

# ***Palestinian Citizenship within the State of Palestine: The Right Answer for the Wrong Question***

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## ***I. Introduction:***

In this chapter the authors suggest citizenship in Palestine has developed as a state-centred institution, and its implementation has served objectives that are the opposite of those that drive citizenship in democratic societies, specifically the empowerment of citizens and the establishment of a basis for essential rights and freedoms. Instead, Palestinian citizenship has more often functioned as a colonial tool that sustains the occupation, contributes to Palestinian disempowerment and enables the dispersal of the local population. Furthermore, it has also repeatedly failed to provide essential protections and prevent the violation of basic rights.

The authors develop this argument by tracing the historical development of Palestinian citizenship. They initially demonstrate how the British Mandate in Palestine shaped citizenship and sought to use it as a colonial tool. Both Jordan and Egypt used it to establish lines of inclusion and exclusion. The State of Israel (henceforth SoI) then applied citizenship to create new identities that would serve its own objectives, and produced a very complex legal matrix based on artificial distinctions between Palestinians.

In investigating this historical context, the authors also offer a contextualized analysis of the current limbo in which many Palestinians live, which arbitrarily subjects them to the authority of assorted legal and political regimes. The authors will then discuss the UN General Assembly's 2012 recognition of Palestine as a non-member state. This diplomatic 'victory' derived from a shift within the Palestinian political strategy which, in emphasizing the importance of the establishment of a Palestinian state within the 1967 'borders', sought wider justification in the imperative of a two-state solution. In the view of the authors, this state-centered and territorial citizenship is at best counterproductive and at worst dangerous.

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## *II. Citizenship during the British Mandate*

On November 2, 1917, Arthur Balfour, the United Kingdom's foreign secretary, sent a letter to Lord Rothschild, the leader of the British Jewish community, in which he announced his government's support for the establishment of a "national home for the Jewish people in Palestine".<sup>1</sup> This letter, which would subsequently become known as the 'Balfour Declaration', did not acknowledge that, at this time, Palestine was still part of the Ottoman Empire and Britain therefore had no basis for making assurances of this kind.<sup>2</sup> Some observers trace the start of the Arab-Israeli conflict back to this commitment.

When the British civil administration of Palestine began in 1920, it was very clear that the establishment of a 'Jewish homeland' was a key priority and that increased Jewish immigration was a means through which this would be achieved. The terms of the Mandate ratified by the League of Nations were however something of a potential problem as they outlined obligations that potentially conflicted with the Declaration. In seeking to overcome this contradiction, the British government adopted a colonial style of administration.<sup>3</sup> The British government issued the Citizenship Order 1925 (hereafter 'the Order') on July 24, 1925 and came into force on the 1<sup>st</sup> of August of the same year.<sup>4</sup> The Order drew upon existing Ottoman legislation,<sup>5</sup> and the Jewish Agency for Palestine helped to draft it.<sup>6</sup>

The Treaty of Lausanne, a peace Agreement between the Ottoman Empire and the Allied powers, came into force on August 6, 1924. It established that Ottoman Empire nationals were *ipso facto* nationals of the state. The Order, in recognizing and upholding this principle, granted Palestinian citizenship to "Turkish subjects habitually resident in the territory of Palestine upon the 1<sup>st</sup> Day of August 1925". This meant that Palestinians who were not resident in Palestine at that time were

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<sup>1</sup> Mandate for Palestine. Adopted by the League of Nations, 12 Aug 1922.

<sup>2</sup> Yolande Knell, "Balfour declaration: the divisive legacy of 67 words," *BBC news Jerusalem*, 2 November 2017. <https://www.bbc.com/news/world-middle-east-41765892>

<sup>3</sup> Lauren Banko, "The 'invention' of Palestinian citizenship: discourses and practices, 1918-1937," (PhD Thesis, SOAS, University of London, 2013).

<sup>4</sup> Mutaz Qafisheh, "Palestinian Citizenship Order 1925." In: *The International Law Foundations of Palestinian Nationality*, chapter 5. Brill: 2009.

<sup>5</sup> Lauren Banko, "The creation of Palestinian citizenship under an international mandate: legislation, discourses and practices, 1918–1925," *Citizenship Studies* 16, no. 5-6 (2012): 6.

