, when it comes to the right to work, priority is given to nationals. However, concessions are made for those married to Egyptian nationals or who can prove permanent and continuous residence for a certain period of time.⁸⁹ Since the late seventies, it has been impossible for stateless Palestinians to work in

⁸⁵ The author is indebted to summaries prepared by Marko Divac Öberg for the teaching of a Human Rights Module at Bethlehem University, for information on the socioeconomic rights considered in this article.

⁸⁶ See, generally, F. Saleh, 'Syrie: la dimension juridique des migrations' in Fargues (ed.), above n. 24, 239-44, at 239.

⁸⁷ See, c.g., Shibliak, above n. 3; Said, above n. 9, 351; Arzt, above n. 39, 45.

⁸⁸ See, generally, Akram and Goodwin-Gill, above n. 17, 223.

⁸⁹ See, Decree No. 43/1988, defining conditions for granting work permits to foreign nationals.

the public sector, because law No. 48 of 1978 stipulated that employment of Arab country nationals should be conducted on a reciprocal basis – a condition impossible to satisfy in the case of stateless Palestinians.

The public sector in Lebanon is not accessible to Palestinian refugees, while jobs offered by UNRWA are, of course. Even access to work in the private sector was made harder for Palestinian refugees, sometimes directly by excluding certain professions and jobs to non-nationals and sometimes by applying the reciprocity clause. In fact, the Minister of Labour is entitled to enumerate and list jobs and trades that are restricted to Lebanese nationals, and to update that list according to the needs of the Lebanese labour market, a power often used by concerned ministers.⁹⁰ Ministerial Decree No. 621/1 of 1995, for example, enumerated a list of about fifty jobs, trades, and independent professions in the private sector that would prefer nationals. Palestinian refugees may enjoy an exemption, like other foreigners, but data shows that a limited number of permits have actually been issued for Palestinian refugees in Lebanon.⁹¹ In 2005, Ministry Memorandum No. 67/1 was issued, permitting Palestinian refugees, who were born in Lebanon and duly registered, to work legally in manual and clerical jobs previously unavailable to them.⁹² The step was welcomed by organizations defending the rights of Palestinian refugees,⁹³ since some obstacles to Palestinian work were removed. However, the ban on Palestinians seeking professional employment has remained in place.⁹⁴

More subtle and indirect discrimination regarding work permits was the 'reciprocity of treatment' clause necessary for foreigners to obtain a work permit – which is impossible to satisfy in the case of stateless Palestinian refugees. Even when they surmount the hurdle of obtaining a permit, they do not necessarily benefit from social security, though they make social security contributions; again, this is because of the reciprocity of treatment.⁹⁵ This subtle and indirect discrimination targeting Palestinians has been the subject of criticism by many human rights organizations.⁹⁶ This

⁹⁰ Suleiman, above n. 18, 16-17; S. Al-Natour, 'The Legal Status of Palestinians in Lebanon' (1997) 10 *JRS* 360-77, 366-71; International Federation for Human Rights, 'Palestinian refugees: systematic discrimination and complete lack of interest on the part of the international community' (Investigative International Mission, 2003), 13.

⁹¹ Al-Natour, above n. 90, 368.

⁹² The memorandum is available in Arabic at: <<http://www.palestine-studies.org/files/word/mdf/7517.doc>>.

⁹³ Such as the Palestinian Commission for Refugees Rights Protection: <<http://www.hrinfo.net/palestine/pcrp/2005/pr0701.shtml>>.

⁹⁴ Suleiman, above n. 18, 15-18. This applies to syndicated professions such as medicine, architecture, law, and pharmacy. For more about list of jobs that were made accessible for Palestinians by the 2005 decree and the skepticism related to it, see, International Labour Office, *Review of Studies on the Employability of Palestinian Refugees in the Lebanese Labour Market* (International Labour Organization, 2010), 16, available at: <http://cep-lb.org/pdf/v2ILO-FCEPRReviewStudies_en.pdf>.

⁹⁵ Suleiman, above n. 18, 16; Al-Natour, above n. 90, 270; R. Sayigh, 'Palestinians in Lebanon: Harsh Present, Uncertain Future' (1995) 25 *Journal of Palestine Studies* 37-53, 44.

⁹⁶ International Federation for Human Rights, above n. 90, 13.

situation finally came to an end in August 2010 with new laws, numbers 128 and 129, that exempt Palestinians duly registered in Lebanon from abiding by the reciprocity clause, both for obtaining a work permit and for social security;⁹⁷ amendments that were welcomed by both the International Labour Organization and UNRWA.⁹⁸

3.3.2 *The right to education*

The right to education – recognized to everyone without discrimination – appears as both a child right and a socioeconomic right. It entails an obligation of states to ensure compulsory education and make free education available for all. Secondary education is to be made progressively free, and – as much as higher education – available for all. Arab states, in various ways, have not fulfilled these obligations.

In Syria, Palestinian refugees duly registered there have the same rights as Syrian citizens. However, UNRWA provides elementary and preparatory education for Palestinian refugees, while secondary education is provided in national schools. Syrian institutions and universities are open to Palestinians on the same terms as to Syrians.⁹⁹ In Lebanon too, UNRWA is the main provider of elementary and primary education through its own schools, which are generally found wherever there is a concentration of Palestinians – and not only in camps.¹⁰⁰ Palestinian refugees are of course welcome to attend private schools – if they can afford private tuition! Public schools in Lebanon are reserved for Lebanese nationals,¹⁰¹ with some exceptions, depending on availability of places.¹⁰² This restriction extends even to obligatory primary education.¹⁰³ Palestinian access to Lebanese public secondary schools is restricted.¹⁰⁴ The same rule applies for public universities. For this reason, most Palestinians study in the private sector, depending on their financial means. Although UNRWA

⁹⁷ See, Law no. 128, amending art. 9 of the Social Security Law, available at: <<http://jo.pcm.gov.lb/j2010/j41/wfn/n128.htm#>>, and Law no. 129, amending art. 59 of Lebanese Labor Law, issued 23 Sept. 1946, available at: <<http://jo.pcm.gov.lb/j2010/j41/wfn/n129.htm>>.

⁹⁸ See, statement available at: <<http://unispal.un.org/UNISPAL.NSF/0/1FF8587D5032893685257783004BC157>>.

⁹⁹ Takkenberg, above n. 6, 167-9.

¹⁰⁰ Al-Natour, above n. 90, 372.

¹⁰¹ Decree Law No. 820, 5 Sept. 1968, art. 3.

¹⁰² *Ibid.*, art. 102.

¹⁰³ Law No. 686 of 1998, which amended art. 49, Decree No.134/59, provides that: 'Public education is free and compulsory in the primary phase, and is a right to every Lebanese in the primary education age'. Cited in: Amnesty International, 'Lebanon: Limitations on Rights of Palestinian Refugee Children' (5 June 2006), 11, available at: <[http://asiapacific.amnesty.org/library/pdf/MD E180042006ENGLISH/\\$File/MDE1800406.pdf](http://asiapacific.amnesty.org/library/pdf/MD E180042006ENGLISH/$File/MDE1800406.pdf)>.

