**WHO HAS THE RIGHT TO BECOME A PALESTINIAN CITIZEN?**

**AN INTERNATIONAL LAW ANALYSIS**

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*Abstract*

*This paper attempts to analyze the legal status of the persons who would be eligible, under international law, to acquire the citizenship of the State of Palestine as recognized by the United Nations General assembly on 29 November 2012. It offers a typology for the various groups that are linked, through the present or former permanent residence in the West Bank or the Gaza Strip. While the current native residents of the West Bank or Gaza would automatically qualify for Palestinian citizenship, other groups who relate to the State of Palestine need careful consideration before acquiring citizenship, including inhabitants of East Jerusalem, refugees who emigrated from the territory of the State of Israel since 1948 and settled in the West Bank or Gaza, West Bankers or Gazans who were expelled from these two areas at any point since July 1925 and were prevented by Britain (1917-1948) or by Israel (since June 1967) to return, and Jewish-Palestinian natives of the West Bank or Gaza who lost their residence therein since May 1948. The paper provides a framework upon which the citizenship law of the State of Palestine might be based.*

**Introduction**

On 29 November 2012, Palestine became a State recognized by the United Nations (UN) General Assembly and by most States of the world.[[1]](#footnote-1) This new status gives Palestine a set of rights, including accessing a member of international organizations, joining universal treaties, opening embassies, and protecting citizens abroad. In indeed, Palestine has joined a number of institutions including UN Educational Scientific and Cultural Organization (UNESCO),[[2]](#footnote-2) and the International Criminal Court (ICC).[[3]](#footnote-3) It acceded to dozens of treaties, including seven core human rights conventions and Geneva conventions on the international humanitarian law.[[4]](#footnote-4)

Within the efforts of Palestine to strengthen its State-building, it seeks to embrace a series of measures at the national level, including forming a constitution, building institutions, reforming its legislation, and defining its citizens. In 2012, an attempt was made by the Palestine Liberation Organization (PLO) to draft a citizenship law. The initiative was short-lived due to ramifications attached to those who may qualify as citizens, implications on the status of Palestinian refugees and the right of return, diplomatic protection, civil and political rights, and residency in the West Bank and Gaza as well as in East Jerusalem, entry into the country while under occupation, travel, passports, and the status of Palestinians in the diaspora and within Israel.[[5]](#footnote-5)

This paper, which builds on earlier research, argues that international law is well- equipped to provide an a clear status to those who qualify as citizens of the State of Palestine.[[6]](#footnote-6) That qualification, in order for the status to be precisely exercised, needs to be ultimately reflected in a citizenship law that may be adopted by the State.[[7]](#footnote-7)

As citizenship is inherently related to sovereignty,[[8]](#footnote-8) any attempt to understand the current status of Palestinian citizenship should start from the moment at which “Palestine” had become a separate entity able to confer citizenship, namely after the separation of this territory from the Ottoman Empire. Under the Ottomans, the inhabitants of Palestine were Turkish citizens.[[9]](#footnote-9) The “Palestinians” then had no particular legal status. Hence, a distinct “Palestinian people” did not exist at the time. The “Palestinians” constituted a component of the larger “Ottoman people”.[[10]](#footnote-10) Towards the end of the First World War, as part of the general Turkish defeat by the Allies, the territory of Palestine fell in 1917-1918 under British occupation.

To acquire Palestinian citizenship at the outset, one was required to hold the status of an “Ottoman subject” or citizen.[[11]](#footnote-11) Upon the entry into force of the Treaty of Lausanne which was signed between the Allies and Turkey on 24 July 1923,[[12]](#footnote-12) the international instrument whereby Palestine was legally separated from Turkey on 6 August 1924, Ottoman citizens who resided in the territory of Palestine became *ipso facto* “Palestinian citizens”.[[13]](#footnote-13) This was domestically confirmed by the Palestinian Citizenship Order, which was enacted by Britain on 24 July 1925.[[14]](#footnote-14) The Order regulated Palestinian citizenship until the dissolution of Palestine on 15 May 1948. From that date until now, due to the de facto sovereignties exercised over the historical Palestine (now Israel, the West Bank, and Gaza), various statuses have affected the inhabitants. Certain statuses emerged due to the policy pursued and the legislative acts undertaken unilaterally by individual States, chiefly Israel and Jordan.

The number of “Palestinians” worldwide amounts to 12 million individuals in 2015 according to the Palestinian Central Bureau of Statistics (PCBS).[[15]](#footnote-15) People who relate to the historical Palestine may be divided, in terms of citizenship features shared by each group’s members, into three broad categories: (1) the inhabitants of the occupied Palestinian territory, namely the West Bank, including East Jerusalem, and the Gaza Strip; (2) Palestinian refugees who voluntarily left or were forced to leave their homes in the area of Mandate Palestine in which Israel had been established; and (3) the inhabitants of Israel. Each of these groups comprises sub-groups.

This paper will not address the status of all these persons. It is rather confined to individuals related to the scope of the current 1967 occupied State of Palestine, namely the West Bank and Gaza. The number of Palestinians residing in the occupied territory totals 4.62 million at the end of 2014.[[16]](#footnote-16) Although they all linked to the same territory that was occupied by Israel in 1967 and despite having one status under international law, their status as defined by the authorities exercising powers in the three areas in which they reside since May 1948 (West Bank, Gaza, and East Jerusalem) is different. Displaced persons from the 1967 occupied territory have also a status linked to the territory, but they acquired a status in their current areas of residence abroad. Each of these four groups (West Bankers, Gazans, East Jerusalemites, and displaced persons) will be addressed in four consecutive sections. An additional group residing in the 1967 territories, namely individuals who arrived therein from the territory of Israel, will be discussed in the fifth section.[[17]](#footnote-17)

1. **Palestinians of the West Bank**

The West Bankers, who number about 2.83 million at the end of 2014,[[18]](#footnote-18) incorporate individuals who resided in the eastern part of Palestine which become known as the “West Bank” after the annexation of that area by Jordan on 24 April 1950.[[19]](#footnote-19)

Palestine had a special relation with Jordan.[[20]](#footnote-20) When the League of Nations adopted the Mandate on 24 July 1922, the text incorporated the territory of Trans-Jordan within the scope of “Palestine”.[[21]](#footnote-21) However, Article 25 of the Mandate accorded Britain the power “to postpone or withhold application of such provisions of this mandate as [...] it may consider inapplicable to the existing local conditions”. On 16 September 1922, by a resolution adopted at the Council of the League, Trans-Jordan was excluded from the scope of Palestine and the boundaries between two areas were fixed.[[22]](#footnote-22) Trans-Jordan had earlier been excluded from Palestine by Article 86 of the Palestine Order in Council of 10 August 1922,[[23]](#footnote-23) the Constitution that Britain applied: “This Order in Council shall not apply to such parts of the territory comprised in Palestine to the east of the Jordan [River] and the Dead Sea”. Britain agreed on 20 February 1928 for Trans-Jordan to form an autonomous government in Amman.[[24]](#footnote-24) After concluding a treaty of alliance with Britain on 22 March 1946, Trans-Jordan could at last acquire its independence from Britain and detach from Palestine.[[25]](#footnote-25)

Trans-Jordan developed a citizenship distinct from that of Palestine. To begin with, the aforementioned resolution of the Council of the League of Nations of 16 September 1922 resolved, inter alia, that Article 7 of the Palestine Mandate relating to Palestinian citizenship would not be applicable to Trans-Jordan.[[26]](#footnote-26) That territory’s inhabitants were then expressly excluded from the scope of Palestinian citizenship by Article 21 of the 1925 Palestinian Citizenship Order. Trans-Jordan eventually enacted its own citizenship law on 1 May 1928.[[27]](#footnote-27) Article 1 of this law conferred Trans-Jordanian citizenship on Ottoman subjects residing in Trans-Jordan retroactively as of 6 August 1924— the date on which the Treaty of Lausanne came into force. Trans-Jordanian citizenship constituted a separate citizenship from that of Palestine in law and in practice throughout the Mandate period. Trans-Jordanians, for example, were required to obtain a visa to enter Palestine.[[28]](#footnote-28)

The relationship between the Palestinian and Trans-Jordanian citizenships arose in a case before the Supreme Court of Palestine on 14 December 1945. In *Jawdat Badawi Sha’ban v. Commissioner for Migration and Statistics*, the applicant was a Palestinian citizen and had acquired Trans-Jordanian citizenship by naturalization. Mr Sha’ban argued that “Trans-Jordan is a territory and not a State [... and] in any case it is not a foreign State [in relation to Palestine]”. The Court, in a landmark decision that summarized the status of Palestine vis-à-vis Trans-Jordan regarding citizenship, held:

Now, Trans-Jordan has a government entirely independent of Palestine. [...] Trans-Jordan can, as in this case, grant a person naturalisation, *i.e.* grant an alien or foreigner Trans-Jordan nationality which is a separate nationality and distinct from that of Palestine citizenship. [...] *Palestinians and Trans-Jordanians are foreigners*. [...] Trans-Jordan must be regarded as a foreign State in relation to Palestine.[[29]](#footnote-29)

Thus, there are no doubts that Jordanian and Palestinian citizenships were distinct from each other before 15 May 1948 in law ad practice.

Under British rule, the West Bank was an integral part of Palestine and did not form a political or administrative entity. Its inhabitants were Palestinian citizens. During the 1948-1949 war, the Jordanian army entered parts of Palestine that were designated for the Arab State or to the international city of Jerusalem in the United Nations Partition Plan of 29 November 1947. The West Bank emerged as an entity after Jordan’s signature of an armistice agreement with the State of Israel on 3 April 1949.[[30]](#footnote-30) This agreement created what has become known as the “green line”, which refers to the armistice lines that were drawn up on the maps attached to the aforesaid agreement. As it is located on the western side of the Jordan River, this area of Palestine was de facto called the “West Bank” as opposed to the “East Bank” of the same River, namely the Hashemite Kingdom or the former Trans-Jordan. Jordan continued ruling the area until 4 June 1967, when it was occupied by Israel the following day.

Gradually during its rule in the West Bank Jordan granted its citizenship to the inhabitants of the West Bank, along with refugees who ended up on the west or east banks of the Jordan River and who were prevented by Israel from returning to their homes within Israel’s territory. On 13 January 1949, by Law No. 56, Jordan amended its 1928 citizenship law.[[31]](#footnote-31) Article 2 of this amendment provided that

all persons habitually residing in Trans-Jordan or in the western area that is currently being administrated by the Hashemite Kingdom of Jordan who hold Palestinian citizenship shall acquire Jordanian citizenship, and enjoy all citizen’s rights and responsibilities on the same footing as Jordanians.

On 7 February 1949, Jordan enacted a law on passports.[[32]](#footnote-32) Article 2 of this law gave any “Arab person holding Palestinian citizenship” the right to obtain a Jordanian passport. Jordan confirmed the granting of its citizenship to all West Bankers by the Nationality Law No. 6 of 2 February 1954.[[33]](#footnote-33) Article 3 of this law stated that

the following persons shall be considered Jordanian citizens: [...] (2) Those who acquired Jordanian citizenship in accordance with Law No. 56 of 1949; and (3) All non-Jewish persons who were holding Palestinian citizenship prior to 15 May 1948 and who reside at the date of the enactment of this law in the Hashemite Kingdom of Jordan [including the West Bank].

Palestinians of the West Bank, via this process, were considered to be Jordanians at the domestic level of the Kingdom. They could as such participate in legislative elections, be elected to parliament, hold public office, become ministers, bear passports, and be provided with diplomatic protection by Jordanian authorities abroad. The West Bankers have consequently become fully-fledged Jordanian citizens.

This situation continued until 4 June 1967. From the beginning of the occupation until 1994, Israel closed the border with Jordan and controlled the whole of the West Bank. No one could leave, or land in, the West Bank without Israeli permission.[[34]](#footnote-34) The inhabitants were considered by Israel at this time as permanent residents of the West Bank, not residents of Israel as the area had not been annexed by Israel. The status of West Bankers then became similar to that of citizens in terms of citizens’ rights, albeit under occupation, according to the applicable law in the area. Israel issued orange-coloured identity cards to the West Bankers as an indication of residency.[[35]](#footnote-35) As a result, a sort of de facto “West Bank citizenship” was invented.

Inhabitants at the time could travel abroad using Jordanian passports. For a number of years prior to 1994, Israel obliged those travelling abroad to remain outside for at least nine months.[[36]](#footnote-36) Thousands of West Bankers who travelled abroad, however, were not allowed to return after exceeding the period of absence specified for them. Israel adopted the system of absentees, namely those who left the West Bank and failed to return within three years would not be allowed to return.[[37]](#footnote-37) Children born to West Bankers abroad would not be eligible for registration as residents, and therefore lose their right of return to the West Bank, if their parents do not register them after reaching 5 years of age.[[38]](#footnote-38) Another group of West Bankers, chiefly political activists, were deported.[[39]](#footnote-39) Such policies created a category of West Bankers called “identity card losers”.[[40]](#footnote-40) These virtually became refugees.[[41]](#footnote-41) Israel allowed only a limited number of non-West-Bank residents (or West Bakers who lost their residency) to return and obtain permanent residence under the formula of family reunification.[[42]](#footnote-42) Others returned with the Palestinian Authority after 1994, as will be discussed below.