<sup>6</sup> Mutaz Qafisheh, "The International Law Foundations of Palestinian Nationality: A Legal Examination of Palestinian Nationality under the British Rule," (These de Doctora, Universite de Geneve, 2007), 12-13.

not entitled to apply for citizenship. Palestinian residents of Transjordan were also explicitly excluded.<sup>7</sup>

The Mandate for Palestine terms obliged the British government in Article 7 to develop a Palestinian nationality for the Jews by encouraging “the acquisition of Palestinian citizenship by Jews who take up their permanent residence in Palestine”.<sup>8</sup> It also stated a clear concern in Article 15 that “no person shall be excluded from Palestine on the sole ground of his religious belief”<sup>9</sup>. Significantly, this was the only nationality law that Britain applied in any of the territories that it administered as a mandatory authority.<sup>10</sup>

The terms of the Mandate established that the nationality had to give rights and impose obligations on both the Arab population and Jewish immigrants. The British government had already provided a reassurance that nothing would “prejudice the civil and religious rights of existing non-Jewish communities”<sup>11</sup>, and this was a factor it was obliged to take into account when drafting citizenship and nationality legislation. However, it did not offer Arabs an equal rights-based citizenship because it feared, *inter alia*, that Arab voting rights would hinder the development and progress of the Zionist movement.<sup>12</sup>

The Order amended certain provisions of the 1869 Ottoman Nationality law with the intention of restricting the number of non-Jewish Palestinian citizens. This was why citizenship was restricted to those born in Palestine. The Order changed citizenship provision in three ways.<sup>13</sup>

First, it restricted the acquisition of British-Palestine citizenship to ‘natural’ Palestinians and Ottoman nationals resident in Palestine. This excluded thousands of Palestinians who were born in Palestine but who happened to be, during the application of the order, in other countries, whether for purposes of business, study or tourism. They were only able to subsequently obtain citizenship through naturalization which, as Article (2) of the Order establishes, was provided at the “absolute discretion” of the government of Palestine (GoP), which only accepted

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<sup>7</sup> Mutaz Qafisheh, “Genesis of Citizenship in Palestine and Israel. Palestinian Nationality during the Period 1917-1925.” *Journal of The History of International Law* 11, (2009): 1-36, 17.

<sup>8</sup> Jacob Hurewitz, *Diplomacy in the near and middle east*, vol. 2, A Documentary Record: 1914-1956. (Cambridge: Cambridge University Press, 1956), 108.

<sup>9</sup> *Ibid*, 109.

<sup>10</sup> Asem Khalil, “Palestinians to Citizens: Is Citizenship a Solution to the Palestinian Refugee Problem?” *6 Middle East Law and Governance* 3, (2014): 204-224, 208.

<sup>11</sup> Hurewitz, *Diplomacy in the near and middle east*, 106.

<sup>12</sup> Banko “The ‘invention’ of Palestinian citizenship,” 51.

<sup>13</sup> Khalil, “Palestinians to Citizens,” 210.

100 out of 9,000 applications,<sup>14</sup> with the consequence that thousands of Palestinians became stateless when they lost Turkish citizenship and were refused Palestinian citizenship. The Mandate citizenship law enabled 130,000 foreigners to acquire Palestinian citizenship through naturalization by 1946, 99 percent of whom were Jews.<sup>15</sup> In 1938, the annual report of the League of Nations administration noted that some of these immigrants had been granted naturalization despite the fact that they did not meet the requirement of having been resident in Palestine for three years.<sup>16</sup>

Second, the Order established that a British national who acquired Palestinian citizenship through naturalization did not lose his/her original nationality. This measure was clearly intended to enable British Jews to settle in Palestine, as it was a clear and obvious violation of the forbidding of dual nationality by British law and the Order itself.<sup>17</sup> Finally: expatriation and the loss of nationality were also regulated by the Order. Palestinian nationality could be lost through obtaining another nationality, punishment or marriage (by Palestinian women) to a foreigner. Many Palestinians lost their nationality as a consequence.

