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PALESTINIAN CITIZENSHIP  
WITHIN THE STATE OF PALESTINE:  
THE RIGHT ANSWER FOR THE WRONG QUESTION

## **1. Introduction**

In this chapter, the authors discuss the following main argument: citizenship in Palestine, being a state-centred institution, in reality served objectives that are the opposite of what citizenship aims at in a democratic society – i.e. to empower equal citizens and provide the basis for their enjoyment of rights and freedoms. In other words, citizenship in Palestine was yet another colonial and occupation tool that contributed to Palestinians' disempowerment, their dispersion, and their lack of protection from violation of their basic rights.

The authors will be supporting this argument by first tracking back the Palestinian citizenship history since the establishment of the British Mandate in Palestine to show how the British mandate shaped Palestinian citizenship using it, yet, as a colonial tool. Thereafter how Jordan and Egypt used the citizenship to serve other aims such as including some Palestinians from their authority while excluding others. Moreover, how the state of Israel applied the citizenship to create new identities that serve their own objectives, resulting in a very complex legal matrix that differentiated between Palestinians artificially.

While doing so we will provide a contextualized analysis of the current limbo under which many Palestinians live, subjected to various legal and political regimes. In such a context, the authors will then discuss the 2012 recognition of Palestine at the UN General Assembly (Unga) as a non-member state. This shifted, yet again, the Palestinians' focus to the statehood within the 1967 borders, perceived as part of the solution to the Israeli-Palestinian conflict and its focus on the two-state solution. We will argue how focusing on state-centered citizenship for Palestinians inside the borders of the 1967 and adopting the citizenship based on the territory is at best counterproductive and futile and at worst a dangerous endeavour.

## 2. Citizenship during the British Mandate

On November the 2<sup>nd</sup> 1917, the United Kingdom's secretary, Arthur Balfour, sent a letter to the leader of the British Jewish community, Lord Rothschild, in which he announced Britain's support of establishing a "national home for the Jewish people in Palestine"<sup>1</sup> this announcement is known as the Balfour Declaration, taking into account that Palestine was still part of the Ottoman Empire and thus Britain had no legitimate rule over it.<sup>2</sup> Therefore, the Declaration was illegitimate and was a starting point to the Arab-Israeli conflict.

Consequently, when the British civil administration of Palestine began in 1920, it was very clear that establishing a national home for the Jewish people in Palestine (following the Balfour Declaration), the abetment of Jewish immigration and creation of a national homeland for the Jewish immigrants were the main objectives. However, it was a bit unclear on how to carry out this plan with the proper legislative process, mainly after the ratification of the Mandate of Palestine by the League of Nations, for Britain had to balance between fulfilling the Balfour Declaration and the proposed Palestine Mandate (prepare the Palestinians for independence) obligations, therefore, Britain adopted a colonial style of administration<sup>3</sup>.

Nevertheless, the British were able to draft a Palestinian nationality law in the late 1920s known as the Citizenship Order 1925 (hereinafter The Order), blending with the existing Ottoman legislation<sup>4</sup>, and the Jewish Agency for Palestine was involved in the process of drafting the order to help in achieving the aim<sup>5</sup>.

The Order was not adopted until the peace agreement with Turkey was concluded; when the Treaty of Lausanne came into force in 1924 it stipulated that the nationals of the Ottoman Empire are "*ipso facto*" nationals of the state, and the Order gave effect to this principle. The Order granted the Palestinian citizenship to "Turkish subjects habitually

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<sup>1</sup> *Mandate for Palestine*, adopted by the League of Nations, 12 August 1922.

<sup>2</sup> Y. KNELL, *Balfour declaration: the divisive legacy of 67 word*, "Bbc news Jerusalem", <<http://www.bbc.com/news/world-middle-east-41765892>>.

<sup>3</sup> L. E. BANKO, *The 'invention' of Palestinian citizenship: discourses and practices, 1918-1937*, PhD Thesis, Soas, University of London, 2013, p. 51.

<sup>4</sup> L. E. BANKO, *The creation of Palestinian citizenship under an international mandate: legislation, discourses and practices, 1918-1925*, "Citizenship Studies", 16, November 2012, no. 5-6, pp. 641-655.

<sup>5</sup> M. QAFISHEH, *The International Law Foundations of Palestinian Nationality: A Legal Examination of Palestinian Nationality under the British Rule*, Doctorat: Genève, CH: Université de Genève, Institut universitaire de hautes études internationales, 2007, pp. 12-13.

resident in the territory of Palestine upon the 1<sup>st</sup> Day of August 1925” meaning that Palestinians who were not residing in Palestine at that time were deprived from obtaining this citizenship, and Transjordan was specifically excluded<sup>6</sup>.

