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Asem Khalil

# SOCIOECONOMIC RIGHTS OF REFUGEES

The Case of Palestinian Refugees in Egypt,  
Jordan, Lebanon, and Syria

2010

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**SOCIOECONOMIC RIGHTS OF REFUGEES IN TIMES OF CRISIS**

**The case of Palestinian Refugees in Egypt, Jordan, Lebanon, and Syria**

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## 1. Introduction

This paper is a contribution to discussions on the possible impact of global crises, especially the current financial crisis, on the economic and social rights of Palestinian refugees in host Arab countries. This paper will be limited to discussing the case of Palestinian refugees in Arab states that host the majority of Palestinian refugees<sup>1</sup> (Egypt, Jordan, Lebanon, and Syria<sup>2</sup>), but recognizes that the impact of such crises reaches beyond refugees, to citizens and other legal and illegal migrants.

Palestinian refugees constitute a unique case study.<sup>3</sup> Prolonged exile, statelessness, and Israeli refusal re-admit refugees render their situation extraordinary and unique. Therefore this study and others on Palestinian refugees may not build on conclusions reached in other refugee case studies, and the conclusions reached may not necessarily be applicable in other circumstances, even if in apparently similar experiences. This may explain the large number

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<sup>1</sup> Approximately half of all refugees worldwide are Palestinian (Badil 2007, 42; Zureik 2001, 206), most have not acquired the nationality of host or third countries (with the exception of Palestinians in Jordan), and thus are stateless. Statelessness is a key concern for more than half the global Palestinian population (Hammami and Johnson 1999, 316). According to Shiblak (2006, 8), Palestinians are the largest stateless community in the world. According to the latest statistics from the United Nations Relief and Works Agency (UNRWA), there are 4,671,811 registered Palestinian refugees (1,373,732 are registered in camps), distributed in UNRWA areas of operation as follows: 1,951,603 in Jordan, 422,188 in Lebanon, 461,897 in Syria, 762,820 in the West Bank and 1,073,303 in the Gaza Strip. Those figures are published at the UNRWA website: [www.un.org/unrwa/publications/index.html](http://www.un.org/unrwa/publications/index.html) (visited on 23 December 2009). Registered Palestinian refugees can be counted. Those refugees, who, for various reasons, did not register, are practically impossible to count. Some estimate their number to be 1.3 million (Said 2005, 350). A related issue is that of undocumented Palestinian refugees. These are particularly vulnerable in that they are not registered by UNRWA (thus not entitled to their services) but also are not registered by a host country. They do not have any paper documentation and are invisible (legally speaking). For more about the undocumented Palestinian refugees in Lebanon, see Pettrigh (2006). As for Egypt, the number of Palestinian refugees is estimated to be between 50,000 and 70,000. According to Takkenberg (1998, 150-154), the total number of Palestinians in Egypt may amount to between 50,000 and 100,000. Many are estimated to be illegally resident. I am not aware of the existence of any official statistics related to Palestinian refugees in Egypt, whether those registered or undocumented. For more about Palestinian in Egypt, see: El-Abed (2004).

<sup>2</sup> The selection of Egypt, Jordan, Lebanon, and Syria is justified by the simple fact of their being, with the West Bank and Gaza Strip, the main destinations for Palestinian refugees during 1948 war (the *nakba*). They are the four countries adjacent to historical Palestine, and the places where most Palestinian refugees are still living and where most refugee camps are present. Those countries also have a variety of legal accommodations for Palestinian refugees that satisfy the objectives of the research. The legal status, rights, and freedoms of Palestinian refugees in the West Bank and Gaza Strip are not covered in this paper for two reasons. Firstly, the West Bank and Gaza Strip are occupied territories and as such, territories where International Humanitarian Law applies, making the legal status and rights' distribution map totally different from that of host Arab states. Secondly, Palestinian refugees and non-refugees fell under Israeli occupation in 1967 and were treated alike with regards to residency status. They are even treated alike under the Palestinian Authority, with regards to political, civil, economic and social rights. The only difference is the entitlement of registered Palestinian refugees to services provided by UNRWA, which will be indirectly referred to later, under the issue of UNRWA and the impact of current crisis on it.

<sup>3</sup> Palestinian refugees fall, *grasso modo*, into three general categories. The largest group is composed of those displaced or expelled from their place of origin as a result of the *nakba*. The second major group is made up of those displaced for the first time from their places of origin as a result of the 1967 war. The last category includes Palestinians who are neither 1948 nor 1967 refugees, but who dwell outside the area of the former Palestine and are unable (due to revocation of residency, denial of family reunification, and deportation) or unwilling to return owing to a well-founded fear of persecution (Badil 2007, 42). However, it should be noted that not all the above categories are deemed refugees, legally speaking, whether according to international law, to international organizations' operational definition, or for domestic law of host state (Khalil 2009, 2). A legal definition is inevitably a narrower one. Accordingly, only those enjoying the status of refugee in the strict legal sense enjoy the rights guaranteed by international law and included in many national laws and regulations (Grabska 2006, 9-10).

of studies related to Palestinian refugees,<sup>4</sup> including those focusing on their legal status and the rights and freedoms they enjoy in host countries.<sup>5</sup> This focus fits largely within broader global interest in issues related to refugees, especially their role under international law.<sup>6</sup> For this reason, this paper also contains some general arguments that may apply to other refugees in the concerned countries, or in other parts of the world.<sup>7</sup> Interest in the legal status of Palestinian refugees goes beyond the concerned states, and beyond Palestinian refugees themselves, and there are cases in which countries need to take concrete decisions as to whether or not to grant Palestinians asylum status or not.<sup>8</sup>

This paper distinguishes between legal recognition of economic and social rights and political enforcement. It may rightly be argued that, *grosso modo*, huge steps have been taken in the legal recognition of economic and social rights since World War II, and especially in the last two decades, on the international and national level, particularly with regard to the

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<sup>4</sup> The bibliography, although not exhaustive, includes a large number of available resources, mostly related to legal status, rights, and freedoms in host Arab states.

<sup>5</sup> If this is the case, one may contend, then why another study about Palestinian refugees? This is a valid concern, since there is indeed a very rich literature on this issue and the status of Palestinian refugees in host states; in a sense, the topic is over-researched rather than under-researched, to the point of being sometimes repetitive. Most importantly, this concern is legitimate because the legal position of Palestinian refugees in the Arab states largely depends more on administrative practices that are subject to constant change. Accordingly, as outlined by Takkenberg (1998, 133, 150) any information collected on the issue is only indicative, being subject to continuous verification and update. Why then bother writing on a topic that may be soon outdated? I believe the objections in themselves justify somehow this additional research in that they insinuate that there is a need to a systematic approach to issues related to Palestinian refugees in Arab states in a way that facilitates access to information and, most importantly, that there is need for continuous update on the legal status of Palestinian refugees in the Arab world. This paper, as much as an earlier version of this study (Khalil 2009), is a contribution in that direction.

<sup>6</sup> The current international system is based on sovereign states. A state's sovereignty is challenged by refugees, which force international actors to consider ethical principles and issues of human rights, which are part of their international obligations (Rempel 2006, 7). In fact, based on the principle of *non-refoulement* (i.e. This principle is part of customary international law and was embodied in 1951 Refugee Convention, Article 33, para.1: "No Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion") sovereign states cannot refuse to admit refugees into their territory, based on regulations applicable on foreign nationals. A refugee, indeed, is a foreign national but he or she cannot be subjected to all the regulations applicable to foreign nationals, since his or her status, as a refugee, is by definition related to the coercive departure from the country of origin.

<sup>7</sup> However, the interest in the issue of Palestinian refugees, besides their large numbers and long years of refugeehood, is justified largely by the fact that large numbers of those refugees are stateless (thus, practically, they have no other country where they can return or at least, not other documents that enables them to reside legally in another country, although theoretically they have the right of return to their country of origin). Accordingly, their refugeehood becomes a source of instability, insecurity, and risk, for both the country of first refuge and the third states, which are a possible target of refugee migratory tendency. As pointed out by Shiblak (2006, 9), statelessness is a push factor leading to massive irregular migration. Around eighty percent of the 80,000 stateless Palestinians thought to be in Germany hold refugee travel documents from Lebanon. He then concluded: "[t]here is a clear correlation between statelessness and asylum seeking in industrialized countries. The large numbers of stateless people from the region ... illustrate the strength of determination to escape the humiliation and uncertainty that statelessness brings. ... They sought asylum in Europe when their residency status in the host countries became increasingly insecure and, in most cases, they were denied the right to go back to these countries."

<sup>8</sup> This was the central point around which the brief *amicus curie* to the United States Board of Immigration Appeals, the highest appellate administrative system governing immigration decisions in the United States, including decisions concerning refugees and asylum seekers (Akram and Goodwin-Gill 2000/2001, 185). The cases related to an unmarried Palestinian, and a Palestinian couple, holding refugee travel documents issued by Jordan, Lebanon, and Egypt. They were working in Saudi Arabia with work visas. They travelled to the United States for vacation and when they tried to return, they were denied access by Saudi Arabian authorities while not being able to enter the country that issued their travel document or any other country. In both cases, the Palestinians requested political asylum, which was initially denied but later granted. Similar cases may arise in other countries. According to the Royal Institute of International Affairs and The Centre for Lebanese Studies (2002, 11), "many Palestinians who have found asylum in the West have not been recognized as refugees."

codification of these rights in constitutional texts of the expansion of rigid and written constitutions (Saiz 2009, 277-278).

Legal recognition does not necessarily mean political enforcement, which is often subject to available resources and may reflect a misconception of economic and social rights by state authorities that may not consider them real legal rights, but rather as political or moral aspirations. An analysis of concrete steps taken to deal with the current global crisis shows that economic and social rights are still treated by most governments as rhetorical aspirations rather than binding principles of public policy. Simultaneously, human rights remain absent from public debate as regards the impact of the crisis (Saiz 2009, 280).

The four countries of concern here have ratified many international human rights conventions,<sup>9</sup> and have included many protections in their constitutions.<sup>10</sup> However, to say that this is a positive step does not mean that, legally speaking, international treaties really matter within national legal systems, and, more importantly, that constitutions really matter.<sup>11</sup> Constitutions may only be façade constitutions, and international treaties, as part of international law, often lack enforcement mechanisms. Nonetheless, it is possible to confirm that having international and constitutional recognition helps to individualize the standards to which concerned states may aspire or may be aspiring to in the future, and that can accordingly be tested to judge state authority performance.<sup>12</sup>

The impact of the financial crisis on the political enforcement of economic and social rights, as regards the lack of legal accountability, is easily shown<sup>13</sup> and can be measured in short and medium terms. More subtle is the observation of the impact of the recession in the legal recognition of economic and social rights, which can be reflected, *in extremis*, through changes in positive law. This applies to changes in the statutes, such as constitutional texts, acts of the parliament, and other secondary legislation for countries with civil law systems, but can also appear through changes in case law.

Changes in the legal recognition of economic and social rights are nearly impossible to prove in the short or even medium term. Only the long-term observation of legislation and cases can inform conclusions. It requires subtlety and sophistication to demonstrate that this specific legal change is due to that specific crisis. To do so there is a need for different

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<sup>9</sup> The International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights were ratified by all concerned countries, Egypt in 1982, Jordan in 1975, Syria in 1969, and Lebanon in 1972.

<sup>10</sup> Most constitutions of Arab countries are available on the website of the Program of Governance in the Arab Region (POGAR): <http://www.pogar.org/>.

<sup>11</sup> Although impossible to cover here, it is nonetheless possible to conclude that this is an issue that is exclusively of interest for particular countries, rather this is an issue that is of relevance of many countries of the world, including some Western and democratic countries. With regards to the way international treaties matter in national legal system, there are monist and dualist approach. In a country that belongs to a dualist system, such as the UK, a treaty needs to be converted first into national legislation in order to be applicable by British courts. As for the enforceability of the constitution, many countries do not have the form of judicial review existent in the USA (exercised by each court, under the Supreme Court) or by a specific centralized court (such as in Germany). The typical example is France.

<sup>12</sup> The Committee of on the Elimination of Racial Discrimination issue concluding observations when considering reports submitted by state parties. It has done so for example, with regards to Lebanon, in 2004 (CERD/C/64/CO/03), in which (n.12), “the Committee reiterate[d] its concern with regard to the enjoyment by the Palestinian population present in the country of all rights stipulated in the Convention on the basis of non-discrimination, in particular access to work, health care, housing and social services as well as the right to effective legal remedies.” The report is available at: <http://unispal.un.org/UNISPAL.NSF/0/14B690AD6762EDF285256F9300547FE1>

<sup>13</sup> For example by observing the financial assets dedicated for social issues, services provided for refugees in one country, or international and humanitarian aid before and after a financial recession.

research tools, and frameworks then those applied in this research.<sup>14</sup> Accordingly, any research pretending to show, through inappropriate methodological tools, a cause-consequence relationship between the global financial crisis and legal recognition of Palestinian refugee economic and social rights will be misleading, and risks being scientifically unfounded.<sup>15</sup>

Rather, this paper argues that, historically speaking, crises (political, economic and social) on the national, regional, and international levels have had negative impacts on Palestinian refugees, not only in terms of political enforcement but also in terms of legal recognition. The paper shall argue that there are no grounds to believe things will be any different with the current global financial crisis. The impact may in fact be worse, recognizing the increase in Palestinian refugees in Arab countries and, accordingly, the increase their needs.

The details of this situation will be discussed. This discussion will cover what is commonly referred to as the 'protection gap' facing Palestinian refugees in host Arab states on the international and regional level, the lack of clear legal texts providing for and protecting basic rights, and the existence of discriminatory legal texts that are included in constitutional texts of Arab states. All of the above may explain why Palestinian refugee rights in Arab states are more fragile than those of other categories of persons.

Finally, this paper argues that political enforcement by concerned countries or international organizations without legal recognition renders them more similar to charitable actions than legal obligations. In the case of legal obligations, rights hold particular weight, and states and international organizations become accountable. The assistance provided to Palestinian refugees is far from a legal obligation for concerned states. As a consequence, this assistance is dependent on available resources and political will of donors. Accordingly, Palestinian refugees will feel the negative impact of the financial crisis as donors turn towards humanitarian aid rather than development.<sup>16</sup>

## 2. Palestinian refugees: a threat to national security?

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<sup>14</sup> In fact, this paper, although it uses empirical data in which legislation and courts decision are used as tangible and rough data, my arguments are largely theoretical, aiming at analyzing those data in an analytical way. I owe much of the insights about national legislations related to Palestinian refugees in host countries to contributions of local experts from the concerned countries, provided in the context of a previous research (Khalil 2009), namely, Hassan Jouni from Lebanon, Mohamed Olwan from Jordan, Fawaz Saleh from Syria, and Sharifa Shafie from Egypt. Unless specified differently, reference to legislative texts and policies related to Palestinian refugees in those countries are based on the data provided upon solicitation by local researchers to the author. All remaining inaccuracies are only mine.

<sup>15</sup> The risk here is to apply simplistic analysis, using syllogism on this complicated issue, resolving the dilemma almost mathematically, by saying that if A (financial crisis) leads to B (political unwillingness or impossibility to enforce economic and social rights), B leads to C (changes in legal recognition of economic and social rights), then A leads to C.

<sup>16</sup> Throughout this paper, two background assumptions, almost an ideology, shall appear and be reflected in what shall follow. First, each individual, without discrimination based, *inter alia*, on origin and nationality, have intrinsic rights that may be organized and regulated by the state. Although the state may regulate the way those rights are fulfilled, when and how, those rights should not be subjected to arbitrary derogation or annulment. This approach employs what might be termed a 'rights-based approach'.<sup>16</sup> Second, state and state law are central in the efforts to realize human development in general, through the fulfilment of his economic and social rights in particular. In this sense, the state has the obligation under human rights law, on the one side, to fulfil economic and social rights through the assignment of the maximum resources available to the progressive fulfilment of economic and social rights, even in the context of declining growth, and on the other side to respect them by avoiding to directly infringe them, and protect them from abuses of private actors (Saiz 2009, 282-263).



For Arab states, the issue of Palestinian refugees is treated as a matter of national security, despite a lack of consensus regarding the dimension and content of the threat. The fact that the Ministry of Interior is responsible of the ‘dossier’ of Palestinian refugees is particularly significant.<sup>17</sup> In Lebanon, for example, the heated debate over Palestinian refugees often relates to community balance (IFHR 2003, 11; Zureik 2001, 212),<sup>18</sup> or to the role of Palestinian refugees in the Lebanese civil war (RIIA and CLS 2002, 14). In Jordan, equilibrium is needed in terms of the large number of Jordanian citizens of Palestinian origin (Arzt 1996, 43). In Egypt, the regulation of border crossing to and from Gaza is a priority, and strict regulation of migratory flows is deemed a priority (Takkenberg 1998, 153-154). In Syria, the control of population movements and other aspects of life, including those of Palestinian refugees and Syrian citizens, constitutes a serious concern for the regime.<sup>19</sup>

Keeping Palestinians in Palestine (or keeping Palestine for the Palestinians) is a noble objective, but when it is presented, as is the case in some Arab countries, to justify restrictive measures on movement or the rights and freedoms of Palestinian refugees, even if legally resident,<sup>20</sup> it becomes a political slogan, void of any significance.