¹⁰⁴ Arzt, above n. 39, 46; Sayigh, above n. 95, 44. According to Al-Natour, at high or secondary school level, 10% of places are reserved for foreign children, and Palestinians are eligible for these places. Al-Natour, above n. 90, 372.

does not operate secondary schools in other countries, UNRWA currently operates nine secondary schools in Lebanon, given the difficulties young Palestinians encounter there in getting a secondary education.¹⁰⁵

In Jordan, the Ministry of Education announced, in August 2006, that foreign children would no longer be allowed to attend either public or private schools in the Kingdom. Subsequently, the Ministry rescinded its ban and declared that they would be allowed to attend private schools and institutions. The decision was an improvement on the previous ban, but would make education for the children of poorer refugee families virtually impossible. According to that decision, the Ministry of Education would allow children from Arab countries to enroll in the country's public school system beginning in the 2006-7 academic year. The decision was based on the recommendations of the Ministry of the Interior, which specify groups of persons who will not be accepted in any school without the explicit approval of the Ministry of the Interior. These persons include holders of Palestinian, Iraqi, Syrian, Lebanese, and Egyptian travel documents, holders of temporary Jordanian passports, and holders of Palestinian passports.¹⁰⁶

In Egypt, access of non-Egyptians to public schools is forbidden unless specifically provided for by law. Since Palestinian refugees' children are deemed foreigners, they have not been allowed to attend public schools, at least since the early 1980s.¹⁰⁷ They have to pay special fees in foreign currency to attend private schools. Contrary to Egypt's obligations under international law, free access to primary education is secured exclusively for Egyptian citizens.¹⁰⁸ The situation is the same for access to universities, where non-Egyptians have to pay 'foreigner fees'. Palestinian refugees are not allowed, in most circumstances, to attend colleges of medicine, pharmacy, economics, political science, or journalism. In recent years, however, some changes deemed positive were introduced to the Egyptian legal system, exempting certain categories from the above rule – thus allowing foreign children into Egyptian public schools.¹⁰⁹

¹⁰⁵ See, summary of UNRWA's activities, at: <<http://www.unrwa.org/etemplate.php?id=90>>.

¹⁰⁶ Olwan, above n. 24, 101.

¹⁰⁷ Shibliak, above n. 50, 43.

¹⁰⁸ Reeds, above n. 21, 373.

¹⁰⁹ These include, Decree No. 24, issued by the Minister of Education, 22 Jan. 1992, which exempted foreign nationals enumerated in the decree, including 'Children of Palestinian and other workers in governmental or public sectors or armed forces in Egypt, and children of those among them who are retired'. In 2000, the Minister of Education issued another Decree extending the application of the 1992 Decree to other refugees. Grabska, above n. 27, 20.

3.3.3 *The right to health*

Everyone has the right to 'enjoyment of the highest attainable standard of physical and mental health'.¹¹⁰ This right does not entail the right to be healthy, of course, because this is simply impossible. Rather, it entails that certain medical services are made available, again without discrimination. In particular, states are requested to take necessary steps for 'the creation of conditions which would assure to all medical service and medical attention in the event of sickness'.¹¹¹

In Syria, Palestinian refugees have rights to access health facilities similar to the rights of Syrian citizens. In Jordan, this right is only for those who have been naturalized as Jordanian citizens. However, 1967 Gaza refugees are treated as foreigners whenever it comes to access to health facilities in the country.

In Egypt, Palestinian refugees legally residing do not have access to medical care or the social benefits provided to Egyptian citizens.¹¹² In fact, as with other government services, Palestinians are treated as foreign nationals under Egyptian national policies on health care. Recognized refugees are referred by UNHCR to Caritas, where they receive subsidized treatment. Palestinian refugees, as explained earlier, are not considered people of concern for UNHCR in Egypt. In February 2005, the Minister of Health issued a new regulation allowing access to public primary and preventive healthcare services for all foreign nationals residing in Egypt.¹¹³ Such change is positive, but is limited to primary and preventive healthcare, and is still dependent on ministerial whim and subject to change at any time.

In Lebanon, Palestinian refugees have no access to government hospitals¹¹⁴ or other related health services. UNRWA, the Palestinian Red Cross Society (PRCS), and other NGOs are the main providers of health services for Palestinian refugees, though the care they provide is hardly adequate.¹¹⁵ Palestinian refugees legally residing in Lebanon receive no reimbursement for surgical operations from the Ministry of Health as Lebanese nationals do.¹¹⁶

3.3.4 *The right to adequate housing*

Everyone has a right to 'adequate housing'.¹¹⁷ The Committee on Economic, Social and Cultural rights (CESCR) had determined certain

¹¹⁰ ICESCR, art. 12. A similar article is present in art. 24, Convention on the Rights of the Child.

¹¹¹ ICESCR, *ibid.*

¹¹² Reeds, above n. 21, 373.

¹¹³ Grabska, above n. 27, 23.

¹¹⁴ Arzt, above n. 39, 46; Sayigh, above n. 95, 44.

¹¹⁵ Suleiman, above n. 18, 20.

¹¹⁶ Khalil, above n. 83, 49.

¹¹⁷ ICESCR, art.11.

factors necessary for shelters to be considered 'adequate' under the ICE-SCR. This includes: legal security of tenure; availability of services, materials, facilities and infrastructure; affordability; habitability; accessibility; adequate location; and cultural adequacy.¹¹⁸

In host states where refugee camps exist, strict and difficult procedures are in place with regard to rebuilding or renovating a residence inside the camps or the issuance of permits for refugees residing therein. This is the case, for example, in Lebanon.¹¹⁹ In fact, in order for foreign nationals to have property, they need to follow special procedures and conditions.¹²⁰ For example, only in exceptional cases is it possible for Palestinian refugees legally residing in Lebanon to buy a personal residence, and the procedure is expensive and takes years.¹²¹ In 2001, new restrictive measures were imposed on Palestinian refugees with regard to the right to own property (outside refugee camps);¹²² the increased restrictiveness of the new measures resulted from the fact that they subordinated the right to own such property to the reciprocity of treatment clause. The new law reads as follows: 'It is prohibited to any person who is not a national of a recognized state, or anyone whose ownership of property is contrary to the provisions of the Constitution relating to "Tawteen" to acquire real-estate property of any kind'. This law was deemed constitutional by the Lebanese Constitutional Council, which argued that the new legislation safeguarded what it called the 'supreme interest'.¹²³ This decision was criticized by the International Federation for Human Rights since it encourages the state to pass measures affecting human rights.¹²⁴

In Egypt, new restrictions have been imposed on Palestinian refugees since the early 1980s with regard to their right to own property.¹²⁵ New regulations, with retroactive effect, ended previous ownership of agricultural land, and those who owned land were required by law to terminate their rights within five years or face seizure of the land by the

¹¹⁸ See, CESCR General Comment 4, available at: <<http://www.unhcr.ch/tbs/doc.nsf/0/469f4d91a9378221c12563ed0053547e?Opendocument>>.

¹¹⁹ Suleiman, above n. 18, 18-19.

¹²⁰ As per art. 9, Decree No. 11614/1969, non-Lebanese foreigners (including Palestinians) need to file an application for a license with the Minister of Finance, who in turn transfers it, along with his recommendation, to the Council of Ministers of the Cabinet. The Cabinet may then grant the license through a decree. The power of the Cabinet to grant or refuse the license is final and its decisions are not subject to any appeal. Al-Natour, above n. 90, 372. See, generally, Suleiman, above n. 18, 18-9.

¹²¹ Shiblak, above n. 50, 44-5.

¹²² With the adoption of law No. 296, 3 Apr. 2001, which amended the first article of Decree No. 11617, 1969, regarding non-Lebanese acquisition of property. Said, above n. 9, 353; Elsayed-Ali, above n. 13, 14.

¹²³ Suleiman, above n. 18, 18-19; N. A. Diab, *Migration et Accès à la Propriété Immobilière au Liban*, Consortium for Applied Research on International Migration Notes (European University Institute, 2008), 3.

¹²⁴ International Federation for Human Rights, above n. 90, 13-14.