The British government successfully created an apolitical citizenship with the intention of simultaneously establishing a Jewish national home and satisfying the terms of the mandate. In this respect, citizenship emerged through the colonial process. Having originally been closely associated with the British government's international trusteeship,<sup>18</sup> it continues to influence the current conflict.<sup>19</sup>

The creation of Palestinian citizenship was also influenced, in general terms, by the extensive insight and experience that British colonists gained during the years of the British Empire. More specifically, it was impacted by Lord Cromer's colonial experience in Egypt, where he developed a series of racial distinctions that

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<sup>14</sup> Moses Doukhan (ed.), *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*, Palestine: L.M. Rotenberg, 1933-1934, 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>15</sup> Khalil, "Palestinians to Citizens," 211.

<sup>16</sup> Banko, "The 'invention' of Palestinian citizenship," 254.

<sup>17</sup> Khalil, "Palestinians to Citizens," 211.

<sup>18</sup> Banko, "The creation of Palestinian citizenship under an international mandate," 646.

<sup>19</sup> Engin Isin, "Citizenship after orientalism: an unfinished project," *Citizenship studies* 16, no. 5-6 (2012): 563-572, 570.

distinguished Europeans from local ‘natives’.<sup>20</sup> These criteria were then transferred to the Palestinian context, where they helped to separate the Arab majority population from Jewish Immigrants, and were incorporated into citizenship and nationality statuses.

The Mandate did not regard Palestinians as British citizens. Although the British government represented Palestinians in its international engagements, British law recognized them as alien subjects or British ‘protected persons’. Palestinians were however acknowledged to be citizens of the GoP, a non-state entity subject to Britain’s sovereign authority.<sup>21</sup>

### ***III. Citizenship after the 1948 war***

The Order remained in effect until May 14, 1948, when the British Mandate ended. The subsequent establishment of the SoI inflicted further distortions on Palestinian citizenship. Israel’s declaration of independence established Israel as a “Jewish state” that was “the creation of the entire Jewish people”.<sup>22</sup> It affirmed sovereignty over territories controlled or seized in the 1948 war and passed several amendments to the nationality law, enabling Jews from any part of the world to emigrate to Israel and obtain Israeli citizenship.<sup>23</sup>

The creation of a Jewish state created a number of problems and challenges for non-Jewish Palestinians who had previously held Palestinian citizenship and enjoyed its associated benefits. Palestinian Arabs were now without citizenship and were recognized as Arabs who had remained (whether in Israel or the Gaza Strip) or as Palestinian Arabs who obtained Jordanian citizenship. Henceforth, Palestinians were no longer ‘Palestinian’ and were instead Gazans, Israeli-Palestinians, Jordanian-Palestinians or Palestinian refugees.<sup>24</sup> Across various contexts, Palestinians were subject to Egyptian (Gaza Strip), Jordanian (West

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<sup>20</sup> Banko, “The creation of Palestinian citizenship under an international mandate,” 642; Yehouda and Berda. “The Colonial Foundations of the State of Exception: Juxtaposing the Israeli Occupation of the Palestinian Territories with Colonial Bureaucratic History,” (New York: Zone Books, 2009), 348-349.

<sup>21</sup> Khalil, “Palestinians to citizens,” 209.

<sup>22</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>23</sup> Khalil, “Palestinians to Citizens,” 212.

<sup>24</sup> Nils Butenshon, Uri Davis, and Manuel Hassassian, *Citizenship and the state in the Middle East: approaches and applications* (Syracuse: Syracuse University Press, 2000), 204.

Bank), Israeli or international (United Nations Relief and Works Agency or UNRWA) authority.

The Gaza Strip was the only territory that remained (ostensibly) under the control of Palestinians; Egypt did not integrate the territory into its jurisdiction because it did not claim sovereignty over the Strip and considered its administration to be a temporary measure that would be superseded by a Palestinian state.<sup>25</sup> Egypt retained the Order and exerted complete control over the Strip: although Palestinians declared an 'All-Palestine' government, it was never really sovereign over the territory or its population. The lack of independence in the Gaza strip was an impediment to accepting the continuing of the British Palestinian citizenship. Egypt was only responsible for protecting and representing Gazans, who were denied access to Egyptian nationality.<sup>26</sup> Gazans were therefore essentially stateless: they had lost Palestinian citizenship but Egypt did not permit them to obtain Egyptian nationality. Outside observers could be forgiven for assuming that the Egyptian government's actual intention was to prevent Palestinians from obtaining state nationality.

