



BRILL

Palestinians to Citizens

Is Citizenship a Solution to the Palestinian Refugee Problem?

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Abstract

In this paper, I first argue that, since the British mandate, citizenship regulations in Palestine contributed to dispossession of the rights of Palestinians, thus laying the seeds of the Palestinian refugee problem and its eventual consolidation. I then argue that citizenship regulations in host countries were exclusionary towards refugees in general, and Palestinians in particular, making it impossible for Palestinians to integrate in host societies. The so-called “Arab Spring” did not bring about any change in that sense. Finally, I argue that the narrative of statehood, although often separated from that of the “right of return”, constitutes but one narrative, and one from a completely different angle than the narrative of a “right of return”, where the ‘just solution’ creates the possibility of establishing a homeland for Palestinians where they, and in particular the stateless refugees, can be converted into full citizens. What was part of the problem for refugees is presented as part of the solution. This discussion is very important in today’s Palestine, which was just recently accepted by the UN General Assembly as a non-member observer state. The importance of that move is the official Palestinian insistence on the need for a state on the 1967 borders, and the willingness to accept the formula of a two-state solution. Discussion related to citizenship and refugee status, and the right of return, are all back at the center of political and legal discussions.

Keywords

Palestine – Israel – citizenship – refugees – Arab Spring – narrative – nationality

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I Introduction

The story this paper tells about citizenship is unconventional. Rather than a tool empowering individuals by granting them certain rights and freedoms by, and within, a state, Palestinian citizenship was first crafted in historic Palestine by a colonial regime, and aimed at realizing a colonial project. The “Balfour Declaration” was embedded in the League of Nations’ Mandate, as an inherent objective in Palestine, for which the British authorities were entrusted and empowered to take the necessary steps, including the adoption of a nationality law.¹ The 1925 Citizenship Order, which was amended several times throughout the mandate years, constituted the ‘nationality law’ of Palestine, which was referred to in Article 7 of the Palestine Mandate.² Such citizenship is an artificial

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- 1 It is noteworthy that the League of Nations Palestine Mandate did not distinguish between *nationality* and *citizenship*, while the British Mandate preferred the use of citizenship, at least in the *legislative* texts – which arguably was meant to advance the narrative of allegiance to the state (which citizenship emphasizes), rather than membership to a community or belonging to a nation, defined by race, religion, or by other sources of identity definition (which nationality reflects). See: Mutaz Qafisheh, *The International Law Foundations of Palestinian Nationality: A Legal Examination of Palestinian Nationality under the British Rule, Thèse de Doctorat* (Genève, CH: Université de Genève, Institut Universitaire de Hautes Études Internationales, 2007) 99. That is why Qafisheh defined both nationality or citizenship from the legal perspective to mean the “legal link between an individual and a sovereign, which has an international legal personality and is normally (but not exclusively) an independent state” (Qafisheh, 2). That definition stems from the jurisprudence of the International Court of Justice (ICJ) in the *Nottebohm* case: “[N]ationality is a legal bond having as its basis a social fact of attachment, a genuine connection of existence, interests and sentiments, together with the existence of reciprocal rights and duties.” *The Liechtenstein v. Guatemala, Judgment, Second Phase*, 6 April 1955—ICJ Reports, 1955, 23 cited in: (Qafisheh, 2). Contrary to Qafisheh (99), however, I keep the distinction between nationality and citizenship, as they do not mean the same thing. The distinction helped the British Mandate accommodate, at least legally speaking, under one new *demos*, two old *ethnos*, ‘Arabs’ and ‘Jews’. To use the words of British Mandate Attorney General, Norman Bentwich, without necessarily approving them or disapproving them for that purpose: “Arabs and Jews in Palestine claim respectively to have Arab and Jewish nationality, but they are equally Palestinian citizens.” Norman Bentwich, “Palestine Nationality and the Mandate,” *Journal of Comparative Legislation and International Law, Third Series* 21, no. 4 (1939): 231.
- 2 Qafisheh, 97. Article 7 of the Palestine Mandate states: “The Administration of Palestine shall be responsible for enacting a nationality law. There shall be included in this law provisions framed so as to facilitate the acquisition of Palestinian citizenship by Jews who take up their permanent residence in Palestine.” The Palestine Mandate, adopted by the Council of the League of Nations in London, on 24 July 1922, available at: http://avalon.law.yale.edu/20th_century/palmanda.asp.

legal institution, a state articulated one, which admitted pre-existent individuals only if they satisfied retroactively the state's new conditions. The law excluded many others, and helped admit new subjects, enabling them as naturalized citizens, to become part of the new constituency of Palestine – a constituency which was not composed solely of Arab residents of Palestine and/or former Ottoman nationals.

Palestinian citizenship, in the way the British mandate shaped it, certainly undermined Palestinians' right to self-determination as a people. But it also helped crystallize their pre-existent identity as a people distinguishable from other populations under the Ottoman Empire, into a separate national movement, that developed in later decades and led to the establishment of the Palestine Liberation Organization (PLO) in 1964. It further served as a reference for the PLO, a foundational source for their national movement, making it possible to argue that Palestinians' forced displacement in 1948 did not undermine the oneness of the Palestinian people, whether those who remained in historical Palestine (albeit divided in three different states: Israel, the West Bank as annexed to Jordan, and Gaza as administered by Egypt) or those dispersed in host countries, the 1948 refugees.³

Alas, this is the only possible legal and historical foundation for modern Palestinian citizenship. British-Palestinian citizenship served the Palestinian national movement in the same way that original sin served understanding the surrounding world in Christian theology. That considering original sin as the foundation of world humanity, the presumption underlying the conception was its key ingredient. Instead of focusing on the role original sin played in the distortion from the original plan, the crucial feature is the original plan, a plan that obviously pre-existed and preceded original sin. That plan postulated an ideal world, which necessarily existed as a logical foundation for Christian existence, an ideal that can be confronted as unrealistic, on the one hand, or as a non-existent reality on the other hand. The issue in Christianity is not whether the ideal world historically preceded the original sin or not, as it is a matter of faith; faith is a reality that transcends historicity. Transcending historicity does not mean that faith was not something real, but that the reality postulated by faith is a metaphysical order.