¹²⁵ Reeds, above n. 21, 373.

government.¹²⁶ In Jordan there are no restrictions to owning housing or property for naturalized Jordanian citizens. However, those Palestinians holding temporary passports in Jordan (including 1967 Gaza refugees) are subject to new regulations for buying property similar to those pertaining to foreign nationals.

Even in Syria, where Palestinian refugees in principle enjoy full residency rights, restrictions were imposed preventing them from owning property except for a personal residence, and even then only after following certain procedures.¹²⁷ Palestinian refugees are also banned from purchasing arable land.¹²⁸

3.4 Right of return uncompromised

Some scholars have asserted that there is a trend now in the literature on Palestinian refugees that refuses the exceptionalism with which they have been dealt in host countries. In this article it is not the objective to take sides in this debate. It is not even the objective to observe whether it is really a new or an old trend, or whether it is a trend at all. In any case, if this decline is a trend, then this article fits within this trend, but only to argue that international law should be used as the basis for the treatment of Palestinian refugees in host countries.

However, nothing in this article questions the possibility of applying a different treatment as a solution to their refugeehood (through their return, their integration in host countries, or their resettlement in host countries). In other words, the two main issues related to Palestinian refugeehood should be separated. The first is the way host states should deal with refugees, and this article argues that international law should be used as the basis for this treatment, as much as for other refugees. At the same time, it argues for the possibility of envisaging a different way to resolve their refugeehood (the maintenance of the right of return).¹²⁹

The reason for distinguishing between the two issues (the way refugees are dealt with in host countries and their right of return) is that the right of return needs to be dealt with as a political issue, subject to different options or solutions, while the treatment of refugees by host countries needs to be dealt with as a legal issue, and not subjected to political preferences. Saying that the right of return is a political issue does not mean that it is not a legal

¹²⁶ Shiblak, above n. 50, 44-5.

¹²⁷ Shiblak, *ibid.*; N. Jarrad, 'Profiles: Palestinian Refugees in Syria Political Overview' (1999) 4 *Al-Majdal*.

¹²⁸ Said, n. 9, 352; N. As-Sahly, 'Development Indicators Among Palestinian Refugees in Syria 1948-2000' (1999) 4 *Al-Majdal*.

¹²⁹ Interestingly, the Palestinians are not the first group to be deliberately blocked from integration into host countries; the same happened to the Spanish Republicans (as appears clearly in the preamble of the Constitution of the International Refugee Organization of 1946, available at: <<http://www.unhcr.org/refworld/type,INTINSTRUMENT,UN,,3ae6b37810,0.html>>). Kagan, above n. 15, 6.

right, since various UN resolutions and other international law instruments form the basis for such a right. It is simply that there are possibly various ways to settle the issue of Palestinian refugeehood – and the settlement can go in the direction of their return. The existence of this option is what makes it a political issue.

In contrast, dealing with refugees in host countries is a legal issue, in that it is related to individuals' entitlement to rights and freedoms that cannot and should not be subjected to political manipulation. Moreover, in the case of the right of return, it is possible for Palestinian refugees individually to renounce this right, largely because, again, it is a political issue. However, as regards the way they are dealt with, they cannot renounce their treatment in a specific way, because these are legal rights *stricto sensu*. Finally, there is a recent trend to distinguish between a collective right of return and an individual right of return,¹³⁰ the first targeting the possible state of Palestine, to be established side by side with Israel, and the second dealing with individuals' right to return to their place of origin (now part of the state of Israel). This is what makes it a political issue. The rights and freedoms of Palestinian refugees in host countries, in contrast, need to be dealt with on an individual basis, as legal rights.

Refugees' daily life is affected by national laws and institutions. Their economic and social wellbeing depends largely on what residency and civil rights they enjoy. Legal restrictions with regard to naturalization, family unification, employment, property, housing, education, and healthcare add to their insecurity and instability. In Lebanon, for example, legal constraints and restrictive policies contributed to the exclusion of Palestinian refugees from the Lebanese labour market. This situation contributed to the deterioration of their socioeconomic status, pushing some of them to leave or try to leave the country (the out-migration among Palestinian refugees in Lebanon is higher than that in other host countries),¹³¹ while others remain in Lebanon, many leaving school and performing poorly, with little ambition for the future.¹³² The illiteracy level among Palestinian refugees in Lebanon is twice that of Lebanese nationals. The literacy rate in refugee camps in Lebanon is 10% lower than in Syria and Lebanon.¹³³ Significantly, it is in Lebanon that the highest proportion of refugees in camps are poor (35 per cent), while it is in Syria that this proportion is lowest (17 per cent).¹³⁴ Of course, unstable and insecure refugees become a major

¹³⁰ Kagan, *ibid.*, 10-11.

¹³¹ J. Hanssen-Bauer and L. B. Jacobsen, 'Living in provisional normality: The living conditions of Palestinian refugees in the host countries of the Middle East' (Fafo Institute for Applied International Studies, 2003), 4

¹³² Å. A. Tiltnes, 'Falling Behind. A Brief on the Living Conditions of Palestinian Refugees in Lebanon' (Fafo-Report 464, 2005), 10.

¹³³ *Ibid.*, 15.

¹³⁴ L. B. Jacobsen, 'Finding Means: UNRWA's Financial Situation and the Living Conditions of Palestinian Refugees, Summary Report' (Fafo-Report 415, 2000), 41.

destabilizing factor for host countries and the region. These refugees are easily exposed to political manipulation, exploitation, and poverty.

For Arab states, the issue of Palestinian refugees is treated as a matter of national security, despite a lack of consensus regarding the dimension and content of the threat. The fact that the Ministry of Interior is responsible for the 'dossier' of Palestinian refugees is particularly significant.¹³⁵ In Lebanon, for example, the heated debate over Palestinian refugees often relates to community balance,¹³⁶ or to the role of Palestinian refugees in the Lebanese civil war.¹³⁷ In Jordan, equilibrium is needed in terms of the large number of Jordanian citizens of Palestinian origin.¹³⁸ In Egypt, the regulation of border crossing to and from Gaza is a priority, and strict regulation of migratory flows is deemed necessary.¹³⁹ In Syria, the control of population movements and other aspects of life, including those of Palestinian refugees and Syrian citizens, constitutes a serious concern for the regime.¹⁴⁰

¹³⁵ In Egypt, the national institution responsible for refugees recognized by UNHCR is the department of Refugee Affairs at the Ministry of Foreign Affairs, while others, including Palestinian refugees, fall under the responsibility of the Ministry of the Interior. In both cases, however, the Ministry of the Interior is responsible for issuing residence permits. A Higher Committee for Palestinian Immigrant Affairs was established to coordinate relief efforts, presided over by a deputy of the Minister of the Interior. Takkenberg, above n. 6, 150. For Syria, things are different in that specific institutions were established to follow up on the issue of Palestinian refugees, including 'The Palestine Arab Refugee Institution' that was replaced by the General Authority for Palestine Arab Refugees, under the auspices of the department of the Ministry of Social Affairs and Labour. As-Sahly, above n. 128.