Moreover, the mandate text ordered the British to produce a law to develop a Palestinian nationality for the Jews and was directed to “facilitate the acquisition of Palestinian citizenship by Jews who take up their permanent residence in Palestine” and that “No person shall be excluded from Palestine on the sole ground of his religious belief”<sup>7</sup>. Additionally, it was the only nationality law enacted by Britain in all the territories assigned to it as a Mandatory<sup>8</sup>.

Essentially, the nationality had to give rights and obligations for both the Arab population and the Jewish immigrants; for the British Government stated that at the same time nothing should “prejudice the civil and religious rights of existing non-Jewish communities”<sup>9</sup> hence the British had to be attentive in their legislation for citizenship and nationality. Still, Britain did not offer Arabs equal rights-based citizenship for *inter alia* they feared that giving right for the Arabs to vote would hinder its obligations towards the Zionist movement<sup>10</sup>.

Taking into consideration, the Order amended certain provisions within the Ottoman Nationality law of 1869 to fit the criteria of minimizing non-Jewish Palestinian citizens, for instance; the restriction of the citizenship to those who were born in Palestine but happen to reside outside Palestine, and stipulated new provisions such as what is related to naturalization, expatriation and the nationality of married women with the children<sup>11</sup>.

The Order was able to change the provisions for citizenship in three ways<sup>12</sup>:

First: it regulated the acquisition of British-Palestine citizenship to “natural Palestinians” who are Ottoman national residents in Palestine, which lead to the restriction of thousands of Palestinians who were born in Palestine but happened to be, on that date, out for business,

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<sup>6</sup> M. QAFISHEH, *Genesis of Citizenship in Palestine and Israel: Palestinian Nationality during the Period 1917-1925*, “Journal of the History of International Law”, 11, 2009, p. 17.

<sup>7</sup> J. C. HUREWITZ (ed.), *Diplomacy in the Near and Middle East, volume-II: a documentary record, 1914-1956*, New York, Octagon Books, 1956, p. 120.

<sup>8</sup> A. KHALIL, *Palestinians to Citizens, is Citizenship a Solution to the Palestinian Problem?*, “Middle East Law and Governance”, 6, 2014, 3, p. 208.

<sup>9</sup> HUREWITZ (ed.), *Diplomacy in the Near and Middle East*, cit., p. 106.

<sup>10</sup> BANKO, *The ‘invention’ of Palestinian citizenship*, cit., p. 51.

<sup>11</sup> QAFISHEH, *The International Law Foundations of Palestinian Nationality*, cit., p. 109.

<sup>12</sup> KHALIL, *Palestinians to Citizens*, cit., p. 210.

study or tourism. The only way they were able to obtain the citizenship is by naturalization which is granted by the complete direction of the government, as Article (2) of the Order stipulated that the government of Palestine has an “absolute discretion” in choosing whether to grant or withhold the Palestinian nationality<sup>13</sup>, out of 9,000 applications submitted only 100 were accepted. As a result, thousands of Palestinians became stateless as they lost the Turkish citizenship and were not granted the Palestinian one. Taking into account, that the Mandate citizenship law enabled the acquisition of the Palestinian citizenship by naturalization to 130,000 foreigners by 1946; 99% of who were Jews<sup>14</sup>. Moreover, in 1938 the Annual Report of the Administration of the League of Nations stated that Jewish immigrants were granted naturalization despite not meeting the qualification of three years residence in Palestine<sup>15</sup>.

Second: it was ruled that “a British who acquires Palestinian citizenship by naturalization, does not thereby lose his British nationality” consequently, British Jews who settled in Palestine were able to keep their British nationality, this was an encouraging legal reasoning to enable British Jews to settle in Palestine without losing their British nationality, at a time were dual nationality was forbidden in both Britain and the Order itself<sup>16</sup>.

Finally, expatriation and the loss of nationality were regulated by the Order, one can lose his Palestinian nationality as a result of obtaining another nationality, revocation of nationality as punishment or by the marriage of Palestinian women to a foreigner. This led to the loss of many Palestinians’ nationality.

Essentially, the British were able to create an apolitical citizenship one without any civil or political rights, meant to justify and achieve the goal of creating a Jewish national home while at the same time satisfying the terms of the mandate, thus the citizenship was produced out of a colonial process, despite the fact that the British had to act as an international trustee in Palestine<sup>17</sup>, this image of citizenship still finds its resonances in the present conflict<sup>18</sup>.