In the following sections I provide arguments to support the above, aiming to show how Palestinian refugee issues are tackled by Arab countries not through a ‘human rights’ perspective, but rather through a ‘security’ perspective. This explains why restrictive measures and policies are undertaken by Arab states with regards to Palestinians. These restrictions often apply to those ‘legally residing’ in the concerned country (having fulfilled

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<sup>17</sup> The national institution responsible for refugees recognized by UNHCR is the department of Refugee Affairs at the Ministry of Foreign Affairs, while others, including Palestinian refugees, fall under the responsibility of the Ministry of the Interior. In both cases, however, the Ministry of the Interior is responsible for issuing residence permits. A Higher Committee for Palestinian Immigrant Affairs was established to coordinate relief efforts, presided over by a deputy of the Minister of the Interior (Takkenberg 1998, 150). For Syria things are different in that specific institutions were established to follow up the issue of Palestinian refugees, including ‘The Palestine Arab Refugee Institution’ that was substituted by the General Authority for Palestine Arab Refugees, under the auspices of the department of the Ministry of Social Affairs and Labour (As-Sahly 1999).

<sup>18</sup> According to Takkenberg (1998, 162), Palestinian refugees in Lebanon “were viewed by the Lebanese ruling establishment as a threat to the delicate balance between Christians and Muslims and, therefore, to political and social stability. ... As a result, the Palestinian refugees in Lebanon have been in a precarious position.” For this reason, it seems that opposition to the settlement of Palestinian refugees in Lebanon is one of the few issues that unites the Lebanese government and public opinion across most of the sectarian communities (Sayigh 1995, 37), leaders in government and in the opposition, both in Lebanon and abroad (El Khazen 2007). According to Arzt (1996, 47), “Lebanese officials have on more than one occasion expressed an intention to expel all Palestinians, who are predominantly Sunni Muslims, at the earliest possible occasion, claiming that their integration in the country would upset the country’s ‘delicate sectarian balance,’ in which Shi’ite Muslims have a slight majority over a dwindling number of Maronite Christians.”

<sup>19</sup> For the Syrian government, the approach to the refugee influx differed considerably from that of the other host states. According to Takkenberg (1998, 167) the reasons behind this attitude can be explained in various ways. First, in 1948, Syria was not suffering from unemployment or limited natural resources. Second, the arrival of 90.000 to 100.000 refugees did not threaten the economy or social structure of the country. Third, Palestinian refugees never constituted more than 2 to 3 per cent of the population. It shall be noted however that Syria is well known for having the most favourable legal and official treatment of Palestinian refugees. However, as rightly noted by (Arzt 1996, 48) of all the areas within the UNRWA orbit, “the least amount of information has been published on Palestinians in Syria.” All conclusions reached by the scrutiny of existing legislation related to Palestinian refugees in Syria, needs, accordingly, to be treated with caution.

<sup>20</sup> Imposing restrictions on economic activity, security pressures and intimidation, non-renewal of residency for Palestinians leaving countries of first refuge, and perhaps even stripping the Palestinians of their legal rights altogether is often perceived as a form of pressure to avoid the permanent settlement of Palestinian refugees in host states (Brynen 1997, 49-50). This political ‘push factor’ aims at encouraging Palestinian emigration (Sayigh 1995, 43), and once they have emigrated, aims to complicate their return. In Syria, the country which deals with Palestinian refugees as Syrian nationals, it is provided in Syrian citizenship law (Citizenship Law No. 276/1969) that Palestinians are excluded from access to citizenship in order to ‘preserve their original nationality’. Accordingly it seems that Syria rejects, as much as Lebanon, the full integration of Palestinian refugees (i.e. their naturalization into citizens by granting them access to Syrian nationality), but, contrary to Lebanon, Syria grants full access to economic and social rights.

conditions imposed by national law to be recognized as Palestinian refugees), as well as, though more restrictively, on those who reside illegally, those holding legal status in other host country, or those holding a Palestinian Authority travel document. Each category faces a different kind of treatment.<sup>21</sup>

I will make reference to two examples in particular. Firstly, the exclusion of Palestinian refugees from international protection mechanisms related to refugees, and the resistance of host states to any notion of their inclusion in those mechanisms. Secondly, the way the Palestinian refugee issue is handled in host Arab states regarding regularization. The cases show how (surprisingly) consistent and unaltered the political attitude of Arab countries remains towards the issue. They constitute common points on which Arab states' policies, surprisingly, converge.

Despite the above, or maybe partially as a consequence of it, several changes have occurred with regards to legal recognition of Palestinian refugee economic and social rights throughout the six decades of Palestinian exile. These cases can be seen through the situation of Palestinian refugees in host Arab countries in the 1970s, following the Camp David Agreement (between Israel and Egypt) and the assassination of Sadat, the civil war in Lebanon, and Black September in Jordan. Similarly, following the first Gulf War, policies towards Palestinian workers in host Arab countries became more restrictive, especially in gulf countries. Those examples show how political crises and local contingencies had consequences on the legal recognition of Palestinian refugees, and the realization of their economic and social rights. A historical overview of Arab state positions toward Palestinian refugees clearly shows that the goals of Arab states often clash with the interests of the refugees themselves (Kagan 2009, 429).<sup>22</sup>

### 3. The Protection Gap

I use the term 'protection gap', borrowing it from other scholars, to refer to the position of Palestinian refugees in host Arab states.<sup>23</sup>

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<sup>21</sup> The most important difference is between Palestinian refugees recognized by host countries as such (for example, Palestinian refugees holding Egyptian, Jordanian, Lebanese or Syrian refugee documents) and other Palestinians. Each country provides certain 'rights' related to residency status. However, each state treats refugees in other host states as foreigners subject to regulation applicable to foreigners (for example a Palestinian refugee holding a Lebanese refugee document is treated as foreigner by Egyptian authorities). Sometimes, Palestinian refugees holding documents from the host country are assimilated with nationals (for example, Palestinian refugees holding Lebanese refugee documents were treated, until recently, as Lebanese citizens in Syria, and vice versa). A Palestinian refugee holding Jordanian nationality is treated as any other Jordanian national. This does not apply however, to those refugees (from Gaza Strip) holding temporary Jordanian travel documents. Most of the times, however, Palestinians holding refugee documents of host countries (for example, a Palestinian refugee holding a refugee document from Lebanon) are treated differently on borders of third states (for example, even if Lebanese are exempted from visa requirement to enter Egypt, Palestinian refugees holding a Lebanese travel document need a visa to cross Egyptian borders). Since the establishment of the Palestinian Authority in 1994 and the later issuance of travel documents, many holders of Palestinian Authority travel documents are treated differently from other Palestinians, depending on the relationship of the host country with the Palestinian Authority itself.

<sup>22</sup> Making explicit reference to J. Hussein's contribution: "The Arab States and the Refugee Issue: A Retrospective View", in (Benvenisti, Gans and Hanafi 2007, 435-463). Hussein observes that Arab states had ambiguous positions toward the Palestinian refugee question as early as 1949. For him, Arab states took, in public, a united stand in favour of repatriation, but indicated in private a willingness to consider settling them in exile. Cited in: Kagan (2009, 429).

<sup>23</sup> For example, Akram (2002); Badil (2005); Suleiman (2006); regardless if they call it this way or not.

depending on regional and domestic politics and on the host state relationship with the Palestine Liberation Organization (PLO). The gap is widened by the refusal of Israel to admit Palestinian refugees into its territory, and the international community's inability or unwillingness to impose resolutions on Israel (Khalil 2009, 5).<sup>24</sup> As pointed out by Rempel, three other facts, taken together, inform the gap. Firstly, UN General Assembly (UNGA) Resolution 181 of 1947 contributed to the initial forced displacement of Palestinians; secondly, the non-applicability of the 1951 Convention relating to the Status of Refugees (1951 Convention) definition for the majority of Palestinian refugees; thirdly, the establishment of separate international agencies for Palestinians (Rempel 2006, 5).

UNHCR was created by UNGA resolution 428(V), on 14 December 1950. It has a mandate to provide protection to refugees worldwide and to search for durable solutions (Suleiman 2006, 10). The term refugee, under the authoritative 1951 Convention definition,<sup>25</sup> applies to any person who “[a]s a result of events occurring before 1 January 1951 and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable, or owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.”<sup>26</sup>

Of the four case studies, only Egypt had ratified both the 1951 Convention and its Protocol of 1967.<sup>27</sup> Under a 1954 agreement between UNHCR and the Egyptian government, UNHCR has assumed the responsibility for refugee status determination in Egypt. It also provides protection and assistance to refugees (Grabska 2006, 25). Nevertheless, only a small number of Palestinian refugees in Egypt are registered with UNHCR, and the vast majority are considered foreign nationals in terms of rights and entitlements and live unassisted (Grabska 2006, 26-27). According to UNHCR, Palestinian refugees are not considered ‘people of concern’.<sup>28</sup> Syria and Lebanon<sup>29</sup>

It suggests that international protection mechanisms are rare, if not absent, and leave Palestinian refugees to their fate, largely

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<sup>24</sup> As pointed out by Elsayed-Ali (2006, 13): “The Palestinian refugee problem is uniquely complex, protracted and significant. One of its peculiar aspects is that most Palestinian refugees want to return to their homes and/or lands but are unable to do so not because of a fear of persecution – commonly found in other refugee situations – but because they will not be allowed to enter Israel by the Israeli authorities.”

<sup>25</sup> Convention relating to the Status of Refugees of 1951; Available at: <http://www1.umn.edu/humanrts/instree/v1crs.htm>

<sup>26</sup> Article 1/A (2).

<sup>27</sup> Egypt had expressed a number of reservations, including on articles 20, 22 (paragraph 1), 23 and 24 of the Convention of 1951, “because these articles consider the refugee as equal to the national.” Available at: [http://treaties.un.org/Pages/ViewDetailsII.aspx?&src=TREATY&mtdsg\\_no=V~2&chapter=5&Temp=mtdsg2&lang=en#EndDec](http://treaties.un.org/Pages/ViewDetailsII.aspx?&src=TREATY&mtdsg_no=V~2&chapter=5&Temp=mtdsg2&lang=en#EndDec)

<sup>28</sup> <http://www.unhcr.org/cgi-bin/texis/vtx/page?page=49e486356>

<sup>29</sup> As noted by Said (1999, 325), “Lebanon is not a signatory to either the Convention Relating to the Status of Refugees of 1951 or the 1967 Protocol Relating to the Status of Refugees, so the safeguards and guarantees of these documents are not legally binding on Lebanon with regard to its Palestinian population.” The same applies to Syria and Jordan. This does not mean that they are not under international legal obligations towards refugees, since in all circumstances Customary International Law related to refugees is binding on all states. For more, cf. Reeds (2006).

principle of *non-refoulement*.<sup>30</sup> This memorandum allows ‘mandate refugees’ a maximum stay of six months in Jordan (Olwan 2007, 99).<sup>31</sup>

Arab states have been reluctant to accede to the 1951 Convention “because it does not address the specificity of Palestinian displacement” (Suleiman 2006, 11). It should be mentioned that UNHCR was not encouraged by the League of Arab States or by its member states to play a formal role in protecting Palestinian refugees due to concerns that UNHCR involvement might result in a decrease of international donor support to UNRWA, and for fear of weakening the ‘right of return’. As pointed out by Badil, the League of Arab States and UNHCR signed a Memorandum of Understanding, “which reaffirms the need to maintain UNRWA and its services to Palestinian refugees in its five areas of operation until a just solution for the problem of refugees is found on the basis of United Nations resolutions” (2007, 124). Additionally, the League of Arab States and UNHCR signed a cooperation agreement “that provides for periodical consultation, mutual representation, exchange of documents and information, and co-operation with UNRWA.”<sup>32</sup>

The main concern of Arab States, as pointed out by Suleiman, was “that the Palestinian refugee problem would not be adequately addressed if UNHCR's durable solutions were applied to Palestinian refugees, such as resettlement to a third country or settlement in the first country of asylum” (2006, 11). In fact, many of the articles of the 1951 Convention seem problematic if applied to Palestinians, especially article 1(C), which provides a list of cases in which the convention ceases to apply to any person falling under the terms of section A, which include, *inter alia*, where he or she “has acquired a new nationality, and enjoys the protection of the country of his new nationality.”

Article 1(D) of the 1951 Convention, which excludes some categories of refugees from the benefits of the Convention, is the most relevant paragraph.<sup>33</sup> A similar provision was inserted into article 7 of the 1950 Statute of UNHCR.<sup>34</sup> According to some, article 1(D) was inserted during the drafting process to address the specific circumstances of Palestinian refugees (Rempel 2006, 6).

The government of Jordan, although not signatory of the 1951 Convention, had signed the 1950 Memorandum of Understanding with UNHCR. Article 1(D) were the major principles of international protection, including the by states in a way that excludes

<sup>30</sup> <http://www.unhcr.org/cgi-bin/texis/vtx/page?page=49e486566>

<sup>31</sup> This is done with the exception of Palestinian refugees (1967 Palestinian refugees from Gaza) who have a temporary travel document. For more about Gazans in Jordan, see: El-Abed (2006).

<sup>32</sup> According to Kagan (2009, 428) the original text of article 1D of the 1951 Convention was proposed by Egypt, Lebanon and Saudi Arabia (Making reference to Akram and Goodwin-Gill (2000/2001, 247-248). As for the second sentence of article 1D, it was proposed by Egypt. The fact that this article was suggested by Arab states does not mean that it serves the interests of Palestinian refugees themselves. As suggested earlier, Arab states may have different goals that may oppose those of Palestinian refugees themselves. Sometimes Palestinian refugees were targeted by host Arab states, such as in Lebanon (Akram and Goodwin-Gill 2000/2001, 226) and Jordan (Arzt 1996, 44). This means that it is wrong to make the assumption about good intentions of the drafters of the 1951 Convention, including those who proposed article 1D, because this assumption may be misleading and simply not correct.

<sup>33</sup> Article 1D: “This 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 or assistance. When such protection or assistance has ceased for any reason, without the position of such persons being definitively settled in accordance with the relevant resolutions adopted by the General Assembly of the United Nations, these persons shall ipso facto be entitled to the benefits of this Convention” <http://www1.umn.edu/humanrts/instree/v1crs.htm>

<sup>34</sup> “Provided that the competence of the High Commissioner ... shall not extend to a person ... (c) Who continues to receive from other organs or agencies of the United Nations protection or assistance.” The statute is available at: <http://www.unhcr.org/3b66c39e1.html>.

<sup>35</sup> Some scholars have used the *travaux préparatoires* and official declarations and statements to determine signatories' intentions, see: Akram and Goodwin-Gill (2000/2001).

Palestinians from receiving protection or assistance from other UN agencies. A note issued by UNHCR states that, “[i]n today’s context, this excludes from the benefits of the 1951 Convention those Palestinians who are refugees as a result of the 1948 or 1967 Arab-Israeli conflicts, and who are receiving protection or assistance from the UNRWA.” (UNHCR 2002).

The international community opted to keep Palestinian refugees separate from the global refugee protection regime by maintaining a system of separate agencies to address their situation (Kagan 2009, 427).<sup>36</sup> For Said, “[t]he exclusion of Palestinians derived from the fact that their predicament differs from that of other refugees who are covered by the Convention - the Palestinians are striving to be repatriated to their homeland, not to be assimilated into the country in which they currently reside. The status of most refugees is that they are fleeing their country to win asylum, and subsequently absorption, into another country. The status of the Palestinian refugees is quite the opposite” (1999, 325). Palestinian refugees and their leadership resisted being labeled or treated as refugees because “they feared that the refugee label would render them an anonymous mass of exiles rather than recognize their national identity and desire to return” (Kagan 2009, 421).<sup>37</sup>

The 1951 Convention seems to be restrictive as regards who is to be considered a refugee, if compared, for example, to the definition of a refugee according to UNRWA.<sup>38</sup> UNRWA defines a ‘Palestine refugee’ as follows: “Palestine refugees are persons 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.”<sup>39</sup>

The UNRWA definition also covers the descendants of persons who became refugees in 1948, but it does not cover those who left Palestine in later phases. As pointed out by Takkenberg, UNRWA’s operational definition of a refugee did not change following the 1967 war (1998, 82). Nevertheless, UNRWA extended its mandate *de facto* by authorizing UNGA resolution 2252 of 1968, which was renewed on the occasion of the UNRWA annual report.

If the shortcomings of the 1951 Convention make the UNRWA definition seems more appropriate, it is understandable that the non-applicability of the 1951 Convention to Palestinian refugees seems attractive, at least from the Palestinian perspective.<sup>40</sup>

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<sup>36</sup> This exclusion was not due to the General Assembly conviction that Palestinian refugees were any less deserving of protection. On the contrary, it is maybe because of their special importance, that a separate agency, the UNCCP, was set out with the mandate to provide protection for Palestinian refugees (Akram and Goodwin-Gill 2000/2001, 194).