¹³⁶ Zureik, above n. 2, 212; International Federation for Human Rights, above n. 90, 11. According to Takkenberg, Palestinian refugees in Lebanon 'were viewed by the Lebanese ruling establishment as a threat to the delicate balance between Christians and Muslims and, therefore, to political and social stability. . . . As a result, the Palestinian refugees in Lebanon have been in a precarious position'. Takkenberg, above n. 6, 162. For this reason, it seems that opposition to the settlement of Palestinian refugees in Lebanon is one of the few issues that unites the Lebanese government and public opinion across most of the sectarian communities (Sayigh, above n. 95, 37), leaders in government and in the opposition, both in Lebanon and abroad. F. El, 'Permanent Settlement of Palestinians in Lebanon: A Recipe for Conflict' (1997) 10 *JRS* 275-93. According to Arzt, 'Lebanese officials have on more than one occasion expressed an intention to expel all Palestinians, who are predominantly Sunni Muslims, at the earliest possible occasion, claiming that their integration in the country would upset the country's "delicate sectarian balance", in which Shi'ite Muslims have a slight majority over a dwindling number of Maronite Christians', Arzt, above n. 39, 47.

¹³⁷ The Royal Institute of International Affairs and the Centre for Lebanese Studies, 'Refugees and Host Countries in International Law' (Report, Consultation Workshop, Minister Lovell, 7-8 Sept. 2002), 14.

¹³⁸ Arzt, above n. 39, 43.

¹³⁹ Takkenberg, above n. 6, 153-4.

¹⁴⁰ The Syrian government's approach to the refugee influx differed considerably from that of the other host states. According to Takkenberg the reasons behind this attitude can be explained in various ways. First, in 1948, Syria was not suffering from unemployment or limited natural resources. Second, the arrival of 90,000-100,000 refugees did not threaten the economy or social structure of the country. Third, Palestinian refugees never constituted more than 2-3% of the population. It shall be noted, however, that Syria is well known for having the most favourable legal and official treatment of Palestinian refugees. Takkenberg, above n. 6, 167. However, as rightly noted by Arzt, of all the areas within the UNRWA orbit, 'the least amount of information has been published on Palestinians in Syria'. Arzt, above n. 39, 48. All conclusions reached by scrutinizing existing legislation related to Palestinian refugees in Syria needs, accordingly, to be treated with caution.

Keeping Palestinians in Palestine (or keeping Palestine for the Palestinians) is a noble objective, but when it is presented, as is the case in some Arab countries, to justify restrictive measures on movement or the rights and freedoms of Palestinian refugees, even if they are legal residents,¹⁴¹ it becomes a political slogan, void of any significance.

The Palestinian refugee issue is dealt with by Arab countries not from a 'human rights' perspective, but rather from a 'security' perspective. This explains why restrictive measures and policies are undertaken by Arab states with regard to Palestinians. These restrictions often apply to those 'legally residing' in the concerned country (having fulfilled conditions imposed by national law to be recognized as Palestinian refugees), as well as - more restrictively - to those who reside illegally, those holding a legal status in another host country, or those holding a Palestinian Authority travel document. Each category faces a different kind of treatment.¹⁴²

This article has referred to two examples in particular. First, is the fact that Palestinian refugees have been excluded from international protection mechanisms related to refugees, and some host states have resisted any notion of including them in those mechanisms. Second, is the way the Palestinian refugee issue is handled in host Arab states regarding regularization. The cases show how (surprisingly) consistent and unaltered the

¹⁴¹ Imposing restrictions on economic activity, security pressures and intimidation, non-renewal of residency for Palestinians leaving countries of first refuge, and perhaps even stripping the Palestinians of their legal rights altogether is often perceived as a form of pressure to avoid the permanent settlement of Palestinian refugees in host states. R. Brynen, 'Imagining a Solution: Final Status Arrangements and Palestinian Refugees in Lebanon' (1997) 26 *Journal of Palestine Studies* 42-58, at 49-50. This political 'push factor' aims at encouraging Palestinian emigration (Sayigh, above n. 95, 43), and once they have emigrated, aims to complicate their return. In Syria, the country which deals with Palestinian refugees as Syrian nationals, Syrian citizenship law (Citizenship Law No. 276/1969) provides that Palestinians are excluded from access to citizenship in order to 'preserve their original nationality'. Accordingly, it seems that Syria rejects, as much as Lebanon, the full integration of Palestinian refugees (namely their naturalization into citizens by granting them access to Syrian nationality), but, contrary to Lebanon, Syria grants full access to economic and social rights.

¹⁴² The most important difference is between Palestinian refugees recognized by host countries as such (e.g., Palestinian refugees holding Egyptian, Jordanian, Lebanese or Syrian refugee documents) and other Palestinians. Each country provides certain 'rights' related to residency status. However, each state treats refugees in other host states as foreigners subject to regulation applicable to foreigners (e.g. a Palestinian refugee holding a Lebanese refugee document is treated as foreigner by Egyptian authorities). Sometimes, Palestinian refugees holding documents from the host country are assimilated with nationals (e.g., Palestinian refugees holding Lebanese refugee documents were treated, until recently, as Lebanese citizens in Syria, and vice versa). A Palestinian refugee holding Jordanian nationality is treated as any other Jordanian national. This does not apply however, to those refugees (from the Gaza Strip) holding temporary Jordanian travel documents. Most of the time, however, Palestinians holding refugee documents of host countries (e.g., a Palestinian refugee holding a refugee document from Lebanon) are treated differently on borders of third states (e.g., even if Lebanese are exempted from visa requirement to enter Egypt, Palestinian refugees holding a Lebanese travel document need a visa to cross Egyptian borders). Since the establishment of the Palestinian Authority in 1994 and the later issuance of travel documents, many holders of Palestinian Authority travel documents are treated differently from other Palestinians, depending on the relationship of the host country with the Palestinian Authority itself.

political attitude of Arab countries remains towards the issue. They constitute common points on which Arab states' policies, surprisingly, converge.

Note that there is no legal obligation on host countries to provide citizenship for Palestinian refugees and, in fact, few Palestinian refugees have acquired citizenship in Arab host states.¹⁴³ Salam suggested that:

granting all Palestinians remaining in Lebanon the status of permanent residency cannot be seen as preparatory to the granting of Lebanese citizenship. The granting of permanent status would be a *political* solution to a *collective* problem. Naturalization, on the other hand, is an *individual* question to be judged on a case-by-case basis; each application would have to be weighed on its own merits, and would have to satisfy the conditions for naturalization set down in the citizenship laws in force, which are bound to be strict in view of the special geographic, economic, and demographic characteristics that have made Lebanon for well over a century a land of emigration rather than of immigration.¹⁴⁴

This article tends to agree with this analysis because restricting access to citizenship for refugees or foreign nationals in general is the state's exclusive power and prerogative. Being granted citizenship, or not, becomes irrelevant whenever there is residency status without restrictions in civil, political and social rights. In some cases, as in the case of Lebanon, it may be considered the best solution to accommodate both the needs of Palestinian refugees and the state, namely human rights prerogatives and national security needs. However, such a measure (limiting access to nationality) should not be justified by political considerations but, rather, on legal grounds. Moreover, it should be regulated by law and not be dependent on the discretion of the administrative authorities, and it should be enforced by state authorities under the supervision and control of the judicial authorities. In addition, such measures cannot be justified if undertaken exclusively against refugees, or against a specific category of refugees, based on nationality, religion, or sectarian affiliation. In other words, even in the case of national interest, discrimination is prohibited. Finally, though restricting access to nationality through long residence may be understandable in the context of forced migration and irregular entry (at least from the point of view of national regulation concerning entry of foreign nationals), it is less justifiable when it is related to access to nationality through family unification.

Palestinians have had completely the opposite experience in host countries. Most countries have special provisions prohibiting the naturalization of Palestinians, provisions based on political grounds and in accordance with Arab League resolutions. Furthermore, marriage of a male

¹⁴³ Badil, above n. 2, 126.

¹⁴⁴ N. A. Salam, 'Between Repatriation and Resettlement: Palestinian Refugees in Lebanon' (1994) 24 *Journal of Palestine Studies* 18-27, 26.