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<sup>13</sup> *Laws of Palestine, 1918-1925: Including Orders in Council, Ordinances, Regulations, Rules of Court, Public Notices, Proclamations, Etc., Arranged in Alphabetical and chronological Order with an Index*, vol. 2, Tel-Aviv, (Palestine), L. M. Rotenberg, 1933-34, p. 444. Article (2) of the Order states: the Government of Palestine “in its absolute discretion” could choose ultimately whether to grant or withhold Palestinian nationality.

<sup>14</sup> KHALIL, *Palestinians to Citizens*, cit., p. 211.

<sup>15</sup> BANKO, *The ‘invention’ of Palestinian citizenship*, cit., p. 254.

<sup>16</sup> KHALIL, *Palestinians to Citizens*, p. 211.

<sup>17</sup> BANKO, *The creation of Palestinian citizenship under an international mandate*, cit.

<sup>18</sup> F. ISIN ENGIN, *Citizenship after orientalism: an unfinished project*, “Citizenship Studies”, 16, 2012, no. 5-6, p. 570.

The creation of the citizenship for the Palestinians was affected by the extensive experience of colonial concepts of citizenship the British had in the empire and was inspired by Lord Cromer in Egypt, who shaped racial distinctions to separate Europeans from local natives<sup>19</sup>. The same mission the British had to separate the local Arab majority population from the Jewish Immigrants in Palestine, through the procedures of acquiring a nationality and citizenship status.

Palestinians were not British citizens while under the mandate, while Palestinians were represented by British Authority abroad they were deemed as alien subjects for British law proper, Palestinian citizens were not considered as British subjects but instead as British protected persons. In addition, Palestinians were citizens of the Government of Palestine which was a non-state government that was under the sovereign authority of Britain<sup>20</sup>.

### 3. Citizenship after the 1948 war

The Order remained in effect until May 14<sup>th</sup> 1948 when the British mandate came to an end, and the Palestinian citizenship was distorted even more due to the establishment of the state of Israel. Israel declared its independence, the establishment of Israel as “the Jewish state” with a vision that it be “the creation of the entire Jewish people”<sup>21</sup>, affirmed sovereignty over the territories they controlled after the 1948 war and passed several amendments to the nationality law, in which enabled Jews in any part of the world to immigrate to Israel and obtain the Israeli citizenship<sup>22</sup>.

The creation of a Jewish state caused multifaceted troubles for non-Jewish Palestinians who once enjoyed the Palestinian citizenship. As a result, the Palestinian citizenship fell apart; Palestinian Arabs had no citizenship and were recognized as either, Arabs who remained in Israel, refugees, Palestinian Arabs who obtained the Jordanian

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<sup>19</sup> BANKO, *The creation of Palestinian citizenship*, cit.; Y. SHENHAV, Y. BERDA, *The Colonial Foundations of the State of Exception: Juxtaposing the Israeli Occupation of the Palestinian Territories with Colonial Bureaucratic History*, in A. OPHIR, M. GIVONI, S. HANAFI (eds), *The Power of Inclusive Exclusion: Anatomy of Israeli Rule in the Occupied Palestinian Territories*, Cambridge, The MIT Press, 2009, pp. 348-349.

<sup>20</sup> KHALIL, *Palestinians to Citizens*, cit., p. 209.

<sup>21</sup> World Zionist Organization, Jewish Agency (Status) Law, 5713-1952, <<https://www.adalah.org/uploads/oldfiles/Public/files/Discriminatory-Laws-Database/English/18-World-Zionist-Organization-Jewish-Agency-Status-Law-1952.pdf>>.

<sup>22</sup> KHALIL, *Palestinians to Citizens*, cit., p. 212.

citizenship or Arabs who remained in Gaza. Henceforth, Palestinians were no longer Palestinian only citizens; they were Israeli-Palestinians, Jordanian-Palestinians, United Nations Relief and work agency Palestinians or Gaza Palestinians<sup>23</sup>.

The West Bank including East Jerusalem became part of Jordan and the Gaza strip was under direct Egyptian control.

Gaza remained the only territory that remained Palestinian and was never integrated into the jurisdiction of Egypt. Egypt did not claim sovereignty over Gaza and considered the administration temporary until the creation of a Palestine state<sup>24</sup>. Consequently, Egypt kept the Palestinian citizenship Order of 1925 intact while maintaining complete control over Gaza, and although Palestinians declared an “All-Palestine” government in Gaza, they never really enjoyed sovereignty over the territory nor the people. The lack of independence in the Gaza strip was an impediment to accepting the continuing of the British Palestinian citizenship, this lack of independence meant that Egypt was merely responsible for representing Gazans and offering protection, nothing more. In addition, Gazans were denied access to the Egyptian nationality<sup>25</sup>.