<sup>37</sup> Depending largely on Rashid I. Khalidi’s (1992) historical account of the way Palestinians dealt with the issue of refugeehood, fearing implications on their right of return.

<sup>38</sup> Rempel reminds us that in the early 1950s “the UN Conciliation Commission for Palestine ... prepared a working definition of a Palestine refugee to identify those persons in need of international protection. The definition would have covered all persons displaced in Palestine during the 1948 war irrespective of ethnic, national or religious origins. In light of the intractable differences between Israel, the Arab states and the Palestinians, however, the Commission’s protection mandate was greatly reduced and the definition was never adopted” (Rempel 2006, 6).

<sup>39</sup> Available at the UNRWA webpage: <http://www.un.org/unrwa/refugees/whois.html>

<sup>40</sup> If Palestinian refugees in Jordan, for example, were covered by the 1951 Convention they would lose their designation as ‘refugees’ by virtue of accepting citizenship in Jordan (Said 2005, 351-352). Granting citizenship, however, does not terminate refugee status under UNRWA regulations. They remain, as much as their descendants, refugees and entitled to return to the lands from which they were driven and to receive compensation for their dispossession.

for legal protection. As pointed out by Susan Akram, UNRWA's operational definition of a Palestinian refugee is limited to needy persons, and is thus markedly different from the protection-related definitions of a refugee found in the 1951 Convention and the UNHCR statute. "As a result ... the agency beneficiaries receive basic subsistence ... but none of the protections for a wide range of human rights and fundamental freedoms that were to be guaranteed by the 1951 Convention and UNHCR" (Akram 2002, 39).

There are, however, many reasons to believe that the Palestinian refugee issue is unique.<sup>41</sup> Arguments that are built on this uniqueness alone to support refugee exclusion from international refugee protection, or the 'exclusion' interpretation of the 1951 Convention, are not convincing.<sup>42</sup>

Palestinians are excluded from the 1951 Convention and from the assistance and protection of the UNHCR, while UNRWA is mandated only to provide assistance. The UNCCP, designed to serve a protection role for Palestinians, is *de facto* ineffective. Combined these create what Suzan Akram rightly describes as a 'legal distortion': "Palestinian refugees fall into a legal lacuna that sets them outside minimal international protections available for all other refugee groups in the world" (2002, 36). Shiblak believes that the legitimacy of the decision taken in 1951 to exclude Palestinians from the international protection regime is being increasingly challenged by scholars, jurists and advocacy groups, and that there is wider awareness of the need to make the international refugee regime relevant for Palestinian refugees and to formally acknowledge the impact of statelessness (2006, 9).<sup>43</sup>

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<sup>41</sup> Introducing the book that he had edited *Palestinian Refugee Repatriation: Global Perspectives* (London: Routledge, 2005), Michael Dumper identified at least five unique aspects of the Palestinian refugee case: the longevity combined with non-integration, the demographic scale and ambiguity, the unique legal and administrative framework, the Palestinian return is precluded by the ethno-religious nationalism of the Israeli government; and the Palestinians lack of sovereignty over any of their historic territory (Kagan 2009, 419-420). This exceptionalism was manifest in two areas, the eventual solution of their refugeehood and the way they need to be treated in exile. Historically speaking at least, the treatment of the Palestinian refugee issue as a 'case apart' was at the same time the express desire of their leadership, the scholars who studies them, and the agencies and activists that sought to assist them (Kagan 2007, 6).

<sup>42</sup> Rather, their exclusion from international protection mechanisms (due to the assistance of the UNRWA and the de facto inactive UN Conciliation Commission for Palestine (UNCCP)) is advanced as one of the reasons why they are considered as a case apart, not the other way around. In other words, it is correct to conclude, based on the premise that Palestinian refugees are excluded from the protection of 1951 Convention and from the assistance and protection of the main UN refugee agency (UNHCR), that they are treated as a case apart by host countries and Palestinian leadership as much as by UN refugee agencies. Scholars may even advance arguments in favour of due consideration for didactic purposes of this case, but not to assist them. In other words, UNRWA does not pretend or aspire to define the legal status of Palestinian refugees. This is related to its mandate, which does not provide the legal status of Palestinian refugees. However, it is wrong to use this fact (their uniqueness) to conclude that they ought to be so (i.e. they ought to be dealt with outside international refugee law, and excluded from international protection).

<sup>43</sup> Some have observed an increasing trend to reject the idea of 'Palestinian exceptionalism' (Kagan 2009), citing a book co-edited by E. Benvenisti, C. Gans, and S. Hanafi (Israel and the Palestinian Refugees 2007), and a book edited by Michael Dumper (Palestinian refugee repatriation global perspectives 2005). It is not my objective to defend those in favor or those against this trend. It is not even my objective to observe whether it is really a new or old trend, or even whether it is a trend (Kagan himself, interestingly, changed the title of his paper, initially published as a working paper at the American University of Cairo Website in 2007, from "The Decline..." to "The (Relative) Decline..." as he published it in the Journal of Refugee Studies in 2009). In any case, if this decline is a trend, then this paper fits within this trend, but only to argue that international law shall be used as basis for the treatment of Palestinian refugees in host countries. However, nothing in my argument questions the possibility of applying a different treatment as for the solution of their refugeehood (through their return, their integration in host countries, or resettlement in host countries). In other words, the two main issues related to Palestinian refugeehood should be separated, the first being the way host states should deal with them (and my argument goes in favor of using international law as basis of this treatment, as much as other refugees) while at the same time arguing for the possibility of envisaging a different way for the resolution of their refugeehood (the maintenance of the right of return). Interestingly, the Palestinians are not the first group to be deliberately blocked from integration in host countries, but also the Spanish Republicans (as appears clearly in the preamble of the Constitution of the International Refugee Organization of 1946, available at:

UNRWA has no mandate of legal protection, only one of assistance.<sup>44</sup> That assistance is limited by the meeting of certain conditions, including the need to be in one of its areas of operation.<sup>45</sup> Therefore, the Convention and the UNHCR mandate are relevant for Palestinian refugees for two reasons. Firstly, UNRWA presence and assistance is limited to its five areas of operation: Jordan, Lebanon, Syria, the West Bank and the Gaza Strip. Palestinian refugees in Egypt, for example, are not excluded by Article 1(D) because they do not receive protection or assistance from any other UN agency. Secondly, many Palestinian refugees residing in the five UNRWA operational areas are not UNRWA registered because they do not fall within its operational definition. As a result, they do not fall under its mandate, though assistance is sometimes granted on a humanitarian basis.

Regardless of the intention or interpretation of Article 1(D), the ‘protection gap’ demonstrates the exclusion of Palestinians from 1951 Convention protection because they are already assisted by UNRWA. UNRWA is mandated to provide assistance, however, not legal protection. The ‘legal distortion’ I believe is in making this exception a rule, and concluding that Palestinians who are theoretically assisted by UNRWA are always outside the mandate of the 1951 Convention,<sup>46</sup> or that all Palestinians are outside its mandate. This is discriminatory and has no basis in the 1951 Convention itself. According to the second sentence of article 1(D), “[w]hen such protection or assistance has ceased for any reason without the position of the refugees being definitively settled in accordance with relevant resolutions adopted by the General Assembly of the United Nations, these persons shall *ipso facto* be entitled to the benefits of this Convention.” This paragraph may be interpreted as mandating UNHCR to serve as an alternative, in order to ensure continuity of protection for Palestinian refugees (Suleiman 2006, 10). It also means that the 1951 Convention shall apply on those Palestinians who had their habitual residence in one of the five areas of operation of the UNRWA, but who are no more in a position to receive assistance from UNRWA.<sup>47</sup>

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<http://www.unhcr.org/refworld/type,INTINSTRUMENT,UN,,3ac6b37810,0.html>), (Kagan 2007, 6). The reason why I distinguish between both issues (the way refugees are dealt with in host country and their right of return) is that the later needs to be dealt with as a political issue, i.e. it may be subject to different options or solutions, while the former needs to be dealt with as a legal issue, i.e. it needs not to be subjected to political preferences. Saying that the right of return is a political issue does not mean that it is not a legal right, since various UN resolutions and other international law instruments can form a basis for such a right. What I simply say is that it was possible in abstract to opt for different ways to settle the issue of Palestinian refugeehood, and the settlement went in the direction of their return. The existence of this option is what makes it a political issue. On the contrary, dealing with refugees in host countries is a legal issue, in that it is related to individuals’ entitlement to rights and freedoms that cannot and should not be subjected to political manipulation. Besides, in the case of the right of return, it is possible for Palestinian refugees, individually to renounce this right, largely because, again, it is a political issue. While in the case of the way they are dealt with, they cannot renounce on their treatment in a specific way, because those are legal rights *stricto sensu*. Finally, there is a recent trend to distinguish between a collective right of return and individual right of return (Kagan 2007, 10-11), the first targeting the possible state of Palestine, to be established side by side to Israel, while the other deals with individuals’ right to return to their place of origin (making part of the now state of Israel). This is what makes it a political issue. While the rights and freedoms of Palestinian refugees in host countries need to be dealt with on individual basis, as legal rights.

<sup>44</sup> Although a distinction is made in this paper, for didactic purposes, between legal protection and other kind of assistance, I do share the conviction that the protection that Palestinian refugees need is multilayered. Its starting point is legal, but it cannot be separated from opportunities for their economic self-sustenance and social development. Otherwise, legal protection becomes void of meaning and effectiveness (Grabska 2006, 53).

<sup>45</sup> Palestinian refugees, according to the above definition, are entitled to assistance, but UNRWA services are not provided for all of them. Palestinian refugees need to satisfy three other conditions: 1) Living in the UNRWA area of operations, 2) Being registered with the Agency, 3) Being in need of assistance.

<sup>46</sup> Such as in the case of Palestinian refugees, who happen to be in third countries holding a refugee travel document from Egypt, Jordan, Lebanon, or Syria but are denied re-entry to the country of their first refuge or any other country, although registered with UNRWA. This has happened in Germany for example (Akram and Goodwin-Gill 2000/2001).

<sup>47</sup> Such as the case of Palestinian refugees who are holding refugee travel document of Jordan, Syria, and Lebanon, but who are no longer able to return to the country of their first refuge, or to establish a legal residence in any other country. Such

This holistic, or integrated, analysis of Article 1 is also the position adopted by UNHCR (2002, 1). Most importantly, in countries where UNRWA does not operate, the only international agency available to Palestinian refugees, as it is for other refugees, is UNHCR. Even in countries of UNRWA operation, many undocumented refugees may indeed not be in a position to enjoy UNRWA assistance, or access any other international agency. This may better explain the reticence of the Jordan, Syria, and Lebanon (out of five total UNRWA areas of operation) in ratifying the convention.<sup>48</sup>

#### 4. The Lack of Regional Protection Mechanisms

Given the lack of international protection, regional mechanisms, such as those presented through the League of Arab States, may provide an alternative.<sup>49</sup> Two approaches have largely characterized the response of Arab States to the Palestinian refugee issue since 1948. Firstly, there show solidarity with Palestinians, hosting refugees and granting them rights similar to citizens, but without naturalizing them. Secondly, states work to preserve Palestinian identity through the preservation of the status of refugees. These not-necessarily-compatible approaches were reflected in the Casablanca Protocol, and successive resolutions of the League of Arab States (Shiblak 1996, 38-39).<sup>50</sup> International Law and the League of Arab States do not require that host states grant citizenship, and few Palestinian refugees have acquired citizenship in Arab host states (Badil 2007, 126).<sup>51</sup>

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countries that deny the applicability of the 1951 Convention, or any other national legislation regulating asylum seekers, on the basis of the fact that those Palestinians come from the areas of operation of the UNRWA, actually make an erroneous interpretation of Article 1D. For more, see (Akram and Goodwin-Gill 2000/2001, 219).

<sup>48</sup> Kagan (2009, 428) reached this same conclusion: “My reading of the plain text of article 1D is that once UNCCP became ineffective the exclusion applied only to those who had actual access to UNRWA assistance. Thus, I would argue, the ipso facto inclusion clause today would apply only if a refugee first has and then loses access to UNRWA. In my view, UNHCR does not have a mandate over most Palestinians in UNRWA’s area of operations (i.e. Lebanon, Syria, Jordan, and the Occupied Palestinian Territories). The author explicitly rejected the thesis defended by Susan Akram (in her chapter “Reinterpreting Palestinian Refugee Rights under International Law” in the book edited by Naseer Aruri: *Palestinian Refugees and the Right of Return*, London: Pluto Press, 2001, pp.165-194.). In fact the thesis advanced by Akram goes further, arguing that the UNCCP’s demise gives UNHCR a mandate over all Palestinian refugees. Accordingly, for her, “if UNCCP has failed to fulfil its protection mandate, that function must be fulfilled by UNHCR” (Cited in Kagan 2009, 428).

<sup>49</sup> Egypt is also part of African Union. The 1969 Convention Governing Specific Aspects of Refugee Problems in Africa applies includes provisions for residency, travel documents, and voluntary repatriation (Badil 2007, 123). The convention, however, does not apply on all Palestinian refugees since it applies only to refugees originally from an African state or on those who have a travel document from an African country (from Egypt, for Example) enjoy the protection given in the Convention. The Convention is available at:

[http://www.africa-union.org/Official\\_documents/Treaties\\_%20Conventions\\_%20Protocols/Refugee\\_Convention.pdf](http://www.africa-union.org/Official_documents/Treaties_%20Conventions_%20Protocols/Refugee_Convention.pdf)

<sup>50</sup> The response of Arab states, it should be noted, seems to fit perfectly within the perspective of ‘temporality’; i.e. the presence of Palestinian refugees in host states, within the ‘right of return’ doctrine, was, and needed to be, temporary. Why then integrating Palestinian refugees, if their presence was perceived to be temporary? For more about Arab states attitudes towards granting citizenship for Palestinian refugees, see Akram and Goodwin-Gill (2000/2001, 222).

<sup>51</sup> Salam (1994, 26) suggested that “granting all Palestinians remaining in Lebanon the status of permanent residency cannot be seen as preparatory to the granting of Lebanese citizenship. The granting of permanent status would be a *political* solution to a *collective* problem. Naturalization, on the other hand, is an *individual* question to be judged on a case-by-case basis; each application would have weighed on its own merits, and would have to satisfy the conditions for naturalization set down in the citizenship laws in force, which are bound to be strict in view of the special geographic, economic, and demographic characteristics that have made Lebanon for well over a century a land of emigration rather than of immigration.” I tend to agree with this analysis because restricting access to citizenship for refugees or foreign nationals in general is the state’s exclusive power and prerogative. Being granted citizenship, or not, becomes irrelevant whenever there is residency status without restrictions in civil, political and social rights. In some cases, as in the case of Lebanon, it may be considered the best solution to accommodate both the needs of Palestinian refugees, and the state, i.e. human rights prerogatives and national security needs. However, such a measure (limiting access to nationality) should not be justified by political



The most important initiative, but certainly not the only one,<sup>52</sup> undertaken by the League was the ‘Casablanca Protocol’ of 1965.<sup>53</sup> This protocol is rightly considered to be one of the earliest regional experiments in refugee protection. Rights accorded to Palestinian refugees under the Casablanca Protocol are fewer and narrower in scope than those provided under the 1951 Convention (Suleiman 2006, 11).<sup>54</sup> However, as pointed out by Badil, “some of its provisions grant greater rights in theory than those set out in the 1951 Convention” (2007, 123-124).<sup>55</sup>

The Casablanca Protocol was adopted by a majority decision of the Council of the Arab League. This means that its contents are only binding upon those member states willing to accept them, either in full or subject to reservations (Takkenberg 1998, 144).<sup>56</sup> Two main elements have determined the treatment of Palestinian refugees in host Arab states: granting Palestinian refugees full citizenship rights, but denying them naturalization, and issuing them Refugee Travel Documents in order to maintain their refugee status (Shiblak 2006, 8).

The Protocol calls for granting Palestinian refugees equal treatment as nationals with regards to work. Palestinians should have the right to leave the country and return to it, to enter another Arab country and leave it. Palestinians shall be provided valid travel documents, and

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considerations, but rather on legal grounds; besides, it should be regulated by law and not be dependent on the discretion of the administrative authorities and it should be enforced by state authorities under the supervision and the control of the judicial authorities. In addition, such measures cannot be justified if undertaken exclusively against refugees, or against a specific category of refugees, based on nationality, religion, or sectarian affiliation. In other words, even in the case of national interest, discrimination is prohibited. What is more, if restricting access to nationality through long residence may be understandable in the context of forced migration and irregular entry (at least from the point of view of national regulation concerning entry of foreign nationals), it is less justifiable when it is related to access to nationality through family unification. Palestinians though experience the exact opposite. Most countries have special provisions prohibiting the naturalization of Palestinians, provisions based on political grounds and in accordance with Arab League resolutions. Furthermore, marriage of a male Palestinian to a female citizen of a host country does not constitute grounds for naturalization or special residency rights either for the husband, who is not a national, or any children (Shiblak 1996, 39). This is the case of Lebanon for example. Under the Lebanese law, “nationality can only be passed on by the father (paternalistic application of the principle of *jus sanguinis*)” (Amnesty International 2006, 10). However, many of the Palestinians in Lebanon who obtained Lebanese citizenship between 1950 and 1972 were cases of Palestinian women (and their children) who were married to Lebanese husbands (Arzt 1996, 47). In Syria it is possible for a female Palestinian married to Syrian national to obtain the Syrian citizenship, but not vice versa (Arzt 1996, 46; Akram and Goodwin-Gill 2000/2001, 224). In Some cases (such as in the case of Palestinian refugees in Egypt and for the Gazans in Jordan) access to nationality of host country is denied for Palestinian women (and their children) even when married to a citizen male. In brief, discourses related to the restriction of Palestinian refugee rights and freedoms are often coupled with political arguments rather than legal ones.