3 Although generally interesting and clearly related to the topic I deal with in this paper, I will not deal with the way Palestinians conceived themselves as a nation, separate from neighboring Arab nations, in particular in the PLO Charter of 1964/1968, nor the way the international community conceived them, as appears in various resolutions and declarations. For more, see my earlier study: Asem Khalil, *Palestinian Nationality and Citizenship: Current Challenges and Future Perspectives*, Carim Research Reports 2007/07, Florence, IT: Robert Schuman Centre for Advanced Studies, European University Institute 2007.

Similarly, before the British mandate made the provision for citizenship, the pre-existent and idealistic identity of the Palestinians as a people presumed as a logical foundation of a Palestinian national movement existed, a presumption, as in all national movements, with no need for historical or legal proof. Faith in the presumption of a pre-existing nation keeps the national movement alive. As in Christianity, this should not be interpreted to mean that nationality did not exist historically and/or legally but that the historical and/or legal pre-existence simply does not matter.

Taking into consideration the 1948 catastrophe, what Palestinians call the *Nakba*, Palestinian citizenship was distorted further as a result of the establishment of the state of Israel, and the demise of Palestinian citizenship as a matter of fact due to the lack of a proper state for the Palestinians. The West Bank, including East Jerusalem, became part of Jordan, and the Gaza Strip was under direct Egyptian control. In 1967, a new distortion took place. The West Bank and the Gaza Strip fell under Israeli occupation. Only those granted an identification number were admitted as residents of the areas under Israeli occupation, who, after the Oslo Accords, became the “citizens” of the Palestinian Authority (residents of the “Areas”).

The regulation of citizenship and/or legal residency was used in all those three occasions to exclude some Palestinians from being admitted as citizens or legal residents, making it impossible for those excluded to enjoy those minimum rights related to that legal institution of citizenship and residency. Those excluded have to find alternative places of legal residence outside Palestine. The thousands of Palestinian refugees became *de facto* and *de jure* stateless persons. They found refuge in neighboring Arab countries. Citizenship was not something host countries were ready to offer – with the exception of Jordan, although the provision of citizenship in Jordan was offered only for territorial purposes, namely, as a result of unification/annexation of the West Bank in the newly established Hashemite Kingdom.⁴

As a result, most Palestinian refugees were more fragile than most other refugee populations because of their being stateless in Arab countries, countries that already had a poor track record with respect to basic rights and freedoms

4 Contrary to what appears in the literature in describing Jordan as an exception to the overall attitude towards Palestinians, and the Palestinian refugees in particular, I have argued that Jordan is no different than other states as the Jordanian nationality law applied a territorial clause only. This means it was inclusive only to those who satisfied the conditions provided by the nationality law, and all others were excluded, in particular those Palestinians of Gaza Strip who were under Egyptian control from 1948 to 1967. For more, see Asem Khalil, “Socioeconomic Rights of Palestinian Refugees in Arab Countries,” *International Journal of Refugee Law* 23, no. 4 (2011): 680-719.

even for their own citizens, and because they are the only refugee community who are excluded from being covered by the protection of the International Refugee Convention.⁵

II Palestinian Citizenship under the British Mandate

Palestine before the British occupation and mandate was part of the Ottoman Empire. Palestinians were Ottoman nationals, subject to the Ottoman Nationality Law of 1869.⁶ With the British Mandate, citizenship was now provided by the British Mandate Citizenship Order of 1925 (hereafter, the Order). By studying this Order, it is not my intention, however important, to give a legal foundation for Palestinians' plea for their return, as many typical refugee papers do. Rather, I limit my discussion to showing how the new citizenship law helped the British Mandate to realize the main objective of the Mandate: enabling the establishment of a national homeland for Jews in Palestine.

Before going into details, one cannot but notice how – and contrary to the increasingly common wisdom in contemporary states where citizenship is often connected to sovereign and independent states only – at the time of the League of Nations, the fact that Palestine under British Mandate was not a sovereign and independent state did not present any obstacle to adopting a nationality law.⁷ Such experience of legislating, including the writing of new constitutions, while still under foreign control and before independence was rather a common experience in the region at the time. It is noteworthy, however, that “the Palestinian Citizenship Order was the only ‘nationality law’ provided within a mandate text. It was also the only nationality law enacted by Britain, in all the territories assigned to it as a Mandatory.”⁸

5 For more about the so-called ‘protection gap’ and the way it affects Palestinian refugees, see Khalil 2011.

6 Such historical and legal experiences serve to understand the way the British Mandate dealt with Palestinian nationals before enactment of the British-Palestinian citizenship law in 1925, and also to understand how Ottoman nationality constituted a source of entitlement for some individuals to acquire the British-Palestinian citizenship. Other than that, such experiences are not relevant for our purposes in this paper. For a discussion, see chapter 3 of Qafisheh.

7 For a discussion over the results of adopting a nationality law by British Mandate, while Palestine is not an independent sovereign State, see Bentwich, 230. The fact that it was possible to appeal to the Crown Privy Council by Palestinian courts did not undermine Palestinian nationality. Bentwich, 230-232.

