

Where to Return?

The Implications of Palestinian Refugees' Secondary Movements from UNRWA Mandate Area to EU on their Right of Return

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Executive Summary

The question of Palestinian refugees has been a central issue in the international arena for over seven decades. More specifically, the fate of these refugees has been the subject of countless debates and studies that address their living conditions in their host countries, and the appropriate solution to this complex problem. However, for the vast majority of Palestinian refugees, the solution is simply embedded in their ‘sacred’ right of return to their original villages in Historic Palestine.

Palestinian refugees are considered among the most vulnerable categories due to their complex status under international law. As they do not fall under the scope of the international refugee system, they have their own regime under the umbrella of UNRWA, which operates in five entities (Jordan, Lebanon, Syria, West Bank, and Gaza). There are great disparities between these entities when it comes to the overall national policy towards Palestinian refugees, with Lebanon being the harshest in terms of treating its Palestinian population. In the Palestinian territories, original inhabitants and refugees alike are suffering under the brutal Israeli occupation of the West Bank and the forced blockade of Gaza Strip. Palestinian refugees in Syria, although were in a relatively good position, have been suffering the consequences of the Syrian conflict that pushed them into a secondary displacement. Jordan has applied an assimilative approach towards Palestinian refugees, but there are still several complications related to discrimination and changing governmental policies.

The vulnerability of Palestinians in their first host states has been the main motivation towards considering applying to asylum elsewhere. It has created a flow of secondary movements to

outside UNRWA mandate area in order to seek protection and dignified living conditions. These movements to outside UNRWA operations' area have added complexity to the originally proclaimed right of return. While the recent debates on Palestinians' right of return revolved around whether Palestinians should return to Historic Palestine/present day Israel or to a newly established Palestinian State within 1967's borders, secondary movements of Palestinians have raised a key legal question regarding their right of return to their first country of asylum. In other words, it is a question of whether Palestinian refugees hold a 'dual' right of return.

This Thesis will examine the implications of these secondary movements on Palestinians' right of return. It will focus on Palestinians' secondary movement to EU Member States due to the important developments of the overall EU approach towards Palestinian asylum seekers. Prior to examining the patterns of such movements, this Thesis will present in Chapter I an overview of the right of return that Palestinians have been claiming since 1948. Chapter II will then describe the situation of Palestinian refugees within the entities covered by UNRWA in order to understand the reasons behind Palestinians' secondary movements. Lastly, Chapter III will discuss the patterns of Palestinians' secondary movements under the framework of EU law, and it will examine the implications of these movements on Palestinians' right of return.

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Most importantly, I would like to use this space to express my gratitude to those that inspired me to become stronger, fight injustice, and never surrender. To every Palestinian refugee struggling to survive the forced exile. To every Palestinian woman raising her family with her bare hands. To every Palestinian child facing Israeli bullets in Gaza. To every Palestinian child surviving the shackles of Israeli prisons. To every fallen Palestinian that dreamt of return. To Palestinians dreaming of return now. To them, and all Palestinians that are struggling, I wish that you may be able to live in peace, and that you may return to the home that you desire.

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Number of Refugees	2,175,491	449,957	526,744	1.3 Million	809,738
Number of Camps	10	12	9	8	19

Distribution of Palestinian Refugees in the UNRWA region

Palestinian Villages Depopulated in 1948 and Razed by Israel



A map showing the depopulated Palestinian Villages in 1948, and to which Palestinians claim the right to return

Abbreviations

CJEU – Court of Justice of the European Union

HRC - Human Rights Committee

ICCPR – International Covenant on Civil and Political Rights

ICERD – International Convention on the Elimination of all Forms of Racial Discrimination

IHL – International Humanitarian Law

OPTs – Occupied Palestinian Territories

PLO – Palestinian Liberation Organization

PRS – Palestinian Refugees from Syria

UDHR – Universal Declaration of Human Rights

UN – United Nations

UNCCP – United Nations Conciliation Commission for Palestine

UNGA – United Nations General Assembly

UNHCR – United Nations High Commissioner for Refugees

UNRWA – United Nations Relief and Works Agency for Palestine Refugees in the Near East

EU – European Union

Introduction

“And who will live in our house when we are away, Father?

It will remain just as it was, My son.