In essence, Gazan Palestinians were stateless; on one hand, they lost their Palestinian citizenship and on the other, Egypt did not offer nor made it possible for them to obtain the Egyptian nationality, seemingly Egypt’s objective was to exclude the Palestinians from the possibility of obtaining the State’s nationality.

The West Bank became under the rule of the Hashemite Kingdom of Jordan and Palestinians residing in the West Bank became Jordanian citizens, along with the Palestinian refugees who fled Palestine in the 1948 war and were present in the territories of the Kingdom of Jordan. In 1949 the Jordanian Council of Ministers amended their Citizenship law of 1928 by adding an article which stipulated that all those who at the time when this law goes into effect were holders of Palestinian citizenship shall be deemed as Jordanians enjoying all rights

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<sup>23</sup> N. AUGUST BUTENSCHON, U. DAVIS, M. SARKIS HASSASSIAN, *Citizenship and the state in the Middle East: approaches and applications*, Syracuse, Syracuse University Press, 2000, p. 204.

<sup>24</sup> L. BROOKE-HOLLAND, R. PAGE, *Recent developments in the Occupied Palestinian Territories*, Briefing Paper, House Of Commons Library, Number CBP 7689, 20 March 2017, p. 10.

<sup>25</sup> A. KHALIL, *Palestinian Nationality and Citizenship, Current Challenges and Future Perspectives*, European University Institute, Robert Schuman Centre for Advanced Studies, CARIM Research Report No. 2007/7, p. 23.

of Jordanians and bearing all the obligations<sup>26</sup>. However, even though Jordan granted the citizenship to those Palestinians in 1949 it was confirmed in 1954 by the Jordanian Nationality law<sup>27</sup>.

Conversely, Palestinians in Gaza and those who fled Gaza in the 1948 war were not eligible to obtain the Jordanian citizenship and were dealt as foreigners in Jordan. Thus, it was clear that Jordan had all intentions to annex the West Bank and Jerusalem into their territory, by granting these Palestinian residents the Jordanian citizenship instead of formulating Palestinian citizenship. Palestinians in the West Bank enjoyed the travel facilities and access to services in Jordan until July 31, 1988, after the unilateral declaration of the legal separation of the West Bank, ending all Jordanian claims on the West Bank. Consequently, Palestinians of the West Bank became *de jure* stateless again – while *de facto* they were stateless since the 1967 Israeli occupation<sup>28</sup>.

Essentially, Gazans have been stateless longer than West bankers, for Egypt did not grant their citizenship to them, while West Bankers obtained full Jordanian citizenship until 1988 when Jordan renounced its claim over the territory and supported the creation of a Palestinian state.<sup>29</sup>

As for the state of Israel, there was clear discrimination in the conditions of acquiring citizenship for Jews and Palestinians (non-Jews). Israel enacted a nationality law in 1952 “Israel’s nationality law of 1952”, which denationalized the Palestinians and granted every immigrant in Israel that is Jew immediate Israeli citizenship, moreover, in 1971 the law was amended to even grant those who “expressed the desire to immigrate to Israel” and without taking any formal steps. As for Palestinians residing in Israel, they had to go through the “naturalization” process in order to obtain the Israeli citizenship, where they had to satisfy *inter alia* the conditions that they had been residing in Israel or in the area that became an Israeli territory or have legally entered Israel between the 14<sup>th</sup> of May 1948 and 14<sup>th</sup> of July 1952, however these conditions were hard to fulfil for Palestinians at that time had no proof, whether a Palestinian citizenship or a an identity card (which have been surrendered to the Israeli army) and as a result many Palestinians residing in Israel failed to satisfy the conditions and

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<sup>26</sup> BUTENSCHON, DAVIS, SARKIS HASSASSIAN, *Citizenship and the state in the Middle East*, cit., p. 207.

<sup>27</sup> QAFISHEH, *The international law foundations of Palestinian nationality*, cit., p. 15.

<sup>28</sup> KHALIL, *Palestinian Nationality and Citizenship*, cit., p. 23.

<sup>29</sup> BROOKE-HOLLAND, PAGE, *Recent developments in the Occupied Palestinian Territories*, cit., p. 10.



were stateless in Israel, consequently over the years stateless Palestinians residing in Israel gave birth to stateless children<sup>30</sup>.