8 Qafisheh, 98. As for Iraq and Trans-Jordan, the nationality laws were enacted by local authorities in 1924 and 1928 respectively. As for Cameroon, Togoland and Tanganyika, also under

As discussed, the League of Nations specifically requested that a nationality law be adopted to realize one of the Mandate objectives, establishing a national homeland for Jews.⁹ This was so significant that the Order of 1925 was enacted by an Order in Council, which sits at the top of the hierarchy of legislative edicts under the mandate.¹⁰ Such an endeavor was also given the weight it merited by the Jewish Agency for Palestine, as they were involved in the drafting process of the Order and other relevant legislation.¹¹ A draft was apparently ready from 1922, but Britain did not adopt it until a peace agreement with Turkey was concluded.¹²

Such facts created an awkward situation which can be formulated as follows: Britain exercised sovereign powers over Palestine, including the adoption of a nationality law; Palestine under the British Mandate was distinguishable from Britain; but in historical Palestine at the time, there was no other independent and sovereign state besides Britain. Palestinian citizens were protected abroad by Britain; Mandate Palestinians were treated by British law and courts as alien subjects; but allegiance to the British Mandate government of Palestine was considered as allegiance to the same Crown.¹³

For Britain, Palestinians were not British citizens. Bentwich argues that the position of Palestine under the mandate, and the protection of Palestinian subjects abroad, was similar to that in British Protectorate. Whereas Palestinians were represented by British Authority abroad, but were deemed alien subjects for British Law proper, as the Order was intended to create a Palestinian citizenship apart from British Nationality.¹⁴ At the same time, mandate Palestinians were the citizens of no other sovereign state but were subjects of the crown, and citizens of the Government of Palestine – a non-state government under the sovereign authority of Britain.¹⁵

British mandate, no nationality legislation was passed and inhabitants were considered British protected persons. For more, see Qafisheh (98) and the literature cited therein.

9 See *supra* note 2.

10 Qafisheh, 102-103.

11 *Ibid*, 12-13.

12 *Ibid*, 81. The Treaty of Lausanne was signed on 24 July 1923 and came into force for Britain (which by then was the Mandatory for Palestine, Trans-Jordan and Iraq), on 6 August 1924 (*Ibid*, 87).

13 Bentwich, 232.

14 *Ibid*, 231.

15 It may be useful for other researchers to study citizenship for non-independent and non-recognized states. See for example, Andrew Grossman, "Nationality and the Unrecognized State," *International Comparative Law Quarterly* 50, no.4 (2001): 849-876.

Under those circumstances, the Order realized the objectives of the mandate by amending certain provisions within Ottoman Nationality Law of 1869, so as, for example, to restrict the right of those born in Palestine, but who happen to reside outside Palestine, to access citizenship,¹⁶ or by adopting entirely new provisions, such as those related to naturalization, expatriation, repatriation, and the nationality of married women and children.¹⁷

In particular, the Order changed the provision for citizenship in three ways:¹⁸

1) The Order regulated acquisition of British-Palestine citizenship by 'natural Palestinians' – Ottoman national residents in Palestine. This provision was restrictive for thousands of persons, born in Palestine, who happened to be outside Palestine (for business, study, or tourism) on the given date.¹⁹ Those persons could apply for Palestinian citizenship through naturalization, but the granting of citizenship was under the complete discretion of the government. Out of 9,000 applications submitted from 1925 to 1936, roughly only 100 were accepted.²⁰ Satisfying the conditions provided by law was not enough to acquire Palestinian citizenship, as Article 2 of the Order states; the Government of Palestine "in its absolute discretion" could choose ultimately whether to grant or withhold Palestinian nationality.²¹ As a result, thousands of persons became stateless as they lost Turkish nationality,²² while not being granted Palestinian

16 Qafisheh, 132-133.

17 Ibid, 109.

18 Ibid, 26-27.

19 Ibid, 123-124, 131.

20 Ibid, 135-136. The numbers clearly show the results of the use of discretion by the British Government of Palestine (Ibid, 138-139) (table is mine):

Year	Number of persons born in Palestine, residing abroad, who were naturalized Palestinians	Number of Foreign Jews naturalized in Palestine
1928	78	4635
1937	64	21,542
1938	92	17,988

21 Ibid, 135.

22 Precise statistics about the total of Palestinian natives who were residing abroad on 6 August 1924 are lacking. However, it was estimated in 1927 that the number of Palestine's natives in Europe and the Americas constituted 25,000. By 1936, it was reported that the figure had risen to 40,000 (Ibid, 134-135).

nationality. Their recourse to the Palestinian judiciary (under the mandate) was in vein, following the Supreme Court of Palestine, sitting as High Court of Justice, in *Kattaneh v. Chief Immigration Officer* of 16 December 1927.²³

2) The introduction of naturalization as a process through which the Mandate Citizenship Law enabled the acquisition of Palestinian citizenship for some 130,000 foreigners (by 1946), 99% of whom were Jews.²⁴ The decision was adopted by the High Commissioner and was not subject to appeal.²⁵ In addition to that, it has been ruled that “a British subject who acquires Palestinian citizenship by naturalization, *as has been done in a number of cases by British Jews settled in Palestine*, does not thereby lose his British nationality. He does not change his allegiance by adopting Palestinian citizenship, and therefore retains his allegiance to the Crown.”²⁶ An encouraging legal reasoning enabled British Jews to settle in Palestine under the British Mandate and acquire this new Palestinian citizenship without losing their British nationality – at a time when dual nationality was forbidden both in Britain, and by the Order itself.

3) The Order regulated expatriation and the loss of nationality, as a result of, *inter alia*, acquisition of another nationality, the revocation of nationality as punishment, and the marriage of Palestinian women with a foreigner, in ways that made it possible for many Palestinians to lose their nationality.

III Citizenship Regulation of Host Countries vis-à-vis the Palestinians

The British Mandate came to an end by unilateral British decision on May 14, 1948, the date in which Israel declared ‘independence’ and claimed sovereignty over the territories they controlled as a result of the war (most of historical Palestine). Palestinians in Israel became with time Israeli citizens,²⁷ while refugees were unable to return because of Israeli refusal, with a small number of

23 Ibid, 134. For a discussion of the interpretation of ‘habitual resident’ by the Supreme Court of Palestine, see Ibid, 114ff.

24 Ibid, 160. While there is a clear disagreement on the exact ratio of Arabs to Jews in Palestine under the British Mandate, it is clear that Arabs were the overwhelming majority at the time the British Mandate began. For an example of the calculation of Arabs to Jews in Palestine, see Ibid, 120. With time, the gap in numbers narrowed in favor of Jews as a result of the British Mandate policies and regulations as explained in this paper.