<sup>52</sup> Other resolutions have been adopted by the League of Arab States such as: Resolution 424, 14 September 1952, related to the reunification of divided families; Resolution 714, 27 January 1952, related to the issuance of a standard travel document (Badil 2007, 123-124). However, no uniform identity paper or travel document has ever been designed or issued by the League of Arab States. Travel documents are issued by individual member states. Resolution 2600 of 1970 states that the acquisition of another nationality would not trigger the cessation of refugee status in LAS member states.

<sup>53</sup> The text of Casablanca Protocol and the reservation expressed by states are available at: [http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=country&docid=460a2b252&skip=0&category=LEGAL&coi=S\\_YR&searchin=title&display=50&sort=date](http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=country&docid=460a2b252&skip=0&category=LEGAL&coi=S_YR&searchin=title&display=50&sort=date)

<sup>54</sup> Takkenberg (1998, 142-143) provides an interesting comparison between the Casablanca Protocol and the 1951 Convention concerning travel documents. He mentions, for example, that contrary to the convention, the Casablanca Protocol leaves responsibility for renewing or re-issuing travel documents to first refuge states.

<sup>55</sup> In support of this claim, Badil (2007, 123-124) provides two examples. First, in the arena of self-employment and employment in the liberal professions, the Casablanca Protocol provides for the same treatment as that given to nationals, whereas the 1951 Convention only provides for treatment as favourable as possible, and not less than that accorded to resident aliens. Second, Article 26 of the 1951 Convention provides for freedom of movement within the host country, whereas Articles 2 and 3 of the Casablanca Protocol also provide for freedom of movement between Arab states.

<sup>56</sup> Only seven member states have ratified the Protocol without reservation, including two of the major host countries: Syria and Jordan. Egypt ratified the Protocol without reservation, but according to Shiblak (2006, 8), once fully committed, effectively withdrew from the Protocol. Lebanon has endorsed the Casablanca Protocol with reservations expressed on three articles out of five (Takkenberg 1998, 374).

the holders of those documents shall be granted the same treatment as nationals in terms of the issuing of visas. The Casablanca protocol was clear about the fact that Palestinians should keep their nationality.<sup>57</sup>

A special resolution on the treatment of Palestinians in Arab countries was adopted by the Council of Arab Ministers of the Interior in December 1982 (Takkenberg 1998, 147). According to that resolution, “[t]he Travel Document for Palestinian Refugees issued by any Arab country is to be accorded the same treatment as the passport of the citizens of that country,” and “the bearer of a Travel Document for Palestine refugees shall be accorded the same treatment as nationals of the state issuing this document, as regards freedom of residence, work and movement.”

Those constituted relatively high standards for the treatment of Palestinians, at least on the theoretical level.<sup>58</sup> Since 1991, and the PLO’s position on the Iraqi invasion of Kuwait, the standards decreased (Badil 2007, 125). In fact, the League of Arab States adopted Resolution 5093, which “authorized states to treat Palestinian refugees in accordance with domestic law rather than under the provisions set forth in the 1965 Protocol” (Badil 2007, 123-124). The resolution weakened respect for the Casablanca Protocol. Since then, restrictions of residency rights, freedom of movement, employment, property ownership rights, and access to government services are now imposed on Travel Document holders in all Arab countries. In addition, education, health, and social benefits for Palestinians are increasingly being curtailed, if not disposed of outright (Shiblak 1996, 42).<sup>59</sup>

## 5. The status of Palestinian refugees in host Arab states: a matrix?

The ‘protection gap’ and the ‘legal distortion’ mean one thing in certainly: Palestinians lack international protection, and are largely dependent on the domestic legal systems of concerned states. The national law of host countries matters for Palestinian refugees, as legal status matters for the realization of rights and freedoms. In other words, legal status matters because it is related to the ‘right to have rights’ (Shiblak 2006, 9). A clarification needs to be made, though. While, in this paper, I talk largely about ‘legal status’ it is maybe more appropriate to use the plural of status. Since the distribution of rights depends on national laws, there is definitively not ‘one’ legal status, but rather various legal statuses (depending

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<sup>57</sup> Interestingly, as outlined by Takkenberg (1998, 141), the Casablanca protocol contains a change in language, from ‘Palestinian refugees’ to ‘Palestinians’. He argues that this change is “apparently initiated by the realization that the legal position of non-refugee Palestinians is much the same as that of those who had become refugees in 1948-49. Both categories of persons being largely composed of *de facto* or *de jure* stateless persons, they are equally in need of the status provided for in the Protocol.”

<sup>58</sup> It is an improvement, at least in theory. However, in reality, this resolution was not necessarily implemented. According to Badil (2007, 125), investigations conducted by the League of Arab States Supervisors Conference have concluded that the implementation of the standards set up by the League for the treatment of Palestinians in member states is poor. According to Shiblak (1996, 42), Arab states had been annulling on an individual basis and through administrative decree the rights accorded to Palestinians under the Casablanca Protocol.

<sup>59</sup> Takkenberg (1998, 149), after having referred to Shiblak’s point of view, considering Resolution 5093 as an official revocation of the Protocol, argued, *a contrario*, that it is “questionable whether member states are able by mere recommendation to nullify an international agreement which was officially ratified by the member states or to which the member state became bound by other means... Whatever the formal position may be, it is obvious, however, that the spirit to live up to the obligations embodied in the Protocol has been severely weakened.” The present author tends to agree with this last position.

on the state), and various types of ‘Palestinians’ (depending on the conditions of refugeehood).

The most appropriate metaphor to describe this plurality is not a ‘map’, but a matrix, in which legal status is not defined on general and abstract norms, but largely dependent on contingent conditions related to the Palestinians concerned. Distributing rights and freedoms according to this matrix inevitably means that rights and freedoms may be more easily subject to host country manipulation. This manipulation could depend on government politics and local concerns on the one side, and the unstable relationship host countries have with the PLO on the other.<sup>60</sup>

The first criterion for the determination of a legal status is related to the idea of the ‘first refuge’.<sup>61</sup> In order to be a Palestinian refugee in Jordan, Lebanon, Syria or Egypt, the person needs to satisfy the terms of the UNRWA definition and/or those imposed by the states, which entitle certain (not all) Palestinian refugees to refugee status. This depends largely on where they happened to be able to flee in 1948, and, in some cases, in 1967.

This status sometimes involves favourable treatment,<sup>62</sup> such as becoming nationals<sup>63</sup> or being treated as nationals.<sup>64</sup> In countries, are treated as foreign residents.<sup>65</sup> In these cases, Palestinian refugees are not only not granted rights as citizens (Reeds 2006, 370-371), but face even more restrictions than other foreign residents. In all cases, however, they are not treated in line with other refugees.<sup>66</sup>

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<sup>60</sup> Not to mention an almost forgotten element in this formulation, that is the correlation between the kind of rights and freedoms granted to Palestinian refugees in the host countries with those enjoyed by citizens. The political and legal systems can be, at best, described as engaging in their first steps towards democracy, rule of law, and respect of human rights and freedoms (Grabska 2006, 52). It is noteworthy that Jordanian women married to Gazans do not have the legal right to transmit citizenship to their children, as is the case with any foreign father. These documents, thus, do not entitle their holders to the rights recognized by Jordanian citizens, such as the right to health care, education in public schools, entry to professions and other rights exclusively reserved for Jordanian citizens.

<sup>61</sup> As mentioned earlier, the first refuge is particularly relevant for Palestinians for that it determine the country responsible for re-issuing travel documents for them.

<sup>62</sup> Such as in Syria, and largely for Palestinians in Jordan, see: (Badil 2007, 125).

<sup>63</sup> Such as the case of ‘most’ Palestinians in Jordan. I say ‘most’ because there is a distinction between those Palestinians that flow from Palestine following 1948 Nakba, and others who fled in 1967 and arrived to Jordan. The first group obtained nationality, while the second group, a distinction is done between those who fled West Bank (deemed internally displaced because West Bank was part of Jordan) and those who fled from Gaza Strip, until then under Egyptian administration. The second group did not have access to nationality, while the first had had access to nationality. Within the later group, however, a further distinction is done based on place of residence, especially following the 1988 decision to sever legal and administrative liaison with the West Bank, undertaken by late King Hussein.

<sup>64</sup> Palestinians in Syria are treated as nationals, with some exceptions though. As pointed out by Reeds (2006, 374), “Syria passed laws giving Palestinians a status equal to that of Syrian nationals. It is not necessary for Palestinians to acquire a permit in order to work, and they are permitted to own more than one commercial enterprise. They may travel freely and settle anywhere in the country. Palestinians are eligible to receive free secondary education from government schools and are granted equal access to Syrian universities.” The same author, however, outlines some restrictions imposed on Palestinian refugees “which Syrian nationals are not burdened. For example, Palestinians residing in Syria may not vote, and they are not permitted to own multiple homes. In addition, despite the fact that they have not been offered citizenship, Palestinian refugees are subject to compulsory service in the Syrian army.” Then she concludes, “Palestinian refugees in Syria enjoy equality with Syrian citizens in most aspects of their lives and have achieved a significant degree of integration.”

<sup>65</sup> Such as in Egypt (for more about Palestinians in Egypt, see: (El-Abed 2006)) and Lebanon; according to Takkenberg (1998, 162), Palestinians in Lebanon are in principle subject to the same legal status as other foreign nationals, with the exception of the period between 1969 and 1987 which was to a limited extent regulated under the Cairo Agreement and its annexes.

<sup>66</sup> Regardless of the opinion one may have, whether or not this exclusion is negative or positive for Palestinian refugees, it is a matter of fact that Palestinians are not treated as refugees in host Arab countries. Based on the empirical, historical data I used in this paper, it appears that this exclusion was at the end of the day negative in terms of protecting Palestinian refugees. Although labeled for long time as a special case, “[Palestinian refugees] are increasingly asking to be recognized as just refugees, full stop” (Kagan 2009, 434).

There is no 'one' legal status, but at least<sup>67</sup> four, one for each of the four countries of concern in this paper. In each country there are different sub-categories, according to different criteria, set out through the discretionary power of the states. Most importantly, however, the plurality of legal status means that satisfying UNRWA conditions does not make them 'one category' of persons, governed by the same set of rules. Although registration at UNRWA may be necessary as a condition for the recognition by host state, it is only one of many other conditions.

In Egypt, where UNRWA is not present, it is only the host state that sets out the conditions for recognizing a Palestinian refugee and granting him or her certain rights. A Palestinian refugee registered by UNRWA in Lebanon has a different legal status from one registered by the same organization in Jordan or Syria, and vice versa.<sup>68</sup> 'Extra' restrictive measures undertaken with regards to Palestinian refugees explains why countries known for better treatment of Palestinian refugees (such as Syria and Jordan) had little to offer Palestinian refugees from Iraq, for example, following the invasion in 2003 and persecution of Palestinians, who remained stuck on the borders and had to be resettled in other countries (Al-Khalidi, Hoffmann and Tanner 2007, 15).<sup>69</sup>

### *Egypt*

In Egypt, legal texts and national institutions dealing with foreign nationals are both, in principle, applicable and accessible to Palestinian refugees (Takkenberg 1998, 150-154). Law No.89/1960<sup>70</sup> provides that there are three residency categories for foreign nationals in Egypt, including Palestinians. The law provides that entry to or exit from Egypt is granted only to those holding passports or travel documents issued by an entity recognized by the Egyptian authorities, and those documents should enable their holder to return to the country of issue. The Ministry of the Interior has discretionary power to exempt any foreign national or category of foreign national from the application of (part of) the law, however.

There are three types of residence permits in Egypt. Applicants satisfying conditions for special residence are granted a ten-year permit, ordinary residence a five-year permit, and temporary residence a one-to- three-year permit.<sup>71</sup>

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<sup>67</sup> I say 'at least' because there may be different legal statuses according to the concerned Palestinian refugees (in Jordan for example, there is a difference between Palestinian refugees of 1948 and those who arrived from Gaza Strip in 1967). Besides, I say 'at least' because, historically speaking, the way Palestinian refugees issue is regulated may be different (for example the Palestinians in Egypt before and after the assassination of Sadat).

<sup>68</sup> Syria had expressly regulated this issue, as will be presented in the coming paragraphs.

<sup>69</sup> The Palestinians of Iraq are about 30,000, mostly Muslim Sunnis, are not registered with a UN agency. They were caught in sectarian violence and suffered particularly because of preferential treatment, real or perceived, under Saddam. Many Palestinians of Iraq came to Syria between 2003 and 2005 and settled in northern Syria. In early 2006 Syrian government started to apply a more restrictive policy towards Palestinians of coming from Iraq. In April-May 2006, UNHCR, the International Organization for Migration and UNRWA organized a convoy to Syria for Palestinians who had been stranded on the Iraqi-Jordanian border, where Jordanian authorities had refused them entry. After negotiations with the Syrian government, these people were allowed into Syria and then settled in a camp at al-Hol, near Hasaka, in north-eastern Syria. They have access to some local services such as schools. Hamas seemed to play a proactive role in resolving the deadlock around the Palestinian refugees blocked between Iraq and Jordan (Al-Khalidi, Hoffmann and Tanner 2007, 14).

<sup>70</sup> Law No.89 relating to the entry and stay of foreigners and their exit from Egypt of 18 Mar. 1960. Official Journal No.71, dated 24 Mar. 1960, amended by law No.49/1968, 124/1980, and 100/1983. In a written statement presented by the Government of Egypt to the Committee on Migrant Workers during its Sixth session (23-27 April 2007), it is stated that illegal migration are governed by Law No.89/1960 as amended by Law No.99/1996. See: [http://www2.ohchr.org/english/bodies/cmw/docs/CMW.C.EGY.Q.1.Add.1\\_ar.pdf](http://www2.ohchr.org/english/bodies/cmw/docs/CMW.C.EGY.Q.1.Add.1_ar.pdf)

<sup>71</sup> There is discordance between authors concerning temporary residence. Badil (2007, 126) mentions that it is from one to three years. Takkenberg (1998, 152), Reeds (2006, 373) and many others mention that permit validity is from one to three

Palestinian refugees, who do not satisfy conditions for special and ordinary permits, acquire a temporary permit. According to Badil (2007, 126-127), the majority of Palestinians in Egypt fall within the third category; those few Palestinians recognized as refugees by UNHCR are granted six-month renewable residence permits.<sup>72</sup>

At one time, Egypt fully implemented the 1965 Casablanca Protocol and treated Palestinians on an equal footing to Egyptians. This happened particularly during the Nasser era. In the 1970s, things changed and privileges were gradually abolished.<sup>73</sup> Many new decrees were put in place. Palestinians needed to pay fees to have their visas renewed, and they were required to show proof of having changed money and spent a minimum amount in hard currency per month. Following the Gulf crisis in 1990, their situation worsened.<sup>74</sup> Since 2007 the Rafah crossing point has systematically closed, and the Gaza Strip has been under siege.

### *Jordan*

Jordan has been exposed to Palestinian migratory waves consistently since the creation of the state of Israel in 1948. The country received wave of Palestinians after the 1967 war, during which Israel captured the remaining parts of historic Palestine: the West Bank and the Gaza Strip. Most of the first group were granted Jordanian citizenship under a law promulgated while the West Bank was still under Jordanian military administration.<sup>75</sup> For the second group a distinction is made between those Palestinians who fled the West Bank during the 1967 Arab-Israeli War and those who had been living in Jordan but were considered internally displaced persons because they moved from one part of the country to another, i.e. from the west to the east of Jordan. These people were entitled to a five-year

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years. The author did not find in the literature any information supporting what appeared in Badil's publication. On the contrary, information collected by the local researcher from official resources talks about one to three years of validity. Certainly, it is more logical to distinguish temporary residence from ordinary residence, otherwise there would be no need to create two different categories of residency. Takkenberg (1998, 152) mentions that special residence were issued for Palestinian refugees, residing in the 'Northern Region', which during the period of the United Arab Republic (1958-1961) referred to Syria. Abu Seada (2007, 44) refers to special residence as granted, *inter alia*, to Palestinian refugees.