Palestinian residents of the West Bank, along with Palestinian refugees who had fled the 1948 War to seek refuge in Jordan were subject to the rule of the Hashemite Kingdom of Jordan. In 1949 the Jordanian council of ministers amended the Citizenship Law of 1928 by adding an article. It established that holders of Palestinian citizenship resident in the country when the law was passed would be considered as Jordanian citizens and would therefore enjoy the same rights and be subject to the same obligations.<sup>27</sup> This status was confirmed by the Jordanian Nationality Law five years later.<sup>28</sup>

But Gazans, including those who had fled the 1948 War, were not eligible to receive Jordanian citizenship and were considered to be foreigners in the country. Jordan's reluctance to establish a Palestinian citizenship, and its granting of Jordanian citizenship to Palestinian residents, indicated its ultimate intention to

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<sup>25</sup> Louisa Brooke-Holland and Rob Page, *Recent developments in the Occupied Palestinian Territories*. (UK: House of Commons Library, 2017), 10.

<sup>26</sup> Asem Khalil, *Palestinian Nationality and Citizenship: Current Challenges and Future Perspectives*, (Florence: Robert Schuman Centre for Advanced Studies, 2007), 23. <https://cadmus.eui.eu/bitstream/handle/1814/8162/CARIM%20RR-2007-07.pdf?sequence=1&isAllowed=y>

<sup>27</sup> Butenschon, Davis, and Hassassian, "Citizenship and the state in the Middle East: approaches and applications," 207.

<sup>28</sup> Qafisheh, *The International Law Foundations of Palestinian Nationality*: 15.

annex the West Bank and Jerusalem. West Bank Palestinians enjoyed Jordanian travel facilities and services until July 31, 1988, when Jordan's unilateral declaration of the legal separation of the West Bank terminated all Jordanian claims to the territory. As a consequence, West Bank Palestinians became *de jure* stateless again, although this had applied in a *de facto* sense since the beginning of the occupation.<sup>29</sup> Gazans had been stateless for even longer.<sup>30</sup>

Meanwhile, the SoI's citizenship conditions clearly discriminated between Jews and Palestinians (non-Jews). Israel's 1952 Nationality Law denationalized Palestinians and granted every Jewish immigrant immediate Israeli citizenship. In 1971, the law was amended to grant this status to those who, in the absence of any other formal steps, "expressed the desire to emigrate to Israel". Palestinian residents of Israel, meanwhile, needed to pass through the 'naturalization' process to obtain Israeli citizenship. Many Palestinians had surrendered proof of identity (including identity cards and other proof of Palestinian citizenship) to the Israeli army and this meant they struggled to meet the conditions, which included demonstrating that they were already resident in the territory that became the SoI or subsequently legally entered its territory between May 14, 1948 and July 14, 1952. Many Palestinians struggled to meet these conditions with the consequence that, in subsequent years, stateless mothers gave birth to stateless children.<sup>31</sup>

After the 1967 war, Israel established two separate military administrations in the West Bank and Gaza Strip, while East Jerusalem was placed under a separate legal status because it had been (illegally) annexed by Israel. East Jerusalemites were offered Israeli citizenship but the vast majority rejected the offer, as they believed this would indirectly legitimize Israel's occupation of East Jerusalem. This is why most Palestinian Jerusalemites are contemporarily tolerated as 'permanent residents'. The West Bank and Gaza Strip, meanwhile, 'enjoy' minimal entitlements after the Israeli occupation imposed its own administrative and military law onto the territories' legal and administrative fragmentation. Although they live as two separate entities under two separate administrations, the SoI considers Palestinian inhabitants of both the Gaza Strip and West Bank to be foreign residents.<sup>32</sup>

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<sup>29</sup> However, residents who were already Jordanian citizens retained this status, It was only Palestinians born subsequent to this date who would be 'stateless'. Khalil. *Palestinian Nationality and Citizenship*, 23.

<sup>30</sup> Brooke-Holland and Page, *Recent developments in the Occupied Palestinian Territories*, 10.

<sup>31</sup> Butenschon, Davis, and Hassassian, "*Citizenship and the state in the Middle East: approaches and applications*," 205.