Palestinian to a female citizen of a host country does not constitute grounds for naturalization or special residency rights, either for the husband, who is not a national, or any children.¹⁴⁵ This is the case in Lebanon, for example. Under Lebanese law, 'nationality can only be passed on by the father (paternalistic application of the principle of *jus sanguinis*)'.¹⁴⁶ However, many of the Palestinians in Lebanon who obtained Lebanese citizenship between 1950 and 1972 were Palestinian women (and their children) who were married to Lebanese husbands.¹⁴⁷ Jordanian women married to Gazans do not have the legal right to transmit citizenship to their children, as is the case for any foreign father. These documents thus do not entitle their holders to the rights recognized by Jordanian citizens, such as the right to healthcare, education in public schools, entry to professions or other rights exclusively reserved for Jordanian citizens. In Syria it is possible for a female Palestinian married to a Syrian national to obtain Syrian citizenship, but this is not the case for a male Palestinian.¹⁴⁸ In some cases (such as in the case of Palestinian refugees in Egypt, and Gazans in Jordan), access to nationality of the host country is denied to Palestinian women (and their children) even when they are married to a male citizen.

In brief, discourses related to the restriction of Palestinian refugee rights and freedoms are often coupled with political arguments rather than legal ones. Despite the above, or maybe partially as a consequence of it, several changes have occurred with regard to legal recognition of Palestinian refugee economic and social rights during the six decades of Palestinian exile. These changes can be seen in the situation of Palestinian refugees in host Arab countries in the 1970s, following the Camp David Agreement (between Israel and Egypt) and the assassination of Sadat, the civil war in Lebanon, and Black September in Jordan. Similarly, following the first Gulf War, policies towards Palestinian workers in host Arab countries became more restrictive, especially in Gulf countries. These examples show how political crises and local contingencies have had consequences for the legal recognition of Palestinian refugees, and for the realization of their economic and social rights. A historical overview of Arab state positions toward Palestinian refugees clearly shows that the goals of Arab states often clash with the interests of the refugees themselves.¹⁴⁹

¹⁴⁵ Shibliak, above n. 50, 39.

¹⁴⁶ Amnesty International, above n. 103, 10.

¹⁴⁷ Arzt, above n. 39, 47.

¹⁴⁸ *Ibid.*, 46; Akram and Goodwin-Gill, above n. 17, 224.

¹⁴⁹ Kagan, above n. 14, 429, making explicit reference to J. Husseini, 'The Arab States and the Refugee Issue: A Retrospective View' in E. Benvenisti, C. Gans and S. Hanafi (eds.), *Israel and the Palestinian Refugees* (Springer, 2007), 435-63. Husseini observes that Arab states had ambiguous positions toward the Palestinian refugee question as early as 1949. For him, Arab states took, in public, a united stand in favour of repatriation, but indicated in private a willingness to consider settling them in exile.

4. Impact of the financial crisis

What began as a global financial crisis is rapidly turning into a global human rights crisis. Both the number of malnourished people¹⁵⁰ and the infant mortality rate are believed to have risen.¹⁵¹ The financial crisis has also meant the loss of millions of jobs,¹⁵² resulting in a decline in income and the loss of homes and savings.¹⁵³ It also causes increased poverty, which forces people to reduce the quantity and quality of their food.¹⁵⁴ This situation may cause a fall in tax revenues, and this threatens to reduce the already meagre funds devoted to social protection programmes in many developing countries, depriving the unemployed, sick, and elderly of essential safety nets.¹⁵⁵ The financial crisis will affect education and training opportunities, and school attendance will drop.¹⁵⁶ In particular, the right of education for girls is threatened.¹⁵⁷ This section investigates the impact of the global financial crisis on socioeconomic rights in host countries.

This article distinguishes between legal recognition and political enforcement of socioeconomic rights. Of course, enforcing socioeconomic rights is expected to be done gradually, and will largely depend on available financial resources at the disposal of states and the international community. Legal recognition, however, does not – or should not – depend on the availability of financial resources, and cannot be expected to be done gradually without undermining the rights themselves. Historically speaking, crises (political, economic and social) at the national, regional, and international levels have had negative impacts on Palestinian refugees, not only in terms of political enforcement but also in terms of legal recognition. This article assumes that things will not be different with the current global financial crisis. The impact may in fact be worse, given the increase in Palestinian refugees in Arab countries and, accordingly, the increase in their needs.

The title of this section may suggest the ambitious objective of showing how the financial crisis hurts enforcement of Palestinian refugees' socioeconomic

¹⁵⁰ World Bank, 'Rising Food and Fuel Prices: Addressing the Risks to Future Generations' (2008), 1.

¹⁵¹ UNESCO, 'Global Crisis Hits Most Vulnerable' (2009).

¹⁵² International Labour Organization, 'Tackling the global jobs crisis. Report of the Director-General: Recovery through decent work policies' (International Labour Conference 98th Session 2009, Report I(A)), available at: <<http://www.ilo.org/wcmsp5/groups/public/>>.

¹⁵³ I. Saiz, 'Rights in Recession? Challenges for Economic and Social Rights Enforcement in Times of Crisis' (2009) 1 *Journal of Human Rights Practice* 277-93, at 279.

¹⁵⁴ *Ibid.*

¹⁵⁵ International Labour Organization, 'A Global Policy Package to Address the Global Crisis' (International Labour Office, 2008), available at: <<http://www.ilo.org/public/english/bureau/inst/download/policy.pdf>>.

¹⁵⁶ *Ibid.*, 9.

¹⁵⁷ Saiz, above n. 153.

rights in host countries and the legal recognition of those rights,¹⁵⁸ but in fact the objective is more limited. In light of the limits of the data and of the methods used,¹⁵⁹ this article restricts itself to showing how the global financial crisis may be particularly damaging to Palestinian refugees for two main reasons. The first is related to UNRWA, an organization already under attack for perpetuating Palestinian refugeehood. While depending on international funds, UNRWA faces serious risk because many countries are decreasing their funding due to the economic crisis,¹⁶⁰ while others are working to discredit the organization and are arguing for international funds to be used for refugee resettlement programs rather than to finance UNRWA.¹⁶¹ The second impact is on entitlements of rights in host countries, already increasingly hostile to the presence of Palestinian refugees (or at least hostile to accommodating increasing numbers of them) on their borders with Iraq or in Gulf countries.

4.1 Weakened UNRWA

Palestinian exceptionalism and the differentiation between UN agencies dealing with refugees (UNHCR vs. UNRWA) are increasingly under attack.¹⁶² The reasons for this vary. Most importantly, critics often agree on the premise that something is wrong with the current situation, but disagree on the prescription for dealing with the deficiencies and the gaps that exist in current protection and assistance mechanisms. This criticism takes two main approaches: first, some attack this exceptionalism, arguing

¹⁵⁸ Changes in legal recognition can be reflected, *in extremis*, through changes in positive law, namely changes in the statutes – such as constitutional texts, acts of the parliament, and other secondary legislation for countries with civil law systems – but can also appear through changes in case law.

¹⁵⁹ In earlier research papers, empirical data was used in which legislation and court decisions are used as tangible and rough data. In this article the arguments remain largely theoretical, aiming to examine the data in an analytical way. Many of the insights regarding national legislation related to Palestinian refugees in host countries are those of local experts from the concerned countries, provided for a previous research paper (Khalil, above n. 83), namely, Hassan Jouni from Lebanon, Mohamed Oilwan from Jordan, Fawaz Saleh from Syria, and Sharifa Shafie from Egypt. Unless specified otherwise, reference to legislative texts and policies related to Palestinian refugees in those countries are based on the data provided by local researchers. All remaining inaccuracies are the author's.