After the 1967 war, when Israel was able to occupy the West Bank and Gaza, two military administrations were established. East Jerusalem was illegally annexed to Israel and was offered a different treatment, different from the rest of the occupied Palestinian territory; East Jerusalemites were offered the Israeli citizenship but the vast majority did not take up the offer, arguing that obtaining this citizenship would mean accepting Israel's jurisdiction over East Jerusalem. Today, Palestinian Jerusalemites are tolerated by Israel, the occupier power, as "Permanent residents". As for the West Bank and Gaza they have minimal entitlements, the Israeli occupation maintained the legal and administrative fragmentation of the two areas, and added its own administrative and military law, and dealt with them as two separate entities under two separate administrations, residents in the Gaza strip and the West Bank were considered as foreign residents<sup>31</sup>.

Even though international law states that when a new state is established "the population follows the change of sovereignty in matters of nationality"<sup>32</sup> meaning that citizens of the former state should attain the nationality of the new state as a rule, and not acquire a different, unequal and racist one; this was not the case for the occupied Palestinian territories Palestinian residents.

Following the Oslo agreement in 1995, Israel controlled the residency rights of the Palestinian population and their right to exit or enter a specific territory; it also maintains the exclusive power to grant or deny an Id or revoke the Id number of Palestinians. Consequently, territorial fragmentation was established.

Gazans as well as West Bank residents, needed a permit to remain in the region, moreover, after the Israeli unilateral "withdrawal" from Gaza in 2005, Israel declared the Gaza strip as an "enemy territory" which in return intensified the restriction regime of entry and exit to and from the Gaza strip. Taking into account that Israel however, kept direct control of Gaza's population registry, airspace, sea, and land borders,

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<sup>30</sup> BUTENSCHON, DAVIS, SARKIS HASSASSIAN, *Citizenship and the state in the Middle East*, cit., p. 205.

<sup>31</sup> A. KHALIL, R. A. DEL SARTO, *The Legal Fragmentation of Palestine-Israel and European Union Policies Promoting the Rule of Law*, in R. A. DEL SARTO (ed.), *Fragmented Borders, Interdependence and External Relations. The Israel-Palestine-European Union Triangle*, Springer, Basingstoke-New York, Palgrave, 2015, p. 135.

<sup>32</sup> QAFISHEH, *The international law foundations of Palestinian nationality*, cit., p. 57.



Gaza can be considered still as an occupied territory and Israel has obligations towards its residents based in International Humanitarian Law.

As for the refugees who were displaced as a result of war simply could not access an identification number issued by Israel unless, through a long, difficult and complicated process of family ratification, and those who were able to obtain an identification number were not the citizens of Israel or any other state<sup>33</sup>.

Moreover, the Palestinian authority (hereinafter Pa) drafted a Citizenship law in 1995, after its establishment due to the Oslo records, but did not pass it. Article (7) of the law defined a Palestinian as anyone who, *inter alia* was a holder of Palestinian citizenship before 15 May 1948 “other than Jews”, was born to a Palestinian father, was born in Palestine to a Palestinian mother or to unknown parents. However, this Draft law did not consider Palestinians living in diaspora or addresses Unrwa-Palestinians in which how they could attain citizenship<sup>34</sup>.

Generally speaking, Palestinians are considered stateless, even though the Palestinian National Authority (Pa) issues its own passports, which are considered as travel documents and not citizenship, they are not commonly accepted since most countries do not recognize the Pa as a state.

#### 4. Current legal limbo

The nationalization and naturalization process, and then again the denationalization and de-naturalization process that took place in Palestine, the segregation of the West Bank and Gaza strip and the stripping off East Jerusalem, resulted in the fragmentation of the Palestinians and separated them into multiple groups and sub-groups, with each subjected to a different kind of restrictions, rights and freedoms, each granted unequal rights and freedoms also, as well as territoriality emerging as additional criterion of demarcation<sup>35</sup>.

Israel's illegal annexation of Jerusalem resulted in the application of the Israeli civil legislation, controlling the issuance of their Ids and legal residency by the Israeli Ministry of Interior. Palestinian Jerusalemites considered as permanent residents but not citizens are anything but

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<sup>33</sup> KHALIL, DEL SARTO, *The Legal Fragmentation of Palestine-Israel*, cit., p. 132.

<sup>34</sup> Draft circulated by the Council for Opinion and Legislation as cited in BUTENSCHON, DAVIS, SARKIS HASSASSIAN, *Citizenship and the state in the Middle East*, cit., p. 219.

<sup>35</sup> KHALIL, *Palestinians to Citizens*, cit., p. 10.

permanent citizens for they are deprived of their Ids and residency if they were to be absent from the city for more than seven years or have acquired other citizenship or residency rights elsewhere<sup>36</sup>.

Meanwhile, Israel issues Ids by the Israeli military government to Palestinians residing in the West Bank and Gaza, indicating West Bankers as “residents” and their nationality is Jordanian while, Gazans were considered as “Palestinian refugees” and their nationality is undefined. In 2013 it was evaluated that more than 50,000 Gazans do not have Id cards or any official status in any other country for various reasons<sup>37</sup>.