<sup>72</sup> Officially, those refugees reported by UNHCR should be granted a three years residency permit:  
[http://www.mfa.gov.eg/MFA\\_Portal/Templates/Generic\\_Content\\_Unit.aspx?thisURL=&NRORIGINALURL=%2fMissions%2fUSA%2fNewyork%2fConsulate%2fen-GB%2fServices%2fRules%2band%2bRegulations%2f&NRCACHEHINT=Guest#Residence%20in%20Egypt%20for%20Foreign%20Nationals](http://www.mfa.gov.eg/MFA_Portal/Templates/Generic_Content_Unit.aspx?thisURL=&NRORIGINALURL=%2fMissions%2fUSA%2fNewyork%2fConsulate%2fen-GB%2fServices%2fRules%2band%2bRegulations%2f&NRCACHEHINT=Guest#Residence%20in%20Egypt%20for%20Foreign%20Nationals)

<sup>73</sup> According to Arzt (1996, 56), the mild privileges enjoyed by Palestinian refugees in Egypt (work in public sector jobs, access to governmental schools, etc.) came to an end "when Palestinian students and the PLO demonstrated against Anwar Sadat's 1977 trip to Jerusalem and the organization and other Arab states "froze" their relations with Cairo. The status of Palestinians was downgraded from "residents" to "foreigner," who must pay hard currency to obtain permission to remain."

<sup>74</sup> As noted by Takkenberg (1998, 153): "Renewal of residence permits became much more difficult. Palestinian children were no longer allowed into government schools and tuition fees for higher education increased dramatically and, unlike before, were due in hard currencies." The same author (1998, 154) explains how humiliating the procedure was for escorting those holding an Egyptian Travel documents willing to return to the Gaza Strip, for whom a transit visa of 72 hours was issued, in order to prevent them from staying on illegally in Egypt. Those holding an Egyptian Travel Document, were no longer able to return to the Gaza Strip, and were denied both entry and transit visas. Those who managed to reach Cairo Airport without a visa were detained for long periods. The same applies for those who had been living in Egypt for a long time. In particular, when Kuwait expelled hundreds of thousands of Palestinians in 1991, Egypt refused to recognize valid Egyptian-issued documents held by about 25,000 Gazans, who had been working in Kuwait and out of Gaza Strip for many years (Akram and Goodwin-Gill 2000/2001, 223).

<sup>75</sup> According to this law, a Jordanian citizen is: "...Any person with previous Palestinian nationality except the Jews before the date of May 14, 1948 residing in the Kingdom during the period from December 20, 1949 and February 16, 1954" (Article 3). The Jordanian Nationality Law No.6/1954 is available in English at:  
<http://www.unhcr.org/refworld/country,LEGAL,,JOR,,3ae6b4ea13,0.html>

passport and full citizenship rights since they were citizens of Jordan prior to the war.<sup>76</sup> Unlike Palestinians who came from the West Bank, the ex-residents of the Gaza Strip living in Jordan do not qualify for citizenship, and they are only given renewable two-year passports, valid for the purpose of potential travel to countries willing to accept the document. These documents are no more than residence permits, and do not connote citizenship or any of its inalienable rights. They are provided for the purposes of identification and travel.

In July 1988, late King Hussein ordered all legal and administrative links with the West Bank be severed. This decision, which did not amount to a law, was followed by instructions from the Prime Minister to implement it and stripped Jordanian citizenship from those Jordanians of Palestinian origin who had been resident in the West Bank before 31 July 1988.<sup>77</sup> A dual card system was created to facilitate a distinction between Palestinian citizens living in Jordan and those living in the occupied West Bank.<sup>78</sup>

Place of residence determines whether an individual is a Jordanian citizen or has become a Palestinian. Article 2 of the Instructions stipulates that “every individual who was residing in the West Bank before the 31<sup>st</sup> of July 1988 is a Palestinian, not a Jordanian citizen.” This stipulation has been expanded to include individuals who obtained passports issued by the Palestinian Authority with the approval of Israel, individuals working in Palestinian Authority institutions, individuals who hold “family reunion” documents issued by the Israeli authorities, and individuals who had been residing in the East Bank before the issuance of the Instructions (NCHR 2006, 12).

As a consequence of the Royal Decree, Jordanians of Palestinian origin residing in the West Bank before 31 July 1988 lost their Jordanian nationality without having recourse to Palestinian nationality due to the non-existence, from a legal point of view, of a Palestinian state that could grant Palestinian citizenship.<sup>79</sup>

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<sup>76</sup> In 1988, late King Hussein ordered the severing of all legal and administrative links with the West Bank, a distinction was done between those living in Jordan proper and those living in the occupied West Bank. The residence at that time determined who is to be considered a Jordanian citizen and who is to be considered Palestinian. The Palestinian nationality is deemed to larger categories of persons, including those (a) individuals who obtained passports issued by the Palestinian Authority with the approval of Israel; b) individuals working in Palestinian Authority institutions; c) individuals who hold “family reunion” documents issued by the Israeli authorities; and d) individuals who had been residing in the East Bank before the issuance of the Instructions (NCHR 2006, 12).

<sup>77</sup> Available at: <http://www.unhcr.org/refworld/country/LEGAL,,JOR,,43cd04b94,0.html> (accessed on 11 September 2008). It is estimated that over one million people lost their Jordanian citizenship as a result. According to the provisions of the Jordanian Constitution and the Jordanian citizenship law, however, they were Jordanian citizens (Olwan 2005, 156). Instead, these people were deemed to be Palestinians rather than Jordanians. It is worth mentioning that the Israeli-Jordanian peace treaty (26 Oct. 1994) refers to the West Bank as ‘territories that came under Israeli military government control in 1967’ (Takkenberg 1998, 156).

<sup>78</sup> It should be noted that some refer to earlier dates for that measure that goes back to 1983: “Palestinians who were living in and citizens of Jordan on that date were provided with a yellow card, which represents full residency and citizenship status. Green cards were provided to Palestinians living in the occupied West Bank and to those who left the occupied West Bank after 1 June 1983. Green card holders have no right of residence in Jordan. They are, however, entitled to visit Jordan for short periods” (Badil 2007, 154-155). For more about the dual card system since 1983, see also: (Arzt 1996, 43; Akram and Goodwin-Gill 2000/2001, 223)

<sup>79</sup> The legality of the Jordanian decision and the Instructions issued therewith has been questioned. But the legal concerns surrounding this issue are beyond the scope of this work. It is sufficient to note that both are administrative decisions and that deciding the status of citizenship on the basis of an administrative decision is a violation of the provisions of Article five of the Jordanian Constitution and citizenship law number six of 1954, both of which do not include any provision that allows for the withdrawing of citizenship by a simple administrative decision. It is to be regretted that lawsuits against decisions taken by the Minister of the Interior, or any official, in matters related to citizenship, before the High Court of Justice, are not resolved, in general, to the satisfaction of claimants (NCHR 2006, 28). The Jordanian High Court of Justice ruled in January 1991 that the severance of legal and administrative ties with the West Bank constituted “an act of state”,

living on the East Bank of the Jordan or elsewhere before 31 July 1988 remain Jordanian citizens. As such, they are entitled to a “family book”, a national number, and a Jordanian passport for five years. They are also issued with a yellow identification card by a special directorate of the Ministry of the Interior called the Department for Inspection and Follow-Up. The yellow card distinguishes those Jordanians of Palestinian origin from other Jordanians. This card allows them to travel to the West Bank over the Allenby Bridge crossing.

However, West Bank residents who were living in the occupied West Bank before 31 July 1988 have no right to Jordanian citizenship. Instead they are entitled to acquire temporary Jordanian passports (Akram and Goodwin-Gill 2000/2001, 222). King Hussein made a speech on 7 August 1988 in which he stated that, ‘passports will remain until such time as the Palestinian state is hopefully created and then obviously Palestinians will have their own passports representing them as citizens of that state’ (Takkenberg 1998, 157).

These Passports were valid for two years, until 1995 when they began being issued for five years. Visas were required to remain in Jordan, and those West Bankers already residing in Jordan suffered restrictive measures (Shiblak 1996, 41). West Bank residents are also issued a green identification card by the Jordanian Ministry of the Interior, allowing them to visit Jordan and return to the occupied West Bank, but not to reside in Jordan. The two documents are issued solely as travel documents and they do not constitute an attestation of citizenship (Arzt 1996, 43).

Palestinians in the West Bank are not Jordanians and, as such, they have no right to enter Jordan.<sup>80</sup> More and more Jordanians of Palestinian origin are deprived of their Jordanian citizenship on the basis of the administrative disengagement decision, with no consideration being given to constitutionality or legality.<sup>81</sup>

Following the decision, Palestinians who were

### *Lebanon*

In Lebanon Palestinians can be divided into three different categories: those registered at UNRWA (and with the Lebanese authorities),<sup>82</sup> those with identity cards issued by the Lebanese authorities but not registered by UNRWA (Elsayed-Ali 2006, 13), and those who are neither recognized by the Lebanese authorities nor under UNRWA’s mandate. Only the

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and as such it lay beyond its jurisdiction. While the Court acknowledged that the petitioner held a Jordanian passport, it emphasized that ‘not every holder of a Jordanian passport is necessarily a citizen of Jordan’ (Takkenberg 1998, 156).

<sup>80</sup> From time to time Jordan makes it harder for Palestinians, who were for decades granted free entry, to enter from the West Bank. On several occasions, the Jordanian authorities have turned Palestinians with no permits from the Interior Ministry away at the Allenby Bridge near Jericho, the last remaining exit and entry point for West Bankers to leave Israeli controlled territory. The blocking of Palestinian entry into Jordan was a reflection of Jordan’s anxiety about a possible new wave of Palestinian immigration from the West Bank. Nevertheless and due to the special ties between Jordan and the West Bank, the number of travellers through the Allenby Bridge is increasing.

<sup>81</sup> The National Centre for Human Rights repeatedly condemned these withdrawals of Jordanian citizenship without judicial ruling. Moreover, it considers these practices arbitrary and a violation of a right, which is the basis of all other rights in the country. Furthermore, the Jordanian High Court still considers the withdrawal of Jordanian citizenship a sovereign act, which does not encourage citizens to file lawsuits related to the denial of citizenship (NCHR 2006, 38). In a recent report by Human Rights Watch had pointed that, since 1988, Jordan had withdrawn its nationality from thousands of its citizens of Palestinian origin – over 2700 between 2004 and 2008 alone. In many cases the organization had identified, the Jordanian authorities have done so “in an arbitrary manner and in violation of Jordan’s nationality law of 1954” (HRW 2010, 1).

<sup>82</sup> Lebanon seems to be adopting UNRWA’s procedural definition. In other words, registration with UNRWA and receipt of UNRWA rations is a prerequisite for the issuance of refugee documents and for permission to stay in the country (Shiblak 1996, 40). Accordingly, Palestinian refugees legally residing in Lebanon are those who during and in the aftermath of the 1948 war took direct refuge in Lebanon and were registered with UNRWA in Lebanon.

first two categories are deemed legal in Lebanon, so the following legislations apply, as they do to any foreigner residing in Lebanon.<sup>83</sup>

Lebanon views Palestinians no differently than other foreign nationals residing in Lebanon (Arzt 1996, 46).<sup>84</sup> A foreign national refers to any natural or juridical person who is not a Lebanese subject, a concept that relies primarily on nationality (Al-Natour 1997, 363). In 1962, Palestinians became one of the 'five categories' of foreigners.<sup>85</sup> Lebanese law made it mandatory for this category of foreign nationals to come to the General Directorate of General Security before the end of September 1962, so as to rectify their status and receive temporary or permanent residency cards.<sup>86</sup>

The apparent hostility towards the idea of integration of Palestinian refugees in Lebanon has not always been the rule. The Palestinian-Lebanese relationship has passed through different stages, dependent largely on the PLO-Lebanese government relationship.<sup>87</sup> The Lebanese government set up a specific administrative apparatus to govern the Palestinian presence in the country from the early stages of arrival, but it has evolved over time.<sup>88</sup>

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<sup>83</sup> Arrêté No.319, of 2 August 1962, regulating the situation of foreign nationals in Lebanon, was issued by the Minister of the Interior. Following the adoption of the orders, Palestinians are one of the five categories of foreign nationals described in Article 1, para.3: 'Foreigners who do not carry documentation from their countries of origin, and reside in Lebanon on the basis of resident cards issued by the Directorate of Public Security, or identity card issued by the General Directorate of the Department of Affairs of the Palestinian Refugees in Lebanon' (Suleiman 2006, 14; Takkenberg 1998, 163). It should be noted that the original law governing entry into Lebanon or residency therein or exit from the country, dated 10 July 1962, did not include provision for the Palestinian presence in Lebanon, though that presence had been officially acknowledged since 1948 (Al-Natour 1997, 363-364).

<sup>84</sup> However, contrary to other foreigners, a Palestinian who manages to obtain a non-Lebanese passport is denied residency rights altogether (Sayigh 1995, 44; Arzt 1996, 46; Akram and Goodwin-Gill 2000/2001, 224).

<sup>85</sup> Following the adoption of Arrêté No. 319 of 2/8/1962, available in French at:

<http://www.unhcr.org/refworld/country.LEGAL,,LEGISLATION,LBN,4562d8cf2,3ae6b4ed58,0.html>

<sup>86</sup> In compliance with this Decision, Palestinians residing in Lebanon went to the General Directorate of the Department of Refugee Affairs to rectify their status and obtain the designated cards. This treatment became standard practice (Al-Natour 1997, 363-364). Among the consequences of the Cairo Agreement, and the situation it created with respect to residency status for the Palestinians already in Lebanon, was the promulgation by Lebanon's Interior Minister of Decision No. 136, dated 20 September 1969. This Decision placed the status of all foreigners in Lebanon on an equal footing and singled out from this equality in treatment (Article 4, Paragraph (e)) resident Palestinians holding the identification cards issued by the General Directorate of the Department of Palestine Refugee Affairs (Al-Natour 1997, 363-364).

<sup>87</sup> The Palestinian-Lebanese relationship passed through several different phases (Suleiman 2006, 21-23) and highlights six historical periods: 1) Adaptation and Hope (1948-1958): Palestinians were welcomed by the public and the government. There was a relatively acceptable level of freedom of expression and political activity. Palestinians were perceived as a cheap labour force that could contribute to economic prosperity; 2) First Crackdown and Covert Activities (1958-1969): This phase began with the coming to power of General Chehab. Chehab's regime initiated an aggressive policy toward Palestinians, subjecting the camps to tight control; 3) Overt Activity and Institutional Building (1969-1982): The Cairo agreement resulted in a sharp increase in the building of social, economic and cultural institutions, in addition to political, military and organizational activity; 4) From PLO Departure to Ta'if (1982-1989): In the aftermath of the PLO's departure from Lebanon, Palestinian refugees survived many harrowing experiences; 5) Deliberate Neglect: Ta'if, Oslo and Beyond (1989-2005): This phase is marked by three landmark political events that had a profound impact on the Palestinian scene in Lebanon: The Ta'if agreement, which put an end to the Lebanese civil war in 1989; the Madrid peace conference, which brought together the major parties to the Arab-Israeli conflict in October 1991; the Israeli-PLO Oslo Accords of September 1993 and its subsequent relevant agreements; 6) Lebanese-Palestinian Relationship: A New Era (2005-present): This new era is characterized by greater public and official Lebanese willingness to discuss Palestinian refugee rights in a more rational though critical manner.

<sup>88</sup> This apparatus has evolved over the years (Al-Natour 1997, 361-363; Suleiman 2006, 11-13): The Central Committee for Refugee Affairs: created by presidential decree No. 11657 of 26/4/1948. The task of the central committee was to administer the Palestinian presence with respect to statistics, accommodation, relief and health care. The Committees was also set up to cooperate with UNRWA in defining the status of Palestine refugees. The Department of Affairs of Palestinian Refugees (DAPR): This office of the Ministry of the Interior was created by a presidential decree No.42 of 31/3/1959. Simultaneously Decree No. 927 was issued to define the tasks of DAPR. All issues relating to Palestinian refugees are administered by this department (Said 2005, 352-353). Other related decrees were issued, such as Decree No. 2867 of 16/12/1959, which identified the DAPR structure and the tasks of its General Director. The Higher Authority of



In 1995, the Lebanese Minister of Interior issued a Decree obliging Palestinian refugees holding a Lebanese travel document to obtain exit/re-entry visas from the Office of Public Security, which are affixed to their travel document or *laissez-passer*, before leaving Lebanon.<sup>89</sup> Those who were outside the country (Syria excluded) on 1<sup>st</sup> of June 1995 have to obtain a re-entry visa through their respective countries of residence prior to returning (Akram and Goodwin-Gill 2000/2001, 224; Takkenberg 1998, 165). This ruling effectively meant that “these laissez-passer holders no longer have the legal right to reside in Lebanon, or indeed anywhere else in the world” (M. A. Khalidi 1995, 28).<sup>90</sup>

### *Syria*

Contrary to other host countries, the Syrian government issued specific legislation expressly regulating Palestinian refugees. Syrian law distinguishes between two categories of Palestinians: those having the status of refugee according to Syrian law, and those who do not have this status. For the first group, Syrian law regulates the responsibilities of national institutions responsible for the follow up of their affairs.<sup>91</sup> Residency permits for Palestinian refugees in Syria are issued in accordance with the Casablanca Protocol (Badil 2007, 127).<sup>92</sup> It grants Palestinians privileges,<sup>93</sup> considers them as though citizens in certain domains,<sup>94</sup> and provides for travel documents<sup>95</sup> and identity cards.<sup>96</sup> Syrian law also expressly excludes the

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Palestinian Affairs: this government agency was created by the presidential Decree No.3909 of 26/4/1960 under the supervision of the Ministry of Foreign and Repatriate Affairs. This authority was authorized to fulfil tasks of political and national security perspectives, without overlapping with DAPR. Department of Political and Refugees Affairs: this was the new name given to the above DAPR. The new name was given by Decree No.4082 of November 2000, though it kept the same responsibilities. However, administratively it was downgraded from General Directorate to a department affiliated to another directorate, with few prerogatives remaining in the hands of the Director. This change was criticized by (International Federation for Human Rights 2003, 12): “The Lebanese government does not want this official status of Host State for the Palestinian refugees anymore.” It should be noted, however, that reference is made on the Lebanese General Security website to the Palestinian Refugees Administration Affairs (Edaret Shuoun Al-Lajeen Al-Falastenyeen): <http://www.general-security.gov.lb/English/TravelingDocs/Palestinian/>

<sup>89</sup> Decree No.478/1995 Regulating Entry and Exit of Palestinians into and out of Lebanon, issued in September 22, 1995.