He felt the key as he felt

His limbs, and was reassured.¹”

a) Historical Background

The verse above was written by Mahmoud Darwish, a notable Palestinian poet in the Arab World. The “key” referred to in the poem constitutes a symbolic representation of the right to return of Palestinians to their original homes in historic Palestine. The idea of return for Palestinians was born following the year of 1948, a year that marks the birth of the Palestinian struggle and referred to by Palestinians as *Nakba* or Catastrophe in English. The Palestinian *Nakba* is associated with the flight and deportation of an estimated 700,000 Palestinians from their homeland during the 1948 war². The war resulted in the creation of the State of Israel on the territory of former Mandate Palestine, with the exception of the territories of West Bank and Gaza Strip that fell under the authority of Jordan and Egypt respectively³. Palestinians that fled and/or were expelled from their homes in historic Palestine sought refuge mainly in Jordan, Syria, Lebanon, West Bank, and Gaza, where they lived in “makeshift refugee camps.”⁴

¹ M. Dawrsih, “The Eternity of the Prickly Pear” In: *Why Did You Leave the Horse Alone?* Shaheen M (trans and ed.). London: Hesperus (2014).

² See B. Morris, *Righteous Victims : A history of the Zionist-Arab Conflict, 1889-1990*, New York : Vintage Books (1999), p. 260; E.W. Said, *The Question of Palestine*, New York : Vintage Books (1992), p.101

³ L. Takkenber, *The Status of Palestinian Refugees in International Law*, Oxford: Clarendon Press (1998), p. 12

⁴ Ibid., p.13

The displacement of Palestinians did not end after the 1948's *Nakba*. In 1967, Israel ceased the territories of West Bank, Gaza Strip, Sinai Dessert in Egypt and Golan Heights in Syria during the second Israeli-Arab war, also known as the six days war. The war resulted in the displacement of an estimated 400,000 Palestinians, half of them being refugees from the first Palestinian refugees' wave of 1948.⁵ The vast majority of these displaced Palestinians fled to Jordan leaving around one million Palestinians in the Occupied Palestinians Territories (OPTs) that include the West Bank, East Jerusalem, and Gaza Strip.⁶

The wars of 1948 and 1967 have created two waves of Palestinian refugees that enjoy a special status under International Law. Palestinian refugees do not fall under the general refugee system, but they have their own regime that governs their status and rights⁷. In this context, two UN agencies were established in 1948 and 1949 in order to deal with the refugee question and the fate of Palestinians.⁸ The first agency, the United Nations Conciliation Commission on Palestine (UNCCP), was established in the purpose of promoting and achieving a durable solution to the Palestinian question, and ensuring the protection of Palestinian refugees⁹. However, on May 1964, the agency announced the end of its last functioning program "the Technical Office"¹⁰. The UNCCP fell into demise officially in 1966¹¹. From then on, the only

⁵ BADIL, "From the 1948 Nakba to the 1967 Naksa", *BADIL Resource Center for Palestinian Residency and Refugee Rights* (2004), p.2

⁶ Ibid.

⁷ S.M Akram, "Palestinian Refugees and their Legal Status: Rights, Politics, and Implications for a Just Solution", *Journal of Palestine Studies* vol. 36 (3) (2002), p.38

⁸ Ibid.

⁹ T.M Rempel, "The United Nations Conciliation Commission for Palestine Protection, and a Durable Solution for Palestinian Refugees", ", *BADIL Resource Center for Palestinian Residency and Refugee Rights* Brief no.5(2002), p.6. UNCCP was established under Resolution 194 passed by the United Nations General Assembly (UNGA) on 11 December 1948, A/RES/194 (III), Accessed on 04/11/2018, , http://www.BADIL.org/phocadownloadpap/BADIL_docs/bulletins-and-briefs/Bulletin-18.pdf

¹⁰ M. Fischbach, *Records of Dispossession: Palestinian Refugee Property and the Arab-Israeli Conflict*, West Sussex: Columbia University Press (2015), p. 280

¹¹ Ibid., p.302

agency that worked on the question of Palestinian refugees is the United Nations Relief and Works Agency for Palestine Refugees (UNRWA), which is considered as an assistance agency with no explicit mandate related to protection¹². Hence, following the fall of UNCCP, a protection gap was created that turned refugees in UNRWA zone more vulnerable to the changing politics and conflicts in hosting states¹³.

Palestinian refugees were placed under a separate refugee regime as the result of a decision taken by the Arab States.¹⁴ During the drafting process of both the UNHCR Statute and the 10th article of the 1951 Convention, Arab States persisted on excluding Palestinians from this international regime.¹⁵ Eventually, Palestinian refugees were excluded from the Refugee Convention of 1951 under Article 1D.¹⁶ The politics behind this decision are related to two notions: the acknowledgment of the right of Palestinians to return to their homes¹⁷ and Arab states' refusal at the same time of resettling Palestinian refugees in their own territories.¹⁸

There are currently 5,266,603 Palestinian refugees registered with UNRWA in its mandate area that includes Jordan, Lebanon, Syria, West Bank, and Gaza.¹⁹ The distribution of

¹² UNRWA was established by UNGA Resolution 302 passed on 8 December 1949, A/RES/302 (IV), Accessed on 04/11/2018, <https://unispal.un.org/DPA/DPR/unispal.nsf/0/AF5F909791DE7FB0852560E500687282>