<sup>32</sup> Asem Khalil and Raffaella A. Del Sarto, "The Legal Fragmentation of Palestine-Israel and European Union Policies Promoting the Rule of Law," In: *Fragmented Borders*,

International law establishes that when a new state is established “the population follows the change of sovereignty in matters of nationality”.<sup>33</sup> As a rule, this means citizens of the former state should attain the nationality of the successor state and not seek a different, unequal or race-based alternative. This, however, was not the case in the Occupied Palestinian Territories (henceforth ‘OPT’).

The Oslo II Agreement (1995) establishes that Israel controls the residency rights of the Palestinian population and their right to enter and exit Israel and the fragmented parts of the OPT. It also has an exclusive power to grant or deny an ID and revoke a Palestinian ID number. As a consequence, territorial fragmentation was established.

Residents of the Gaza Strip required a permit to remain in the West Bank and vice versa. After Israel’s ‘unilateral withdrawal’ from the Strip in 2005, Israel declared it to be an ‘enemy territory’ and intensified the restriction regime that controls entry and exit in the Strip while retaining control of the territory’s airspace, land ‘borders’, population registry and sea access. This means that the Strip is still, under international law, considered to be occupied territory and that, by extended implication, Israel is still obliged to meet obligations towards its residents that originate in International Humanitarian Law (IHL).

Refugees displaced as a result of war could not always access an identification number issued by Israel, and it could usually only be obtained through a long, difficult and complicated process of family ratification. Even in the event that a number was obtained, applications were complicated by the fact that their holders were not citizens of Israel or any other state.<sup>34</sup>

The Palestinian Authority (hereafter PA) drafted a Citizenship law in 1995, but it has not been passed. Article (7) of this law defines a ‘Palestinian’ as any person (“other than Jews) who, *inter alia*, held Palestinian citizenship before May 15, 1948), was born to a Palestinian father and was born in Palestine to a Palestinian mother or unknown parents. This law did not acknowledge diaspora Palestinians and also failed to inform UNRWA-Palestinians how they could attain citizenship.<sup>35</sup>

Palestinians are generally considered to be stateless by foreign countries. Although

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*Interdependence and External Relations: The Israel-Palestine-European Union Triangle.* Ed. Raffaella A. Del Sarto, pp.129-154. (Basingstoke: Palgrave, 2015), 135.

<sup>33</sup> Qafisheh, *The International Law Foundations of Palestinian Nationality*: 57.

<sup>34</sup> Khalil and A. Del Sarto, “The Legal Fragmentation of Palestine-Israel and European Union Policies Promoting The Rule of Law,” 132.

<sup>35</sup> Butenschon, Davis, and Hassassian, “*Citizenship and the state in the Middle East: Approaches and Applications*,” 219.

the PA issues its own passports, which are travel and not citizenship documents, they are not widely accepted, for the reason that most countries do not recognize the PA as the government of a sovereign state.

#### **IV. Current legal limbo**

Palestinians have been separated into multiple groups and sub-groups characterized by different restrictions, rights and freedoms. This ingrained inequality has been complemented by the emergence of territoriality as an additional criterion of demarcation.<sup>36</sup> Nationalization and naturalization have been followed by de-nationalization and de-naturalization, which segregated the OPT and stripped off East Jerusalem. The fragmentation of Palestine followed as a logical consequence.

Israel's illegal annexation of Jerusalem resulted in the application of Israeli civil legislation, which controlled the Israeli Ministry of Interior's issuance of IDs and legal residency. Palestinian Jerusalemites who are permanent residents can be deprived of their IDs and residency if they are absent from the city for certain number of years or attain citizenship or residency rights elsewhere.<sup>37</sup>

The IDs that the Israeli military government issues to Palestinians in the West Bank and Gaza Strip categorize the former as 'residents' with Jordanian nationality and the latter as 'Palestinian refugees' with undefined nationality. In 2013 it was estimated that more than 50,000 Gazans, for various reasons, do not hold ID cards or an official status recognized in any other country.<sup>38</sup>

*Diaspora* Palestinian refugees are treated as alien residents. While Palestinian refugee ID arrangements vary between Arab host countries such as Lebanon and pre-war Syria, it is generally the case that Palestinian refugees are stateless and for this reason are issued with identity and travel documents, rather than passports, by the host country.<sup>39</sup>

Israel controls East Jerusalemite legal residency and West Bank and Gazan ID numbers, meaning that the members of each group require a permit if they wish to enter the other two areas. In the event that a Palestinian wishes to change his/her place of residence by moving from one area to another, he/she also requires the

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<sup>36</sup> Khalil, "Palestinians to citizens," 10.