Jordan continued at the time of Israeli occupation to treat the inhabitants of the West Bank as Jordanian citizens. West Bankers could travel abroad, i.e. outside the Kingdom, using Jordanian passports; they crossed the West Bank border with Jordan by employing permits for each journey. West Bankers were allowed to reside in the territory lying to the eastern side of the Jordan River, to own real estate, to practise professions, and to hold public office— just like East Bankers/native Jordanians.[[43]](#footnote-43)

The same status continued intact until 31 July 1988, when the King of Jordan decided to end the Kingdom’s sovereignty over the West Bank.[[44]](#footnote-44) Three weeks later, the Jordanian Prime Minister issued instructions to *ipso facto* stripped persons who were residing in the West Bank on that date from their Jordanian citizenship.[[45]](#footnote-45) Jordanian courts upheld the King’s decision and considered West Bankers as “Palestinians”, namely foreigners while in the Kingdom.[[46]](#footnote-46) Jordanian passports held by the West Bankers at the time were turned into temporary travel documents, lasting initially for two years,[[47]](#footnote-47) which do not give their bearer citizen’s rights in Jordan.[[48]](#footnote-48) Thousands others, particularly those West Bakers who were residing outside the West Bank at the time of the aforesaid 1988 decision, are still facing such withdrawal risks.[[49]](#footnote-49) Today, Jordan still grants thousands of West Bankers a five-year long temporary Jordanian passport upon application.[[50]](#footnote-50) These passports are treated by Jordan and by most States as travel documents, not as ordinary Jordanian passports with a national number.[[51]](#footnote-51)

It should be noted that Jordan’s sovereignty in the West Bank was questionable in international law since the vast majority of States had not recognized the Jordanian annexation. The Palestine Liberation Organization, as the legal representative of the Palestinian people, has always considered the West Bank to be part of Palestine.[[52]](#footnote-52)

The situation somewhat changed in 1994 after the establishment of the Palestinian Authority, as we will discuss after touching upon the citizenship in pre-1994 Gaza.

1. **Palestinians of the Gaza Strip**

This group of individuals, which numbers today some 1.79 million persons,[[53]](#footnote-53) comprises inhabitants of the part of Palestine that became known as the “Gaza Strip”[[54]](#footnote-54) in 1948 when the Mediterranean enclave fell under Egypt’s administration.[[55]](#footnote-55)

Although the Gaza Strip constitutes with the West Bank the Palestinian territory occupied in 1967,[[56]](#footnote-56) Gaza has developed since 1948 a separate political and social character. This character produced certain legal effects. Gaza, like the rest of Palestine, was occupied by Britain from 9 December 1917 and remained under the Mandate until 14 May 1948. During its war with Israel, Egypt occupied the territory that has become known as the Gaza Strip, which emerged within its current borders with Egypt and Israel after the signing of the armistice agreement between Egypt and Israel on 24 February 1949.[[57]](#footnote-57) Unlike what Jordan had done in the West Bank, Egypt retained its military administration of Gaza without annexing it until 1967. In June of that year, Israel occupied Gaza and continued controlling it directly until 1994 after the signing of the Oslo agreement with the Palestine Liberation Organization.

Citizenship in Gaza under Egyptian administration (1948-1967) had a particular, de facto, character. As Egypt had not annexed Gaza, Gaza’s inhabitants retained a form of Palestinian citizenship, comparable to the citizenship that existed under the British rule in Palestine as described above.[[58]](#footnote-58) The Palestinian Citizenship Order of 1925 continued to be applicable and the Gaza government set up by Egypt treated the inhabitants as Palestinian citizens. Although Egypt granted travel documents to them, Gazans needed a visa to land in Egypt. At the time, persons could retain and recover Palestinian citizenship in Gaza. Acquisition of Palestinian citizenship by naturalization was possible too. For example, a non-Palestinian woman who married a Palestinian man residing in Gaza could acquire permanent residency in Gaza and would be registered as a Palestinian citizen naturalized by marriage, as demonstrated by naturalization decisions published in the *Palestine Gazette*, the official journal of the Egypt-run government of Gaza.[[59]](#footnote-59) Citizenship was accorded to persons who had been residing abroad and returned to Gaza. Such persons were obliged to renounce their other citizenships as a pre-condition for obtaining Palestinian/Gaza citizenship.[[60]](#footnote-60) Like naturalization, decisions relating to such revocations of citizenship were also gazetted.[[61]](#footnote-61) It should be noted that this citizenship constituted a form of anomalous Palestinian citizenship. Its nature depended on the way in which States regarded the holders. Many States viewed the inhabitants of Gaza as refugees because they held Egyptian travel documents that Egypt granted to both refugees and non-refugees in Gaza.[[62]](#footnote-62) However, citizenship status in Gaza produced fully-fledged local effects. Its holders enjoyed citizens’ rights, including participation in parliamentary elections, holding public office, exit, return, and residing permanently.

In Egypt, Gazans were viewed as foreigners.[[63]](#footnote-63) However, they were treated on the same footing as Egyptians in regard to a number of social rights, such as admission to public schools and access to public health institutions.[[64]](#footnote-64) While abroad, Gazans were protected by Egyptian diplomatic and consular missions— similar to the protection enjoyed by Palestinians under British rule. Hence, Gazans at the time had a *sui generis* status that can be described as “Gaza citizenship”. This anomalous status is merely one of the many anomalous circumstances stemming from the absence of the State of Palestine. Such anomalies have shaped Palestinian citizenship from 1917 until the present day; the citizenship of the Gaza’s inhabitants was no exception.[[65]](#footnote-65)

This situation continued until 5 June 1967 when Israel occupied Gaza.[[66]](#footnote-66) Israel then closed the borders with its territory and with Egypt and did not allow the Gazans to leave by sea.[[67]](#footnote-67) No one could leave, or land in, Gaza without Israeli permission.[[68]](#footnote-68) The Gazans were considered by Israel at that time as permanent residents of Gaza.[[69]](#footnote-69) Their status had become similar to that of citizens, albeit under occupation, as was the case in the West Bank. Israel granted Gazans orange-coloured identity cards as proof of residency.[[70]](#footnote-70) It allowed the inhabitants who applied for permits to the Israeli military commander of Gaza to leave abroad and to return.[[71]](#footnote-71)

The situation changed somewhat is of 1994 when the Palestinian Authority was established in Gaza after the signing of the Oslo Accord as will be elaborated below.

In September 2005, Israel withdrew from Gaza. Israel simultaneously maintained its control over Gaza land border, airspace, and sea.[[72]](#footnote-72) Israel, Egypt and the PA signed an agreement on 15 November 2005 placing the crossing point between Gaza and Egypt under joint Egyptian-Palestinian administration, with a European Union monitoring and remote Israeli oversight.[[73]](#footnote-73) After Hamas assumed control over Gaza in June 2007, Israel tightened its blockade.[[74]](#footnote-74) Egypt took control of the border crossing and unilaterally decides when to open or to close it, often arbitrarily.[[75]](#footnote-75) In response, Gazans erected tunnels with Egypt, which were used to smuggle goods and persons between the two sides of the border. However, the border crossing opens from time to time. The inhabitants, notwithstanding the recent difficulties, have been able to travel abroad using Palestinian passports as in the case of the West Bank.[[76]](#footnote-76)

It is to be noted that after the takeover of Gaza by Hamas, and particularly during the period 2011-2013 (Egyptian revolution and subsequently of the rule of Islamic Brotherhood), hundreds of people were able to land in Gaza, mostly through tunnels erected on border.[[77]](#footnote-77) Most of these people are either originally Palestinian refugees displaced again as a result of war in Syria or Syrian refugees.[[78]](#footnote-78) While receiving assistance from the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA),[[79]](#footnote-79) on de facto basis, and from local authorities, the situation of this group of people would remain undermined until an agreed upon solution for them is adopted or until they return to Syria. They will constitute de facto residents of Gaza (as Hamas accepts their residency) but it might be difficult for them to leave Gaza or obtain travel documents or passports that enable them to leave Gaza and return to it.

A word must be added concerning the status of the Gazans in the West Bank and the West Bankers in Gaza. When the West Bank and Gaza were under Jordan and Egypt rules, respectively, the two regions were practically separated from 1948 until 1967. After its occupation of the two regions in June 1967, Israel permitted movement between the two areas.[[80]](#footnote-80) However, Israel suspended the movement between the two areas after the outbreak of the first uprising (*intifada*) in 1987.[[81]](#footnote-81) The separation has become more systematic upon the Oslo agreement in 1994.[[82]](#footnote-82) West Bankers could not travel to Gaza, and vice versa, except with the permission of Israel. Gazans could reside in the West Bank only for as long as Israel determines. Israel reserved the power to deport Gazans from the West Bank.[[83]](#footnote-83) It likewise reserved the power of granting permanent residence to some Gazans in the West Bank, chiefly on grounds of family reunification or public employment with the Palestinian government. After over a decade of freeze, in August 2011, Israel allowed 1,956 persons from Gaza, who had already been residing in the West Bank for years, the right to change their address to the West Bank and thereby acquire permanent residency therein.[[84]](#footnote-84) In practice, such persons became West Bankers and were unable to travel to Gaza without an Israeli permit. Israel also deports certain West Bankers to Gaza and denies their return to the West Bank.[[85]](#footnote-85) Hundreds of thousands of Gaza-registered persons who are residing in the West Bank whose residency in that area has been approved by Israel, among whom thousands born in the West Bank, are not immune of expulsion.[[86]](#footnote-86) Thus, the status of Gazans as determined and enforced by Israel who enter and stay the West Bank without formal Israeli-approved change of residency address resembled that of de facto foreigners in the West Bank.[[87]](#footnote-87) This runs counter to the Oslo agreements that regard the West Bank and Gaza as a single territorial unit as we will see next.

**Citizenship under the Palestinian Authority**

After the establishment of the Palestinian Authority (PA) in 1994 in certain parts of the West Bank and Gaza upon the signing of the Declaration of Principles between Israel and the Palestine Liberation Organization on 13 September 1993 (“Oslo I”),[[88]](#footnote-88) and based on the Israeli-Palestinian Interim Agreement on 28 September 1995 (“Oslo II”),[[89]](#footnote-89) the situation of Palestinian citizenship changed to some extent. These two instruments, commonly known as the “Oslo Accords”, gave the PA the right to issue identity cards for inhabitants and to print Palestinian passports after notifying Israel.[[90]](#footnote-90) Yet Israel continued controlling the Palestine’s border. The inhabitants could travel using PA passports but required the permission of Israeli authorities stationed at the border crossing points with Jordan (West Bank) and Egypt (Gaza), as was the case before the Accords. Palestinian passports are now recognized by most States of the world. States grant entry visas to Palestinian passport holders and deal with them according to the regulations governing aliens enforced in these States on the same footing as foreigners from independent States.[[91]](#footnote-91)

A number of changes relating to Palestinian citizenship occurred after the signing of the Oslo Accords.[[92]](#footnote-92) A joint Israeli-Palestinian police force was stationed at the border crossing points. West Bankers travelling abroad via Jordan were required to pass through Israeli and Palestinian security checks; the same applied to Gazans travelling abroad through Egypt.[[93]](#footnote-93) From November 1998 to October 2000, Gazans and to a lesser extent West Bankers were able to travel abroad through Gaza International Airport, which the Israeli army destroyed in December 2001.[[94]](#footnote-94) Also after the *intifada*, Israel prevented holders of Palestinian passports from travelling through its airports—they had in fact rarely travelled through those airports.[[95]](#footnote-95) Israel had the final say on whether passage was permitted at all exits from which Palestinians depart. Thousands of inhabitants were banned from travelling abroad under security pretexts.[[96]](#footnote-96)

At the beginning of the second *intifada* in 2000, Israel ended the nominal Palestinian police presence at border crossing points and retained exclusive control over the movement of persons.[[97]](#footnote-97) However, the PA maintained separate police control points near the border in the cities of Jericho (West Bank) and Rafah (Gaza).[[98]](#footnote-98) Travellers were required to undergo Palestinian police checks and passport registration before proceeding to the Israeli side of the border. Passengers were required to do the same on their way back from Jordan or Egypt. The PA could prevent certain West Bankers from travelling to Jordan by means of this procedure. Hamas, as a de facto authority, was able to operate a similar procedure after taking over Gaza.[[99]](#footnote-99)

The Oslo Accords affected Palestinian citizenship in a number of–albeit limited– positive ways.[[100]](#footnote-100) Thousands of persons were enabled to acquire permanent residency in the West Bank or Gaza and to obtain Palestinian identity cards and passports. The persons concerned, commonly known amongst the local population as “the returnees”, belong to five categories: (1) officers recruited by the PLO from abroad (i.e. from among non-residents of the West Bank or Gaza), mostly Palestinian refugees with Jordanian passports or Egyptian travel documents;[[101]](#footnote-101) (2) employees recruited to work for the PA who were mostly PLO officials; (3) “investors, for the purpose of encouraging investment”, who are mostly Palestinian refugees from the business community; (4) “spouses and children of Palestinian residents”; (5) “other persons, for humanitarian reasons, in order to promote and upgrade family reunification”.[[102]](#footnote-102) The PA granted such permanent residency on a case-by-case basis, effectively after the approval of Israel. Israel could block any decision on the granting of permanent residency, and it did so when it froze family reunification requests after the outbreak of the *intifada* in 2000.[[103]](#footnote-103) In addition, the Accords defined the citizens of the occupied territory for the purpose of participation in general presidential and legislative elections in the West Bank and Gaza. Any resident over eighteen years of age was considered to be a Palestinian citizen for that purpose. Certain persons who were not recorded in the population register, namely who did not hold Palestinian identity cards, could acquire such cards and become permanent resident.[[104]](#footnote-104)

