



مركز الجزيرة للدراسات
ALJAZEERA CENTER FOR STUDIES

**Palestinian Refugees in the Arab World
Reality and Prospects**

14-15 April 2012
Doha Sheraton Hotel

in collaboration with



مركز العودة الفلسطيني
The Palestinian Return Centre

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Palestinian Refugees: A Crisis of Recognition

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In this paper I intend to show how international conventions, major UN Resolutions, and relevant agreements that define who is a refugee and how the international community should deal with refugees have played a role in creating customary international law principles that eradicate the right of return for Palestinian refugees and their descendants.

I have decided to start this paper by looking at the impact of the 1951 Convention relating to the status of refugees because despite the efforts that were made by the Arab League to make it inapplicable to Palestinian refugees, it continues to threaten the right of return for many Palestinians.

The 1951 Convention defines a refugee as "any person who... is outside the country of his nationality [or former habitual residence] and [as a result of a well-founded fear of being persecuted] is unable or unwilling to avail himself of the protection of that country."¹ This convention places two main criterias that an individual must fulfil in order to be recognised as a refugee: possessing the nationality and/ or being a former habitual resident of the country that one is unable to return to. The convention also goes on to imply that it recognises the principle of naturalising refugees when it stated that a refugee who has "acquired a new nationality, and enjoys the protection of the country of his new nationality" is no longer a refugee.² It poses a clear threat to the right of return for Palestinian refugees because it is essentially reaffirming the principles promoted within the 1930 Hague Convention that stated "the ideal towards which the efforts of humanity should be directed ... is the abolition of all cases ... of statelessness and ...double nationality."³ When we look at the principle of naturalisation as a solution to encounter statelessness and the call for abolition of double nationality in the context of the right of return for Palestinian refugees, it becomes clear that both conventions can be used to strip Palestinian refugees of their right to a Palestinian identity and their right of return because the solution they are ultimately promoting is a form of naturalisation that will strip Palestinians not only of their status as refugees, and accordingly their right of return, but also of the ability to remain Palestinian nationals if and when they acquire a new nationality.

Arab League member states recognised the danger posed by the 1951 Convention relating to the status of refugees and their descendants and their right of return, and hence reaffirmed their opposition to the naturalisation of Palestinian refugees by adding the following provision to the convention: "This

¹ 'Convention and Protocol relating to the Status of Refugees,' P.16, UNHCR homepage available at <http://www.unhcr.org/3b66c2aa10.html>)

² 'Convention and Protocol relating to the Status of Refugees,' P.17, UNHCR homepage available at <http://www.unhcr.org/3b66c2aa10.html>)

³ Pilgram, L. 2001, p.4. 'International Law and European Nationality Laws,' EUDO Citizen Observatory available at <http://eudo-citizenship.eu/docs/Pilgram.pdf>



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Convention shall not apply to persons who are at present receiving from organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees protection and assistance."⁴

This provision protected the identity of Palestinian refugees and their descendants who sought refuge in Arab countries and fell under UNRWA's mandate. Although UNRWA's mandate did not promote the naturalisation of Palestinian refugees, Arab League member states failed to recognise it does not protect all Palestinian refugees and their descendants. This is evident when we find that UNRWA defines Palestine refugees as "people whose normal place of residence was Palestine between June 1946 and May 1948, who lost both their homes and means of livelihood as a result of the 1948 Arab-Israeli conflict."⁵ This definition and the criteria that one must fulfil to be eligible for assistance from UNRWA pose a clear threat to the right of return for many Palestinian refugees. Furthermore, this definition fails to recognise that Palestinians who were not residents two years preceding the conflict became refugees by the mere fact that they were equally unable to return to their country of origin; and by implying that residency defined by a set time scale in Palestine dictates who is deemed a Palestinian refugee, the agency has created a precedence that legal scholars could use to claim that 'Palestinians who fall short of the two-year residency requirement should not be considered effective nationals of a pre-1948 Palestine and should not be able to argue for a right of return.'