Moreover, Palestinian refugees living in *diaspora* are treated as alien residents, it is important to note, however, that Ids for Palestinian refugees varied from Arab host countries to another, but generally speaking, Palestinian refugees are stateless possessing identity and travel documents and not issued passports from the host country<sup>38</sup>.

With Israel controlling both the legal residency of East Jerusalem Palestinians and the Id number of the residents of the West Bank and Gaza, three groups of Palestinian Id holders need permits to enter either of the other two areas where their fellow Palestinians live.

The right to move residency from one to another requires the approval of the Israeli authorities. In addition, the Palestinian Territories are characterized by complete disconnected and separated jurisdictions, territorially defined entities and categories of people.

Moreover, the Pa is assigned certain tasks and must follow a protocol cooperating with the Israeli army when performing different legal spaces that are defined in terms of specific functions. Thus, distinct jurisdictions apply to different categories of persons, with East Jerusalem Palestinians being excluded from the Pa’s jurisdiction. In addition to separate laws applied to Palestinians, there are many other discriminatory features such as the separate road system in the West Bank, which is basically territorial fragmentation and a sense of apartheid<sup>39</sup>.

Palestinian Jerusalemites cars with yellow number plates can circulate freely across Israel and the territories<sup>40</sup>, though cars with green number plates, characterizing the vehicles of Palestinians from

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<sup>36</sup> S. ABBAS, *Stateless Palestinians*, in “Forced Migration Review”, 26, 2006, pp. 8-9.

<sup>37</sup> *Residents without Status*, The Gaza Strip, Btselem, 21 July 2013, <[https://www.btselem.org/gaza\\_strip/stateless](https://www.btselem.org/gaza_strip/stateless)>.

<sup>38</sup> K. LAWAND, *The Right to Return of Palestinians in International Law*, “International Journal of Refugee Law” 8, 1996, 4, p. 34.

<sup>39</sup> J. DUGARD, J. REYNOLDS, *Apartheid, international law, and the occupied Palestinian territory*, “European Journal of International Law” 24, 2013, 3, p. 44.

<sup>40</sup> *Ibidem*.

the territories cannot enter Israel and are forbidden to use the bypass roads. Moreover at the checkpoints, further distinction is made according to Ids, for instance, an East Jerusalem Palestinian woman driving a yellow plated car, who is married to a Palestinian from Ramallah with a “Palestinian” Id that drives a green plated car can travel with her husband in the Israeli occupied territory with either the green or yellow number plate car; however at the Qalandia checkpoint the only access point for entry to Israel the wife can drive through the checkpoint in the car, while her husband has to cross the checkpoint on foot<sup>41</sup>.

As for Palestinian citizens in Israel (1948 borders), there are unequal citizenship rights, whether it is in the legislation, by drawing boundaries of Arab citizenship entrenching laws that are discriminatory when it comes to the right of expression, economic status, political participation or even family right. Government policies or public discourse by describing the Palestinians as enemies and referred to as a threat. In essence, Palestinians residing in Israel are “citizens without citizenship” and are treated as residents with unequal rights, meaningful citizenship is only granted Jewish citizens only<sup>42</sup>. Identity distinctions between the Jews and Israeli Palestinians are rooted in laws, social and state practice<sup>43</sup>.

The different categories of rights relating to residency, citizenship, access, and freedom of movement bestowed upon Israelis and Palestinians are legal statuses that are defined solely by Israel. Unlike as in much of the world, in Palestine, governance and how lives can be lived varies from one place to another and from one Palestinian to another. There are different rules for different people. Not all Palestinian individuals live the same life, their daily lives unfold in a complex matrix of laws, rules, orders, norms and institutions that shape and compel every action. What is a law for one Palestinian differs from one place to another in Palestine, such as what can be constituted as a crime or not can experience wildly different rights, restrictions or privileges<sup>44</sup>. Even on aspects of travel not every Palestinian travel the same way and from the same place. These elements impact an

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<sup>41</sup> KHALIL, DEL SARTO, *The Legal Fragmentation of Palestine-Israel*, cit., p. 137.

<sup>42</sup> N. N. ROUHANA, N. SULTANY, *Redrawing the Boundaries of Citizenship: Israel's New Hegemony*, “Journal of Palestine Studies”, Vol. 33, 2003, 1, p. 16.

<sup>43</sup> DUGARD, REYNOLDS, *Apartheid, international law, and the occupied Palestinian territory*, cit., p. 24.