Oslo II institutionalized population registration in the occupied territory.[[105]](#footnote-105) In particular, the Accords recognized the identity cards issued by Israel for the population under occupation and replaced such cards with Palestinian cards as a sign of permanent residency. The PA assumed responsibility for population affairs relating to citizenship, including births, deaths, marriages, addresses, and other matters.[[106]](#footnote-106) The PA received from Israel “the population registry for the residents of the West Bank and the Gaza Strip in addition to files and records concerning them [including] [...] records of births and deaths and the indexes from 1918 till 1981”. The PA was mandated to register children under sixteen years of age who were born abroad “if either of their parents is a resident of the Gaza Strip and West Bank”.[[107]](#footnote-107) This situation may constituted an acceptance in practice of the *jus sanguinis* principle whereby any child born to a West Banker or Gazan father or mother is entitled to permanent residency, since such residency is effectively equivalent to citizenship.[[108]](#footnote-108)

Oslo II gave the PA, after Israeli clearance, the power to issue visitors’ permits for persons from States that had no diplomatic relations with Israel.[[109]](#footnote-109) Requests for such permits were to be filed by any relative or acquaintance of the visitor residing in the West Bank or Gaza. Such visitors were permitted to remain in the occupied territory for a period of up to three months with the possibility of extension for an additional four months. The PA could also issue visitors’ permits to foreigners for the purpose of study or work in Palestine for an extendable period of one year. Thousands of persons who entered the country under these provisions overstayed, especially spouses who had married local inhabitants and formed families. While the status of many of these persons was regularized through family reunification procedures whereby they acquired identity cards and Palestinian passports, the cases of many others are still pending.[[110]](#footnote-110) A smaller number of persons from States that have diplomatic relations with Israel, who visited Palestine by obtaining visitors’ permits from the PA,[[111]](#footnote-111) or by obtaining Israeli visas (under the 1952 Entry into Israel Law),[[112]](#footnote-112) also overstayed and are deemed to be illegal residents. These persons, mostly spouses of local inhabitants, may face deportation by the Israeli authorities if they are discovered.[[113]](#footnote-113)

This *tour d*’*horizon* reveals that the Oslo Accords have not significantly changed the *status quo* relating to Palestinian citizenship that was in place before the establishment of the PA. The Accords broadly maintained that status with minor modifications that have affected the lives of affected individuals. Since the Accords, Palestinian citizenship in the West Bank and Gaza has become akin to permanent residence. Such de facto citizenship can be proved and claimed by the means of two key documents: locally through identity cards and abroad via Palestinian passports. The current situation shows that citizenship may be effectively acquired by a person born to a Palestinian citizen, who may be the father or mother or both, residing in the West Bank or Gaza, regardless of the place of birth— within the territory or abroad. Citizenship may also be acquired by marriage based not on local law but on the formula of family reunification which may be granted or withheld by Israel. There is no clear rule relating to naturalization,[[114]](#footnote-114) but one may view the cases enumerated above involving the granting of permanent residence as cases somewhat similar to naturalization. No rules are in place regarding citizenship revocation.[[115]](#footnote-115) Yet deportation of inhabitants or the denial of return to those who travel abroad could be regarded as a means of denationalization.[[116]](#footnote-116) Citizenship legislation issued in Palestine in the past, particularly the 1925 Palestinian Citizenship Order and the 1954 Jordanian Citizenship Law, notwithstanding that they were never directly repealed, have been frozen since 1967 as a result of the series Israeli polices highlighted above.

Neither Israel nor the PA oppose the acquisition of one or more citizenship by permanent residents, many of whom hold other citizenships in addition to their Palestinian passports and reside in the West Bank or Gaza. It may be concluded form this fact that dual or multiple citizenship is de facto permissible for West Bankers and Gazans.[[117]](#footnote-117) Such dual citizens (e.g. French-West Banker, American-Gazan) are treated as Palestinians by the PA, not as foreigners— for instance in order for one to participation in elections, to own immovable property, practising of professions, and holding public office. Israel similarly considers Palestine’s inhabitants who hold foreign passports to be local Palestinians; such persons cannot use their foreign passports in relation to Israel, either to enter the West Bank, Gaza, or Israel territory. Dual citizenship goes in line with the modern trends that consider having two or more citizenships as a human right,[[118]](#footnote-118) which ought to be the case in the future citizenship law of Palestine.

In an attempt to pave the way for further regularization of the inhabitants’ status, the PA drafted a citizenship law in 1995. The bill, prepared by the Ministry of the Interior, took most of its provisions from the 1925 Palestinian Citizenship Order and the 1954 Jordanian Citizenship Law. In its twenty-five articles, the draft defined who is a Palestinian, fixed the modes of citizenship acquisition, naturalization, revocation and repatriation, covered issues such as the citizenship of spouses and children, and contained other provisions that normally exist in the citizenship legislation of independent States.[[119]](#footnote-119) Despite the existence of the Palestinian Legislative Council since 1996 and its adoption over a hundred laws,[[120]](#footnote-120) the citizenship bill has not been the subject of deliberation. The reasons for this are the absence of an independent State capable of conferring its citizenship and obtain international recognition, and the lack of a strategy for dealing with the question of citizenship in the event of a delay in the establishment of the State at the end of the transitional period in May 1999.[[121]](#footnote-121)

Diplomatic protection is the main manifestation of citizenship abroad.[[122]](#footnote-122) The PA was prevented under Oslo II from exercising certain types of diplomatic relations.[[123]](#footnote-123) Yet this restriction did not apply to the PLO. Nor, it can be argued, did it apply to the PA after the Oslo transitional period lapsed. Thus, nothing in international law would prevent the PLO or the PA from exercising diplomatic protection on behalf of Palestinians abroad, particularly after the recognition of Palestine as a State by the UN General Assembly on 29 November 2012, and more specifically after the accession of Palestine on 2 April 2014 to both Vienna Convention on Diplomatic Relations of 18 April 1961,[[124]](#footnote-124) and Vienna Convention on Consular Relations of 24 April 1963.[[125]](#footnote-125)

Diplomatic protection may be extended to any Palestinian citizen. It may be exercised through bilateral agreements between the State of Palestine and other States. Diplomatic protection takes various forms and can be exercised at different official or informal fronts. It includes assistance to Palestinians abroad in regard to civil status matters, such as registration of marriage, divorce, birth or death, defence of persons facing criminal charges, certification of educational diplomas obtained abroad, mediation on behalf of citizens with international organizations in these countries (e.g. supporting the rights of persons to obtain refugee status by intervening with the Office of the UN High Commissioner for Refugees or defending the labour rights of workers employed by international companies), assistance to investors abroad by providing technical advice, and the issuing of Palestinian passports. Despite the fact that various types of such assistance are supplied on *ad hoc* basis,[[126]](#footnote-126) such protection needs to be institutionalized. It may be exercised by existing Palestinian embassies, consulates, missions or representative offices. These diplomatic institutions should be strengthened by hiring trained staff to exercise protection as a technical function.

The Arab inhabitants of the West Bank and Gaza (unlike Jewish settlers who hold Israeli citizenship) currently hold green-coloured Palestinian identity cards, which indicate their right of residence. Under PA rule, inhabitants enjoy most citizens’ rights. As citizens, unlike foreigners, can vote in legislative elections and be elected to parliament and municipalities,[[127]](#footnote-127) hold public service,[[128]](#footnote-128) become ministers or judges,[[129]](#footnote-129) own real estate,[[130]](#footnote-130) practice professions,[[131]](#footnote-131) have unrestricted right to work,[[132]](#footnote-132) form political parties and establish associations.[[133]](#footnote-133) The PA can, at least in theory, exercise diplomatic protection on behalf of West Bankers and Gazans under bilateral agreements with host countries through its representative missions abroad.[[134]](#footnote-134) After all, citizenship was envisaged as link between the State and the individual for the purpose of granting rights and establishing obligations,[[135]](#footnote-135) which is the case here. Yet certain citizens’ rights are still restricted due to the occupation, including travel bans since Israel has retained the ultimate decision on departures from the West Bank, restrictions on travel within Palestine through a system of checkpoints, prohibitions on residency or the building of homes in certain areas, and denial of inhabitants’ right to bring their foreign spouses into Palestine, save to exceptional cases (above).

Consequently, the status of some five-million West Bankers and Gazans is close, albeit not identical, to the status of citizens belonging to sovereign States. There is, so to speak, de facto “West Bank citizenship” and “Gaza citizenship”. This citizenship is in certain features assimilate ordinary citizenship of other States.[[136]](#footnote-136) It can be regarded as full citizenship for certain purposes at the local level, including residency, election, employment, and travelling abroad and re-admission. Palestine inhabitants may also be considered by other States and by international organizations as citizens of Palestine for various legal purposes, for instance in cases involving private international law disputes,[[137]](#footnote-137) refugee status determination (including *non*-refoulement to Israel or the PA),[[138]](#footnote-138) be prosecuted by the ICC over the commission of war crimes or crimes against humanity based on the Rome Statute on the International Criminal Court of 17 July 1998,[[139]](#footnote-139) and being elected or appointed as member/experts representatives or staff of international or regional organizations.[[140]](#footnote-140) However, certain legal effects do not ensue from such West Bank or Gaza citizenship, such as the possibility of extradition of inhabitants to other States or their repatriation to Palestine by the PA if necessary,[[141]](#footnote-141) the freedom of citizens to import or export goods without Israel’s permission,[[142]](#footnote-142) and freedom to travel abroad without Israeli control.

In the future citizenship law of the State of Palestine, the inhabitants of the West Bank and Gaza should be collectively granted Palestinian citizenship with automatic effect by the operation of law, or *ipso facto*. Palestine is under an international legal obligation to grant its citizenship *en masse* to these inhabitants. This obligation stems from the law of State succession.[[143]](#footnote-143) Palestine is a successor State to Mandate Palestine, as Palestinian citizenship has never been settled since the dissolution of the Mandate Palestine in May 1948. In addition, the State of Palestine would become a successor to all the States or entities that have exercised de facto control in the West Bank or Gaza (Jordan, Egypt, Israel, the PA, and probably even Hamas) and have taken action with respect to the inhabitants’ citizenship. For example, if Jordan in the West Bank or Egypt in Gaza (before 1967) or Israel in the West Bank and Gaza (after 1967) granted de facto Palestinian citizenship, or permanent residence, to certain persons, Palestine should confirm this status and grant citizenship to such individuals. The obligation of Palestine can be induced from the customary rule as codified in Art. 1 of the 1999 International Law Commission’s Draft Articles on Nationality of Natural Persons in relation to the Succession of States.[[144]](#footnote-144) This article obliges each successor State to grant its citizenship to every individual who held the citizenship of the predecessor State and who has his or her habitual residence in the successor State.

The obligation of the State of Palestine to grant its citizenship should hold “irrespective of the mode of acquisition of that [predecessor] nationality”.[[145]](#footnote-145) Thus, Jordan might have granted its citizenship to some foreigners in the West Bank during its rule before 1967. Some East Jordanians might have moved to the West Bank at that time, since residence within Jordan, east and west, was possible as part of the local law under which all citizens were free to live in the two sides of the Jordan River. The two groups of persons might have become permanent residents of the West Bank after Israeli occupation. Israel, too, might have granted family reunification to a certain number of non-Palestinian men or women during its rule in the West Bank and Gaza. Some of these persons are currently permanent residents, holding Palestinian identity cards and passports just like the rest of the local population. They have well-established legal positions, such as birth, property ownership, families, business, etc. Similarly, the PA has granted permanent residency in the West Bank or Gaza to the foreigners mentioned above. Simply put, the test for conferring Palestinian citizenship on the inhabitants of the West Bank or Gaza in the citizenship law of the State of Palestine would be the possession of Palestinian identity cards.

In brief, the new Palestinian citizenship would emerge, by and large, as a legalization of the pre-existing de facto Palestinian citizenship in the West Bank and Gaza.

1. **Palestinians of East Jerusalem**

This group totals about 320,000 in 2015.[[146]](#footnote-146) The group, according to international law, forms part of the West Bank population. It is, however, considered separately here due to the particular status that Israel unilaterally created for the group after annexing East Jerusalem in 1967. The members of the group do not hold Palestinian passports and are considered by Israeli authorities as permanent residents of Israel. A considerable number of East Jerusalemite Arabs have acquired Israeli citizenship pursuant to the Israeli Nationality Law of 1 April 1952 upon satisfying its naturalization requirements: residency, Hebrew-language literacy, and application.[[147]](#footnote-147)

A special status for inhabitants of Jerusalem (both west and east) was envisaged in 1938 by Britain,[[148]](#footnote-148) and then in 1947 by the United Nations Partition Plan.[[149]](#footnote-149) “The City of Jerusalem” was intended to have a special international status, and the citizenship of the inhabitants was formulated accordingly.[[150]](#footnote-150) The Plan conferred Jerusalem’s citizenship with automatic effect on all residents of the city, irrespective of their citizenship, race or religion. It stated that “all the residents shall become [...] citizens of the City of Jerusalem”.[[151]](#footnote-151) The Arab and Jewish residents were given the right to opt for the citizenship of the Arab State or the Jewish State respectively. In such cases, the person in question would lose his or her Jerusalem citizenship status and become a citizen of either the Arab or Jewish State.[[152]](#footnote-152) By the end of 1944, the settled population of east and west Jerusalem numbered 240,880. Of these, 140,530 were Arabs and 100,200 Jews, and there were 150 others.[[153]](#footnote-153)

However, as the Plan was never implemented,[[154]](#footnote-154) Jordan annexed the eastern part of Jerusalem which fell under its control in 1948 and granted its citizenship to East Jerusalem’s inhabitants on the same basis as the rest of the West Bankers (above). The western side of the city became part of the State of Israel since Israel controlled that side and granted its Jewish inhabitants Israeli citizenship. The Arab inhabitants of West Jerusalem, like the vast majority of Arabs who were residing in the area of Palestine in which Israel took control, were expelled and become refugees.[[155]](#footnote-155)

After its occupation of the West Bank, Israel annexed East Jerusalem and considered it an Israeli territory.[[156]](#footnote-156) The international community did not recognize the annexation of East Jerusalem, adopting a number of Security Council and General Assembly resolutions to that effect.[[157]](#footnote-157) No State does recognize Jerusalem as the capital of Israel.[[158]](#footnote-158) However, Israel closed off Jerusalem from the rest of the West Bank.[[159]](#footnote-159) West Bankers now require permits to enter East Jerusalem, like other parts of Israel.