¹³ E.g. Black September conflict in Jordan (1970), Sabra and Chatila massacre in Lebanon (1982)

¹⁴ J. Al Hussein and R. Bocco, "The Status of the Palestinians in the Near East: the Right of Return and UNRWA in Perspective", *Refugee Survey Quarterly* 28 (2-3) (2009), p.283

¹⁵ See supra note 7, p.40

¹⁶ The Third Chapter of this Thesis will explain the exclusion of Palestinian refugees from the Refugee Convention under Article 1D

¹⁷ In this regard, Al Hussein and Bocco (Supra note 14) quotes resolution 231 of 17 March 1949 adopted by the Arab League Council states, which states: "that the lasting and just solution of the problem of the refugees would be their repatriation and the safeguarding of all their rights to their properties, lives and liberty, and that these should be guaranteed by the United Nations."

¹⁸ BADIL, *Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Convention* (2nd edition), published by BADIL center for Palestinian Residency and Refugee Rights (2015), ed. by S. Akram and N. Al Azza, p.43

¹⁹ UNRWA, "Where we work", *United Nations Relief and Work Agency UNRWA*, Accessed on 05/12/2017: <https://www.unrwa.org/where-we-work>

Palestinian refugees between UNRWA regions is unequal, and their legal status differs in each country. Furthermore, the experience of Palestinian refugees varies widely depending on the country in which they reside.²⁰ The Table below shows the distribution of Palestinian refugees within UNRWA mandate area:

Region	Jordan	Lebanon	Syria	Gaza	West Bank
Number of Refugees	2,175,491	449,957	526,744	1.3 Million	809,738
Number of Camps	10	12	9	8	19

Distribution of Palestinian Refugees in the UNRWA region²¹

Palestinians in these areas, especially in Lebanon, are subject to different types of stigmatization, discrimination, and marginalization.²² They are placed in an “intractable state of limbo” as their country of origin has been turned into an ethnically exclusive state, and they lack legal protection in their hosting states (with a few exceptions in this regard).²³ Palestinian refugees are lacking both international protection²⁴ and national protection of the hosting states as the legal status of Palestinian refugees in these states are subject to changing national politics and security considerations²⁵. The protection gap has increased the vulnerability of Palestinian

²⁰ Chapter II of this Thesis will shed the light on the legal status of Palestinian refugees within UNRWA mandate area

²¹ See supra note 19

²² See supra note 14, p.261

²³ N. Erakat, “Palestinian Refugees and the Syrian Uprising: Filling the Protection Gap during Secondary Forced Displacement”, *International Journal of Refugee Law* Vol.26 (4) (2014), p. 582

²⁴ The demise of the UNCCP as the agency responsible for the protection of Palestinian refugees has created what is described as a “protection gap.” For more details on the protection gap, see BADIL’s handbook *Closing Protection Gaps: A Handbook on Protection of Palestinian Refugees* ed. by S. Akram and N. Al Azza (2015)

²⁵ S. Akram & T. Rempel, “Temporary Protection as an Instrument for Implementing the Right of Return for Palestinian Refugees”, *Boston University International Law Journal* vol. 22(1) (2004), p. 53.

refugees, especially during secondary movements.²⁶ This vulnerability was further exposed by the Syrian conflict that forced Palestinian refugees in majority into secondary displacement.²⁷ It is estimated by the Euro-Mediterranean Human Rights Monitor that approximately 57,276 Palestinians from Syria (PRS) fled to neighboring countries and around 80,000 PRS fled towards Europe.²⁸

The secondary displacement of Palestinians is becoming a “regular phenomenon,” as they had to flee their host states on several occasions since their first displacement from historic Palestinian.²⁹ The secondary movements of Palestinians, which increased in light of the Syrian conflict, have raised several issues regarding the legal status of Palestinian refugees in the country of destination outside UNRWA operations’ area. The special legal status of Palestinian refugees under International Law and their exclusion from the international refugee regime has further complicated their situation during secondary movements. These secondary movements of Palestinian refugees from their first host states to countries outside UNRWA mandate area raise an important question on the implications of these movements on the right of return of Palestinian refugees.

b) Objective and Structure of Thesis

This Thesis will tackle the question on whether secondary movements of Palestinian refugees could generate a dual right of return. The duality of return discussed in this thesis

²⁶ See supra note 23, p.583

²⁷ UNRWA, “Syria Crisis”, published on the Website of the *United Nations Relief and Working Agency for Palestine Refugees in the Near East (UNRWA)* Accessed on 3/11/2018 <https://www.unrwa.org/syria-crisis>

²⁸ “Palestinian Syrians: Displaced Once Again”, published on the Website of Euro-Mediterranean Human Rights Monitor, Accessed on 3/11/2018, <https://euromedmonitor.org/en/palestinians-in-syria>

²⁹ BADIL, “Palestinian Refugees: Multiple Displacements and the Issues of Protection”, *Al Majdal Magazine* Iss. No.59 (2017), p.17, Accessed on 10/11/2018, <https://reliefweb.int/sites/reliefweb.int/files/resources/al-majdal-59.pdf>

relates to the main right of return demanded by the Palestinians to their countries of origin on one hand, and the right of return to Palestinians' first hosting state following their secondary movement or displacement on the other hand. This Thesis aims at shedding the light on the implications of secondary movements on the right of return for Palestinian refugees and highlight the recent developments of international law regarding the question of Palestinian refugees.