The process of eradicating the right of return by filtering who can be considered a Palestinian Refugee is also evident when we look at Resolution 194 (III) of 1948 which states that Palestinian "refugees wishing to return to their homes and live at peace with their neighbours should be permitted to do so at the earliest practicable date."⁶ In addition to failing to establish a right of return for Palestinian refugees that see the Zionist regime as an occupier who had to be fought, this resolution also placed a criteria that refugees must be able to fulfil in order to be able to argue for a right of return, namely the ability to "return to their homes."⁷ This implies that refugees who lack physical homes to return to (including future descendants) cannot use this resolution as a basis for return. Moreover, by suggesting compensation for those choosing not to return, the resolution not only reaffirms the principle of naturalisation but also implies that the principle of return is one potential solution rather than an obligation that

⁴Pilgram, L. 2001, p.4. 'International Law and European Nationality Laws,' EUDO Citizen Observatory available at <http://eudo-citizenship.eu/docs/Pilgram.pdf>

⁵ 'Palestine Refugees,' P.1, UNRWA homepage available <http://www.unrwa.org/etemplate.php?id=86>

⁶ 'Palestine Progress Report of the United Nations Mediator: Article 194 (III),' 1948, P.5, UN Home page available at <http://daccessddsny.un.org/doc/RESOLUTION/GEN/NR0/043/65/IMG/NR004365.pdf?OpenElement>

⁷ 'Palestine Progress Report of the United Nations Mediator: Article 194 (III),' 1948, P.5, UN Home page available at <http://daccessddsny.un.org/doc/RESOLUTION/GEN/NR0/043/65/IMG/NR004365.pdf?OpenElement>



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must be fulfilled by the Zionist regime. This analysis is supported by the fact that the principle of naturalisation was reaffirmed as an ideal solution to combat statelessness in the 1954 Convention on the Status of Stateless Persons which stated that "contracting States shall as far as possible facilitate the assimilation and naturalization of refugees [and] make every effort to expedite naturalization proceedings,"⁸ and in the 1961 Convention on the Reduction of Statelessness which states that "[a] Contracting State shall grant its nationality to a person born in its territory who would otherwise be stateless."⁹ The fact that the 1961 Convention was followed by the 1963 European Convention on the Reduction of Cases of Multiple Nationality also implies that the principle of naturalisation was ultimately intended to eradicate the right of return for refugees and their descendants by eliminating the legal basis on which refugees could argue that they continue to be a national of their original country despite acquiring a new nationality.¹⁰

The process of reducing the number of individuals who could be considered Palestinian refugees continued further when Security Council Resolution 237 of 4 June 1967 came about as a result of the Six-Day War in 1967. This resolution called upon the government of Israel "to facilitate the return of those inhabitants who have fled the areas since the outbreak of hostilities."¹¹ By applying only to inhabitants, it clearly failed to affirm the right of return for Palestinians who were abroad before the 4th of June 1967. In fact, when we look at Security Council Resolution 242 of 22 November 1967, we find that the right of return was even reduced for Palestinian inhabitants when the resolution affirmed "the necessity... for achieving a just settlement of the refugee problem."¹² According to the conventions reviewed earlier, a just settlement would likely be interpreted as a call for the naturalisation of refugees in the areas in which they sought refuge.

The most important and oft-cited instance that illustrates the threat that the customary international law principle of naturalisation poses to the right to a Palestinian identity and consequently the right of return for Palestinians is the decision that was made by the International Court of Justice in 1955 in the *Nottebohm* case. This case was brought by Liechtenstein against Guatemala

⁸ "Convention relating to the Status of Refugees," Office of the United Nations High Commissioner for Human Rights available at <http://www2.ohchr.org/english/law/refugees.htm>

⁹ "Convention on the Reduction of Statelessness," 1961, p. 2, United Nations available at http://untreaty.un.org/ilc/texts/instruments/english/conventions/6_1_1961.pdf

¹⁰ "Convention on the Reduction of Cases of Multiple Nationality and on Military Obligations in Cases of Multiple Nationality," 1963, Council of Europe available at <http://conventions.coe.int/Treaty/en/Treaties/Html/043.htm>

¹¹ "Resolution 237: The situation in the Middle East (14 June)," 1967, p.1, UN homepage available at <http://daccess-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/240/89/IMG/NR024089.pdf?OpenElement>

¹² "Resolution 242: The situation in the Middle East (22 Nov)," 1967, p.1, UN homepage available at <http://www.un.org/documents/sc/res/1967/scres67.htm>



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wherein the former argued that the latter was treating Mr. Nottebohm, who is a national of Liechtenstein, contrary to international law. The court upheld the principle of 'effective nationality' and dismissed the case on the basis that a genuine and effective link between a state and an individual that confers upon the state the opportunity to afford diplomatic protection was lacking in the case of Nottebohm.¹³ Because the principle of effective nationality as described in Nottebohm is often cited in definitions of the concept of nationality,¹⁴ the case can be used in the future by political leaders and legal scholars to argue against recognising Palestinians within and beyond the UNRWA scene as Palestinian nationals who had a right of return on the basis that both groups lack a genuine link with a future state of Palestine.