¹⁶⁰ In his statement to the Advisory Commission on 21–22 June 2010, the UNRWA Commissioner-General referred to this troubling matter: 'Global financial uncertainties cast a shadow on the economic prospects of many donor States, constraining their capacity to respond to UNRWA's needs as generously and as urgently as the situation demands. Countries and communities hosting refugees are acutely impacted by the strains of UNRWA's funding crisis. As service quality declines, and as UNRWA struggles to adjust its programmes to cope with financial realities, there is growing regional anxiety about what these trends might imply for the prospects of UNRWA's presence and role. This convergence of UNRWA's financial crisis with the lack of tangible progress in the political sphere, and especially in respect of the refugee issue, is especially troubling'. Available at: <<http://www.unrwa.org/etemplate.php?id=712>>.

¹⁶¹ The decline in aid is felt on the refugees of host countries much earlier than that; in fact, the establishment of the Palestinian Authority, and the Oslo process in general, resulted in the 'skewing of international funds away from the "outside" refugees', Sayigh, above n. 95, 51.

¹⁶² Kagan, above n. 14.

that UNRWA and host Arab states contribute to perpetuating Palestinian refugeehood and that, instead, Palestinian refugees need to be dealt with in the same way as any other refugees in the world, by regular UN mechanisms dealing with refugees.¹⁶³ Second, some attack this exceptionalism based on concerns for the socioeconomic welfare of Palestinian refugees in host Arab states, which is often correlated with the absence of protection mechanisms and restrictions of their rights and freedoms by these host countries.

This article subscribes entirely to the second approach. Although both approaches reject the current status quo, the difference between them is immense, and the conclusions they reach go in completely different directions. The first approach is adopted by Israel,¹⁶⁴ and largely by pro-Israel scholars.¹⁶⁵ The second approach is adopted by most international human rights organizations, and by an increasing number of scholars.¹⁶⁶

For those who support the first approach, any opportunity is taken to attack UNRWA and host countries, they urge the international community to cut UNRWA's funding for refugees and to concentrate on programs aimed at resettling Palestinian refugees. Those who subscribe to the second approach, while recognizing the uniqueness of the Palestinian refugee issue, stress that refugee law can be a useful tool for improving the situation. In other words, Palestinians' uniqueness does not in any way negate the relevance of international refugee law to the Palestinian case.¹⁶⁷ Moreover, the second approach recognizes UNRWA's contribution in preventing a worsening situation, along with its essential role of responding to emergency needs.¹⁶⁸ Some have pointed out that, although poverty in refugee

¹⁶³ Brynen summarized the reasons behind this attack, speech, 60th anniversary of UNRWA, Columbia: '[T]he Agency frequently finds itself under political attack. Some have accused it of artificially keeping the refugee issue alive, or perpetuating refugee camps and failing to integrate the refugees into host populations. It has been accused of hiring terrorists, of failing to monitor and supervise the political views of its employees', R. Brynen, 'UNRWA: Historical performance in a changing context' (Columbia University, Symposium on 'UNRWA And Palestine Refugees: Drawing Lessons From 60 Years Of Service', 26 Sept. 2009), 4, available at: <<http://www.mcgill.ca/files/icames/brynen/UNRWA60.pdf>>.

¹⁶⁴ This explains the recent interest in the Israeli Knesset where a cross-party parliamentary caucus was formed to deal with the rehabilitation of Palestinian refugees in 2008. See, report, *The Jerusalem Post* (Lefkovits, 30 July 2008, retracted by LexisNexis).

¹⁶⁵ As pointed out by Kagan: 'Pro-Israel critics have argued for UNHCR to replace UNRWA because UNHCR's refugee definition would supposedly reduce the official size of the Palestinian refugee population, and thus lessen the strength of Palestinian claims against Israel . . . These critics generally argue that UNRWA's existence prolongs the Palestinian refugee problem by reinforcing Palestinian refugees' separate identity, by failing to seek a solution to the refugee problem via resettlement of the refugees outside Israel, and for highlighting the claims of the refugees by virtue of its mere existence', Kagan, above n. 14, 427 (citations omitted).

¹⁶⁶ Some of whom will be cited in the following paragraphs, as well as in other parts of this article.

¹⁶⁷ Kagan, above n. 14, 428.

¹⁶⁸ Brynen, above n. 163, 6.

camps in host countries is worse than in other parts of the territory, the camps do not constitute the main poverty problem of the host countries. The main explanation highlights the support the camps receive from the international community – mainly through UNRWA.¹⁶⁹ The second approach, while recognizing existing restrictions in law or national policy, also acknowledges that host countries have provided valuable assistance to Palestinian refugee populations, which needs to be maintained and encouraged.¹⁷⁰

While admitting that UNRWA remains necessary and that Palestinian refugeehood is indeed unique, this second approach stresses that UNRWA is not capable of ensuring the necessary protection for Palestinian refugees alone,¹⁷¹ and that host Arab states cannot use the unique nature of

¹⁶⁹ Hanssen-Bauer and Jacobsen, above n. 131, 1.

¹⁷⁰ The best way to summarize Arab states' positive contribution can be found in a recent speech, presented by Akram on the 60th anniversary of UNRWA: 'The Arab states are frequently subjected to harsh criticism for their treatment of millions of Palestinian refugees and displaced persons, pointing to widespread violations of rights, and particularly to the failure to offer Palestinians permanent status in their territories. Indeed, much of the criticism has merit, in that the Arab states have often not respected individual rights of Palestinians as guaranteed in the principal human rights treaties and the customary norms those treaties embody. However, the critique that Arab states have failed to grant Palestinians permanent status in their territories is seriously misplaced: it ignores the fact that Arab states are under *no* legal obligation to grant permanent status to Palestinian refugees. In fact, Arab states have actually supported what the refugees themselves have demanded all along – the right to choose their durable solution, the right to return to their original lands and homes. It is my contention that the Arab states' six decades of *de facto* temporary protection to the Palestinians is unprecedented in the history of protection of refugees, and has been granted at great social, economic and political cost. The Western world's periodic and time-limited temporary protection programs have never reached the scale of generosity that the Arab states have shown the Palestinians'. S. Akram, 'Palestinian Refugees' Contributions to Norm-Creation in the Arab and Muslim World' (Symposium, UNRWA And Palestine Refugees, above n. 163), 1, available at: <http://www.un.org/unrwa/newyork/docs/susan_akram_speech.doc> (accessed 3 Feb. 2010).