<sup>37</sup> Abbas Shiblak, "Stateless Palestinians," *Forced Migration Review* 26 (2006): 8-9.

<sup>38</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>39</sup> Kathleen Lawand, "The Right to Return of Palestinians in International Law," *International Journal of Refugee Law* 8, no. 4 (1996): 532-568, 34.

approval of the Israeli authorities. This reiterates the disconnect of jurisdictions, people and territory within the OPT.

Generally, the PA must closely cooperate with the Israeli army and follow a protocol that is defined in functional terms, especially when entering different legal spaces. Different categories of people fall within distinct jurisdictions, as shown by the fact that East Jerusalemite Palestinians are excluded from the PA's jurisdiction. In addition to the separate laws that are applied to Palestinians, other forms of discrimination include the separate road system in the West Bank, which embodies and perpetuates territorial fragmentation and apartheid.<sup>40</sup>

Palestinian Jerusalemite cars, which have yellow number plates, are allowed to travel freely across Israel and the Palestinian territories,<sup>41</sup> while cars with green number plates, which indicate the car owner is from the OPT, are not permitted to enter Israel or use the bypass roads. This distinction also applies at the checkpoints. An East Jerusalemite woman who drives a yellow-plated car, and who is married to a Palestinian with a 'Palestinian' ID from Ramallah who drives a green-plated car, is entitled to travel with her husband in the OPT in either car; however at the Qalandia checkpoint, which controls Palestinian movement into Jerusalem and additional occupied Palestinian territories, the wife is permitted to drive through the checkpoint, while her husband has to cross on foot.<sup>42</sup>

Identity distinctions between Jewish and Palestinian Israelis are rooted in law and social and state practice.<sup>43</sup> Palestinian citizens of Israel experience legal inequalities that are embodied in both legislation and practice, and their economic, political (freedom of expression and political participation) and social (family) rights are accordingly discriminated against. Israeli Government discourse positions them as an internal enemy and this representation produces hostile and aggressive policies that are directed towards Palestinians both within and outside Israel. Palestinians in Israel are essentially "citizens without citizenship" and are treated as residents with unequal rights, while meaningful citizenship is only granted to Jewish Israelis.<sup>44</sup>

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<sup>40</sup> John Dugard and John Reynolds, "Apartheid, International Law, and the Occupied Palestinian Territory." *European Journal of International Law* 24, no. 3 (2013): 867–913, 44.

<sup>41</sup> *Ibid.*

<sup>42</sup> Khalil and A. Del Sarto, "The Legal Fragmentation of Palestine-Israel and European Union Policies Promoting the Rule of Law," 137.

<sup>43</sup> Dugard and Reynolds, "Apartheid, International law, and the Occupied Palestinian Territory," 24.

<sup>44</sup> Nadim Rouhana and Nimer Sultany, "Redrawing the Boundaries of Citizenship: Israel's New Hegemony," *Journal of Palestine Studies* 33, No. 1, (2003):16.

The different rights (access, citizenship, freedom of movement and residency) bestowed on Israelis and Palestinians are legal statuses solely defined by Israel. Different rules for different people mean that everyday life and governance vary considerably between place and individual. Palestinians do not even travel in the same way or from the same place. Not all Palestinians live the same life, and their daily lives unfold in a complex matrix of laws, rules, orders, norms and institutions that shape and compel every action. Law and even the perception of what is or what is not a crime differ from one place to another, and this produces wildly different rights, restrictions and privileges.<sup>45</sup> This impacts day-to-day life and produces a situation diametrically opposed to the one that prevails under rule-of-law.<sup>46</sup>

On November 29, 2012, the United Nations General Assembly passed Resolution 67/19, which recognizes Palestine as a non-member observer state. Even in its own terms, this ‘achievement’ is clearly limited – after all, recognition is, at the level of legal theory, only an official declaration that recognizes the existence of a state and cannot be said to be constitutive of the state nor a necessary element of statehood.<sup>47</sup> More importantly however, this recognition further consolidated the Palestinian fixation on the 1967 ‘borders’ and segregated Palestinians into different subjects, as was the case under British colonization.