This dangerous argument would be supported by the 1997 Council of European Convention on Nationality which recognised that 10 years habitual residency in a country was a basis for the grant of nationality.¹⁵ This principle poses a genuine threat to the right to a Palestinian identity because the set time scale for one to be eligible for naturalisation can be used to argue that Palestinians who did not reside in Palestine before or after the occupation have become naturalised by the virtue of the time they have lived outside their country of origin and that therefore they cannot be considered effective citizens of a future Palestinian State. Put simply, the principle of habitual residence in nationality rules increases the rights of the Zionist occupiers over the land and eradicates the right of return for Palestinian refugees.

Overall, the conventions we looked at in this paper and the Nottebohm case can be used to pressure Arab League member states to naturalise Palestinian refugees in their territories and de-recognise Palestinians who have acquired a new citizenship. Arab League member states will find it hard to argue against such demands because their opponents can argue that they have played a key role in eradicating the right of return for all Palestinian refugees and their descendants. This argument could be supported by the 1978 Camp David agreement in which Egypt agreed that representatives from Egypt, Israel, and Jordan and the Palestinians would "decide by agreement on the modalities of admission of persons displaced from the West Bank and Gaza" in 1967.¹⁶ Thus, Egypt accepted that the issue has moved from the 1948 refugees to include only

¹³ 'Nottebohm Case (Liechtenstein v. Guatemala); Second Phase,' 1955, The UN Refugee Agency, Available at <http://www.unhcr.org/refworld/docid/3ae6b7248.html>

¹⁴ 'Nottebohm Case (Liechtenstein v. Guatemala); Second Phase,' 1955, The UN Refugee Agency, Available at <http://www.unhcr.org/refworld/docid/3ae6b7248.html>

¹⁵ 'European Convention on Nationality, 1997, UN refugee Agency Available at <http://www.unhcr.org/cgi-bin/texis/refworld/rwmain?docid=3ae6b36618&page=search>

¹⁶ 'Durable solutions for Palestinians in OPT,' 2011, Internal Displacement Monitoring Centre available at [http://www.internal-displacement.org/idmc/website/countries.nsf/\(httpEnvelopes\)/60623A81027B3502C12574B8004B77E2?OpenDocument](http://www.internal-displacement.org/idmc/website/countries.nsf/(httpEnvelopes)/60623A81027B3502C12574B8004B77E2?OpenDocument)



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the problem of the 1967 refugees, which was reaffirmed in the 1993 Declaration of Principles on Interim Self-Government Arrangements between Israel and the Palestinians and in the 1994 Peace Treaty between Israel and Jordan that confirmed that the problem of the 1967 refugees will be resolved "in accordance with international law."¹⁷

The above agreements not only failed to establish a right of return for all Palestinian refugees to the places and homes from which they were expelled but also played an active role in watering down who from the 1967 category will be able to return, hence illustrating how relevant agreements signed by Arab League member states contributed to the eradication of the right to a Palestinian identity, and consequently the right of return for many Palestinians.

Members of the Arab League who did not signed agreements with the Zionist regime might argue that the decisions taken by Egypt and Jordan have no bearing on them. Such an assumption in the context of customary international law is very naïve because it fails to recognise that international standards are developed in bilateral and multilateral treaties, and that, therefore, the decisions taken by Jordan and Egypt have an impact on all members within the Arab League because they suggest that members that are committed to the right of return for all Palestinian Refugees are working against international standards. Hence, it is important for members that are committed to the right of return for all Palestinian refugees to respond appropriately to any agreements that a member state of the Arab League enters with the Zionist regime because all member states will find themselves having to face the consequences of such actions.