¹⁷¹ The issue at stake here is that UNRWA is not enough, but the alternative is not the replacement of UNRWA by UNHCR, rather the enhancement of the protection role of UNRWA, or the extension of the protection mandate of UNHCR to Palestinian refugees in addition to (not instead of) existing agencies dealing with Palestinian refugees. UNHCR seems to be attractive for Palestinians on some issues, but it may be resisted and rejected for others. As pointed out by Kagan: 'The attraction for Palestinians is that general refugee policy as advocated by UNHCR promotes three things that have been denied them: first, a clear recognition of the right to return, along with its complementary rights of property restitution; second, a clear goal of finding a durable solution, with particular emphasis on repatriation; third, a commitment to fundamental rights in exile until a durable solution can be found', Kagan, above n. 14, 434. Then he adds: 'Yet it is important to recall that pro-Israel writers who are hostile to Palestinian aspirations are similarly questioning the wisdom of Palestinian exceptionalism because they believe that UNHCR involvement will help minimize the claims of Palestinian refugees. While general (namely non-Palestinian) refugee policy contains several attractions for Palestinians, it also contains some hidden features that might challenge longstanding Palestinian political orientations. Two examples illustrate this point. First, established norms of refugee law would condemn the militarization of refugee camps (EXCOM 2002: Para. A) which has been a prominent feature of Palestinian armed conflict with Israel from the 1950s onwards. General refugee policy would thus back condemnation of groups like Hamas, and would call on host governments like Lebanon to disarm militant elements in refugee camps. Second, while it is true that refugee law generally backs the right of return and the right to property restitution . . . , UNHCR's approach to durable solutions is ultimately more pragmatic and flexible than many Palestinians might like. While UNHCR calls repatriation "the

Palestinian refugeehood to justify the continued use of discriminatory laws and policies towards Palestinian refugees. The second approach is best summarized by a quote from Brynen on the 60th anniversary of UNRWA: ‘happy 60th anniversary, UNRWA. I wish you were unnecessary – that issues of refugees and peace had long ago been resolved. Until they are, however, the Agency, its staff, and their very hard work remain invaluable’.¹⁷²

The global financial crisis may result in decreasing international funds for UNRWA, which may be forced to reduce its services. Such a scenario will be felt by Palestinian refugees in particular ways, given the absence of alternative sources of income and the restrictive laws and policies that exist in some host countries. UNRWA is a main service provider for Palestinian refugees in host countries. It provides jobs for thousands of refugees, education, health care, and various other services that are extremely valuable and necessary. The argument here is simple: it is not that UNRWA is not necessary but, rather, that it is not enough. UNRWA needs to be encouraged to adopt a protection role.¹⁷³ At the same time, UNHCR needs to be encouraged to change its attitude towards certain groups of Palestinian refugees in the Middle East, whether by providing the valuable contribution of recording the numbers of refugees (not only those registered with UNRWA) in their various reports, or by extending protection to Palestinians who have fled Iraq and who need to be supported.¹⁷⁴

4.2 Weakened rights

Palestinian refugee status is completely dependent on host state recognition of that status. It is a grant of status particular to the state, not international refugee status. Arab states generally grant residency permits to Palestinian refugees. However, residency status varies from state to state.¹⁷⁵ Palestinians in Egypt and Lebanon, if they satisfy certain conditions with

solution of choice” for most refugees . . . , it cautions that “there is no hierarchy of durable solutions” and that resettlement and local integration should be considered simultaneously . . . What this means in practical terms is that UNHCR will look to local integration and third country resettlement when repatriation is impossible . . . UNHCR has indicated a similar flexible or ad hoc approach to compromises on property restitution . . . Thus, while UNHCR policy would back Palestinians on the abstract rights to return and restitution, in terms of implementation UNHCR might accept Israeli resistance as an immovable fact and turn pragmatically to other options in order to not leave refugees in limbo indefinitely’, Kagan, above n. 14, 434 (citations omitted).

¹⁷² Brynen, above n.163, 7.

¹⁷³ As pointed out by Karen AbuZayd, UNRWA Commissioner-General, in a statement on the 60th anniversary of UNRWA: ‘The environment of persistent conflict and its impact on civilians – especially in the occupied Palestinian territory - have brought to the fore UNRWA’s protection role. Since the 2004 Geneva Conference, we have adopted a more forthright posture on protection issues, taking as our cue the duty to advance respect for the human rights of Palestine refugees which is implicit in UNRWA’s mandate’, available at: <<http://unrwa.org/etemplate.php?id=360>>.

¹⁷⁴ Kagan, above n. 14, 431-3.

¹⁷⁵ Badil, above n. 2, 126.

regards to entry and stay, obtain residency permits according to the regulation applicable to foreign nationals. In Syria, Palestinian refugees are granted standard national treatment, while in Jordan most have Jordanian citizenship.

Granting residency status to those recognized as refugees means, at times, excluding the applicability of basic human rights to both recognized and unrecognized groups, but especially those living in 'illegality' within host states or those who do not satisfy the conditions imposed by law to be considered a refugee. Illegality and lack of refugee status means limited and disadvantaged access to jobs, lack of access to education for children, lack of access to health services, and inability to claim other rights, including the right to freedom of movement. This is the case of the undocumented Palestinians in Lebanon.¹⁷⁶ This population suffers restrictions on all movement within the country. They cannot register their children,¹⁷⁷ thus children cannot attend public schools. They cannot even register their marriages, being under constant threat of deportation.¹⁷⁸ An undocumented Palestinian is legally nonexistent. When one does not exist, rights and freedoms are superfluous and useless concepts.

For host states to grant residency status to Palestinian refugees means, in practice, granting certain privileges and/or restrictions that can be called 'rights'. However, these are not rights in the sense of legal obligations for host states, nor are they to be considered entitlements, but rather gifts or grants, an option for the host state to allow or refuse at their discretion, contingent on changing politics and interests. Most Arab states do not consider it necessary to have a unique legal document that governs the rights of refugees in Arab countries.¹⁷⁹ This applies acutely to Palestinian refugees.¹⁸⁰ The fact is that most regulation related to Palestinian refugees in host Arab countries (especially in Egypt and Lebanon) is regulation by decree that is left to the discretion of administrative authorities. This renders the situation of Palestinian refugees more uncertain and vulnerable to changes in political contingencies.

¹⁷⁶ Their number, although not certain, may be 3,000-5,000 individuals, whose status in Lebanon is akin to that of irregular migrants, although most of them have lived there for decades. As they do not possess valid identification, they suffer from wide-ranging restrictions on their human rights. Elsayed-Ali, above n. 13, 13. For more about the needs and assistance to non-ID Palestinian refugees in Lebanon, see, Pettrigh, above n. 11, 15-16.

¹⁷⁷ According to Amnesty International, 'children neither receive recognized identity documents from the Lebanese state', Amnesty International, above n. 103, 10.

¹⁷⁸ Takkenberg, above n. 6, 163-4; Elsayed-Ali, above n. 13, 14; Shiblak, above n. 50, 40.

¹⁷⁹ Grabska, above n. 27, 17.

¹⁸⁰ According to Sayigh, 'Lebanon as "host" country always has been characterized by the absence of a legal code regulating refugee rights and obligations, the absence of rights except those of residence as refugees, regulation through ad hoc decrees, lack of legal protection against preventive detention, and obstacles to receiving necessary documents', Sayigh, above n. 95, 44.

In previous sections a 'legal matrix' has been constructed, where each Palestinian is treated according to his status, largely determined by host countries unilaterally, while highlighting the protection gap, whether in international or regional mechanisms. This was not to argue that there is necessarily and irrefutably a direct correlation between the legal status and rights enjoyment of Palestinian refugees in host Arab states, on the one hand, and their real economic and social welfare, on the other. Legal status and legal rights are not the only factors that determine the living conditions for Palestinian refugees in host countries.¹⁸¹ On the contrary, there is often a correlation between the socioeconomic conditions of Palestinian refugees in host Arab countries and that of the rest of the population, at least for refugee populations living outside the refugee camps.

Nevertheless, some data concerning the economic and social situation of Palestinian refugees in host states is explicable if placed in the context of their legal status and rights distribution.¹⁸² The suggestion is that the welfare status of Palestinian refugees in host Arab states is strictly connected to their legal entitlements, their rights and their freedoms. There is a risk of oversimplification in suggesting a connection, in abstract terms, between legal rights and concrete conditions of welfare. This is not the objective. Rather, the intention is to suggest that the presence of certain legal provisions in force in host Arab states, or the lack of other legal provisions, contributes to the deterioration of welfare.