<sup>90</sup> It should be noted that such a measure was undertaken by the Lebanese authorities following the expulsion of Palestinians from Libya in order to keep thousands of Palestinians with Lebanese Refugee travel documents out of Lebanon (Shiblak 1996, 40).

<sup>91</sup> Law No. 450 of 25 January 1949.

<sup>92</sup> Palestinian refugee residency cards are granted to those who entered Syria in 1948 and who were registered at the register of Immigration and Passports and at the registers of the Public Agency for Palestinian Refugees, and their children aged 10-18, with their legal representative or those the Ministry of the Interior accepts. It should be noted that the entry, residence, and departure of foreign nationals in Syria is currently regulated by legislative decree No.29/1970, which authorizes the Minister of the Interior to issue decisions regulating the entry, residence and departure of the Palestinian refugees in Syria. In 1980, Ministerial Decision No.1531 was adopted in which procedures for issuing residence permits for Palestinians refugees in Syria was set.

<sup>93</sup> Legislative Decree No.37 of September 1949 exempted Palestinians from a provision of the Civil Servants Act that stipulated that unless one had been a Syrian national for at least five years, one could not serve in the Syrian civil service (Takkenberg 1998, 167).

<sup>94</sup> According to Law No.260 of 10 January 1956, “Palestinians residing in Syria as of the state of the publication of this law are to be considered as originally Syrian in all things covered by the law and legally valid regulations connected with the right to employment, commerce, and national service, while preserving their original nationality” (Takkenberg 1998, 168).

<sup>95</sup> Decree no. 28/1960, issued by president Gamal Abdel-Nasser (then President of the United Arab Republic, between Egypt and Syria), granting Palestinians in Syria Palestinian travel documents. Law No.1311/1963 regulated the issuing of Syrian *laissez-passer* or travel documents to Palestinians residing in Syria, on condition that they were registered with GAPAR and held Syrian provisional identity cards. Law No.45/1975 concerning the regulation of Passports at entry and exit of Arab Syrians stipulates that it also applies to Palestinian refugees in Syria (article 14).

<sup>96</sup> Ministerial decision No.1531 of 6 September 1980 regulated the issuance of residency cards for Palestinian refugees (Saleh 2005, 2). According to Article 2, the Palestinian refugee residency card is granted for those who entered Syria in 1948 and who were registered at the register of Immigration and Passports and at the registers of the Public Agency for

Palestinians from access to citizenship through naturalization, despite fulfilling the conditions set out by the law, in order to 'preserve their original nationality'.<sup>97</sup>

As for the second group, Syrian law distinguishes between those having obtained the citizenship of another state (such as most Palestinian refugees in Jordan) and those having refugee status in another state. The first sub-group are subjected to the law applicable for Arab nationals with regards to entry, stay, and exit,<sup>98</sup> and with regards to work regulation.<sup>99</sup>

Palestinian refugees who hold refugee status in another Arab country are obliged, if they wish to enter Syria, to obtain a visa prior to arrival. This visa is only granted with the approval of the relevant services. Those who are given a visa have no right to work in Syria unless they first obtain a permit from the Ministry of Social Affairs and Work.<sup>100</sup> Syria does not recognize Palestinian Authority issued travel documents, and refuses to grant visas, even for short stay, for residents of the Autonomous Areas under Palestinian Authority control (Arzt 1996, 48) (Akram and Goodwin-Gill 2000/2001, 224).

## 6. Economic and social rights of Palestinian refugees

This section examines the regulation of Palestinian refugee rights to work, education, health, and property in host Arab states.<sup>101</sup> A refugee's daily life is affected by national laws and institutions. Economic and social well-being depends largely on what residency and civil rights they enjoy. Legal restrictions with regards to naturalization, family unification, employment, property, housing, education, health care, and others add to their insecurity and instability.<sup>102</sup> Unstable and insecure refugees become a major destabilizing factor for host

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Palestinian refugees, and for their children aged 10-18, with their legal representative or those whom the Ministry of Interior allows to register.

<sup>97</sup> Citizenship Law No. 276/1969.

<sup>98</sup> Ministerial Order No. 30, of 12 March 2007, concerning the entry, stay, and exit of Arab nationals allows Arab nationals to enter Syria without a visa for entry or transit. Registration at the register of travellers' arrivals is sufficient, once entry or exit is stamped on the travel document (Article 1). Those Arab nationals who wish to stay in Syria for more than three months are obliged to present a demand for authorization from the Department of Immigration and Passports. Only Lebanese nationals have a longer period of stay without permit (six months, according to Article 2) while it is only 15 days for other foreign nationals (Article 3). Those who do not respect the conditions are considered irregular, but the order does not foresee any penalty. Article 7 states that the authorization of stay does not mean a work permit. A work permit for Arab nationals is granted by the Ministry of Social Affairs and Work.

<sup>99</sup> Two new orders were issued in 2005 by the Ministry of Social Affairs and Work which regulates work for foreign nationals in Syria, and the conditions needed to obtain a permit. The decisions do not distinguish between foreign nationals and Arab nationals. Article 1 of Order No. 2040 of 20 November 2005, indeed, stipulates that "non-Arab Syrian" refers to all those who do not enjoy Arab Syrian nationality, or those having a status similar to them, such as Palestinian refugees in Syria (Saleh 2007, 239).

<sup>100</sup> Palestinians having an Israeli Laissez-Passer or Passports are, in principle, forbidden from entering Syria. There is no confirmed information concerning the way entry of Palestinians holding a Palestinian Authority travel document is regulated.

<sup>101</sup> A disclaimer needs to be done here, as to the availability of data, and the continuous need of update. The collection of those legal texts was done during the preparation for the research on Palestinian refugees in host Arab states (Khalil 2009). I will update the data as much as information that was available to me during the research that followed the redaction of earlier report.

<sup>102</sup> In Lebanon, for example, legal constraints and restrictive policies contributed to the exclusion of Palestinian refugees from the Lebanese labour market. This situation contributed to the deterioration of their socioeconomic situation, pushing some of them to leave (the out-migration within Palestinian refugees of Lebanon is indeed higher than that of other host countries, (Hanssen-Bauer and Jacobsen 2003, 4)) try to leave the country, while others remain in Lebanon, largely leaving school and performing poorly, with little ambition for the future (Å. A. Tiltmes 2005, 10). The illiteracy level among Palestinian refugees is almost as higher (almost twice as high) than the average of adult illiteracy among Lebanese nationals.

countries and the region. These refugees are easily exposed to political manipulation, exploitation, and poverty.

### ***6.1 The right to work***

The work environment in contemporary societies is usually highly regulated and work policies are highly restrictive. The rationale for such policy is the protection of national interest. In this sense, Arab policies are no different from those of other states, including western democracies.

Palestinian refugees, despite residence of many years, and for many, being born and raised in the host country, are treated as foreign nationals as regards work regulations. Some suffer even more restrictive measures, as they need to obtain a permit like other foreign nationals, but may need to satisfy a ‘reciprocity of treatment’ clause, which is impossible for stateless Palestinians. What is more, Palestinian refugees, even if they surmount the hurdle of obtaining a permit, do not necessarily benefit from social security, though they make social security contributions. In Lebanon, for example,<sup>103</sup> the right to social security for Palestinians is dependent on the reciprocity of treatment (Sayigh 1995, 44; Suleiman 2006, 16).<sup>104</sup>

Labor laws in Arab states distinguish between ‘nationals’ and ‘foreigners’ as regards equal opportunities and benefits. In most Arab states, Palestinian refugees are treated as non-nationals, and therefore need work permits. Work permits for Palestinians are more or less difficult to obtain, depending on the state and the political environment. In the 1990s, following the Gulf crisis, most Arab states had restrictions as regards Palestinians. Restrictions, accompanied by stagnant economies, led to a high incidence of unemployment among Palestinians (Shiblak 1996, 43). Some Palestinians opted to profit from UNRWA work opportunities, but others migrated to third countries, looking for work abroad, mainly in the Gulf States (Yasin 1999). Those who remained in host countries resolved to work illegally, without protections.

#### *Egypt*

In Egypt, a series of laws were passed in 1954 that allowed Palestinians to practise liberal professions under the same standards and regulations as Egyptians. According to Decree No. 657/1989,<sup>105</sup> Palestinians in possession of an Egyptian Travel Document, endorsed with

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If compared to other refugee camps in host countries, the literacy rate in refugee camps of Lebanon is 10% lower than that of Syria and Lebanon (Å. A. Tiltne 2005, 15). It is very indicative that the highest proportion of poor camp refugees is found in Lebanon (35 percent) and the lowest in Syria (17 percent) (Jacobsen 2000, 41).

<sup>103</sup> The Lebanese Social Security Law limits access to social security for foreign workers on the condition of reciprocity of treatment, meaning that the hundreds of thousands of Palestinian refugees are excluded because they are simply stateless, and reciprocity of treatment is in fact impossible. Article 9(4) of the Social Security Law states: *Foreign Labourers working on Lebanese soil are not subject to the provisions of this law, and therefore not entitled to the benefits of any and all sections of Social Security, except if the country of their origin affords its Lebanese residents the same treatment as its own citizens with regard to Social Security.*” Cited in: Amnesty International 2006, 10.

<sup>104</sup> Article 9 of the Social Security Law issued on 26 September 1963, defines the conditions of foreign wage-earners' eligibility for social security in Lebanon: ‘the said foreign wage-earners shall benefit from the provisions stipulated in the Social Security Law, provided they hold work permits in accordance with the laws and rules and regulations in force and provided that reciprocal treatment is afforded its own nationals where social security is concerned’ (Al-Natur 1997, 270).

<sup>105</sup> Article 11, paragraph J.

a visa other than for a tourist, were formally exempted from the requirement that native workers be given priority for employment (Takkenberg 1998, 153). However, in the late 1970s regulations changed. Presidential Decrees No. 47 and 48, issued in July 1978, cancelled earlier decisions that treated Palestinians like Egyptians. The Ministry of Human Resources prohibited foreign nationals, including Palestinians, to work in trade unless they had been married to Egyptians for more than five years.

Decree No. 43/1988 determined conditions for granting work permits to foreign nationals.<sup>106</sup> The decree provides that special concessions are available to foreign nationals married to Egyptians. Further, anyone of undetermined nationality who has been continuously and permanently residing in Egypt for not less than 15 years should be given priority, as should political refugees who have a certificate from the Political Refugees Office of the President. Special considerations should also be given to foreign nationals who were born in Egypt, and who have remained continuously and permanently resident. Palestinian refugees legally residing in Egypt are not treated equally with citizens, but rather as foreigners. Accordingly, in order to work, they need permits issued by the concerned authorities. The permit requires presenting documents that demonstrate having been resident in Egypt for the previous five years and the type of residency permit requested.

Egyptian Law No.66/1962 was issued to permit Palestinians to work in government and public-sector jobs, and to be treated as nationals of the United Arab Republic. However, in 1978, law No. 48 was adopted. This stipulated that employment of Arab country nationals should be conducted on a reciprocal basis.<sup>107</sup> This condition cannot be satisfied by stateless Palestinians.

### *Jordan*

Jordanian Palestinians have the same rights as other citizens, while Palestinians holding temporary Jordanian passports are treated as foreign nationals. As 'Gazans of Jordan' are non-citizens, they need official permission to work, and they can do so only in the private sector. Their residency status and their right to leave and to return depends largely on the whim of the Jordanian government (Akram and Goodwin-Gill 2000/2001, 223).

Palestinians who have Jordanian nationality have equal rights as citizens with regards to public services. However, according to some authors, Palestinians still suffer from discrimination, especially in employment in the public sector and representation in

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<sup>106</sup> Article 1 provides that foreign nationals will not be allowed to work in Egypt until they have obtained a proper permit from the Office of Manpower and Training in the relevant Governorate. Article 3 provides that certain matters should be considered by the Manpower and Training Office before granting a foreigner a work permit. First the foreign national should not be competing with equally or better qualified persons of Egyptian nationality. Also the necessity for the economy of Egypt of the foreigner's work should be considered, as should be the intended place of work's need for such an employer. If the foreign national is a person working in a field where the Egyptian law provides regulation of employees as to skills and experience, the foreigner should comply with the necessary regulation. Also a foreign national born and permanently resident in Egypt should be given priority over a complete foreigner. Under Article 4, the number of foreign employees in any establishment may not exceed 10% of the total number employed. Exception may be made if it is in the interests of the Egyptian economy. Article 5 provides for certain fees to be charged. On the first application by any foreign national, 1000 LE is charged for foreigners and members of Arab countries. Monks and nuns practicing a religious activity within monasteries and convents and not performing services outside their religious institutions are also charged. On renewal, the fees are halved. Article 7 provides that the establishment employing foreigners must keep a register, containing the foreigner's name, family name, nationality and date of birth. The register should also contain details of his or her work, qualifications, work permit number, date of issue and wages.

<sup>107</sup> Section 1, Article 16.

government (Said 2005, 351): they are denied equal political participation and subjected to subtle forms of discrimination (Shiblak 2006).<sup>108</sup> As for those holding temporary travel documents (Palestinians from the West Bank, or Gazans residing in Jordan<sup>109</sup>), these people are treated as foreigners, and access to public service is restricted.

### *Lebanon*

A restrictive policy towards foreign nationals in general, and Palestinians in particular, exists in Lebanon. Legislative texts regulating the labor market do not address the issue of Palestinian refugees in Lebanon, leaving the Palestinians in a legal limbo (Al-Natour 1997, 366). However, the work of Palestinians in Lebanon, as much as other foreign nationals, is subject to regulation included in Presidential Decree No. 17561 of 18/9/1964.<sup>110</sup> A Palestinian willing to work in Lebanon must satisfy three conditions: firstly, the obtaining of a work permit,<sup>111</sup> secondly, national preference,<sup>112</sup> and thirdly, reciprocity of rights and obligations (Suleiman 2006, 15-16). As was the case with Egypt, the reciprocity clause disenfranchises stateless Palestinians (IFHR 2003, 13).

According to Article 9 of the decree, the Minister of Labor is entitled to enumerate and list jobs and trades that are restricted to Lebanese nationals, and to update that list in line according to the needs of the Lebanese labor market, a power often used by concerned ministers (Al-Natour 1997, 366-371; IFHR 2003, 13; Suleiman 2006, 16-17). For example:

- Ministerial Decree No. 621/1 of 1995 (updating Ministerial Decision No. 1/289 of 18 December 1982) enumerated a list of about 50 jobs, trades, and independent professions in the private sector that would prefer nationals. Jobs not mentioned in the decree require permits. Palestinian refugees are disadvantaged compared to Lebanese nationals, and, in some cases, foreign nationals (such as Syrian workers, who do not need work permits).<sup>113</sup> In certain cases, it is possible for foreign nationals to receive an exemption from the Minister (Article 2).<sup>114</sup>

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<sup>108</sup> Whether this discrimination is real, it is difficult to establish, because it is within the domain of the 'informal politics.' For sure, however, 'Jordanians of Palestinian origins' complain of systematic discrimination in favour of native Jordanians (Arzt 1996, 45).

<sup>109</sup> For more about Gazans in Jordan, see: El-Abed 2006.