Israel did not annex the Arab inhabitants of East Jerusalem, not it conferred its citizenship on them. Simultaneously, it did not treat them as West Bankers or Gazans in terms of residency. The inhabitants who remained in Jerusalem after the occupation and were counted in the Israeli census conducted on 19 June 1967, were deemed to be foreigners permanently residing in Israel. Israel provided them with blue identity cards as a permit for permanent residency. Inhabitants could acquire an Israeli travel document (*laissez passer*), which is valid for three years, to travel abroad. Jerusalem inhabitants could participate in the Jerusalem local (municipality) elections, live anywhere in Israel, and acquire social security benefits such as pension and health insurance. They pay tax in the same way as Israeli citizens. But they are not allowed to participate in the Israeli legislative elections or perform national service. If East Jerusalemites move outside Jerusalem or exit Israel for seven years or more, their residency in Jerusalem would be revoked. Thereafter, Israel would not allow them to return to the city. Such persons may then become stateless.[[160]](#footnote-160)

If East Jerusalemites move to the West Bank, irrespective of the length of their stay, their residency in the city would be revoked by Israel. Residency and housing in the West Bank is effectively open to Jerusalemites, as many of them hold family connections with the neighbouring Palestinian cities; in fact thousands of East Jerusalemites live and work in the West Bank without informing the Israeli authorities.[[161]](#footnote-161) East Jerusalem women who marry West Bankers face the threat of withdrawal of their Jerusalem identity cards. If Jerusalemites’ residence in the West Bank is discovered by Israel, their residency in Jerusalem may be revoked. Israel sometimes expels people to the West Bank and revokes their residency in East Jerusalem for political reasons, as it did in the case of four Palestinian parliamentarians who were removed to Ramallah in 2011.[[162]](#footnote-162) A large number of East Jerusalemites have found themselves physically outside the city after the completion of the separation wall with the West Bank.[[163]](#footnote-163) These residents are threatened with withdrawal of their identity cards and many cards have indeed been withdrawn.[[164]](#footnote-164) In all these cases, the persons concerned become stateless, having on the one hand lost their Jerusalem status and, on the other, failed to acquire West Bank residency.[[165]](#footnote-165)

The PA is not in favour of granting Palestinian identity cards to East Jerusalemites whose residency is revoked in order to discourage Israel from undertaking further expulsions.[[166]](#footnote-166) For the PA, the treatment of these persons may sometimes differ from that of West Bank identity card holders in terms of court and police jurisdiction—Palestinian police cannot issue traffic fines against East Jerusalemites who drive in the West Bank, for example. As stateless persons, they are unable to travel abroad or to acquire identity papers, a state of affairs that has adverse implications in matters such as marriage, immovable property ownership, registration of children, or the conduct of business. Yet the PA treats such persons as ordinary Palestinian citizens in terms of, for instance, the practising of professions, right to work, public employment, and elections.[[167]](#footnote-167)

The Israeli government’s practice in dealing with the inhabitants of East Jerusalem originates from the *Awad v. Yitzhak Shamir* *et al.* case decided by the Israeli High Court of Justice on 5 June 1988.[[168]](#footnote-168) In this case, the court held that permanent residency status is not citizenship and may be revoked due to residency abroad. This decision was used against the inhabitants, restricting their departure from the city and their acceptance of foreign citizenships or residency abroad. It was estimated that Israel revoked the residency of over 13,000 East Jerusalemite between 1967 and 2010,[[169]](#footnote-169) through a policy known as “quiet deportation”.[[170]](#footnote-170) Family reunification for East Jerusalemites (as well as Arab Israelis of Palestinian origin) whose spouses are from outside the city, notably from the West Bank, is granted in rare cases.[[171]](#footnote-171) In short, the status of “permanent residence” for Arabs in Jerusalem is not guaranteed.

The status of East Jerusalemites is anomalous. This anomaly is a result of the Israeli policy of reducing the Arab population of the city to the absolute minimum. Jerusalem status places the inhabitants in a peculiar (*sui generis*) situation. They can still get temporary Jordanian passports without being considered as Jordanians, as in the case of West Bankers.[[172]](#footnote-172) As mentioned above, they have the right to apply for Israeli citizenship. For the PA, Jerusalem inhabitants are considered to be Palestinians, notwithstanding minor exceptions such as those mentioned above.

Under normal conditions, namely if East Jerusalem was to become part of the State of Palestine, the inhabitants of the city would automatically acquire Palestinian citizenship, as in the case of West Bankers and Gazans. However, given the complex statuses that have been wilfully engineered by Israel in order to minimize the number of Palestinians in the city, the future citizenship of East Jerusalemites needs to be examined in detail. The granting of citizenship to such persons should be carefully worded and the implications carefully considered because Israel may use the acquisition of such status as a pretext to revoke the inhabitants’ residency. This scenario would apply if East Jerusalem was to remain under Israeli control.

1. **Persons Displaced from the 1967 Territory**

This group of individuals was displaced from the West Bank and the Gaza Strip before, during, or after the 1967 Arab-Israeli war. Over 400,000 persons belonging to this category left the occupied territory in 1967.[[173]](#footnote-173) It is difficult to estimate the exact number of those currently displaced, as there is no central institution dedicated for collecting data regarding individuals belonging to this group in various parts of the world. Yet if one considers that the population of the occupied territory has increased over fourfold since 1967 and if this figure is used as an analogy for the group under consideration, it may be concluded that the group numbers at least 1.6 million.[[174]](#footnote-174)

Another category belonging to this group consists of inhabitants of the West Bank or Gaza who were deported by Israel or who have been denied the right of return since June 1967. The status of the latter category, commonly known as “identity card losers”,[[175]](#footnote-175) was envisaged to be settled within the five-year transitional period following the 1995 Oslo Accords. Oslo II provided the basis for such settlement through the formation of a committee for the purpose.[[176]](#footnote-176) However, the transitional period has lapsed and the status of this category has yet to be resolved.[[177]](#footnote-177)

Under international law, these peoples are deemed as ordinary refugees. A number of UN General Assembly resolutions regard as refugees those persons “displaced [...] as a result of the June 1967 and subsequent hostilities”.[[178]](#footnote-178) UNRWA deals with those persons, in terms of assistance and protection, at the same footing as those who were displaced in the 1948 war.[[179]](#footnote-179) The UN High Commissioner for Refugees does the same with respect to this group of refugees who reside outside UNRWA areas of operation.[[180]](#footnote-180) This category of persons has the right of return to the West Bank or Gaza, depending to their ordinary place of residence prior to displacement.[[181]](#footnote-181)

Once they settle in the State of Palestine and acquire its citizenship, members of this group will cease to be refugees.[[182]](#footnote-182) However, if Israel denies them entry to Palestine in the event of on-going Israeli control of the borders, the members of the group would continue to be refugees while residing abroad. Yet if they obtain Palestinian citizenship even before exercising their right of return to the West Bank or Gaza, these persons can be issued Palestinian passports, be provided with diplomatic protection by Palestinian diplomatic authorities, and participate in elections, etc.[[183]](#footnote-183)

The State of Palestine (and by extension Israel in case of on-going Israeli occupation) is obliged under international legal to allow this group of persons to return to their native homes if they choose to do so. This obligation stems from the right of return in international law, which is based, *inter alia*, on international human rights law, international humanitarian law, UN resolutions, natural law, international refugee law, and customary international law (that cannot be elaborated here).[[184]](#footnote-184) The State of Palestine should also attribute its citizenship to those returnees who elect its citizenship under the law of State succession, particularly those who would remain stateless in case of non-acquisition of Palestinian citizenship.[[185]](#footnote-185) Holding other citizenships should not derogate from the right to return to the West Bank or Gaza and to for these persons’ rights to recover their Palestinian citizenship.[[186]](#footnote-186)

Two additional West Bank and Gaza natives have the right to citizenship in the State of Palestine. One is Jews who were residing in the West Bank or Gaza as Palestinian citizens before May 1948. And the second includes those natives who left the West Bank or Gaza before the enactment of the Palestinian Citizenship Order in 1925.

In 1925, there were 7,143 Jews residing in Palestine as Ottoman subjects.[[187]](#footnote-187) They had then acquired Palestinian citizenship *ipso facto* based on the Palestinian Citizenship Order enacted that year. After the establishment of Israel, this group (including those originally residing in Israel or inhabitants of the West Bank or Gaza who moved to Israel after the 1948 war) acquired Israeli citizenship. There are no existing data on this group because Israel does not provide such statistics. Yet one may reach a rough total by comparing available data that existed at the end of the Mandate with that relating to the current population of the West Bank and Gaza. In 1947, the number of Jews who expected to be habitual residents of the Arab State that was proposed by the UN Partition Plan was some 10,000, or about 1.4% of the total citizens of the Arab State.[[188]](#footnote-188) This figure included native and naturalized Jewish Palestinians, foreigners as well as Jewish refugees who mainly emigrated from Europe to Palestine during the Second World War. As the West Bank and Gaza constitute about half of the area allocated to the Arab State, half of the above-mentioned percentage of Jews, or 0.07% of the total population of the West Bank and Gaza today, would have had the right to remain there. As almost half of the Jews residing in Palestine at the end of the Mandate were foreigners,[[189]](#footnote-189) the total number of Palestinian Jews residing in the West Bank and Gaza would be about 0.035%, or 2,500 persons. Comparing the figures proportionally with the current population of the West Bank and Gaza, which totals about 4.62 million;[[190]](#footnote-190) and assuming that the number of Jews has increased at the same rate, the total number of Jews presumed to be Palestinian citizens would not now exceed 15,000 at best. One third of these would probably be native Jewish Palestinians and two thirds naturalized Jews. In other words, the total number of native Jewish Palestinians and their descendants who would be eligible to acquire Palestinian citizenship in the State of Palestine would be approximately 5,000.[[191]](#footnote-191)

Jewish Palestinians who were resident in the area that became known as the West Bank, mainly in the old cities of Jerusalem and Hebron, as well as the Gaza Strip, should be given the right to opt for the citizenship of the State of Palestine, as in the case of any refugee. These persons could be considered, in one sense, as “Palestinian-Jewish refugees in Israel” who can return to their original places of habitual residence in Palestine. They would in that case become dual Israeli-Palestinian citizens. Yet the granting of Palestinian citizenship to members of this group would be somewhat symbolic since, effectively, only a small number of them would be interested in acquiring such citizenship. There are two reasons for this assumption. One is that this group has been fully integrated into the Jewish community of Israel, so that one might be unable to distinguish them from other Israelis for the purpose of developing criteria for attributing citizenship. The second reason relates to evidentiary difficulties, since most of this group’s members are of the second, third or even fourth generation for which proof of original pre-Israel citizenship might be difficult to find.[[192]](#footnote-192)

Lastly, when Britain applied the Palestinian Citizenship Order in 1925, it stripped those Palestine’s native residing abroad of their Palestinian citizenship.[[193]](#footnote-193) In 1937, members of this group numbered over 40,000.[[194]](#footnote-194) Some estimates today predict that their number exceeds 1 million.[[195]](#footnote-195) If one roughly considers that the West Bank and Gaza to be about 20 per cent of the Mandate Palestine, no less than 200,000 persons of this category would have the right of return to the State of Palestine and to acquire Palestinian citizenship, as the case of other refugees discussed above.[[196]](#footnote-196)

1. **Refugees in the West Bank and Gaza**

Palestinian refugees who were displaced from the parts of Palestine in which Israel was established in 1948 compose the largest category of Palestinians.[[197]](#footnote-197) The number of such refugees registered by UNRWA is 5.094.886 million in 2015.[[198]](#footnote-198) Thousands of other refugees (the exact number is unknown) are not registered with UNRWA. According to international law, these refugees have the right to return to Israel and to become Israeli citizens.[[199]](#footnote-199) Israel will most likely continue to oppose the right of return to its territory, as it has done for the past almost seven decades.[[200]](#footnote-200) The obligation of permitting the return of these refugees lies with Israel, not with the State of Palestine. Yet Palestine (or the PLO) would have a historical/political/moral duty to defend their rights.

Palestinian refugees are scattered mainly in Jordan, Lebanon, and Syria, in addition to Gaza and the West Bank. This study addresses the status of the inhabitants of the 1967 occupied territory and therefore the status of refugees in other countries is beyond its scope. Put it differently, refugees in the West Bank and Gaza are treated here not as refugees per se, but rather as residents of the State of Palestine.

Refugees of West Bank and Gaza today originally came from the territory of Mandate Palestine that became Israel in 1947-1949 and afterwards. Members of this category total 2.020.847 persons in 2015, according UNRWA,[[201]](#footnote-201) approximately 43 per cent of the population of the Palestinian territory.[[202]](#footnote-202) In effect, this group has similar local status to West Bankers, Jerusalemites, and Gazans, as the case may be.