<sup>44</sup> *Ibidem*.

individual's day to day life and this situation led to a complete opposite rule of law<sup>45</sup>.

On the 29<sup>th</sup> of November 2012, the Unga designated Palestine as a non-member observer State by Resolution 67/19; this switched the Palestinian focus to the 1967 borders which in return segregates the Palestinians yet again into different subjects as it did during the colonization of Britain. Taking into account that recognition, in theory, is nothing but official declaratory of a state being, and is not constitutive of a state nor a necessary element of statehood<sup>46</sup>.

It's important to note, however, the recognition of Palestine as a state took place even before the Unga 67/19 resolution; Palestine was considered and referenced as an existing statehood in the treaty of peace between Turkey and the Allies, i.e. the Treaty of Lausanne. When the latter treaty came into force in 1924, it stipulated and referred to Palestine in several of its provisions as a State along with Iraq and Syria. In addition, the Permanent Court of International justice referred to Palestine as a "successor state" to Turkey in the territory of Palestine, when explaining the meaning of Article (9) of the protocol XII; noting that Palestine was administrated by the British Mandate at that time, yet, Palestine was referred to as a "state"<sup>47</sup>. In addition, the Plo made a statement in 1988 affirming Palestine statehood in the Declaration of independence. Thus, the recognition is considered nothing but a retroactive act. Furthermore, Palestine being occupied in 1948 by Israel did not deprive its status of being a state, for when a state is occupied by a foreign army its status remains unaffected<sup>48</sup>.

Citizenship is normally defined as a legal-political relationship between individuals and their state, through citizenship individuals demarcate their legal status by becoming citizens instead of foreigners. Moreover, citizenship is intrinsically connected to the state, the state is a precondition of citizenship, meaning the inexistence of the state is concomitant with the inexistence of citizenship<sup>49</sup>.

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<sup>45</sup> *Ibidem*.

<sup>46</sup> C. RYNGARET, S. SOBRIE, *Recognition of states: International law or Realpolitik? The practice of recognition in the Wake of Kosovo, South Ossetia, and Abkhazia*, "Leiden Journal of International law", 24, 2011, 2, p. 4; D. AKANDE, *Palestine as a Un Observer State: Does this Make Palestine a State?*, Blog of the "European Journal of International Law", 2012, <<https://www.ejiltalk.org/palestine-as-a-un-observer-state-does-this-make-palestine-a-state/>>.

<sup>47</sup> J. QUIGLEY, *Palestine Statehood and International law*, Mortiz College of Law, The Ohio State University, Global Policy Essay, January 2013, p. 2.

<sup>48</sup> See: "International Review of the Red Cross: Humanitarian debate: Law, policy, action, Occupation", 94, 2012, 885, p. 2.

<sup>49</sup> A. KHALIL, *Palestinian Nationality and Citizenship*, cit., p. 32.

Consequently, the establishment of a state is normally juxtaposition to regulating citizenship effectively, and discussions around formulating citizenship as a measure to take for strengthening the status of Palestine as a state and enhancing the access to justice for the Palestinian victims aroused after the Unga Resolution. The recognition of Palestine as a non-member observer state in the United Nations, is directly connected with Palestine's potential to become a national home and a sovereign state to Palestinians wherever they are, by the ability of granting a Palestinian citizenship to all Palestinians and especially to those who are stateless, which will in return enable them to acquire rights and freedoms.

Through the recognition, Palestine is able to issue passports that would be *ipso facto* recognized by other states that recognize Palestine as a state, claim diplomatic protection of its citizens under international criminal law, refugee law and human rights, in addition, Palestine may define its population<sup>50</sup>.

However recently, there has been an attempt to end the occupation by means of a "two-state solution" where the Palestinian state is formed in the West-bank and Gaza as in the "1967 borders", for the two-state solution is perceived as part of the Palestinian-Israeli conflict's solution. Though, defining Palestinians as residents of the Palestinian state "the 1967 borders" will lead to further fragmentation of Palestinians once again, in addition, regulating a citizenship as a state-centered institution will serve the same aims the colonial citizenship during the British mandate served, which as a result established what we now define as a Palestinian.

Additionally, the Pa is supportive of the Unga Resolution A/67/L.28 of November 2012 which recognizes Israeli state legitimacy within the 1967 borders – which means regulating a citizenship would only be applicable in the West Bank and Gaza strip, and not to all historic Palestine. This contradicts with the ideology of having a "Palestinian" citizenship for all Palestinians.