25 Ibid, 154.

26 Bentwich, 232, emphasis added.

27 It is true that Palestinians in Israel became Israeli citizens, but it is not obvious that they enjoyed equal citizenship. For more see, Nimer Sultany, *Citizens without Citizenship* (Haifa: Arab Center for Applied Social Research – Mada, 2003).

exceptions, to permit their re-entry and thus access citizenship. While at the same time, Israel enacted several amendments to the nationality law enabling Jews, with a few exceptions, in any part of the world to immigrate to Israel and acquire Israeli citizenship.²⁸ The Israeli Nationality Law of 1952, together with the Law of (Jewish) Return, and the Absentees' Property Law, enabled Israel to grant a group of Palestinians citizenship, and rejected many others, whether those who happened to be outside the territories under Israel's control, or who did not satisfy the Israeli Nationality Law conditions.²⁹

Egypt kept (British) Palestinian citizenship intact while maintaining Gaza under its complete control; Palestinians declared an All-Palestine government in Gaza, but effectively never enjoyed sovereignty over the Gaza Strip or the Palestinian people.³⁰ However, the lack of independence for the Gaza Strip and Palestine was not an obstacle to accepting the continuity of British Palestinian citizenship, in the same way one would accept the possibility of having Palestinian citizenship under the British Mandate in the first place. The lack of national sovereignty and independence for Palestinians meant only that protection abroad for Palestinians of Gaza (Gazans), and representation was theoretically the responsibility of the Egyptian authorities, nothing more. Gazans in Egypt, nonetheless, and despite initial welcome by Egyptian authorities – in particular at the time of Jamal Abdel Nasser – were denied access to Egyptian nationality, to public schools and universities (unless they paid high fees as other foreigners did), and to free health care. Egypt did not permit UNRWA to offer its services in Egypt. At the same time, when Egypt

28 I thank one of the reviewers for his input and clarification of this point.

29 Abbas Shiblak, "Stateless Palestinians," *Forced Migration Review* 23 (2006): 8–9. As pointed out by Dugard and Reynolds, "Israel denies Palestinian refugees now living in the [occupied Palestinian territory] who fled their homes inside the Green Line the right of return, reside and obtain citizenship in the successor state (Israel) now governing the land of their birth" (John Dugard and John Reynolds, "Apartheid, International Law, and the Occupied Palestinian Territory," *European Journal of International Law* 24, no.3 (2013): 896. In that same direction, Nagan and Haddad assert, "What makes a final settlement complex is that there are now some 6.3 million (absentee) Palestinians whose citizenship rights were abrogated by internal Israeli legislative and administrative measures" (Winston P Nagan and Aitza M Haddad, "The Legal and Policy Implications of the Possibility of Palestinian Statehood," *U.C. Davis Journal of International Law and Policy* 18, no.2 (2012): 372.

30 The All-Palestine Government disappeared with the death of its prime minister in 1963, following which the Arab League convened some Palestinians in 1964 and established the Palestine Liberation Organization, acting since then as the unique representative of the Palestinian people (Khalil 2007, 24).

ratified the 1951 Refugee Convention, Egypt denied UNHCR from having any responsibility towards Palestinians.³¹

The West Bank became part of the Hashemite Kingdom of Jordan. Palestinians in the West Bank, as well as Palestinian refugees who fled Palestine because of the 1948 war and were present in any of the territories of the newly established Kingdom of Jordan, became Jordanian citizens according to Jordanian Nationality Law No. 6 of 1954. Most of them retain Jordanian citizenship. Palestinians of Gaza, including the refugees who fled to Gaza first in 1948, were not candidates for Jordanian citizenship and were dealt with as any other foreign persons in Jordan. The Jordanian Nationality Law served to distribute rights between members of the same people and former residents of the same territory, depending on the satisfaction or dissatisfaction of the conditions imposed by the Jordanian state's new nationality law.

Even when in 1967, thousands of Palestinians of Gaza, displaced as a result of the Israeli attack and occupation, fled to Jordan from Egypt, they were denied access to citizenship and were still dealt with as foreigners in Jordan.³² West Bank Palestinians continued to be *de jure* Jordanian Nationals, but *de facto* rendered stateless as a result of Israeli occupation, which disconnected them from the state whose nationality they were enjoying until then. It is noteworthy that Palestinians of the West Bank continued to enjoy certain travel facilities and access to services in Jordan proper, even after the 1967 occupation. Such a situation remained so until the unilateral declaration on July 31, 1988, of the administrative and legal separation of the West Bank, by the Jordanian King, ending all Jordanian claims on the West Bank (with the exception of East Jerusalem), which prepared the terrain for the PLO declaration of Independence in Algiers in November 15, 1988.

The state of Palestine did not result, as a matter of fact, from a declaration, as occupation persisted while West Bank Palestinians had no more access to any rights and freedoms granted for Jordanian citizenship. *De facto* stateless Palestinians of the West Bank became *de jure* stateless persons again. But there are cases where, even those Palestinians of Jordan who had been granted Jordanian nationality, and maintained it after 1988, were denaturalized if, after the Oslo agreements, they received a Palestinian Authority (PA) passport – despite recognizing it only as a travel document issued by a non-state entity.

Nationalization and naturalization processes, the denial thereof, and then again de-nationalization and de-naturalization processes, that took place in

31 For more, see Khalil 2011.

32 See Oroub El-Abed, "Immobile Palestinians: Ongoing Plight of Gazans in Jordan," *Forced Migration Review* no. 26 (2006): 17–18.

Palestine or on Palestinians by state authorities fragmented the Palestinians and separated them into various groups and sub-groups, each subject to different kinds of restrictions and each having access to different kind of rights and freedoms. This resulted in what I have previously called a legal matrix, to indicate how 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.³³

In 1967, when Israel occupied, inter alia, the West Bank and Gaza Strip, two military administrations were established. East Jerusalem was separated from both territories, and then annexed to Israel, despite the illegality of annexation of occupied territories under international law.³⁴ For the Israeli military, and then civil administrations in the West Bank and Gaza Strip, the local population registered by general census taking place immediately after the war was considered as made up of foreign residents.³⁵ East Jerusalemites were offered Israeli citizenship (in exchange for forfeiting their Jerusalemite identification, but the vast majority did not take up the offer). As for those who were forcibly displaced as a result of the war, or who happened to be outside those areas at the time the censuses took place, they simply could not access the areas and could not obtain an identification number issued by Israeli authorities unless through a long, painful and often unsuccessful process of family unification. To be sure, both Palestinians who were lucky enough to obtain an identification number, and those who were denied that number, were not citizens of the state of Israel, or of any other state. They were *de facto* stateless,³⁶ while Palestinian citizenship (established by the mandate) arguably remained intact, from a legal perspective.