Technically, had Palestine remained one entity as it was under British rule before 1948, Palestinian citizens who moved eastwards to the West Bank or southwards onto Gaza would have been considered as internally displaced persons. Part of this group still lives in refugee camps, while others reside in towns.[[203]](#footnote-203) However, in practice, as the West Bank and Gaza were separated from the parts of Palestine in which Israel was established, these Palestinians obtained refugee status under international law. Although they have been treated by the authorities exercising power in the West Bank and Gaza as de facto equal to the inhabitants (in terms of, for example, residency, identity cards, passports, election, public employment), members of the group are registered by UNRWA as refugees. Such persons are at the same time citizens of the West Bank or Gaza and refugees. As citizens, they have a status akin to the native inhabitants of these two areas.[[204]](#footnote-204) As refugees, they are entitled to the rights enjoyed by other refugees: UNRWA’s protection, return to Israel, and compensation.[[205]](#footnote-205)

Despite their integration into the local population, the members of this group should continue to be considered under international law as refugees for certain purposes, such as the right of return and being eligible for UNRWA’s protection/assistance, and as dual citizens. These refugees are at the same time de facto, or according to the local law, citizens of the territory, and citizens of Israel in the sense that they have a right to become citizens of Israel based on the law of State succession and other branches of international law pertaining to the right of return.[[206]](#footnote-206) Yet Israel refuses to grant refugees Israeli citizenship or to let them return to their homes in its territory.

In other words, this group has simultaneously three separate statuses:

(1) Refugee status in accordance with international law and the practice of UNRWA;

(2) West Bank and Gaza citizenship (or citizenship of the State of Palestine) in by virtue of the applicable local law in the West Bank, East Jerusalem, and Gaza, and the practice of local authorities therein;

(3) Israeli citizenship, although non-effective at present, based on international law.

Under the citizenship law of the State of Palestine, this group should be eligible for the citizenship on the same basis as the West Bankers and Gazans.[[207]](#footnote-207) However, the question of their refugee status should continue to be raised. Palestine would, in one sense, serve as a host State for these refugees as the case of other host countries.

Some might fear that the refugee status of the group, should they acquire Palestinian citizenship, would be effectively ended. That is not accurate. Under international law, their refugee status would persist. They would therefore continue to receive UNRWA aid and be entitled to claim the right of return.[[208]](#footnote-208) The PLO ought to continue defending the rights of these refugees in international forums in its capacity as the representative of the pre-1948 Palestinian people.[[209]](#footnote-209) The granting of citizenship to this group would in no way, from a legal perspective, undermine their status. Israel would continue to oppose their return, regardless of whether the group acquired other citizenship(s) or not. Thus, the acquisition of the citizenship of the State of Palestine would not per se be a reason for ending the group’s refugee status. Indeed, most Palestinian refugees have acquired citizenships of other States (with the exception of the refugees in Lebanon and Syria) and these naturalized persons, in the eyes of international law, are still refugees. Their right of return is still on the international agenda and UNRWA’s assistance is still in place—for example, in Jordan refugees are assisted by UNRWA despite holding Jordanian citizenship.[[210]](#footnote-210)

**Conclusion**

The State of Palestine as recognized by the United Nations General Assembly on 29 November 2012 is obliged, under international law, to confer its citizenship to all natives of its territory (the West Bank and Gaza Strip). The starting day for these natives who would be eligible for Palestinian citizenship is the date of succession of the West Bank and Gaza from the mandated-territory of Palestine, namely 15 May 1948. Individuals who acquired the status of permanent residents in Palestine’s territory since then, regardless of the acquisition mode of that status, would qualify for Palestinian citizenship today. That status might have been conferred by any authority that exercised juridical power in the West Bank and Gaza, including Jordan, Egypt, Israel, and the Palestinian Authority. The State of Palestine can regulate its citizenship based on this general principle by enacting a law to that effect.

Nonetheless, the legal regulation of Palestinian citizenship would not be an easy or a merely technical matter. Various groups of individuals who belong to the West Bank or Gaza by one way or another might be in a position to claim such a citizenship. Two groups would have clear-cut link to the territory and can acquire an *ipso facto* Palestinian citizenship, namely those originated from the West Bank or Gaza since the separation of Palestine from the Ottoman Empire when Palestinian citizenship was first regulated in 1925 and who are still residing in one of these two areas.

The status of other groups who relate to the State of Palestine needs to be carefully annualized before acquiring Palestinian citizenship. These are the inhabitants of East Jerusalem, refugees who expelled from the territory of Israel since 1948 and settled in the West Bank or Gaza, West Bankers or Gazans who lost their residence in these two areas at any point since 1925 and were prevented by Britain (1917-1948) or by Israel (since 1967) to return, and Jewish-Palestinian natives of the West Bank or Gaza who lost their residence therein since 1948. This paper tried to shed light on the status of these various groups for citizenship-conferring purposes in the State of Palestine.

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   United Nations General Assembly, *Status of Palestine in the United Nations*, UN Doc. A/RES/67/19, 4 Dec. 2012. [↑](#footnote-ref-1)
2. UNESCO, *General Conference admits Palestine as UNESCO Member State*, Paris, UNESCO, 31 October 2011. [↑](#footnote-ref-2)
3. ### ICC Press Release, *ICC welcomes Palestine as a new State Party*, ICC-CPI-20150401-PR1103, The Hague, 1 Apr. 2015.

   [↑](#footnote-ref-3)
4. M. Qafisheh (ed.), *Palestine Membership in the United Nations: Legal and Practical Implications,* Newcastle: Cambridge Scholars, 2013. [↑](#footnote-ref-4)
5. PLO, *Draft Palestinian Citizenship Law*, Ramallah, Negotiation Affairs Department, January 2012; unpublished draft, on file with the writer). [↑](#footnote-ref-5)
6. M. Qafisheh, *The International Law Foundations of Palestinian Nationality: A Legal Examination of Palestinian Nationality under Britain’s Rule*, Leiden/Boston, Martinus Nijhoff, 2008. [↑](#footnote-ref-6)
7. The terms “citizenship” and “nationality” are used as synonymous here. [↑](#footnote-ref-7)
8. J. Crawford, *Brownlie’s Principles of International Law*, 8th edn., Oxford, Oxford University Press, 2012, 509-526. [↑](#footnote-ref-8)
9. According to Ottoman Nationality Law of 19 January 1869. R.W. Flournoy & O. Hudson (eds.), *Collection of Nationality Laws of Various Countries as Contained in Constitutions, Statutes and Treaties*, New York/London/Toronto/Melbourne/Bombay, Oxford University Press, 1929, 598. [↑](#footnote-ref-9)
10. P. Arminjon, “De la nationalité dans l’Empire ottoman spécialement en Egypte”, *Revue générale de droit international public*, VIII, 1901, 520-567; P. Arminjon, *Etrangers et protégés dans l’Empire ottoman*, Paris, Librairie Marescq Ainé, 1903, 81-259. [↑](#footnote-ref-10)
11. P. Ghali, *Les nationalités détachées de l’Empire ottoman à la suite de la guerre*, Paris, Les Editions Domat-Montchrestien, 1934, 199-229. [↑](#footnote-ref-11)
12. 28 *League of Nations Treaty Series* 13, 1924. [↑](#footnote-ref-12)
13. Art. 30. [↑](#footnote-ref-13)
14. R.H. Drayton (ed.), *The Laws of Palestine in Force on the 31st Day of December 1933*, London, Waterlow and Sons, 1934, 3404. [↑](#footnote-ref-14)
15. PCBS, *Palestinians at the End of the Year 2014*, Ramallah, December 2014, 13. [↑](#footnote-ref-15)
16. *Ibid.*, 23. [↑](#footnote-ref-16)
17. It is to be noted that the above figure of 4.62 million residing in the West Bank and Gaza does include the refugees residing therein, who are treated as natives. [↑](#footnote-ref-17)
18. PCBS, *Palestinians*, above footnote 14, 23. [↑](#footnote-ref-18)
19. “The Historical Decision to the Unify the Two Banks”, in M. Qafisheh, *History of Law in Palestine*, Ramallah, Birzet University, 2009 (unpublished collection of documents), 171. [↑](#footnote-ref-19)
20. S. Ficheleff, *Le statut international de la Palestine orientale (la Transjordanie)*, Librairie Lipschutz, Paris, 1932; M. Mock, Le mandat britannique en Palestine, Paris, Editions Albert Mechelinck, 1932, 326-330. See also E.L. Rogan, *Frontiers of the State in the Late Ottoman Empire, Transjordan, 1850-1921*, Cambridge, Cambridge University Press, 1999. [↑](#footnote-ref-20)
21. League of Nations, *Official Journal*, August 1922, 1107. [↑](#footnote-ref-21)
22. *Memorandum by Lord Balfour*, League of Nations Document No. C.66.M.396.1922.VI, 16 September 1922—League of Nations, *Official Journal*, November 1922, 1390-1391. [↑](#footnote-ref-22)
23. Drayton, above note, 3303. [↑](#footnote-ref-23)
24. Agreement between the United Kingdom and Trans-Jordan, Jerusalem, in P. Toye (ed.), *Palestine Boundaries 1833-1947*, Durham, University of Durham, 1989, 809. [↑](#footnote-ref-24)
25. Treaty of Alliance between His Majesty in respect of the United Kingdom and His Highness the Amir of Transjordan, London, 6 UNTS 143 (entry into force 17 Jun. 1946). [↑](#footnote-ref-25)
26. N. Bentwich, “The Mandate for Trans-Jordan”, *British Year Book of International Law*, 1929, 212-213. [↑](#footnote-ref-26)
27. Trans-Jordan Nationality Law of 1928 (Flournoy & Hudson, above note, 274). [↑](#footnote-ref-27)
28. Immigration Ordinance, 1941 (Palestine Gazette, No. 1082, Supplement 1, 6 March 1941, 6), Art. 2. [↑](#footnote-ref-28)
29. M. Levanon, A.M. Apelbom, H. Kitzinger & A. Gorali (eds.), *Annotated Law Reports*, Tel Aviv, S. Bursi, I, 1946, 116 (emphasis added). [↑](#footnote-ref-29)
30. Jordanian-Israeli General Armistice Agreement, 42 UNTS 304 (entry into force 3 Apr. 1949). [↑](#footnote-ref-30)
31. Additional Law of 13 January 1949 of the [Trans-Jordan] Nationality Law. United Nations, *Laws Concerning Nationality*, New York, 1954, 277. [↑](#footnote-ref-31)
32. Annex to Passports Law No. 5 of 1942: Temporary Law No. 11 of 1949. Jordan Official Gazette, No. 970, 14 Feb. 1949, 40. [↑](#footnote-ref-32)
33. Jordan Official Gazette, No. 1171, 16 Feb. 1954, 105. [↑](#footnote-ref-33)
34. Order Concerning Alenby Bridge Crossing Station (West Bank) No. 175 of 30 Nov. 1967. Israeli Army, *Proclamations, Orders and Appointments (West Bank)*, 9, 1968, 355. [↑](#footnote-ref-34)
35. Order Concerning Identity Card No. 234 of 17 Mar. 1968 (Israeli Army, *Proclamations, Orders and Appointments (West Bank)*, 12, 1969, 480); and Order Concerning Identity Card and Population Registration No. 297 of 8 Jan. 1969 (Israeli Army, *Proclamations, Orders and Appointments (West Bank)*, 19, 1969, 609). For a number of years during the first Palestinian uprising/*intifada* (1988-1993), Israel issued green identity cards to former political prisoners who were held in Israeli jails as an indication that these ex-prisoners are potential security threat. After the establishment of the Palestinian Authority in 1994, orange cards for inhabitants of the West Bank and Gaza were replaced with green identity cards. See below footnote 106. [↑](#footnote-ref-35)
36. J. Mohammad, *Identity Card Losers*, Ramallah, Palestinian Independent Commission for Citizen’s Rights, 1998, 17. [↑](#footnote-ref-36)
37. *Ibid.*, 18 [↑](#footnote-ref-37)
38. Order Concerning Identity Cards and Population Registration (Amendment 17) No. 1206 of 13 Sep. 1987 (Israeli Army, *Proclamations, Orders and Appointments (West Bank)*, 76, 1990, 97). This Order was changed only in 1995 to allow registration of children born abroad until they attain 18 years of age. Order Concerning Identity Cards and Population Registration (Amendment 23) No. 1421 of 17 Jan. 1995 (Israeli Army, *Proclamations, Orders and Appointments (West Bank)*, 159, 1995, 1752). The latter Order came in the context of the Oslo Accords. See below footnote 107. [↑](#footnote-ref-38)
39. J.R. Hiltermann, “Israel’s Deportation Policy in the Occupied West Bank and Gaza”, *Palestine Yearbook of International Law* 3, 1986, 154-185; Y. Dinstein, “The Israel Supreme Court and the Law of Belligerent Occupation: Deportations”, *Israel Yearbook on Human Rights* 23, 1993, 1-26; and I.G.M. Scobbie, S.L. Hibbin, &, A. Margalit, “Palestine/West Bank and Gaza - Israel’s Policy of Expelling Palestinian Inhabitants from the West Bank to Gaza”, *Yearbook of Islamic and Middle Eastern Law* 15, 288-325. [↑](#footnote-ref-39)
40. Mohammad, *Identity Card Losers*, above footnote 36. [↑](#footnote-ref-40)
41. See below Section 4. [↑](#footnote-ref-41)
42. Y. Dinstein, “The Israel Supreme Court and the Law of Belligerent Occupation: Reunification of Families”, *Israel Yearbook on Human Rights*, 18, 1988, 173-188; and I. Brownlie, “The Application of Contemporary Standards of International Law to Cases Involving Separation of Husband and Wife as a Consequence of Administrative Action by the Israeli Authorities in the Occupied Territories”, *Palestine Yearbook of International Law* 6, 1991, 113-122. [↑](#footnote-ref-42)
43. A.F. Kassim, “The Legal Status of the Jordanian-Palestinian in Jordan”, *The Right of Return Magazine*, 13(63), Badil Resource Center, Bethlehem, Aug. 2015, 8. [↑](#footnote-ref-43)
44. “Termination of Jordan’s Ties with the West Bank”, in W.B. Quandt (ed.), *The Middle East: Ten Years after Camp David*, Washington, D.C., The Brookings Institution, 1988, 494. [↑](#footnote-ref-44)
45. Jordanian Prime Minster Office, *Instructions on the Detachment of Legal and Administrative Ties with the West Bank*, Amman, 20 Aug. 1988 (unpublished; a copy in file with the writer), Art. 2. [↑](#footnote-ref-45)
46. The writer has collected over 100 cases adjudicated by the Jordanian High Court of Justice, between 1988 and 2014, published in *Journal of the Jordanian Bar Association*, with regard to the citizenship of West Bank originated inhabitants. These cases essentially indicate that West Bankers have become Palestinian citizens since 1988 and that these individuals are no longer Jordanians. [↑](#footnote-ref-46)
47. Jordanian Prime Minster Office, *Instructions on the Detachment*, above footnote 45, Art. 1. [↑](#footnote-ref-47)
48. West Bankers, for instance, are allowed to reside in Jordan for one month only. *Ibid.*, Art. 15. [↑](#footnote-ref-48)
49. Human Rights Watch, *Stateless Again: Palestinian-Origin Jordanians Deprived of Their Nationality*, New York, 2010. [↑](#footnote-ref-49)
50. A copy of a five-year temporary Jordanian passport, issued on Apr. 2015, is in the writer’s possession. [↑](#footnote-ref-50)
51. Most States, such as Egypt, Syria and Lebanon, require West Bank holders of temporary Jordanian passports to apply for an entry visa, unlike Jordanian citizens who could land in these States without a prior visa. However, other States, like Turkey, Yemen and Tunisia, treat temporary and permanent Jordanian passports alike with regard to entry purposes. It should be noted that the majority of the West Bankers hold Palestinian passports, while they could simultaneously bear temporary Jordanian passports. [↑](#footnote-ref-51)
52. E. Sahliyeh, “Jordan and the Palestinians”, in Quandt, *The Middle East*, above footnote 44, 279-318. [↑](#footnote-ref-52)
53. PCBS, *Palestinians*,footnote 14, 23. [↑](#footnote-ref-53)
54. Hereinafter referred to as “Gaza”. [↑](#footnote-ref-54)
55. As the case of the West Bank, two groups of “Gazans” will be addressed in two different sections below: the first is the “refugees in Gaza” who moved to the Strip during the 1947-1949 war; and the second refers to those who were displaced from the Gaza Strip (as in the case of the West Bank) and moved to other States after the Israeli occupation in 1967 or afterwards. [↑](#footnote-ref-55)
56. In its resolution of 29 November 2012 (above footnote 1), the UN General Assembly recognized the territory of Palestine “on the basis of the pre-1967 borders”. Art. IV of the Israeli-Palestinian Declaration of Principles on Interim Self-Government Arrangements of 13 September 1993 (32 *International Legal Materials (ILM)*, 1993, 1525) resolved, *inter alia*, that: “The two sides view the West Bank and the Gaza Strip as a single territorial unit, whose integrity will be preserved”. [↑](#footnote-ref-56)
57. Israel and Egypt General Armistice Agreement, 42 UNTS 252 (entry into force: 24 Apr. 1949). [↑](#footnote-ref-57)
58. As Britain was mandated by the League of Nations to rule Palestine, Egypt was commissioned by the League of Arab States to administrate Gaza. G. Surani, *The Gaza Strip: 1948-1993*, 2011, 9. [↑](#footnote-ref-58)
59. M. Qafisheh, *Nationality and Domicile in Palestine*, Ramallah, Institute of International Studies of Birzeit University, 60-62. [↑](#footnote-ref-59)
60. *Ibid.* [↑](#footnote-ref-60)
61. *Ibid.* [↑](#footnote-ref-61)
62. S. Martin, J.G. Warner, & P. Fagen, “Palestinian Refugees in Gaza”, *Fordham International Law Journal* 28(5), 2005, 1457-1478. [↑](#footnote-ref-62)
63. *Cf.* the status of Palestinians in Britain before 1948 who were considered as aliens despite holding passports issued by UK authorities. *The King v. Ketter*, England Court of Criminal Appeal, 21 February 1939; A.D. McNair, D. Arnold & H. Lauterpacht (eds.), *Annual Digest of Public International Law Cases*, London/New York/Toronto, Longmans, 1938-1940, 46. [↑](#footnote-ref-63)
64. # I. Feldman, *Governing Gaza: Bureaucracy, Authority, and the Work of Rule, 1917–1967*, Duke University Press, 2008.