## 5. Conclusion

If the Palestinian citizenship would be regulated under the conventional legal matter, it will jeopardize the state's major task of

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<sup>50</sup> M. M. QAFISHEH, *What Palestine Ought to do after becoming a state on 29 November 2012?*, The Palestinian Initiative for the Promotion of Global Dialogue and Democracy", Ramallah, Palestine, 2012.

safeguarding the right of its inhabitants. The right to citizenship is one of the basic entitlements for it has been codified in international treaties and resolutions as well as upheld by tribunals<sup>51</sup>.

When we refer to Palestine as a state, we cannot and are not talking about a sovereign nation-state, and there are suggestions that we cannot unless or until Palestine and the Palestinian citizenship are formally recognized, although will a formal legal based Palestinian citizenship put an end to this complex matrix and rule of law?

Considering that Palestinian citizenship is formally adopted and recognized, it will only be given to one category of these people; the Palestinians residing in the West Bank and the Gaza strip. East Jerusalemites will not be able to obtain this citizenship and the legal matrix will stay the same for all residents of the West Bank and Gaza Strip because of existing Israeli occupation.

Assuming that residents in the West Bank and Gaza strip obtained a formally recognized Palestinian citizenship, a legal matrix will still be enacted. West Bank residents still will not be able to travel to Jerusalem and will remain different from the residents in the Gaza strip and vice versa, because of the occupation, they will still need a travel document that is also different.

The refugees are entitled to acquire citizenship as well, they have the right to return to their homeland as stipulated by the 1948 Unga resolution 194. However, refugees residing outside of Palestine being as they do not have an Id number, and accordingly, they are not considered to be one of this category and cannot automatically gain the Palestinian citizenship.

Besides, assuming that they will, they won't be able to enter their homes in historic Palestine (now part of the state of Israel). Thereafter; granting Palestinian refugees the Palestinian citizenship will enable them to 'return' to the state of Palestine within the 1967 borders – if and when Israel, now controlling the borders, admit them to the state of Palestine. In any cases, Israel will reject the return of any Palestinian to what is now the state of Israel proper. This means that refugees, not only they are not being able, through citizenship of the state of Palestine, to return to their homes (now part of the state of Israel), they also risk their right to return to their homes as a result – for they have been relocated in the newly established and recognized state of Palestine within the 1967 borders<sup>52</sup>.

In consequence the legal matrix, the territorial fragmentation, and the

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<sup>51</sup> BUTENSCHON, DAVIS, SARKIS HASSASSIAN, *Citizenship and the state in the Middle East*, cit., p. 223.

<sup>52</sup> Ivi, p. 222.

artificial division of Palestinians into categories based on their Ids, and the lack of rule of law, dealing with every Palestinian as a category, where one comes from, what citizenship and Id they hold, will treat everyone as a category still and not follow the rule of law, thus, it does not depend on a rule but on who that rule applies to.

Hence what we are trying to do by creating a legal citizenship for Palestinians within the state of Palestine, will not provide the solution to the real issues at stake; i.e. the right of return, the territorial fragmentation, the artificial division of the population. As a result, providing such nationality will not contribute to the creation of a unified nation, putting an end to the apartheid regime, or to occupation. On the contrary, establishing a nominal state with nominal citizenship, in fact, may fit perfectly with the apartheid regime in place<sup>53</sup>.

The right to citizenship is a basic, fundamental and empowering right that helps safeguard the citizen. However, a Palestinian citizen has never been defined, instead, this definition has been acted by foreign states, and with the British mandate defining who a Palestinian is in the 1925 Order, Israel stripping the citizenship in 1948, Jordan imposing its citizenship in 1949 and stripping them again from it in 1988. The Pa should establish citizenship as a right and not a privilege<sup>54</sup>.

Palestinian Citizenship as a state-centred institution will serve the same objectives citizenship did since the British mandate. Such citizenship, within the 1967 borders, might provide a solution for the statelessness of millions of Palestinians. But, as the title suggests, Palestinian citizenship within the 1967 borders as portrayed by the Unga resolution is the right answer for the wrong question.

The right question is how well we are capable to address the main problems that are the territorial fragmentation of Palestine and the dispersion of the Palestinians, the artificially constructed legal matrix, the prolonged Israeli occupation, the apartheid regime in place in the occupied Palestinian territory, and the question of Palestinian refugees. These are the main issues that if we don't deal with, then Palestinian citizenship won't serve or empower equal Palestinians with rights and freedoms, as it usually does in democratic societies, and how it probably should.

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<sup>53</sup> A. KHALIL, *The Palestinian Authority: Unsettling Status Quo Scenarios*, Al- Shabaka, "The Palestinian policy network", 5 October 2016.

<sup>54</sup> BUTENSCHON, DAVIS, SARKIS HASSASSIAN, *Citizenship and the state in the Middle East*, cit., p. 224.