33 Khalil 2011.

34 Although the 1948 partition resolution envisioned Jerusalem and its surroundings as an international area under the supervision of the United Nations, this was never achieved; as a result of the 1948 ceasefire, Jerusalem was, as a matter of fact, separated in two, the western part under the newly established state of Israel and the Eastern part, including the Old City, under Jordan. In 1967 Israel occupied East Jerusalem with the rest of the West Bank and Gaza Strip. In 1980, Israel annexed Jerusalem by a Basic Law called "The Jerusalem Law," an annexation deemed illegal by the United Nations Security Council resolution 478 of the same year.

35 Asem Khalil, *Irregular Migration into and through the Occupied Palestinian Territory*, CARIM Analytic & Synthetic Notes No. 2009/19, Florence, IT: Robert Shuman Center for Advanced Studies, European University Institute, 2009.

36 The West Bank Palestinians became *de facto* stateless in 1967 as a result of Israeli occupation of the West Bank which disconnected them from the Jordanian state. In 1988, with the unilateral declaration of disengagement, West Bank Palestinians became also *de jure* stateless.

I have studied earlier Israeli measures with regards to Palestinian residents of the areas, including the way the registration process of the local population took place, family unification processes, exit and entry regulations, etc.³⁷ In those research papers, I concluded, as many others also have, that such measures reflected clear Israeli policies that aimed at minimizing the number of Palestinians in the areas under Israeli control, and maintained and intensified the fragmentation that pre-existed between the Gaza Strip and the West Bank. As a matter of fact, Gaza Strip Palestinians were identified differently from West Bank Palestinians, and over time the former became, for the purposes of Israeli military orders, illegal infiltrators if present in the West Bank without an Israeli permit.³⁸

The establishment of the PA, and the possibility of issuing PA travel documents, did not change the way an identification number was granted – it remained a prerogative of Israeli authorities, although this time with the intermediate role of the PA. Even the change of residence between the West Bank and the Gaza Strip, and vice versa, remained subject to Israeli approval, which became with time, in particular after the second Intifada in 2000, a near impossible objective. Similarly, the control of borders of both the West Bank and the Gaza Strip remained an exclusive Israeli prerogative.³⁹

Particularly relevant is the case of East Jerusalem, separated *de jure* by Israeli law (the so called ‘unification’ of Jerusalem, was deemed illegal by the international community) as well as *de facto* from the rest of the occupied Palestinian territories. Its Palestinian residents held a different identification card, issued by the Israeli Ministry of Interior, and subjected the holders to

37 See for example, Asem Khalil, *Family Unification of Residents in the Occupied Palestinian Territory*, CARIM Analytic and Synthetic Notes no.2009/19, Florence, IT: Robert Schuman Center for Advanced Studies, European University Institute, 2009; Asem Khalil, *Impact of Israeli Military Order No.1650 of 2009 on Palestinians' Rights to Legally Reside in their own Country*, CARIM Analytic and Synthetic Notes – Legal Module, CARIM-AS 2010/46, Florence, IT: Robert Schuman Center for Advanced Studies, European University Institute, 2010; Khalil 2007; Khalil 2011; Asem Khalil, “Palestine: the Legal Dimension of Migration,” *Mediterranean Migration (2006–2007 report)*,” (ed.) Philippe Fargues, Florence, IT: Robert Schuman Center for Advanced Studies, European University Institute, 2007, 195–205; Asem Khalil, “Palestine: the Legal Dimension of Migration,” *Mediterranean Migration (2008–2009 report)*,” (ed.) Philippe Fargues, Florence, IT: Robert Schuman Center for Advanced Studies, European University Institute, 2009, 267–277.

38 See Khalil 2010.

39 A different situation exists for the Rafah crossing, after the unilateral withdrawal in 2005. Analyzing the way this crossing is now functioning goes beyond the limited scope of this paper.

many restrictions related to their travel, residency, and family unification, together with tough Israeli measures aimed at limiting their access to permits to build new houses. Palestinians of East Jerusalem were also considered foreign residents in Israel, but they do have access to most services of the state of Israel, with freedom of movement within Israel denied to other Palestinian populations of the West Bank and the Gaza Strip. East Jerusalem Palestinians can travel using Israeli travel documents, and also still have the right to Jordanian citizenship and travel documents, even after the separation of the West Bank from Jordan in 1988.

Amendments introduced to the Israeli Nationality Law by Temporary Order, the Citizenship and Entry into Israel Law – first passed in July 2003, renewed over the years since, and approved as constitutional by the Israeli Supreme Court – rendered the situation for Palestinians of East Jerusalem even more difficult since West Bank and Gaza Strip Palestinians did not qualify for automatic citizenship or residency in case of marriage to an Israeli citizen or to a Palestinian of East Jerusalem. This meant that mixed families (meaning simply when one partner holds Israeli citizenship or an East Jerusalem identification number, and the other is a Palestinian from the West Bank or the Gaza Strip), when married, were unable to legally reside together inside Israel (or East Jerusalem). More restrictive measures were imposed on East Jerusalem Palestinians; they risked losing their identification number if they were discovered to be living outside the Jerusalem area. This meant that a mixed family, in the way defined above, cannot live legally inside Israel, nor can they live in the West Bank or Gaza, without risking something (in the first case prison and fine, and in the second the loss of an identification card).