    [↑](#footnote-ref-64)
65. A.F. Kassim, “The Palestinian: From Hyphenated Citizen to Integrated Citizen”, *Yearbook of Islamic and Middle Eastern Law* 3, 1996, 64-84. [↑](#footnote-ref-65)
66. B. Labes, “The Law of Belligerent Occupation and the Legal Status of the Gaza Strip”, *Michigan Yearbook of International Legal Studies* 9, 1988, 383-410. [↑](#footnote-ref-66)
67. Order Concerning the Closure of an Area of 6 Mar. 1985 (Israeli Army, *Proclamations, Orders and Appointments (Gaza Strip)*, No. 75, 1986, 3017). [↑](#footnote-ref-67)
68. Order Concerning Closure of an Area No. 1 of 14 Sep. 1967 (Israeli Army, *Proclamations, Orders and Appointments (Gaza Strip)*, No. 1, 1967, 39). [↑](#footnote-ref-68)
69. General Exit Permit No. 2 of 3 Jul. 1972 (Israeli Army, *Proclamations, Orders and Appointments (Gaza Strip)*, No. 34, 1972, 2863). [↑](#footnote-ref-69)
70. Order Concerning Identity Cards No. 406 of 25 October 1971 (Israeli Army, *Proclamations, Orders and Appointments (Gaza Strip)*, No. 31, 1972, 2477). These were similar to the identity cards issued in the West Bank. See above footnote 35. [↑](#footnote-ref-70)
71. Order Concerning the Naot Sinai Passage Terminal No. 661 of 24 Aug. 1980 (Israeli Army, *Proclamations, Orders and Appointments (Gaza Strip)*, No. 43, 1981, 4077). As we saw in the case of West Bank above, thousands of Gazans were not allowed to return. Others were forcibly deported. Israel adopted the same family reunification system as in the case of the West Bank. This policy created a category of Gazans called “identity card losers”. [↑](#footnote-ref-71)
72. R. Shehadeh, “The Gaza Occupation: Beginnings and Endings”, *Palestine Yearbook of International Law*, 14, 13-26. [↑](#footnote-ref-72)
73. S. Darcy & J. Reynolds, “An Enduring Occupation: The Status of the Gaza Strip from the Perspective of International Humanitarian Law”, *Journal of Conflict and Security Law*, 15(2), 2010, 211-244, 227. [↑](#footnote-ref-73)
74. N. Erakat, “It’s Not Wrong, It’s Illegal: Situating the Gaza Blockade between International Law and the UN Response”, *UCLA Journal of Islamic and Near Eastern Law*, 11, 2012, 37-84. [↑](#footnote-ref-74)
75. Gisha- Legal Center for Freedom of Movement, *Rafah Crossing: How Holds the Keys*, Tel Aviv, Physicians for Human Rights Israel, 2009, 35-63, 125-132. [↑](#footnote-ref-75)
76. I. Wadi, *The Palestinian Tunnels Between Gaza Strip and Sinai: A Political Geography Study*, Gaza, Islamic University, 2014 (master’s thesis). [↑](#footnote-ref-76)
77. “Ongoing Exodus: Palestinians Returning to Gaza from Syria”, *The Right of Return Magazine*, 6(68), 2013. [↑](#footnote-ref-77)
78. “Syrian Refugees Flee to Relative Safety in Gaza”, *The Guardian*, 30 Apr. 2013, available at: http://www.theguardian.com (last visited 21 Aug. 2015). [↑](#footnote-ref-78)
79. In June 2013, UNRWA estimated the number of Palestinian refugees arriving from Syria to Gaza at about 1,000. UNRWA, “Nowhere to Go, Palestine Refugees from Syria Arrive in Gaza”, Gaza, 20 Jun. 2013, available at: http://www.unrwa.org (last visited 21 Aug. 2015). [↑](#footnote-ref-79)
80. General Exit Permit No. 5 of 2 Jul. 1972 (Israeli Army, *Proclamations, Orders and Appointments (West Bank)*, 31, 1973, 1228, Art. 2); General Permit of Exit of 27 Apr. 1972 (Israeli Army, *Proclamations, Orders and Appointments (Gaza Strip)*, 34, 1972, 2861, Art. 2). [↑](#footnote-ref-80)
81. Instructions Concerning Suspension of the General Exit Permit No. 2 of 28 March 1988 (Israeli Army, *Proclamations, Orders and Appointments (Gaza Strip)*, 89, 1991, 9843). [↑](#footnote-ref-81)
82. Instructions Concerning the Suspension of Exit Permits from the Region No. 3 of 27 Oct. 1994 (Israeli Army, *Proclamations, Orders and Appointments (West Bank)*, 158, 1994, 1719). [↑](#footnote-ref-82)
83. E.g. in 1996, Israel ordered Gazan students who were studying in West Bank universities to depart to Gaza. Instructions Concerning Suspension of Entry and Stay Permits to the Region (Students from the Gaza Strip) of 7 Mar. 1996 (Israeli Army, *Proclamations, Orders and Appointments (Gaza Strip)*, 165, 1996, 2014, Art. 2). [↑](#footnote-ref-83)
84. Palestinian News and Information Agency, “Civil Affairs Commission: We Got Approval for 1956 Gazans to Change Address to the West Bank”, Ramallah, 2 Aug. 2011, available at: http://www.wafa.ps (last visited 21 Aug. 2015). [↑](#footnote-ref-84)
85. A. Baker, “Institutionalization of the Expulsion of Palestinians Legally”, *Journal of Palestine Studies* 21(84), 2010, 1-7. [↑](#footnote-ref-85)
86. *Ibid.*, 1 [↑](#footnote-ref-86)
87. HaMoked, “Information provided by COGAT to HaMoked indicates that some 35,000 Palestinians who live in the West Bank were labeled by Israel as “illegal aliens” liable for expulsion, because their registered address is in Gaza”, 6 Jul. 2010, available at: http://www.hamoked.org (last visited 21 Aug. 2015). [↑](#footnote-ref-87)
88. 32 ILM, 1993, 1525. [↑](#footnote-ref-88)
89. 36 ILM 1997, 551. [↑](#footnote-ref-89)
90. Oslo II, Art. 28, para. 7. [↑](#footnote-ref-90)
91. J.S. Estapa, *Criteria for the Establishment of the Palestinian Citizenship within the Framework of a Palestinian Sovereign State*, Barcelona, University of Barcelona, 1997 (unpublished paper). [↑](#footnote-ref-91)
92. A. Zimmermann, “The Nationality of the Inhabitants of the Palestinian Autonomous Territories”, in A. Shapira & M. Tabory (eds.), *New Political Entities in Public and Private International Law with Special Reference to the Palestinian Entity*, The Hague/Boston/London, Kluwer Law International, 1999, 231-246. [↑](#footnote-ref-92)
93. Oslo II, Art. XXX, and Annex I. [↑](#footnote-ref-93)
94. K. Al-Sahili & S. Abu-Eisheh, “Diagnosis of Existing Transportation Systems in Palestine under the Current Political Conditions”, proceedings of the International Civil Engineering Infrastructure Systems, 12-16 Jun. 2006, Beirut, Lebanon, available at: http://staff.najah.edu (visited 21 Aug. 2015), 6. [↑](#footnote-ref-94)
95. HaMoked and B’Tselem, *So Near and Yet So Far: Implications of Israeli-Imposed Seclusion of Gaza Strip on Palestinians’ Right to Family Life*, 2014, 31. [↑](#footnote-ref-95)
96. M.S. Salamah, *Freedom of Movement as Basic Human Right*, Hurryyat, Ramallah, 2015. [↑](#footnote-ref-96)
97. Euromid Observer for Human Rights, *Restricted Hopes: On the Breach of West Bank Palestinians’ Right to Travel by Israeli Authorities*, Geneva, 2011, 10-13. [↑](#footnote-ref-97)
98. Palestinian Independent Commission for Citizen’s Rights, *The Suffering of Palestinians At Al-Karama and Rafah Crossing Stations*, Ramallah, Oct. 2002, available at http://www.ichr.ps (last visited 21 Aug. 2015). [↑](#footnote-ref-98)
99. M. Qafisheh, “Palestinian Legislation and the Freedom of Movement: An Appraisal in Light of International Law”, *International Journal of Human Rights and Constitutional Studies* 1(2), 2013, 110-126. [↑](#footnote-ref-99)
100. M. Qafisheh, “La nationalite palestinienne selon les principes du droit local et du droit international”, in N. Picaudou (ed.), *La Palestine en transition: crise du projet national et construction de l’Etat*, Paris, National Institute for Oriental Languages and Civilizations, 2001, 39-77. [↑](#footnote-ref-100)
101. Oslo I, Annex II, Art. 3, para. c. [↑](#footnote-ref-101)
102. The four categories are covered by Art. 28 of Oslo II. [↑](#footnote-ref-102)
103. B’Tselem, *Perpetual Limbo: Israel’s Freeze on Unification of Palestinian Families in the Occupied Territories*, Jerusalem, 2006. [↑](#footnote-ref-103)
104. Oslo II, Annex II, Art. II, para. 1(g). [↑](#footnote-ref-104)
105. Art. 28, Annex III. [↑](#footnote-ref-105)
106. Law No. 2 of 8 Jun. 1999 Concerning Civil Affairs, *Palestine Gazette*, No. 99, 17 Jul. 1999, 6. [↑](#footnote-ref-106)
107. Art. 28, para. 12. See above footnote 38. [↑](#footnote-ref-107)
108. G.D. Collins, “Citizenship by Birth”, *American Law Review* 29, 1895, 385-394; J.B. Scott, “Nationality: Jus Soli or Jus Sanguinis”, *American Journal of International Law* 24(1), 1930, 58-64; D.V. Sandifer, “A Comparative Study of Laws Relating to Nationality at Birth and to Loss of Nationality”, *American Journal of International Law* 29(2), 1935, 249-261; I. Brownlie, “The Relations of Nationality in Public International Law”, *British Year Book of International Law*, 1963, 284-364, at 302-306 [↑](#footnote-ref-108)
109. Art. 28, para. 13. [↑](#footnote-ref-109)
110. Human Rights Watch, *“Forget About Him, He’s Not Here”: Israel’s Control of Palestinian Residency in the West Bank and Gaza*, New York, 2012. [↑](#footnote-ref-110)
111. Oslo II, Art. 28, para. 14. [↑](#footnote-ref-111)
112. A.K. Wan, “Israel’s Conflicted Existence as a Jewish Democratic State: Striking the Proper Balance under the Citizenship and Entry into Israel Law”, *Brookline Journal of International Law* 29(3), 2004, 1345-1402. [↑](#footnote-ref-112)
113. S. Ramahi, *The Suffering of Palestinians Seeking Family Reunification*, London, Middle East Monitor, 2015. [↑](#footnote-ref-113)
114. A.P. Morse, “Citizenship by Naturalization”, *American Law Register*, 18, 1879, 665-675; H.J. Randall, “Nationality and Naturalization: A Study in the Relativity of Law”, *The Law Quarterly Review*, 40, 1924, 18-30; R. Donner, *The Regulation of Nationality in International Law*, New York, Transnational Publishers, 1994, 1-120; R.M. White, “Nationality, Citizenship and the Meaning of Naturalisation: Brubaker, the United Kingdom, EU Citizens, Third-Country Nationals and the European Union”, *Northern Ireland Legal Quarterly* 53(3), 2002, 288-317. [↑](#footnote-ref-114)
115. W. Stein, “Revocation of Citizenship—‘Denaturalization’”, *Marquette Law Review*, 28, 1944, 59-74; A. Mechbat, *Loss of Nationality: Comparative Study*, Algiers, Institute of Law and Administration at Algeria University, 1987; S. Lavi, “Citizenship Revocation as Punishment: On the Modern Duties of Citizens and their Criminal Breach”, *University of Toronto Law Journal*, 61(4), 2011, 783-810; A. Macklin, “Citizenship Revocation, the Privilege to Have Rights and the Production of the Alien”, *Queen*’*s Law Journal*, 40(1), 2014, 1-54. [↑](#footnote-ref-115)
116. V. Kattan, “The Nationality of Denationalized Palestinians”, *Nordic Journal of International Law*, 74(1), 2005, 67-102. [↑](#footnote-ref-116)
117. C. Maugham, “Some Cases of Double Nationality”, *The Juridical Review*, 4, 1892, 135-143; R.W. Flournoy, Jr., “Dual Nationality and Election”, *Yale Law Journal*, 30, 1921, 693-709; L.B. Orfield, “Legal Effects of Dual Nationality”, *George Washington Law Review*, 17, 1949, 427-445; L. Bosniak, “Multiple Nationality and the Postnational Transformation of Citizenship”, *Virginia Journal of International Law*, 42, 2002, 979-1004; M.A. Apostolache, “Considerations on the Issue of Multiple Citizenship”, *Journal of Law and Administrative Sciences*, 3, 2015, 14-22. [↑](#footnote-ref-117)
118. P.J. Spiro, “Dual Citizenship as Human Right”, *International Journal of Constitutional Law* 8(1), 2010, 111-130. [↑](#footnote-ref-118)
119. A copy of the draft citizenship law, which has never been published, is in file with the writer. [↑](#footnote-ref-119)
120. M. Qafisheh, “Legislative Drafting in Transitional States: The Case of Palestine”, *International Journal for Legislative Drafting and Law Reform*, 2, 2014, 7-34. [↑](#footnote-ref-120)
121. Qafisheh, *Nationality and Domicile*, above footnote 59. [↑](#footnote-ref-121)
122. E.M. Borchard, *The Protection of Citizens Abroad or the Law of International Claims*, New York, Banks Law Publishing, 1919; G.I.F. Leigh, “Nationality and Diplomatic Protection”, *The International and Comparative Law Quarterly*, 20, 1971, 453-475; A. Pellet, “Second Death of Euripide Mavrommatis: Notes on the International Law Commission’s Draft Articles on Diplomatic Protection”, *Law and Practice of International Courts and Tribunals*, 7(1), 2008, 33-58. [↑](#footnote-ref-122)
123. Art. IX, para. 5. [↑](#footnote-ref-123)
124. 500 UNTS 95 (entry into force 24 Apr. 1964). [↑](#footnote-ref-124)
125. 596 UNTS 261 (entry into force 19 Mar. 1967). [↑](#footnote-ref-125)
126. A.M. Barham, *Reforming the Palestine Liberation Organization: Problems of Structure and Programme*, Nablus, Najah University, 2007 (master’s thesis), 160, 185, 196. [↑](#footnote-ref-126)
127. Decree Law No. 1 of 2 Sep. 2007 Concerning General Elections, Palestine Gazette No. 72, 9 Sep. 2007, 2, Art. 27 (parliamentary and presidential elections); Election of Local Councils Law No. 10 of 15 Aug. 2005, Palestine Gazette No. 57, 18 Aug. 2005, 79, Art. 7 (municipal elections). [↑](#footnote-ref-127)
128. Civil Service Law No. 4 of 28 May 1998, Palestine Gazette No. 24, 1 Jul. 1998, 20, Art. 24. [↑](#footnote-ref-128)
129. Judicial Authority Law No. 1 of 14 May 2002, Palestine Gazette No. 38, 5 Sep. 2001, 279, Art. 16. [↑](#footnote-ref-129)