In addition, Arab League member states must also be aware of the kind of nationality laws that they adopt because they can be used as a tool to force them to naturalise Palestinians in the near future. This threat becomes clear when we find that although the Hague Convention of 1930 states that "each State shall determine under its own law who are its nationals," it confirms that nationality laws adopted by each sovereign state "shall be accepted... in so far as it is consistent with applicable international conventions, customary international law and the principles of law generally recognized with regard to nationality law."¹⁸ This last point confirms that nationality principles that support

¹⁷ Declaration Of Principles On Interim Self-Government Arrangements (Article XII), 1993, Centre of Islamic and Middle Eastern Law, SOAS available at <http://www.soas.ac.uk/cimel/materials/declaration-of-principles-on-interim-self-government-arrangements.html>

¹⁸ Treaty of Peace between The Hashemite Kingdom of Jordan and The State of Israel (Article 8), 1994, King Hussein Homepage available at <http://www.kinghussein.gov.jo/peacetreaty.html>

¹⁸ Convention on Certain Questions Relating to the Conflict of Nationality Law (Article), 1930, The UN Refugee Agency Homepage available at <http://www.unhcr.org/refworld/docid/3ae6b3b00.html>



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the customary international principle of naturalisation can be used to support the argument for naturalising Palestinians.

Unfortunately, despite the fact that the majority of Arab League member states continue to defend the right to a Palestinian identity, and consequently the right of return for all Palestinian refugees, they have adopted nationality laws that suggest that they agree with the principles that have played a role in eradicating the right of return for Palestinian refugees and their descendants. This is demonstrated by the fact that the majority of Arab League member states recognise the principle of involuntary loss of nationality.¹⁹ By doing so, they are automatically recognising that a future Palestinian state can determine under its domestic nationality law who its nationals are, which implies that Arab League members in principle accept that Palestinian refugees can involuntarily lose their rights to Palestinian identity and the right of return. The imminence of this threat was confirmed in the Oslo Agreement of 1993 which empowered the Palestinian Authority to issue passports only to current residents of the West Bank and Gaza and Palestinian Refugees returning to Palestinian territories.²⁰ In addition to clearly excluding refugees who did not accept the terms set by the Oslo Agreement, this agreement illustrated how agreed upon definitions referring to who is a Palestinian refugee have come to dictate the kind of relationship that must exist between the state and the individual within the development of the Palestinian Authority's nationality laws.

The principle of dual nationality is not mentioned within the categories that define who is eligible for a Palestinian Authority passport. Nonetheless, the mere fact that the majority of Arab League member states do not recognise the principle of dual nationality and accept that involuntary loss of citizenship can take place if a person acquires a new citizenship implies that the Arab League theoretically accepts that Palestinian refugees who have acquired a new nationality are no longer Palestinian nationals and, as a result, cannot argue for a right of return. Also, by recognising the principle of involuntary loss of citizenship, it could be argued that the majority of Arab League member states accept that descendants of Palestinians who have acquired a new citizenship have no right to Palestinian identity. This becomes apparent when we find that although the majority of Arab League members recognise within their nationality laws that individuals have the right to acquire the citizenship of their fathers regardless of their country of birth, they attach rigid criteria that limit the extent to which descendants can exercise this right.

Key Examples:

¹⁹ Citizenship Laws of the World available at <http://www.multiplecitizenship.com/worldsummary.html>

²⁰ 'Palestine National Authority,' Citizenships of the World available at http://www.multiplecitizenship.com/wscl/ws_PALESTINE_NATIONAL_AUTHORITY.html



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1. Bahrain: for a minor to be eligible for a Bahraini Citizenship, his or her father must be a citizen on or after the declaration of independence, and the loss of citizenship extends to minors as well.²¹
2. Sudan: the father or grandfather must be a resident in the country of origin in order for a descendent to be eligible.²²
3. Lebanon: descendants must be registered with the Lebanese embassy in the respective country if they are born abroad.²³

If and when Arab League states recognise how their foreign policies and domestic nationality laws play a role in eradicating the right to a Palestinian identity, it will be too late to withdraw their obligations to the international system because whether they realise it or not they have played an active role in forging a regional pattern of nationality provisions that support the customary international principles that eradicate the right of return for Palestinian refugees and their descendants.

In conclusion, this paper has demonstrated how international conventions, major UN resolutions, and relevant agreements have eradicated the right to a Palestinian identity, and therefore, the right of return for Palestinians and their descendants.

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²¹ 'Bahrain,' *Citizenships of the World* available at http://www.multiplecitizenship.com/wscl/ws_BAHRAIN.html

²² 'Sudan,' *Citizenships of the World* available at http://www.multiplecitizenship.com/wscl/ws_SUDAN.html

²³ 'Lebanon,' *Citizenships of the World* available at http://www.multiplecitizenship.com/wscl/ws_LEBANON.html