<sup>110</sup> This author notices that there is confusion in the literature over this issue, concerning the act (law or decree) and the year. Suleiman 2006, 15), for example refer to it as 'Decree No. 17561 of 18/9/1962', (IFHR 2003, 12) refers to it as decree n° 17561 dated July 10, 1962, while (Al-Natour 1997, 366-371) refer to it as Law No. 17561 of 18 September 1964. The local researcher refers to it as: Decree No. 17561 du 18/09/1964. The confusion is mainly between Law No.319 of 10 July 1962 (Law Regarding Entry to, Residency in and Exit from Lebanon) which imposes on foreigners wishing to work in Lebanon a license from the Ministry of Labour and Social Affairs (Al-Natour 1997, 366). While Presidential Decree No.17561 of 1964 regulated the way that such a permit for foreign nationals is granted. Palestine Studies Organization published the Memorandum of 2005, in which reference is made to 'Presidential Decree (*marsoom*) No.17561 issued in 18/9/1964, which this author adopts.

<sup>111</sup> Article 25 of the decree states that: 'A foreigner, other than an artist, is prohibited from carrying in Lebanon any work or occupation unless permitted to do so by the Ministry of Labour and Social Affairs under valid laws and regulations'. According to Sayigh (1995, 44), granting a permit of work applied more or less harshly on Palestinians, depending on the politics of particular government and minister. In 1994, for example, only 100 work permits were granted to Palestinian refugees.

<sup>112</sup> Article 17 of the same decree directly refers to the national preference principle, as it states that: 'The work permit shall be cancelled at any time, if it is revealed that any document is incorrect or as may be required in the interest of Lebanese labour'.

<sup>113</sup> No information available whether this is still currently the case or not.

<sup>114</sup> Article 2 is available at: <http://www.humanrightslbanon.org/arabic/LLaw.html#FORG>

than one year. Palestinian refugees may enjoy such an exemption, but data shows a limited number of permits issued for Palestinian refugees in Lebanon. According to Al-Natour, “[i]n principle, every Palestinian can obtain a work permit under these conditions. But for the vast majority of Palestinians in Lebanon, this principle is purely hypothetical and cannot be applied” (1997, 368).

- On 27 June 2005, Ministry Memorandum No. 67/1 was issued, permitting Palestinian refugees who were born in Lebanon and registered with DAPR to work legally in manual and clerical jobs previously unavailable to them. However, the ban on Palestinians seeking professional employment has remained in place (Suleiman 2006, 15-18).<sup>115</sup> The step was welcomed by organizations defending the rights of Palestinian refugees,<sup>116</sup> since some obstacles to Palestinian work were removed.

The public sector is not accessible to non-Lebanese nationals. However, Palestinians in Lebanon, as much as in Jordan and Syria, have access to jobs offered by UNRWA. In Lebanon, this has been possible since the exchange of communication between Lebanon and UNRWA in 1954.

### *Syria*

In Syria, Palestinians who are deemed refugees according to Syrian law are treated as nationals, with regards to access to labour market in private and public sector. Other refugees need a visa of entry and need to work as other foreign workers.

## **6.2 The right to education**

### *Egypt*

These cases include those with residence in Lebanon since birth, Lebanese origin, and who have been married to a Lebanese female for more than one year. In Egypt, access of non-Egyptians to public schools is forbidden unless specifically provided for by law. Palestinian refugees' children are foreign. Accordingly, they have not been allowed to attend public schools since the early 1980s (Shiblak 1996, 43), and have to pay special fees in foreign currency to attend private schools. Despite obligations under international law for children, free access to primary education is secured exclusively for Egyptian citizens (Reeds 2006, 373). The situation is the same for universities, where non-Egyptians have to pay “foreigner fees”. Palestinian refugees are not allowed, in most circumstances, to join colleges of medicine, pharmacy, economics, political science, and journalism. However, over the years, two decrees have been adopted that exempt certain categories from the above rule, thus allowing foreign children into Egyptian public schools. These include:

- Decree No. 24, issued by the Minister of Education on 22 January 1992, exempted foreign nationals enumerated in the decree, including “Children of Palestinian and other workers in governmental or public sectors or armed forces in Egypt, and children of those among them who are retired.”

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<sup>115</sup> The memorandum is available in Arabic at: <http://www.palestine-studies.org/files/word/mdf/7517.doc>

<sup>116</sup> Such as the Palestinian Commission for Refugees Rights Protection: <http://www.hinfo.net/palestine/pcrp/2005/pr0701.shtml> (accessed on 11 September 2008).

- In 2000, the Minister of Education issued another Decree extending the application of the 1992 Decree to other refugees (Grabska 2006, 20).

### *Jordan*

In Jordan, the Ministry of Education announced in August 2006 that foreign children would no longer be allowed to attend either public or private schools in the Kingdom. Subsequently, the Ministry rescinded its ban and declared that they would be allowed to attend private schools and institutions. The decision was an improvement on the previous ban, but would make education for the children of poorer refugee families virtually impossible. The Ministry of Education will now allow children from Arab countries to enrol in the country's public school system beginning in the 2006-2007 academic year. The decision was based on the Ministry of the Interior's recommendations, which specify groups of persons who will not be accepted in any school without the explicit approval of the Ministry of the Interior. These persons include holders of Palestinian, Iraqi, Syrian, Lebanese, and Egyptian travel documents, holders of temporary Jordanian passports, and holders of Palestinian passports (Olwan 2007, 101).

### *Lebanon*

According to Decree Law No. 820 of 5/9/1968, access to public schools in Lebanon is reserved for Lebanese nationals.<sup>117</sup> However, it is possible to exceptionally accept foreign children, if there are free places.<sup>118</sup> This restriction extends even to obligatory primary education.<sup>119</sup>

Palestinian access to Lebanese public secondary schools is restricted (Sayigh 1995, 44; Arzt 1996, 46). According to Al-Natour, at high or secondary school level, ten percent of places are reserved for foreign children, and Palestinians are eligible for these places (1997, 372). They may even receive limited financial assistance from UNRWA to study in such schools, or in private schools. The same rule applies for public universities. In practice, however, Palestinians would never be admitted to certain faculties in Lebanon.

For this reason, most Palestinians study in the private sector, depending on financial means. Other educational institutions accessible for Palestinians are: UNRWA schools (for children from 6 until secondary school)<sup>120</sup>

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<sup>117</sup> Article 3.

<sup>118</sup> Article 102.

<sup>119</sup> Law No. 686 of 1998, which amended Article 49 of Decree No.134/59 provides that: "Public education is free and compulsory in the primary phase, and is a right to every Lebanese in the primary education age." Cited in: Amnesty International 2006, 11.

<sup>120</sup> Only children of registered Palestinians can enrol in the UNRWA's 81 elementary and preparatory schools and 5 secondary schools that are available in Lebanon. It shall be noted that Lebanon is the only country within the UNRWA areas of operation, where UNRWA runs secondary schools (Amnesty International 2006, 12). Children of non-ID Palestinians can access private schools, but they need to be able to afford high fees. They cannot access secondary schools and most importantly cannot pass the official state exam (Amnesty International 2006, 12).

Lebanon. It also runs a program for university education funded by some UNRWA donors in the international community (Suleiman 2006, 20).

### *Syria*

As mentioned earlier, Syria grants Palestinians the same rights as Syrian citizens, and this applies to graduate and undergraduate studies. However, some areas are left to the discretion of various government institutions. This is true of education where, according to Takkenberg, in keeping with the spirit of the law, elementary and preparatory education is provided for Palestinian refugees in UNRWA schools, while secondary education is provided in national schools (1998, 168). Syrian institutions and universities are open to Palestinians on equal terms to Syrians. A number of scholarships are available for Palestinians to study abroad (Takkenberg 1998, 167-169).

## **6.3 The right to health**

### *Egypt*

In Egypt, Palestinian refugees legally residing do not have access to medical care or the social benefits provided to Egyptian citizens (Reeds 2006, 373). In fact, as with regards to other governmental services, Palestinians are treated as foreign nationals under Egyptian national policies on health care. Recognized refugees are referred by UNHCR to Caritas, where they receive subsidized treatment. In February 2005, the Minister of Health issued a new regulation allowing access to public primary and preventive healthcare services for all foreign nationals residing in Egypt (Grabska 2006, 23).

### *Jordan*

In Jordan, Palestinians who have obtained Jordanian nationality have the same rights as citizens, while others holding temporary Jordanian passports are treated as foreign nationals with regards to access to public health services.

### *Lebanon*

and PLO institutions or NGOs for those less than six years of age and for secondary school. It should be noted that UNRWA has its own schools, in Lebanon, Palestinian refugees have no access to government hospitals (Sayigh 1993, 44; West 1996, 46) or other related health services. UNRWA, the Palestinian Red Cross Society (PRCS), and other NGOs are the main providers of health services for Palestinian refugees, though the care they provide is hardly adequate (Suleiman 2006, 20). Palestinian refugees legally residing in Lebanon receive no reimbursement for surgical operations from the Ministry of Health as Lebanese nationals do.

### *Syria*

Palestinian refugees in Syria have the same rights as Syrian citizens with regards to access to health care.



#### *6.4 The right to housing and property*

In host states where refugee camps exist, strict and difficult procedures are in place with regards to re-building or renovating residence inside the camps or the issuance of permits for refugees residing therein. This is the case, for example, in Lebanon (Suleiman 2006, 18-19).

##### *Egypt*

Since the early 1980s, new restrictions have been imposed on Palestinian refugees in Egypt with regards to their right to own property (Reeds 2006, 373). New regulations, with retroactive effect, ended previous ownership of agricultural land and those who owned land were required by law to terminate their rights within five years or face seizure of the land by the government (Shiblak 1996, 44-45).

##### *Jordan*

Palestinians holding temporary passports in Jordan are subject to new regulations for buying property similar to those pertaining to foreign nationals.

##### *Lebanon*

In Lebanon, the freedom of foreign nationals to own property was regulated until 2001 by Decree No. 11614 of 14/1/1969 relating to the acquisition of immovable property for foreigners, which provides for special procedures<sup>121</sup> and conditions (Suleiman 2006, 18-19). Accordingly, only in exceptional cases is it possible for Palestinian refugees legally residing in Lebanon to buy a personal residence, and the procedure is expensive and takes years (Shiblak 1996, 44-45).

Restrictions targeting Palestinians with regards to the right to own property (outside refugee camps), came with the adoption of law No. 296 of 3 April 2001, which amended the first article of decree No. 11617 of 1969 regarding non-Lebanese acquisition of property (Elsayed-Ali 2006, 14; Said 2005, 353). It reads as follows: “[i]t is prohibited to any person who is not a national of a recognized state, or anyone whose ownership of property is contrary to the provisions of the Constitution relating to ‘Tawteen’ to acquire real-estate property of any kind.” This law was deemed constitutional by the Lebanese Constitutional Council (LCC), which argued that the new legislation safeguarded what it called the ‘supreme interest’ (Suleiman 2006, 18-19; Diab 2008, 3). This decision was criticized by the International Federation for Human Rights since it encourages the State to pass measures affecting Human Rights (2003, 13-14).

##### *Syria*

Even in Syria, where Palestinian refugees in principle enjoy full residency rights, restrictions were imposed preventing them from owning property except for a personal residence, and

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<sup>121</sup> As per Article 9 of Decree No. 11614/1969, non-Lebanese foreigners (including Palestinians) need to file an application for a license with the Minister of Finance, who in turn transfers it, along with his recommendation, to the Council of Ministers of the Cabinet. The Cabinet may then grant the license through a decree. The power of the Cabinet to grant or refuse the license is final and its decisions are not subject to any appeal (Al-Natour 1997, 372).

even then only after following certain procedures (Jarrad 1999; Shiblak 1996, 44-45). Palestinian refugees are also banned from purchasing arable land (As-Sahly 1999; Said 2005, 352).

## **7. Possible impact of the global financial crisis**

What began as a global financial crisis is rapidly turning into a global human rights crisis. The estimation of the number of malnourished people has risen (World Bank 2008, 1), as has infant mortality (UNESCO 2009). The financial crisis also means the loss of millions of jobs (ILO 2008; 2009). This means a decline in remittances and a loss of homes and savings (Saiz 2009, 279). It also means increased poverty, which obliges people to lower the quantity and quality of their diet (Saiz 2009, 279). This situation may cause a fall in tax revenues, and thus will threaten to reduce the already meager funds devoted to social protection programmes in many developing countries, depriving the unemployed, sick, and elderly of essential safety nets (ILO 2008; Saiz 2009, 279). The financial crisis affects education and the training opportunities, and school attendance will drop (ILO 2008, 9). In particular the right of education for girls is threatened (Saiz 2009, 279).

However, there are serious grounds to believe that the global financial crisis may be particularly felt by Palestinian refugees. Two main areas of risk may be outlined. The first is related to UNRWA, already under attack for perpetuating Palestinian refugeehood. While depending on international funds, UNRWA is faces serious risk because many countries are decreasing their funding due to the economic crisis, while others work to discredit the organization and argue for using international funds for refugee resettlement programs instead of financing UNRWA.<sup>122</sup> The second impact is on entitlements of rights in host countries, already increasingly hostile to the presence of Palestinian refugees (or at least hostile to accommodating increasing numbers of them) on their borders from Iraq or in Gulf countries.

### ***7.1. Weakened UNRWA***

The attack on Palestinian exceptionalism and the differentiation between UN agencies dealing with refugees (UNHCR vs. UNRWA), is increasingly under attack (Kagan 2009). The reasons behind this attack are varied. Most importantly, attacks often agree on the premises (that something is wrong with the current situation) but disagree on the prescriptions to deal with the deficiencies and the gaps that are existent in current protection and assistance mechanisms.

I regroup the approaches as follows: firstly, some may attack this exceptionalism arguing that UNRWA and host Arab states contribute to the perpetuation of the issue of Palestinian refugeehood, and they need to be dealt with the same way as any other refugees in the world,

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<sup>122</sup> The decline in aid is felt on the refugees of host countries much earlier than that; in fact, the establishment of the Palestinian Authority and Oslo process in general resulted the “skewing of international funds away from the “outside” refugees” (Sayigh 1995, 51).

and dealt with by regular UN mechanisms dealing with refugees;<sup>123</sup> secondly, some may attack this exceptionalism based on concerns for the socioeconomic welfare of Palestinian refugees in host Arab states, which is often correlated to the absence of protection mechanisms and restrictions of their rights and freedoms by host countries.

This paper subscribes entirely to the second approach. This clarification is important because, despite the apparent similarity between both approaches in that they reject the current status quo, the difference between them is immense, and the conclusions they reach go towards completely different directions. The first is the one held by Israel,<sup>124</sup> and largely by pro-Israel scholarship.<sup>125</sup> The second approach is the one held by most international human rights organizations, and by an increasing number of scholars.<sup>126</sup>

For those who subscribe to the first approach, any occasion is good to attack UNRWA, as much as host countries, urging the international community to cut its funding for refugees and concentrate on programs aimed at resettling Palestinian refugees. Those who subscribe to the second approach, while recognizing the uniqueness of Palestinian refugee issue, may stress that refugee law can be a useful tool for improving the situation. In other words, their uniqueness does not in any way negate the relevance of international refugee law to the Palestinian case (Kagan 2009, 428).

Besides, UNRWA's role is recognized in avoiding a worse situation, and its role in responding to emergency needs is essential (Brynen 2009, 6).<sup>127</sup> In this perspective, despite existing restrictions in law or national policy, the second approach recognizes the valuable assistance provided by host countries to Palestinian refugee populations in general, which need to be maintained and encouraged.<sup>128</sup>

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<sup>123</sup> Rex Brynen summarized the reasons behind this attack, in a speech in the 60<sup>th</sup> anniversary of UNRWA in Columbia: “[T]he Agency frequently finds itself under political attack. Some have accused it of artificially keeping the refugee issue alive, or perpetuating refugee camps and failing to integrate the refugees into host populations. It has been accused of hiring terrorists, of failing to monitor and supervise the political views of its employees” (Brynen 2009, 4).

<sup>124</sup> This explains the recent interest in the Israeli Knesset where a cross-party parliamentary caucus was formed to deal with the rehabilitation of Palestinian refugees in 2008. See report published in The Jerusalem Post: (Lefkovits 30 July 2008, retracted by LexisNexis).

<sup>125</sup> As pointed out by Kagan: “Pro-Israel critics have argued for UNHCR to replace UNRWA because UNHCR’s refugee definition would supposedly reduce the official size of the Palestinian refugee population, and thus lessen the strength of Palestinian claims against Israel... These critics generally argue that UNRWA’s existence prolongs the Palestinian refugee problem by reinforcing Palestinian refugees’ separate identity, by failing to seek a solution to the refugee problem via resettlement of the refugees outside Israel, and for highlighting the claims of the refugees by virtue of its mere existence...” (2009, 427; Citations omitted).

<sup>126</sup> I will cite some of them in the coming paragraphs as much as in various parts of this report.

<sup>127</sup> Some have pointed out that the situation in refugee camps in host countries, although relatively worse in terms of poverty, if compared to other parts of the territory, they do not constitute the main poverty problem of the host countries. The main explanation they provide is often connected to the support from and situation within the host countries, and assistance from the international community mainly through the UNRWA (Hanssen-Bauer and Jacobsen 2003, 1).