130. Law on Lease and Sale of Immovable Property by Foreigners No. 40 of 27 Jan. 1953 (applicable in the West Bank), Jordan Gazette No. 1134, 16 Feb. 1953, 558, Art. 3 (conditions for owning real estate by non-citizens). [↑](#footnote-ref-130)
131. E.g. Legal Profession Law No. of 24 Jun. 1999, Palestine Gazette No. 30, 10 Oct. 1999, 5, Art. 3. [↑](#footnote-ref-131)
132. Labour Law No. 7 of 30 Apr. 2000, Palestine Gazette No. 39, 25 Nov. 2001, 7, Art. 14 (conditions for non-Palestinians to work I n Palestine). [↑](#footnote-ref-132)
133. Associations Law No. 1 of 16 Jan. of 2000, Palestine Gazette, No. 32, 29 Feb. 2000, 71, Art. 1. [↑](#footnote-ref-133)
134. Palestine does reach bilateral agreements with various States on different matters, including trade, agriculture, communications, health, security, etc. For instance, a series of agreements between Jordan and Palestine were signed on 23 Apr. 2014. See Wafa, “In the President’s Presence: Signing Cooperation Agreements Between Palestine and Jordan”, Ramallah, available online at: http://www.wafa.ps (visited 9 Oct. 2015). [↑](#footnote-ref-134)
135. D.H. Pingrey, “Citizenship and Rights There-under”, *The Central Law Journal*, 24, 1887, 540-544; M.S. McDougal, H.D. Lasswell & Lung-chu Chen, “Nationality and Human Rights: The Protection of the Individual in External Arenas”, *Yale Law Journal*, 83, 1974, 900-998; G. Budlender, “On Citizenship and Residence Rights: Taking Words Seriously”, *South African Journal on Human Rights*, 5, 1989, 37-59; L.C. Stratton, “The Right to Have Rights: Gender Discrimination in Nationality Laws”, *Minnesota Law Review*, 77, 1993, 195-239; P. Mindus, “Dimensions of Citizenship”, *German Law Journal* 15(5), 2014, 735-750; U. Davy, “How Human Rights Shape Social Citizenship: On Citizenship and the Understanding of Economic and Social Rights”, *Washington University Global Studies Law Review*, 13(2), 2014, 201-263. [↑](#footnote-ref-135)
136. For a survey on the citizenship of various political entities, see A. Grossman, “Nationality and the Unrecognized State”, *International and Comparative Law Quarterly*, 50(4), 2001, 849-867. [↑](#footnote-ref-136)
137. A.R. Dawwas, *Conflict of Laws in Palestine*, Amman/Ramallah, Dar Al-Shorok, 2001. [↑](#footnote-ref-137)
138. M. Qafisheh & V. Azarov, “Article 1D”, in A. Zimmerman (ed.), *The 1951 Convention Relating to the Status of Refugees and Its 1967 Protocol: A Commentary*, Oxford, Oxford University Press, 2011, 537-569. [↑](#footnote-ref-138)
139. 2187 UNTS 90 (entry into force 1 Jul. 2002). Art. 12(2)(b) of the Statute gives jurisdiction to the ICC if the person accused of the crime is a national of a State party. [↑](#footnote-ref-139)
140. On 2 Apr. 2014, Palestine became party to, among other treaties, the Convention on the Rights of the Child of 20 Nov. 1989, 1577 UNTS 3 (entry into force 2 Sep. 1990). As such, Palestine has the right to nominate a Palestinian citizen as a member to the UN Committee on the Rights of the Child in accordance with Art. 43(2) of the said Convention which provides, *inter alia*, that the “members of the Committee shall be elected by States Parties from among *their nationals*” (emphasis added). [↑](#footnote-ref-140)
141. It is to be noted that Palestine, on 3 Aug. 2015, submitted an application for full membership of the INTERPOL as a State party. This development can be read in the light of Palestine’s accession to the ICC and beyond. Available online at: http://maannews.net (visited 8 Aug. 2015). [↑](#footnote-ref-141)
142. Import and export of goods from and into Palestine are restricted based on the Protocol on Economic Relations between Israel and the PLO signed in Paris on 29 Apr. 1994 (33ILM, 1994, 696). The Paris Protocol was attached (Annex IV) to Oslo II. [↑](#footnote-ref-142)
143. F.A. Mann, “The Effect of Changes of Sovereignty upon Nationality”, *Modern Law Review*, 5, 1942, 218-224; D.P. O’Connell, *State Succession in Municipal Law and International Law*, London, Cambridge University Press, 1967, I, 497-542; Y. Onuma, “Nationality and Territorial Change: In Search of the State of the Law”, *Yale Journal of World Public Order*, 8, 1982, 1-35; C.L. Gettys, “The Effects of Change of Sovereignty on Nationality”, *American Journal of International Law*, 21, 1992, 268-278; J.L. Blackman, “State Succession and Statelessness: The Emerging Right to an Effective Nationality under International Law”, *Michigan Journal of International Law*, 19, 1998, 1160-1161. [↑](#footnote-ref-143)
144. United Nations General Assembly, *Nationality of Natural Persons in Relation to the Succession of States*, UN Doc. A/RES/55/153, 10 Jan. 2001 (Annex). [↑](#footnote-ref-144)
145. Art. 1 of the Draft Articles reads as follows: “Every individual who, on the date of the succession of States, had the nationality of the predecessor State, irrespective of the mode of acquisition of that nationality, has the right to the nationality of at least one of the States concerned […]”. [↑](#footnote-ref-145)
146. According to the Israeli Central Bureau of Statistics, the number of Palestinians in East Jerusalem amounts to 288,900 persons at the end of 2009 (*Statistical Abstract of Israel 2010* (2010), 99). This number comes out of the calculation of the number of Muslims and Christians in Jerusalem, who form the Palestinians of East Jerusalem. Taking into account the annual population increase of 2.59 per cent for five years (2010-2014) in the West Bank (PCBS, *Palestinians*, above footnote 14, 25), which could roughly be similar in East Jerusalem, thus the above figure of 320,000 (as calculated by the writer). [↑](#footnote-ref-146)
147. United Nations, *Laws Concerning Nationality*, above footnote 31, 263. [↑](#footnote-ref-147)
148. Palestine Partition Commission, *Report Presented by the Secretary of State for Colonies to Parliament by Command of His Majesty*, Oct. 1938, London, His Majesty Stationary Office, 1938. [↑](#footnote-ref-148)
149. United Nations General Assembly, *Future Government of Palestine*, UN Doc. A/RES/181(II), 29 Nov. 1947. [↑](#footnote-ref-149)
150. *Ibid.*, Section B, Part III. [↑](#footnote-ref-150)
151. *Ibid.*, para. 11. [↑](#footnote-ref-151)
152. *Ibid.* [↑](#footnote-ref-152)
153. Government of Palestine, *Survey of Palestine*, Jerusalem, Government Printer, 1946, I, 152. [↑](#footnote-ref-153)
154. P. Mohn, “Jerusalem and the United Nations”, *International Conciliation*, 28, 1950, 425-474. [↑](#footnote-ref-154)
155. J. Robinson, *Palestine and the United Nations: Prelude to Solution*, Washington, D.C., Public Affairs Press, 1947; C. Eagifton, “Palestine and the Constitutional Law of the United Nations”, *American Journal of International Law*, 42, 1948, 397-399; J. Zasloff, *Great Britain and Palestine: A Study of the Problem of Palestine before the United Nations*, Geneva, Graduate Institute of International Studies, 1952 (Ph.D. thesis) [↑](#footnote-ref-155)
156. S.F. Halabi, “Jerusalem in the Court and on the Ground”, *Florida Journal of International Law*, 26(2), 2014, 223-270. [↑](#footnote-ref-156)
157. J.B. Tulman, “The International Legal Status of Jerusalem”, *A.S.I.L.S. International Law Journal*, 3, 1979, 39-62. [↑](#footnote-ref-157)
158. J. Quigley, “The Status of Jerusalem after the Admission of Palestine to the United Nations”, in Qafisheh, *Palestine Membership*, above footnote 4, 290-307. [↑](#footnote-ref-158)
159. Order Concerning General Exit Permit (West Bank) No. 3 of 19 January 1968 (Israeli Army, *Proclamations, Orders and Appointments (West Bank)*, 16, 1969, 598). [↑](#footnote-ref-159)
160. United Nations Office for the Coordination of Humanitarian Affairs (OCHA), *East Jerusalem: Key Humanitarian Concerns*, Jerusalem, OCHA, 2011, 12-26. [↑](#footnote-ref-160)
161. No statistics on these cases are available as East Jerusalemites refrain from declaring that they live or work in the West Bank due to the fear of residency’s revocation. [↑](#footnote-ref-161)
162. Palestine Today, “Jerusalem Parliamentarians: Israeli Deportation Policy”, Beirut, Zaytouna Center, 13 Jan. 2011, available at: www.alzaytouna.net (last visited 29 Aug. 2015). [↑](#footnote-ref-162)
163. OCHA, *Seven Years After the Advisory Opinion of the International Court of Justice on the Barrier: The Impact of the Barrier in the Jerusalem Area*, Jerusalem, Jul. 2011. [↑](#footnote-ref-163)
164. *Ibid.*, 11. [↑](#footnote-ref-164)
165. D.C. Jefferis, “The ‘Center of Life Policy’: Institutionalizing Statelessness in East Jerusalem”, *Jerusalem Quarterly*, 50, 2012, 94-103. [↑](#footnote-ref-165)
166. A. Ruwaidi & N. Dkidik, *Guide on Procedures for Residency in East Jerusalem*, Jerusalem, Civic Coalition for Defending the Palestinians’ Rights in Jerusalem, 2007. [↑](#footnote-ref-166)
167. E.g. Art. 27(2)(b) of Decree Law No. 1 of 2007 Concerning General Elections (above footnote) stated that: “For the purposes of this law, the person is deemed Palestinian citizen if: […] Born in the Gaza Strip or the West Bank, including the Holly [i.e. East] Jerusalem”. [↑](#footnote-ref-167)
168. D. Herling, “The Court, the Ministry and the Law: Awad and the Withdrawal of East Jerusalem Residence Rights”, *Israel Law Review*, 33(1), 1999, 67-105. [↑](#footnote-ref-168)
169. HaMoked, *Written Submission for Consideration Regarding Israel’s Third Periodic Report to the UN Human Rights Committee*, 2010, 2, available at: http://www2.ohchr.org (last visited 29 Aug. 2015). [↑](#footnote-ref-169)
170. B’Tselem & HaMoked, *The Quiet Deportation: Revocation of Residency of East Jerusalem Palestinians*, Jerusalem, 1997. [↑](#footnote-ref-170)
171. Y. Peled, “Citizenship Betrayed: Israel’s Emerging Immigration and Citizenship Regime”, *Theoretical Inquiries in Law*, 8(2), 2007, 603-628; L. Bilsky, “Speaking through the Mask: Israeli Arabs and the Changing Faces of Israeli Citizenship”, *Middle East Law and Governance*, 1, 2009, 166-209. [↑](#footnote-ref-171)
172. See above, Section 1. [↑](#footnote-ref-172)
173. PCBS, *Population, Housing and Establishment Census-2007: Census Final Results*, Ramallah, 2007, 18. [↑](#footnote-ref-173)
174. In Sep. 1967, Israel estimated that the number of Palestinians in the West Bank and Gaza at 9099.000 persons: about 599 thousands were enumerated in the West Bank and some 400 thousand in the Gaza Strip. *Ibid.* At the end of 2014, the number of West Bankers ad Gazans, as shown above (in the introduction), totaled 4.62 million. That means that the number of inhabitants has been increased approximately five times since 1967. [↑](#footnote-ref-174)
175. This issue was discussed above, Section 1. [↑](#footnote-ref-175)
176. Art. XXVII, para. 2; and Annex II, Art. 28, para. 3. [↑](#footnote-ref-176)
177. United Nations General Assembly, *Persons Displaced as a Result of the June 1967 and Subsequent Hostilities*, UN Doc. A/RES/59/118, 15 Dec. 2004. In this resolution (in the preamble), the Assembly took “note of the relevant provisions of the Declaration of Principles on Interim Self-Government Arrangements of 1993 [between Israel and the PLO] with regard to the modalities for the admission of persons displaced in 1967, and concerned that the process agreed upon *has not yet been effected*” (emphasis added). [↑](#footnote-ref-177)
178. United Nations General Assembly, *Persons Displaced as a Result of the June 1967 and Subsequent Hostilities*, UN Doc. A/RES/56/54, 14 Feb. 2002, para. 3. [↑](#footnote-ref-178)
179. United Nations General Assembly, *Report of the Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East, 1 January-31 December 2013*, New York, 2014, UN Doc. A/69/13. In this report, it was stated that “UNRWA continued providing humanitarian assistance to […] persons displaced by the 1967 and subsequent hostilities”. [↑](#footnote-ref-179)
180. UNHCR, *Revised Statement on Article 1D of the 1951 Convention*, Geneva, 2009, 7-8. [↑](#footnote-ref-180)
181. General Assembly Resolution 59/118 (above footnote) reaffirmed (para. 1) “the right of all persons displaced as a result of the June 1967 and subsequent hostilities to return to their homes or former places of residence *in the territories occupied by Israel since 1967*” (emphasis added) [↑](#footnote-ref-181)
182. When the 1967 displaced person “returns to the Palestinian territory occupied by Israel since 1967, […] he or she would lose his or her refugee character”. UNHCR, *Revised Statement*, above footnote, 8. [↑](#footnote-ref-182)
183. According to various legislative instruments applicable in the West Bank and Gaza, all the 1967 territory natives and their decedents, regardless of their place of residence now, are deemed Palestinian citizens for the purposes of employment, election, and residency. See legislation cited above, footnotes. [↑](#footnote-ref-183)
184. ## M. Qafisheh, “Bases for the Palestinian Refugees’ Right of Return under International Law: Beyond General Assembly Resolution 194”, *Cambridge Journal of International and Comparative Law*, 26 November 2012, available at: http://cjicl.org.uk (visited 12 Sep. 2015).