Palestinians who, after 1967, were outside the West Bank and Gaza Strip, including the thousands of 1948 Palestinian refugees and their children, remained in host countries, or tried to emigrate to third countries. Those who remained in Lebanon were subject to various restrictive measures on their socioeconomic rights and freedoms, including the right to work, to health services and to education. Except for some Christians in the early years, Palestinian refugees in Lebanon were denied access to Lebanese citizenship, even after decades of residency. Male Palestinian refugees are also denied citizenship through family unification in cases of mixed marriages with Lebanese women. Children of those mixed marriages (when the wife is Lebanese), are denied citizenship as citizenship in Lebanon is transferred through fathers alone. In Syria, before the current civil war, Palestinians enjoyed all rights citizens enjoy (with some exceptions with regards to ownership of certain properties). They were explicitly denied access to Syrian citizenship through long residence, but could enjoy under certain conditions access to citizenship through

family unification. In Egypt, before the change of regime in 2011, Palestinians were denied access to most socioeconomic rights, and were dealt with as foreign residents despite long residency. They were also denied access to citizenship, even through family unification in mixed families (when the wife is Egyptian). In Jordan, Gazans were and still are dealt with as any other foreign group, with regards to access to socioeconomic rights. After 1988, West Bank Palestinians suffered from the same treatment. Both groups have very limited access to citizenship as a result of long residence and family unification, in cases where the woman is a Jordanian citizen.

The above restrictions on access to citizenship were coherent with the so-called 1965 Casablanca Protocol on the treatment of Palestinian refugees, and successive resolutions, which recommended member states of the Arab League not naturalize Palestinians so as to keep their identity alive.⁴⁰ The second most important approach of the Casablanca Protocol and successive resolutions was reflected in the provision that host countries should provide travel documents for Palestinians, making it possible for Palestinian refugees to access services and rights as citizens of the host state while maintaining their status as refugees.⁴¹ Such approaches to the question of Palestinian refugees are not necessarily compatible but they reflect the perspective Arab states held towards the presence of Palestinian refugees: it was only temporary. Why integrate Palestinian refugees if their presence was ultimately temporary anyway?⁴²

IV Citizenship is the Solution, not Statehood

The title I gave to this section includes, admittedly, a strong statement if one considers the long years Palestinians struggle to have their right to self-determination, including the right to establish a state of their own, be recognized. The latest move aimed at obtaining the status of a non-member state by a UN General Assembly Resolution was the latest step in that direction, considered to be a diplomatic victory for Palestinians supported by the majority of states and the isolation of both Israel and the USA on this issue. It seems also a strong statement, if one considers the PLO's historic move to accept, timidly in the

40 See for example, Abbas Shibliak, "Residency Status and Civil Rights of Palestinian Refugees in Arab Countries," *Journal of Palestine Studies* 25, no.3 (1996): 36–45.

41 Ibid, 38–39.

42 For a more thorough discussion of the Casablanca Protocol, compared to the International Refugee Law convention, and host countries' domestic laws, see Khalil 2011.

1970s but then publicly and proudly, the idea of two states, where a state of Palestine is established and lives peacefully with its neighbor Israel on the foundation of the Partition Plan, intrinsically amended by the events and borders recognized by the international community as the Occupied Palestinian Territories of 1967.

The argument I am advancing is simple. To empower stateless Palestinians, most of whom are refugees, displaced and/or those denied re-entry to their homeland, and/or to the territories that are currently under the PA control, and which is a candidate, together with the rest of the Palestinian territories occupied in 1967, to become the territory of the state of Palestine, it is absolutely necessary to grant them citizenship in and of an independent and sovereign state. Not only is this an obligation under modern international law which aims at limiting and diminishing the number of stateless people, but citizenship also enables people to move freely, to enjoy political, civil, economic, social and cultural rights more easily, and because citizenship entails protection in third countries, at a time when it is much needed.⁴³

That is why I have asserted in the title of this section that what is needed for stateless Palestinians is primarily citizenship more than statehood; even more, the value of statehood as a Palestinian national objective is intrinsically connected to the consequences related to the establishment of a state with providing stateless Palestinians a recognized citizenship. This explains the intentional use of undefined words with regards to which state nationality stateless refugees may be enjoying. It can be indeed the citizenship of an internationally recognized Palestinian state; an option which largely depends on the creation of that state, and the enjoyment of sovereign powers over a territory and a people, the independence of which is recognized by other states. It can also be Israeli citizenship, as Israel arguably has the obligation as a successor state not

43 Of course I assume, as many authors do, that West Bank and Gaza Strip Palestinians are, at least, *de facto* stateless as much as most Palestinian refugees in host countries for the lack of a recognized state from which they can claim citizenship. I recognize that this is a different conclusion than that of Qafisheh (21–22) from which interesting thesis stemmed most of my analysis related to Mandate Palestinian citizenship. Accepting that Palestinians are indeed stateless does not mean I accept they remain so, or that they do not have the right to statehood, based on British mandate established Palestinian citizenship, or even being recognized as citizenship *in statu nascendi* as some authors had concluded. See for example, Andreas Zimmermann, “The Nationality of the Inhabitants of the Palestinian Autonomous Territories,” in *New Political Entities in Public and Private International Law with Special Reference to the Palestinian Entity*, (eds.) Amos Shapira and MalaTabory, Hague/Boston/London: Kluwer Law International, 1999, as cited by Qafisheh (21–22).

to deny citizenship of the citizens of the former state (the (British) Government of Palestine, or Mandate Palestine). This is an option that many Israelis exclude categorically for what they conceive as a threat to the nature of their state as a Jewish state.⁴⁴ Another option may be the naturalization in host countries, or in third countries, in case of the unwillingness of third countries. Such an option is rejected so far by most host countries as a matter of principle, even if Jordan alone had admitted that right in fact for those who satisfied the conditions of the Jordanian Nationality Law.

Based on the above, and given the lack of alternative options, one cannot but conclude that granting Palestinian citizenship for Palestinian refugees in host countries seems to be the most suitable and probable solution, whenever the condition of statehood is satisfied. The establishment of the state of Palestine seems to be satisfying the interests of all concerned parties, including the Israelis, from finding a solution, even if temporary, to the question of refugees, without having to deal with their possible return to the current state of Israel.