<sup>128</sup> The best way to summarize Arab states positive contribution can be found in a recent speech that Susan Akram presented on the occasion of 60<sup>th</sup> anniversary of UNRWA: “The Arab states are frequently subjected to harsh criticism for their treatment of millions of Palestinian refugees and displaced persons, pointing to widespread violations of rights, and particularly to the failure to offer Palestinians permanent status in their territories. Indeed, much of the criticism has merit, in that the Arab states have often not respected individual rights of Palestinians as guaranteed in the principal human rights treaties and the customary norms those treaties embody. However, the critique that Arab states have failed to grant Palestinians permanent status in their territories is seriously misplaced: it ignores the fact that Arab states are under *no* legal obligation to grant permanent status to Palestinian refugees. In fact, Arab states have actually supported what the refugees themselves have demanded all along—the right to choose their durable solution, the right to return to their original lands and homes. It is my contention that the Arab states’ six decades of *de facto* temporary protection to the Palestinians is unprecedented in the history of protection of refugees, and has been granted at great social, economic and political cost. The Western world’s periodic and time-limited temporary protection programs have never reached the scale of generosity that the Arab states have shown the Palestinians” (Akram 2009, 1).

The point this approach stresses, I believe, is not that UNRWA is not necessary or that Palestinian refugeehood is not unique and special, but rather that UNRWA is not currently capable of ensuring necessary protection for Palestinian refugees,<sup>129</sup> and that host Arab states cannot use the uniqueness of Palestinian refugeehood to continue upholding discriminatory laws and policies towards Palestinian refugees. The best way to describe the second approach can be summarized by a quote from Rex Brynen on the occasion of the 60th anniversary of UNRWA: “happy 60th anniversary, UNRWA. I wish you were unnecessary — that issues of refugees and peace had long ago been resolved. Until they are, however, the Agency, its staff, and their very hard work remain invaluable.” (Brynen 2010).

The global financial crisis may result in decreasing international funds to UNRWA, and UNRWA may be pushed towards reducing its services. Such a scenario will be felt by Palestinian refugees in particular ways, seeing the absence of alternative sources of income and the restrictive laws and policies that exist in some host countries. UNRWA is a main service provider for Palestinian refugees in host countries. It provides jobs for thousands of refugees, education, health care, and various other services that are extremely valuable and necessary. The argument I make here is simple: I do not argue that UNRWA is not necessary; rather I argue that it is not enough. The adoption of a protection role by UNRWA needs to be encouraged.<sup>130</sup>

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<sup>129</sup> The issue at stake here is that UNRWA is not enough, but the alternative is not the replacement of UNRWA by UNHCR, rather the enhancement of the protection role of UNRWA, or the extension of protection mandate of UNHCR to Palestinian refugees besides (not instead) existing agencies dealing with Palestinian refugees. UNHCR seem to be attractive for Palestinians in some issues, but it may be resisted and rejected for others. As pointed out by Kagan: “The attraction for Palestinians is that general refugee policy as advocated by UNHCR promotes three things that have been denied them: first, a clear recognition of the right to return, along with its complementary rights of property restitution; second, a clear goal of finding a durable solution, with particular emphasis on repatriation; third, a commitment to fundamental rights in exile until a durable solution can be found” (Kagan 2009, 434). Then he add: “Yet it is important to recall that pro-Israel writers who are hostile to Palestinian aspirations are similarly questioning the wisdom of Palestinian exceptionalism because they believe that UNHCR involvement will help minimize the claims of Palestinian refugees. While general (i.e. non-Palestinian) refugee policy contains several attractions for Palestinians, it also contains some hidden features that might challenge longstanding Palestinian political orientations. Two examples illustrate this point. First, established norms of refugee law would condemn the militarization of refugee camps (EXCOM 2002: Para. A) which has been a prominent feature of Palestinian armed conflict with Israel from the 1950s onwards. General refugee policy would thus back condemnation of groups like Hamas, and would call on host governments like Lebanon to disarm militant elements in refugee camps. Second, while it is true that refugee law generally backs the right of return and the right to property restitution. ..., UNHCR’s approach to durable solutions is ultimately more pragmatic and flexible than many Palestinians might like. While UNHCR calls repatriation ‘the solution of choice’ for most refugees. ..., it cautions that ‘there is no hierarchy of durable solutions’ and that resettlement and local integration should be considered simultaneously ... What this means in practical terms is that UNHCR will look to local integration and third country resettlement when repatriation is impossible (ibid.). UNHCR has indicated a similar flexible or ad hoc approach to compromises on property restitution... Thus, while UNHCR policy would back Palestinians on the abstract rights to return and restitution, in terms of implementation UNHCR might accept Israeli resistance as an immovable fact and turn pragmatically to other options in order to not leave refugees in limbo indefinitely” (Kagan 2009, 434; Citations omitted).

<sup>130</sup> As pointed out by Karen AbuZayd in a statement as UNRWA Commissioner-General, on the occasion of the 60th anniversary of UNRWA: “The environment of persistent conflict and its impact on civilians – especially in the occupied Palestinian territory - have brought to the fore UNRWA’s protection role. Since the 2004 Geneva Conference, we have adopted a more forthright posture on protection issues, taking as our cue the duty to advance respect for the human rights of Palestine refugees which is implicit in UNRWA’s mandate.”

## 7.2. Weakened Rights

Being a Palestinian refugee is completely dependent on host state recognition of being so. It is a positive construction of the state, not the state of being a refugee. Arab states generally grant residency permits to Palestinian refugees. However, residency status varies from state to state (Badil 2007, 126). Palestinians in Egypt and Lebanon, who satisfy certain conditions with regards to entry and stay, obtain residency permits according to the regulation applicable on foreign nationals. In Syria, Palestinian refugees are granted standard national treatment, while in Jordan most have Jordanian citizenship.

Granting residency status to those recognized as refugees means, at times, excluding the applicability of basic human rights to both recognized and unrecognized groups, but especially those living in 'illegality' within host states or those who do not satisfy the conditions imposed by law to be considered a refugee. Illegality and lack of refugee status means limited and disadvantaged access to jobs, lack of access to education for children, lack of access to health services, and inability to claim other rights, including the right to freedom of movement. This is the case of the undocumented Palestinians in Lebanon.<sup>131</sup> In the same vein, the changes in UNHCR attitude towards certain groups of Palestinian refugees in the Middle East, whether in providing valuable contribution of counting the refugees (not only those registered with UNRWA) in their various reports, and by extending protection to Palestinians who have fled Iraq, need to be supported. (Kagan 2009, 431-433) This population suffers restrictions in all movement within the country. They cannot register their children, thus children cannot attend public schools. They cannot even register their marriages, being under constant threat of deportation (Shibliak 1996, 40; Takkenberg 1998, 163-164; Elsayed-Ali 2006, 14). An undocumented Palestinian is legally inexistent. When one does not exist, rights and freedoms are superfluous and useless concepts.

Granting residency status to Palestinian refugees means, in practice, being granted certain privileges and/or restrictions by host states that can be called 'rights'. Those are not, however, rights in the sense of legal obligations for host states, nor are they to be considered entitlements, but rather gifts or grants, a faculty to do or not to do, according to changes in politics and interests. Most Arab states do not consider it necessary to have a unique legal document that would govern the rights of refugees in Arab countries (Grabska 2006, 17). This applies acutely to Palestinian refugees.<sup>132</sup> The fact is that most regulation related to Palestinian refugees in host Arab countries (especially in Egypt and Lebanon) is regulation by decrees and is left to the discretion of administrative authorities. This renders the situation of Palestinian refugees more fragile and easily dependent on changes in political contingencies.<sup>134</sup>

In previous section I have outlined the available legal texts dealing with Palestinian refugees in host countries. I have constructed what I have called a legal matrix, where each Palestinian

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<sup>131</sup> There number, although not definitively sure, may be 3.000 to 5.000 individuals whose status in Lebanon is akin to that of irregular migrants, despite most of them having lived there for decades. As they do not possess valid identification they suffer from wide-ranging restrictions on their human rights (Elsayed-Ali 2006, 13). For more about needs and assistance to non-ID Palestinian refugees in Lebanon, cf Petrigh 2006, 15-16.

<sup>132</sup> According to Amnesty International, "children neither receive recognized identity documents from the Lebanese state" (2006, 10).

<sup>133</sup> According to Sayigh (1995, 44) "Lebanon as 'host' country always has been characterized by the absence of a legal code regulating refugee rights and obligations, the absence of rights except those of residence as refugees, regulation through ad hoc decrees, lack of legal protection against preventive detention, and obstacles to receiving necessary documents."

<sup>134</sup> Most importantly, what follows will deal with the legal status and legal entitlements while being aware of the existent gap between the law on the books and the law in practice or in the real life, that may need a different kind of analysis and empirical data in support or against what follows.

is treated according to his status, largely determined by host countries unilaterally. I have done this while pointing out the protection gap, whether in international and regional mechanisms.

This was not done to argue that there is necessarily and irrefutably a direct correlation between the legal status and rights enjoyment of Palestinian refugees in host Arab states, on the one side, and their real economic and social welfare on the other. It also does not mean that legal status and legal rights are the only factors that determine the conditions of life for Palestinian refugees in host countries.<sup>135</sup> On the contrary, there is often a correlation between the socioeconomic conditions of Palestinian refugees in host Arab countries and that of the rest of the population, at least for refugee populations living outside the refugee camps (Hanssen-Bauer and Jacobsen 2003, 4).

Nevertheless, some data concerning the economic and social situation of Palestinian refugees in host states are explicable if placed in the context of their legal status and rights distribution.<sup>136</sup> The suggestion here is that the welfare status of Palestinian refugees in host Arab states is strictly connected to their legal entitlements, their rights and freedoms. There is a high risk here of simplification, by suggesting to connect, in abstract, legal rights and concrete conditions of welfare. This is not my objective. Rather, I intended to show how certain legal provisions, in force in host Arab states, or the lack of other legal provisions, contribute to the deterioration of welfare status. Said differently, if it is not possible to confirm (at least with the methodological tools that this author applies in this research) that the deterioration of economic, social, and cultural welfare is due (partially or totally) to this or that legal provision or its absence, it is, nonetheless, possible to confirm without hesitation that certain legal provisions and the lack of others constitutes a real obstacle towards full realization of Palestinian refugee welfare.

## 8. Conclusion

More than six decades after displacement, assistance and protection of Palestinian refugees in host Arab states is still needed. Their right to return is yet to be realized, and statelessness is still a destabilizing factor in the region. International aid, even in a time of global financial crisis, needs to be maintained, not out of charity but out of responsibility. As pointed out by

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<sup>135</sup> In Jordan for example, it was outlined by many reports (see for example: Arneberg 1997; Khawaja and Tiltnes 2002) that there are clear differences between Palestinian refugees living in refugee camps and Palestinian refugees who are living in the rest of the country. Regardless of the reasons behind such differences, what is important is to notice that the situation of Palestinian refugees in host Arab countries needs to be looked at with attention to those existent differences and that legal status is not the only factor that has impact on Palestinian refugees welfare conditions in host countries.

<sup>136</sup> The increased poverty among Palestinian refugees in Lebanon can be cited as an example. For (Arzt 1996, 46) “Around 60 percent of the Palestinians in Lebanon live below the U.N. poverty line, making it the poorest of the communities in the UNRWA orbit.” According to Said (2005, 354), “[t]he legal situation of the Palestinian refugees in Lebanon explains in part why an estimated 80% live in poverty... The rise in poverty has also created a health crisis, as Palestinians are not allowed access to Lebanese government hospitals and other health services.” Restrictive policies and laws in host country, such as in Lebanon, add to their preoccupations new ones, including the daily life problems arising from the “lack of housing, lack of jobs, decline in aid, and environmental deterioration. More serious is the pervasive anxiety caused by uncertainty about the future and the “campaigns of hatred” that erupt whenever the question of Palestinian naturalization or *tawtin* arises” (Sayigh 1995, 52). In support to this claim, I can cite also a report issued by Fafo, related to Palestinian refugees in Syria, in which it was stated that the living conditions of Palestinian refugees in Syria are basically on a par with those of Syrian citizens. The same report connects this reality with the existing equality of rights between Palestinian refugees and citizens (Tiltnes 2006, 9).

Saiz, “[t]hat international assistance is an obligation, not an act of charity, must be emphasized in a context where the costs of the economic crisis are being borne disproportionately in the south, despite having originated in the richer countries” (2009, 288).

Most importantly in the Palestinian case, it is partially the responsibility of the international community, which partitioned Palestine, has yet to establish a Palestinian state, and has not enforced the many resolutions related to the right of return for Palestinian refugees. In this context it is possible to perceive assistance as a form of protection. Whenever assistance is effectuated as to fulfill a legal obligation, it may be considered as comprising part of a protection mechanism. Assistance as protection is not conceived as an act of charity aiming at providing superfluous resources to refugees in need. Rather, it is conceived as an obligation of host states, as much as of the international community. Accordingly, they are responsible for fulfillment, and, falling short, they risk being rendered accountable and responsible. In this sense, the basis for state action is not dependent on refugee need or state resources, but rather on individual entitlements to rights.<sup>137</sup>

The way assistance is provided to the Palestinians, including UNRWA shortcomings, intentions to reduce services, the lack of resources and funds, and the diminution of contributions from international community, as much as the way some host countries are (or are not) providing assistance to Palestinian refugees, including refusal to admit them to public schools, hospitals, and other state services, proves that assistance is not conceived as a legal obligation. This is one reason why assisting Palestinian refugees for decades has not contributed to Palestinian refugee empowerment and welfare or economic, social, and political development. This is why assistance is provided for Palestinians while maintaining refugee camps, as if refugeehood and economic instability and precariousness are two faces of the same coin.<sup>138</sup>

Protection, however, entails much more than assistance. It entails taking refugee rights seriously. This paper has shown that the way host Arab countries deal with Palestinian refugees is shaky and unstable, and easily manipulated in times of crises to respond to internal, regional, or international contingencies.

Precarious legal recognition of economic and social rights, accompanied by a lack of political enforcement, renders Palestinian refugees easy prey for the consequences of the global financial crisis, and an easy target for recession actions undertaken by concerned governments. The economic crisis may provide a ‘good opportunity’ to justify rejection of legal obligations to recognize economic and social rights, since legal recognition has serious consequences, not only in economic and political terms, but also in legal terms. Besides, the financial crisis provides a much-awaited opportunity for concerned states to escape

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<sup>137</sup> Although rights and needs may seem similar as to the way they may be satisfied, the approach is completely different, as much as the consequences. A rights-based approach enhances the need to take the rights of refugees seriously and not only their needs. The essence of a rights-based approach is the identification of a certain standard of treatment to which an individual refugee is entitled. In addition, rights imply justiciability, i.e. the ability to access and claim justice. It takes us one step further and prompts questions about responsibility and accountability, and provides a legal component that points to the institutional duty to protect, respect, fulfil and safeguard them (Grabska 2006, 10, 11)

<sup>138</sup> Here again there is a clear difference between host countries concerning the number of refugees who remain in refugee camps, where policies of host states have direct impact on the refugees decision to remain in the refugee camp or opt for living elsewhere in the host country. In Jordan for example, where 95% of Palestinian refugees have Jordanian citizenship (Arneberg 1997, 16), only 13 percent actually live in UNRWA refugee camps. In general situation in camps are “worse off with regards to almost all aspects of what are considered relevant indicators of a good life” (Arneberg 1997, 7).

fulfillment of their political commitments towards the enforcement of economic and social rights, “a further license to ignore their economic and social rights obligations” (Saiz 2009, 280). A more optimistic vision of the current crisis may see in it a potential opportunity to bridge the gap between legal justiciability and political accountability. The challenge would be to translate the abstract normative principles of international law into an ethical point of reference in the political arena and make them operational in day-to-day public policy making (Saiz 2009, 281).

In this paper, the vision is, admittedly, pessimistic. The global financial crisis may have direct and indirect consequences on Palestinian refugees. The little available literature on the topic suggests that, at least with regard to political enforcement of economic and social rights, there is a real danger of regression. Based on historical experience, this paper suggests, there are serious grounds to believe that legal recognition of economic and social rights will be affected. It is possible to accept arguments in favor of delaying political enforcement because of financial and economic prerogatives, delimiting its application *ad minima*, or even deciding to prioritize certain actions over others. What is inconceivable to accept, from a human rights perspective, are compromises with regards to legal recognition.

A right exists or does not exist. One cannot have both options. State actions aimed at delaying the legal recognition of economic and social rights, their delimitations, or their re-organization in a way that render those rights effectively non-existent, are intolerable and unjustifiable. None of the duties of host countries with regards to human rights are derogable as a result of the financial crisis. They are universally applicable to all states regardless of their level of resources or economic development.

Deterioration in the global economic structure is therefore no justification for states – whatever their level of income – to compromise on fundamental human rights obligations. In such times it is all the more important that states guarantee minimum essential levels of these rights, take deliberate measures targeting the most vulnerable, avoid measures that are regressive or discriminatory, and orient public policy towards the progressive realization of the rights of the whole population through the equitable distribution of available resources (Saiz 2009, 283-284).



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