     [↑](#footnote-ref-184)
185. In this case, the “State of Palestine” (i.e. West Bank and Gaza) would be one of two successor States of the predecessor “Palestine” as existed under the British rule (the other succeeding State is “Israel”). The State of Palestine and the State of Israel are both under similar obligation vis-à-vis the individuals who held Palestinian citizenship before 15 May 1948, depending on the individuals’ place of residence prior to that date. Although par. 1 of Art. 8 of the International Law Commission’s *Draft Articles on Nationality of Natural Persons in relation to the Succession of States* (above footnote) does not oblige the successor State “to attribute its nationality to persons concerned if they have their habitual residence in another State and also have the nationality of that or any other State”; para. 2 of the same article establishes a duty on the successor State to attribute its citizenship to persons residing abroad who “would otherwise become stateless”. In all cases, these persons have the right to opt for the citizenship of the succeeding State (in this case the State of Palestine) if they opt for its citizenship (*ibid.*, Art. 11). [↑](#footnote-ref-185)
186. M. Masri, “The Implications of the Acquisition of a New Nationality for the Right of Return of Palestinian Refugees”, *Asian Journal of International Law*, 5(2), 2015, 356-386. [↑](#footnote-ref-186)
187. M. Qafisheh, “Genesis of Citizenship in Palestine and Israel: Palestinian Nationality During the Period 1917-1925”, *Journal of the History of International Law* 11(1), 2009, 1-36, 33. [↑](#footnote-ref-187)
188. United Nations Special Committee on Palestine, *Report to the General Assembly*, New York, UN Doc. A/364, 3 Sept. 1947, 54. [↑](#footnote-ref-188)
189. It was estimated that 43% of the Jewish qualified for naturalization in Palestine under the Mandate did not apply for Palestinian citizenship. Palestine Royal Commission, *Report Presented by the Secretary of State for the Colonies by Command of His Britannic Majesty*, London, His Majesty Stationary Office, 1937, 332. [↑](#footnote-ref-189)
190. Above, Introduction. [↑](#footnote-ref-190)
191. M. Qafisheh, “Citizens of the State of Palestine and the Future of Palestinian Refugees: Legal and Political Scenarios”, in Qafisheh, *Palestine Membership*, above footnote 4, 45-133, 97. [↑](#footnote-ref-191)
192. *Ibid.* [↑](#footnote-ref-192)
193. *Ibid.*, 86-94. [↑](#footnote-ref-193)
194. Palestine Royal Commission, above footnote 189, 21. [↑](#footnote-ref-194)
195. M. Qafisheh, “An Ongoing Anomaly: Pre- and Post-Second World War Palestinian Refugees”, *International Journal of Refugee Law*, 27(1), 2015, 52-74, 54-55. [↑](#footnote-ref-195)
196. C. Baeza, “Palestinians in Latin America: Between Assimilation and Long-distance Nationalism”, Washington DC, The Jerusalem Fund for Education and Community Development and Institute for Palestine Studies, 21 Nov. 2013, available at http://www.thejerusalemfund.org (visited 20 Sept. 2015). [↑](#footnote-ref-196)
197. E.H. Buehrig, *The UN and the Palestinian Refugees: A Study in Nonterritorial Administration*, Bloomington/London, Indiana University Press, 1971; L. Takkenberg, *The Status of Palestinian Refugees in International Law*, Oxford, Clarendon Press, 1998; B. Morris, *The Birth of the Palestinian Refugee Problem, 1947-1949*, Cambridge, Cambridge University Press, 2004; M. Bouchard, *L’Exode Palestinien: construction d’une représentation occidentale du conflit israéloarabe*, Paris, L’Harmattan, 2003; A.M. Lesch & I.S. Lustick, *Exile and Return: Predicaments of Palestinians and Jews*, Philadelphia, University of Pennsylvania Press, 2005. [↑](#footnote-ref-197)
198. See http://www.unrwa.org (visited 19 Sep. 2015). [↑](#footnote-ref-198)
199. K. Lawand, “The Right to Return of Palestinian Refugees in International Law”, *International Journal of Refugee Law*, 8(4), 1996, 532-568; J. Quigley, “Mass Displacement and the Individual Right of Return”, *The British Year Book of International Law*, 68(1), 1997, 65-125; and F.A. Boyle, *The Palestinian Right of Return under International Law*, Atlanta, Clarity Press, 2011. [↑](#footnote-ref-199)
200. K.R. Redley, “The Palestinian Refugees: The Right to Return in International Law”, *American Journal of International Law*, 72, 1978, 586-614; R. Lapidoth, “The Right of Return in International Law, with Special Reference to the Palestinian Refugees”, *Israel Yearbook on Human Rights*, 16, 1986, 103-125; Y. Tadmor, “The Palestinian Refugees of 1948: The Right to Compensation and Return”, *Temple International & Comparative Law Journal*, 8, 1994, 403-434. [↑](#footnote-ref-200)
201. Of these: 1.258.559 in the Gaza Strip, and 762.288 in the West Bank. See http://www.unrwa.org (visited 19 Sept. 2015). [↑](#footnote-ref-201)
202. PCBS, *Palestinians*, above footnote 14, 23. [↑](#footnote-ref-202)
203. ### A. Knudsen & S. Hanafi, *Palestinian Refugees: Identity, Space and Place in the Levant*, London, Routledge, 2011.

     [↑](#footnote-ref-203)
204. Above Sections 1 and 2. [↑](#footnote-ref-204)
205. L. Takkenberg, “The Protection of Palestine Refugees in the Territories Occupied by Israel”, *International Journal of Refugee Law*, 3(3), 1991, 414-434. [↑](#footnote-ref-205)
206. Above Section 4. [↑](#footnote-ref-206)
207. Members of the group who now reside in East Jerusalem should be treated as mentioned in Section 4 above, notwithstanding their right of return to their original places of residence inside Israel. [↑](#footnote-ref-207)
208. Qafisheh & Azarov, “Article 1D”, above footnote 138, 549. [↑](#footnote-ref-208)
209. A.F. Kassim, “The Palestine Liberation Organization’s Claim to Status: A Juridical Analysis under International Law”, *Denver Journal of International Law and Policy*, 9(1), 1980, 1-34. [↑](#footnote-ref-209)
210. A. Khalil, “Palestinians to Citizens: Is Citizenship a Solution to the Palestinian Refugee Problem”, *Middle East Law and Governance*,6(3), 2014, 204-224. [↑](#footnote-ref-210)