Possible critiques for this option (establishment of the state of Palestine which in turn grants all stateless Palestinians with Palestinian citizenship) may be found in the fear of a negative impact on the right of return. It is also possible to fear granting of such a citizenship as a possible reason for de-nationalization of Palestinians currently enjoying a citizenship of a recognized state. What would the reaction of Israel be if some of its Palestinian citizens acquire the citizenship of the newly established state of Palestine? And why should we expect Jordan not to take similar steps aiming at de-nationalizing some of its citizens (of Palestinian origin), in case they acquire the citizenship of the state of Palestine, when it is known this occurred when they received a PA travel document? What about the possibility of mass displacement of refugees

44 The awkward legal trick Israel uses is simple: In order to be able to enjoy the citizenship of the newly established state, you need to be legally residing in Israel at the time provided by law. But in order to be legally residing, you have to be admitted through the borders – a condition which all Palestinians who fled as a result of the war, or who were outside the country at the time the census took place, could not realize. This is a position that contradicts with international obligations of the newly established state, and contradicts UN resolutions, in particular those related to the readmission of Palestinian refugees. As pointed out also 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.” Sherif Elsayed-Ali, “Palestinian Refugees in Lebanon,” *Forced Migration Review* 26 (2006): 13.

outside the borders of host countries, even if they were unwilling to leave? Could we not imagine steps like the one by former Libyan leader, Muammar Al-Gaddafi, in 1995 when he expelled from Libya 5,000 Palestinians holding Lebanese refugee travel documents, and who were left with no place to return after Lebanon imposed restrictions on their re-entry? Or something similar to the mass expulsion and displacement of Palestinians from Kuwait after the first Gulf War, and from Iraq after the second war, and now from Syria? Another critique may be a risk of mass nationalization (or naturalization) processes of Palestinian refugees as endangering the sustainability of the state of Palestine due to mass migration towards the new state of Palestine.

Such fears are legitimate as they may effectively result from adopting such an orientation. Worse, all those scenarios may take place even before a recognized state is established. Although citizenship is usually related to a state, it is a fact that Palestinian nationality existed before 1948 and was regulated by the mandate citizenship law, although there was no Palestinian state proper.⁴⁵ The same reasoning applies to accepting the existence of Palestinian citizenship in Gaza under Egyptian control between 1948 and 1967. A scenario which fails to recognize Palestinian nationality is catastrophic because it will result in new dilemmas of the kind of mass de-nationalization on the one hand, and mass displacement on the other, with no state of Palestine to enter nor a Palestinian citizenship that offers diplomatic protection enabling the enjoyment of rights and freedoms. But in case of a recognized independent Palestinian state, the scenarios above are not inevitable. Putting this scenario aside, let me try to answer the three critiques above, admitting that offering citizenship for stateless Palestinians after the establishment of a Palestinian state is taking place.

One may argue successfully, as many others have, that the right of return to the country of origin is not affected as a right by enjoying the citizenship of a recognized state. The right of return will continue to depend on the international community's willingness to impose on the state which prevents the realization of that right a requirement to permit the re-entry of refugees. Obtaining citizenship in that sense will not affect either negatively or positively such an option. I suggest, rather, that the two-state solution appears to be safer from the perspective of refugee law for keeping the right to return to the country of origin alive.⁴⁶ In case of a one-state solution, the re-entry to Ramallah or

45 For a discussion, see Qafisheh, 18.

46 Concerning the differentiation between the return to the state of Palestine and the right of return, apparently Bisharat reaches similar conclusion: "Meanwhile, Palestinian refugees living in exile would benefit from a two-state solution only to the extent that they receive the rights to return to their homes and homeland and to receive compensation for

Nablus means indeed the return to the country of origin, Palestine. The problem would be internal displacement and nothing more, the regulation of which, and contrary to international refugee law, is still subject to soft international law. In the case of a two-state solution, the return to the state of Palestine would not affect the right to return to their country of origin which is a different state, the state of Israel. Also, rejecting the idea of offering Palestinian citizenship to Palestinian refugees in host countries in the name of the right of return would be as awkward as advocating for the denial of Palestinian citizenship to the refugees in the West Bank and Gaza Strip (who form over two thirds of the population in Gaza,⁴⁷ and over one quarter of the population in the West Bank).⁴⁸

The second fear is completely legitimate given the known actions of host countries. Jordan is likely to be more aggressive in applying the legal ban on dual Arab nationality for those Jordanian citizens obtaining (or applying for) Palestinian citizenship. Although relevant, such an option would apply only to those who consciously choose between the two nationalities. Moreover, it is possible to envisage bilateral agreements that enable the favorable treatment between citizens of the states rendering the acquisition of Palestinian citizenship a luxury for a Palestinian holding a Jordanian citizenship. However, for Gazans in Jordan, having a Palestinian citizenship may result in an empowering reality, enabling them to reside legally, to travel freely, and to obtain work, etc.

As for the fear of mass displacement resulting in possible expulsion from host countries as a result of an automatic nationalization process of all stateless Palestinians by the newly established state of Palestine, this is also a serious risk and possible scenario. However, most states, even the poorest in terms of protection of human rights, may find it difficult to justify such steps which are deemed to be illegal and punishable by international law as war crimes, crimes against humanity, and/or a crime against peace. Also, the changing

their losses. As many Palestinian refugees fled from areas that will remain within Israel under a two-state solution, their rights of return will be only imperfectly realized." George E. Bisharat, "Re-Democratizing Palestinian Politics," *ucla Journal of International Law and Foreign Affairs* 17, no.1-2 (2013): 8.

47 According to the 2007 Palestinian Central Bureau of Statistics (PCBS) census, the refugee population of the Gaza Strip was 67.9% compared to 65.1% in 1997. For more, see press release announcing results of the PCBS 2007 census: http://www.pcbs.gov.ps/Portals/_pcbs/PressRelease/gaza_census_e.pdf

48 According to the 2007 PCBS census, the refugee population of the West Bank was 28.1% compared to 26.6% in 1997. For more, see press release announcing results of the PCBS 2007 census: http://www.pcbs.gov.ps/Portals/_pcbs/PressRelease/Census_2007e.pdf

politics of the Arab world means measures of such relevance and importance would likely be difficult to implement and accommodate.