¹⁸¹ In Jordan, e.g., it was outlined by many reports (see, e.g., M. Arneberg, 'Living Conditions Among Palestinian Refugees and Displaced in Jordan' (Fafo-Report 237, 1997); M. Khawaja and Å. Tiltnes (eds.), 'On the Margins: Migration and Living Conditions of Palestinian Camp Refugees in Jordan' (Fafo-Report 357, 2002)) that there are clear differences between Palestinian refugees living in refugee camps and Palestinian refugees living in the rest of the country. Regardless of the reasons behind such differences, what is important is that the situation of Palestinian refugees in host Arab countries needs to be looked at with attention to those existing differences, and that legal status is not the only factor that affects Palestinian refugees' welfare in host countries.

¹⁸² The increased poverty among Palestinian refugees in Lebanon can be cited as an example. For Arzt, 'Around 60 percent of the Palestinians in Lebanon live below the U.N. poverty line, making it the poorest of the communities in the UNRWA orbit', Arzt, above n. 39, 46. According to Said, '[t]he legal situation of the Palestinian refugees in Lebanon explains in part why an estimated 80% live in poverty . . . The rise in poverty has also created a health crisis, as Palestinians are not allowed access to Lebanese government hospitals and other health services', Said, above n. 9, 354. Restrictive policies and laws in a host country, such as in Lebanon, add to refugees' preoccupations on new ones, including the daily life problems arising from the 'lack of housing, lack of jobs, decline in aid, and environmental deterioration. More serious is the pervasive anxiety caused by uncertainty about the future and the "campaigns of hatred" that erupt whenever the question of Palestinian naturalization or *tawtin* arises', Sayigh, above n. 95, 52. In support of this claim, is a report issued by Fafo, related to Palestinian refugees in Syria, which states that the living conditions of Palestinian refugees in Syria are basically on a par with those of Syrian citizens. The same report connects this reality with the existing equality of rights between Palestinian refugees and citizens. Å. Tiltnes, (ed.), 'Palestinian Refugees in Syria: Human Capital, Economic Resources and Living Conditions' (Fafo-Report 514, 2006), 9.

5. Conclusion

More than six decades after displacement, Palestinian refugees in host Arab states still need assistance and protection. Their right to return is yet to be realized, and statelessness is still a destabilizing factor in the region. International aid, even in a time of global financial crisis, needs to be maintained, not out of charity but out of responsibility. As pointed out by Saiz, '[t]hat international assistance is an obligation, not an act of charity, must be emphasized in a context where the costs of the economic crisis are being borne disproportionately in the south, despite having originated in the richer countries'.¹⁸³

Most importantly in the Palestinian case, it is partially the responsibility of the international community, which partitioned Palestine, has yet to establish a Palestinian state, and has not enforced the many resolutions related to the right of return for Palestinian refugees. In this context it is possible to perceive assistance as a form of protection. Whenever assistance is given to fulfill a legal obligation, it may be considered as comprising part of a protection mechanism. Assistance as protection is not conceived as an act of charity aiming to provide superfluous resources to refugees in need. Rather, it is conceived as an obligation of host states, as much as of the international community. Accordingly, they are responsible for fulfilling this obligation, and, falling short, they risk being rendered accountable and responsible. In this sense, the basis for state action is not dependent on refugee need or state resources, but rather on individual entitlements to rights.¹⁸⁴

The way assistance is provided to the Palestinians, including UNRWA shortcomings, intentions to reduce services, the lack of resources and funds, and the diminution of contributions from the international community, proves that assistance is not conceived as a legal obligation. A similar conclusion can be reached by observing the way some host countries are (or are not) providing assistance to Palestinian refugees, including refusal to admit them to public schools, hospitals, and other state services.

This is one reason why assisting Palestinian refugees for decades has not contributed to Palestinian refugee empowerment and welfare or economic, social, and political development. This is why assistance is provided for

¹⁸³ Saiz, above n. 153, 288.

¹⁸⁴ Although rights may be satisfied in ways similar to needs, a rights-based approach is completely different from a needs-based approach, and has different consequences. A rights-based approach takes seriously the rights of refugees, and not only their needs. The essence of a rights-based approach is the identification of a certain standard of treatment to which an individual refugee is entitled. In addition, rights imply justiciability, namely the ability to access and claim justice. It goes one step further and prompts questions about responsibility and accountability, and provides a legal component that points to the institutional duty to protect, respect, fulfil and safeguard them. Grabska, above n. 27, 11.

Palestinians while maintaining refugee camps, as if refugeehood and economic instability and precariousness are two faces of the same coin.¹⁸⁵

Protection, however, entails much more than assistance. It entails taking refugee rights seriously. This article has shown that the way host Arab countries deal with Palestinian refugees is variable and changeable, and that in times of crisis these countries often delimit these rights as part of their response to internal, regional, or international contingencies.

Precarious legal recognition of economic and social rights, accompanied by a lack of political enforcement, renders Palestinian refugees likely victims of the consequences of the global financial crisis, and an easy target for policies undertaken by concerned governments responding to recession. The economic crisis may provide a good excuse to justify rejecting legal obligations to recognize economic and social rights, since legal recognition has serious consequences, not only in economic and political terms, but also in legal terms. Besides, the global financial crisis provides a much-awaited opportunity for concerned states to escape fulfillment of their political commitments for the enforcement of economic and social rights, 'a further license to ignore their economic and social rights obligations'.¹⁸⁶ A more optimistic vision of the current crisis may see an opportunity to bridge the gap between legal justiciability and political accountability. The challenge would be to translate the abstract normative principles of international law into an ethical point of reference in the political arena and make them operational in day-to-day public policy making.¹⁸⁷

In this article the vision is admittedly pessimistic. The global financial crisis may have direct and indirect consequences for Palestinian refugees. The little available literature on the topic suggests that, at least with regard to political enforcement of economic and social rights, there is a real danger of regression. Based on historical experience, this article suggests, there are serious grounds to believe that legal recognition of economic and social rights will be affected. It is possible to accept arguments in favour of delaying political enforcement because of financial and economic prerogatives, delimiting its application *ad minima*, or even deciding to prioritize certain actions over others. What is inconceivable to accept, from a human rights perspective, are compromises with regard to legal recognition.

A right exists or does not exist. One cannot have both options. State actions aimed at delaying the legal recognition of economic and social

¹⁸⁵ Here again there is a clear difference between host countries concerning the number of refugees who remain in refugee camps, where policies of host states have a direct impact on the refugees' decision to remain in the refugee camp or to opt to live elsewhere in the host country. In Jordan, e.g., where 95% of Palestinian refugees have Jordanian citizenship (Arneberg, above n. 181, 16), only 13% actually live in UNRWA refugee camps. In general, situations in camps are 'worse off with regards to almost all aspects of what are considered relevant indicators of a good life' (*ibid.*, 7).

¹⁸⁶ Saiz, above n. 153, 280.

¹⁸⁷ *Ibid.*, 281.

rights, delimiting them, or reorganizing them in a way that renders those rights effectively non-existent, are intolerable and unjustifiable. None of the duties of host countries with regard to human rights are derogable as a result of the financial crisis. They are universally applicable to all states regardless of their level of resources or economic development.

Deterioration in the global economic structure is therefore no justification for states – whatever their level of income – to compromise on fundamental human rights obligations. In such times, it is all the more important that states guarantee minimum essential levels of these rights, take deliberate measures to protect the most vulnerable, avoid measures that are regressive or discriminatory, and orient public policy towards the progressive realization of the rights of the whole population through the equitable distribution of available resources.¹⁸⁸

¹⁸⁸ *Ibid.*, 283-4.