It should also be acknowledged that Palestine was recognized as a state even before this Resolution was passed, most notably by the Treaty of Lausanne. When it entered into force in 1924, several of its provisions recognized Palestine as a state. The Permanent Court of International Justice, in explaining the meaning of Article (9) of the protocol XII, also referred to Palestine as a ‘successor state’ to Turkey – tellingly, even though Palestine was administrated by the British Mandate at the time, it was still referred to as a “state”.<sup>48</sup> The PLO’s 1988 Declaration of Independence also affirmed Palestine statehood. Each allusion to

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<sup>45</sup> Ibid.

<sup>46</sup> Ibid.

<sup>47</sup> Cedric Ryngaert and Sven 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, no. 2 (2011): 467–90, 4; Dapo Akande, “Palestine as a UN Observer State: Does this Make Palestine a State?,” *EJIL: Talk!*, 3 December 2012. <https://www.ejiltalk.org/palestine-as-a-un-observer-state-does-this-make-palestine-a-state/>

<sup>48</sup> John Quigley. *Palestine Statehood and International law*. Mortiz College of Law, The Ohio State University, Global Policy Essay, 2013, 2. [https://www.globalpolicyjournal.com/sites/default/files/pdf/Quigley%20-%20Palestine%20statehood%20and%20international%20law%2001.13\\_0.pdf](https://www.globalpolicyjournal.com/sites/default/files/pdf/Quigley%20-%20Palestine%20statehood%20and%20international%20law%2001.13_0.pdf)

Palestinian statehood serves to reiterate that the Resolution was in many senses essentially retroactive. It should also be recognized that Israel's 1948 occupation of Palestine did not alter this status, for the reason that occupation is essentially an irrelevance in this regard.<sup>49</sup>

Citizenship is normally defined as a legal-political relationship between individuals and their state, and it enables these individuals to establish their legal status as citizens rather than foreigners. It is also intrinsically connected to the state, to the point where the state appears as a precondition of citizenship. By implication, the non-existence of the state simultaneously indicates the absence of citizenship.<sup>50</sup>

The establishment of a state is normally synonymous with the effective regulation of citizenship, and this is shown by the fact that, subsequent to the UNGA's recognition of Palestinian statehood, citizenship was increasingly engaged as a means through which to strengthen this status. The UNGA's recognition simultaneously acknowledged Palestine's potential to become a national home and sovereign state for Palestinians, and this will in turn enable them to acquire the rights and freedoms associated with citizenship.

The Resolution means the PA will be able to issue passports that will be *ipso facto* recognized by states that acknowledge Palestinian statehood. In addition, it will also be able to claim diplomatic protection for its citizens by referring to human rights, international criminal and refugee law. The Authority will also be permitted to define its population.<sup>51</sup>

Since the PLO's recognition of Israel in 1988, a strong Palestinian consensus has emerged around the two-state solution, which envisages the establishment of a Palestinian state within the 1967 'borders'. Defining citizenship within this framework will contribute to further fragmentation, and the establishment of a state-centered institution will resurrect, iterate and perpetuate colonial overtones that have prevailed since the British Mandate.

In addition, the PA continues to support UNGA Resolution A/67/L.28 (passed on November 26, 2012), which recognizes Israel's state legitimacy within the 1967

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<sup>49</sup> Humanitarian Debate: Law, Policy, Action, Occupation. *International Review of the Red Cross* 94, No. 885 (2012): 2.

<sup>50</sup> Khalil, *Palestinian Nationality and Citizenship*, 32.

<sup>51</sup> Mutaz Qafisheh, "What Palestine Ought to do after becoming a state on 29 November 2012?," *Miftah.Org*, December 4 2012, 5. <http://miftah.org/Display.cfm?DocId=25541&CategoryId=5>

'borders'. The upholding of this commitment means that Palestinian citizenship will only apply in the OPT, and not to the Palestinian inhabitants of Historical Palestine. This clearly contradicts the aspiration of a 'Palestinian' citizenship that applies to all Palestinians.