The last critique is connected to the sustainability of the newly established state of Palestine, assuming it was united and independent, and its ability to accommodate hundreds of thousands of nationalized or naturalized Palestinians. Such a critique, although a serious one, assumes that all refugees would choose to apply for Palestinian citizenship, and if admitted as citizens, would choose to take up their right to (re-)entry into the newly established Palestine. While those two assumptions are not so obvious for various reasons, the granting of citizenship may be accompanied with clear policies of readmission of citizens residing abroad, with some needed organization for such measures in practical terms – in a manner that should not be considered discriminatory or arbitrary.

Finally, the establishment of a state would not affect Palestinian refugees' right of return, including the rights of restitution, and the right to compensation, even if they acquire the citizenship of a newly established sovereign Palestinian state, or any other state. The PLO will remain the one responsible for representing Palestinians in their quest for the fulfillment of all the above rights.

V Conclusion

With the exception of Palestinians who were considered or naturalized as Palestinians, and who remained so with time along with their ancestors, most other Palestinians in host Arab countries are stateless. They suffer in their right to movement and in their right to obtain a legal permit of entry and residency in third countries. Their access to work, education and health facilities is also restricted, together with their right to own properties, houses, lands, etc.

To travel, Palestinian refugees need a travel document issued by the host country, usually issued for a limited period of time; they often⁴⁹ need a visa to access any other state, including those which host other Palestinian refugees (for example, a refugee registered in Lebanon needs a visa to enter Jordan, and vice versa). On some occasions, Palestinian refugees have needed a visa to re-enter the host country who issued them a travel document (as has occurred in Lebanon and Egypt).

49 With the exception of Palestinian refugees moving between Syria and Lebanon, where Palestinians officially do not need a visa.

The current political crises in Egypt and Syria have shown how vulnerable stateless Palestinians are in all the neighboring Arab countries.⁵⁰ Their displacement, internally or outside Syria, resulted in a humanitarian catastrophe because there was no other place where Palestinians of Syria could find safe refuge while maintaining a legal status, as they have no citizenship of a recognized state. Nor do they have legal residency in any other state. This has also been true of the Palestinians in Iraq, Kuwait, and Libya.⁵¹ The way Jordan deals with Palestinians of Syria who try to enter or have already crossed their borders, and the way Egypt, since the ousting of Mohammed Morsi, deals with Palestinians and the Gaza Strip as a whole, further exemplify how precarious the situation of stateless Palestinians is.

Based on historical and legal developments of Palestinian citizenship, one is tempted to answer the question the title of this paper poses in a completely unexpected way. Rather than asking if citizenship can offer a solution for the

50 As rightly pointed out by Nagan and Haddad (442–443), it is also the result of the inability of customary international law to provide protection for stateless people: “[C]urrent international law frameworks regarding stateless individuals have proved unable to deal effectively with the current problem of Palestinian statelessness. While treaties attempt to redress some the problems faced by stateless individuals, the reality is that customary international law affords little protection to stateless people who suffer continuing abuses by other states”. As Costas Douzinas eloquently observes: “While human rights belong supposedly to all human beings on account of their humanity, it is citizenship that turns people into human beings by protecting their so-called eternal or inalienable rights... The alien is not a citizen. He does not have rights because he is not part of the state and he is a lesser human being because he is not a citizen... The alien is the gap between man and citizen; between human nature and political community lies the moving refugees.” Cited in: Savitri Taylor, “Introduction,” in *Nationality, Refugee Status and State Protection: Explorations of the Gap between Man and Citizen*, (ed.) Savitri Taylor, Annandale, AU: The Federation Press, 2005, 2.

51 After giving various examples of Palestinians in host Arab countries, Kassim reaches a similar conclusion: “The above examples demonstrate certain facts and raise certain issues, the most relevant of which to my purpose here are: to be a Palestinian means not to have a formal citizenship, with the resulting hardships that make the Palestinian life in various communities continuously dangerous; the legal status of a Palestinian in the Middle East is always in doubt and left to the political exigencies of each host country; and the absence of an internationally recognized State of Palestine will make this agony last indefinitely.” Anis Kassim, “The Palestinians: From Hyphenated to Integrated Citizenship,” in *Citizenship and the State in the Middle East: Approaches and Applications*, (ed.) Nils A. Butenshon, Uri Davis, and Manuel Hassassian, Syracuse, NY: Syracuse University Press, 2000, 202–203.

refugee problem,⁵² this paper has shown how citizenship regulations were part of the problem. The understanding of the distorted historical and legal institutional mechanism of citizenship is necessary for the possible reconciliation of Palestinians to be provided for by the empowering institution, a Palestinian state.

The understanding of the way citizenship was regulated will help overcome the perception of citizenship as an obstacle, deemed part of a colonial project that has not yet come to an end, and prepare the terrain for a different argument of citizenship as a solution for the Palestinian refugee problem without citizenship being considered for that reason as an alternative to their right of return. Rather, citizenship becomes an empowering institution, which can help in creating citizens as agents of change rather than negative subjects who are marginalized by decision makers, political processes, and state authorities.

To conclude, statelessness is a serious problem for Palestinian refugees in host countries. The lack of security for their status as citizens is a real problem for many Palestinians enjoying Jordanian citizenship. Granting citizenship is not a withdrawal of one's right to return, nor under the UNRWA operational definition of a refugee, a reason to lose rights to UNRWA services. Accordingly, it is possible to think of citizenship as a solution for many Palestinian refugees who may be empowered if they enjoy a citizenship of a sovereign state, as statelessness is depriving them of their fundamental rights and freedoms.

52 As arguably was done, for example, by, Donna E. Arzt, *Refugees Into Citizens: Palestinians and the End of the Arab-Israeli Conflict*, Washington, DC: Council on Foreign Relations, 1997; and, Salman H. Abu-Sitta, *From Refugees to Citizens at Home: The End of the Palestinian Israeli Conflict*, London, UK: Palestine Land Society and Palestinian Return Center, 2001.

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