## *V. Conclusion*

If the Palestinian citizenship would be regulated under the conventional legal matter, it will jeopardize the state's major task of safeguarding the right of its inhabitants. The right to citizenship is a basic entitlement that is codified in international treaties and resolutions and upheld by international tribunals.<sup>52</sup>

References to Palestine as a state do not, and cannot, refer to 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?

If Palestinian citizenship is formally adopted and recognized, it will only apply to Palestinian residents of the OPT, and Palestinian Jerusalemites will not be able to obtain it. In all likelihood, continued Israeli occupation will ensure that the legal matrix stays the same for Palestinian residents of the OPT.

Even if Palestinian inhabitants of the OPT obtain a formally recognized citizenship, a legal matrix will still remain in place. West Bank Palestinians will not be able to travel to Jerusalem and will continue to be separate from the Gaza Strip's residents. The continuation of the occupation will also ensure that they require a different travel document.

UN General Assembly resolution 194 establishes that Palestinian refugees also have the right to acquire this citizenship and return to their homeland. However, refugees outside of Palestine do not have an ID number and fall outside of this

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<sup>52</sup> Butenschon, Davis, and Hassassian, *"Citizenship and the State in the Middle East: Approaches and Applications,"* 223.

category and, as a consequence, are not automatically entitled to Palestinian citizenship.

Even if they were so entitled, they would not be able to enter their homes in what was Historical Palestine and which is now the SoI. The granting of Palestinian citizenship to Palestinian refugees would therefore enable them to ‘return’ to the state of Palestine within the 1967 ‘borders’ – this, however is conditional on the ‘good will’ of the SoI, which currently controls the OPT’s ‘borders’, and its willingness to allow them to first enter the state of Palestine. Under any circumstance, refugees will not be permitted to to the SoI. This clearly establishes that the acceptance of Palestinian citizenship by these refugees would ultimately mean forgoing the right to return to their homes and instead accepting resettlement within the 1967 ‘borders’.<sup>53</sup>

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

The creation of a legal citizenship for Palestinians within the SoP will not resolve the real issues at stake – specifically, the right of return, territorial fragmentation and the artificial division of the OPT’s population. To the same extent, an abstract nationality will not unify the nation, end occupation or terminate apartheid. On the contrary, past experience suggests that the establishment of a nominal state with nominal citizenship may in fact perfectly align with the apartheid regime and complement its attributes and operations.<sup>54</sup>

The right to citizenship is a basic, fundamental and empowering right that helps safeguard citizens. However, in the Palestinian context this ‘citizenship’ has only ever been defined by external states and interests, who have assiduously used it to exclude and manipulate Palestinian interests and priorities. The British Mandate

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<sup>53</sup> Butenschon, Davis, and Hassassian, “*Citizenship and the State in the Middle East: Approaches and Applications*,” 222.

<sup>54</sup> Asem Khalil, “The Palestinian Authority: Unsettling Status Quo Scenarios,” *Al-Shabaka, The Palestinian policy network*, 2016.

issued Order 1925 before Israel stripped away the Palestinian citizenship in 1948; Jordan imposed its citizenship in 1949 and then stripped it away the Palestinian right to obtain Jordanian citizenship in 1988. In contrast to these historical examples, the PA should seek to institute citizenship as an unconditional right rather than a privilege.<sup>55</sup>

If the development of Palestinian citizenship occurs within the limitations of a state-centred framework it will serve the same objectives and intentions that have prevailed since the British Mandate. While the articulation of citizenship within the parameters of the 1967 ‘borders’ may provide an imperfect solution for millions of stateless Palestinians it is, the authors reiterate, ‘the right answer for the wrong question’.

The real question is how both local and international actor should address the main problems that confront Palestinians. These are, at present, territorial fragmentation, the dispersal of Palestinians, the construction of an artificial legal matrix, prolonged occupation, the continued operation of an apartheid regime in the OPT and the ongoing question of Palestinian refugees. If these problems are not addressed, then Palestinian citizenship will continue to fall short of the model in democratic societies and, by extended implication, will fail to uphold essential rights and freedom.

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<sup>55</sup> Butenschon, Davis, and Hassassian, *“Citizenship and the State in the Middle East: Approaches and Applications,”* 224.

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