This thesis will firstly provide a moral and legal analysis of the general right of return demanded by Palestinian refugees. It will secondly address, through a comparative analysis, the policies of hosting states towards its Palestinian refugee populations within UNRWA mandate area. Lastly, it will approach the secondary movements of Palestinian refugees from UNRWA mandate area to EU Member States and the implications of these movements on the right of return. The legal status of Palestinian refugees arriving to EU Member States will be explained in the context of the judgments issued by the Court of Justice of the European Union (CJEU) in this regard.

c) Choices of Jurisdictions

The examination of the context of Palestinians' secondary movements from UNRWA mandate area to EU Member States requires firstly a thorough understanding of the Palestinian reality in their first hosting states. Due to the differences in the policy of states towards Palestinian refugees within UNRWA operations' area, the first set of jurisdictions that will be examined incorporates all entities composing UNRWA mandate area, which include Jordan, Lebanon, Syria, and Occupied Palestinian Territories. Chapter II of the Thesis will examine the reality of Palestinian refugees in these entities and the great disparities in States' approach

towards Palestinians. It will expose the vulnerability of Palestinian refugees in light of political and security considerations of the hosting state.

In addition to the entities falling within UNRWA mandate area, this Thesis will examine the implications of the secondary movement of Palestinian refugees within the EU context. The reason behind choosing the EU as a jurisdiction relates to the developments that the EU has achieved in its approach towards Palestinian asylum seekers coming from UNRWA mandate area. CJEU has issued key decisions on Palestinian asylum seekers in Hungary and Bulgaria that further elaborated on the interpretation of Article 1D. These decisions highlight the characteristics of the secondary movements of Palestinian refugees necessary to examine the dual notion of the right of return.

d) Methodology

In this Thesis, I will rely on primary and secondary sources. Primary sources will cover a set of historical and legal documents including United Nations' documents (resolutions and conventions), national laws and policies, EU Directives, and CJEU case laws. In addition to these, I will use a set of secondary sources that cover the existing literature on the topic of Palestinian refugees. Used secondary sources include books, academic articles, official reports by the UN, non-governmental organizations' reports and studies, and Newspapers' articles.

The academic literature along with UN related documents will assist me in approaching the nature and characteristics of the right of return of Palestinian refugees in the first Chapter. It will also provide me with the necessary information to describe hosting entities' policies towards Palestinian refugees in order to highlight the complex reality of Palestinians within UNRWA mandate area. This description of policies is necessary to examine the motives behind

Palestinians refugees' secondary movement, particularly to EU Member States. Lastly, the case laws will be used to understand the development of international and EU approaches towards Palestinians' asylum seekers and the implications of their secondary movements on the right of return.

Chapter I

Palestinians' Right of Return: Moral and Legal Analysis

Preliminary Notes on Palestinians' Right of Return

The right of return of Palestinian refugees is the most controversial and contested issue in the Israeli-Palestinian conflict. Palestinian refugees, who claim this right, are initially those who were expelled around 1948 from their homes in historic Palestine.³⁰ Palestinians thus demand their right of return to the sites in which they originally resided, and this right has also been claimed by the descendants of the first generation of Palestinian refugees.³¹ As the right of return constitutes the milestone of the continuous conflict and the essence of the refugee problem, it is crucial to identify the nature of this right and its legality.

³⁰ R. Halwani, "The Right of Return" in *The Israeli-Palestinian Conflict: Philosophical Essays on Self-Determination, Terrorism and One State Solution* by R. Halwani and T. Kapiran, New York: Plagrave Macmillan (2008), p. 72

³¹ Ibid.

Palestinian Villages Depopulated in 1948 and Razed by Israel



A map showing the depopulated Palestinian Villages in 1948, and to which Palestinians claim the right to return

³² "Palestinian Depopulated and Destroyed Villages, 1948-1949", published by the Palestinian Academic Society for the Study of International Affairs PASSIA, Accessed on 04/11/2018, <http://www.passia.org/maps/view/18>

The term ‘return’ does not merely refer to the return to a future Palestinian state established next to Israel, but to the original lands from which refugees’ ancestors were expelled.³³ The right of return of Palestinian refugees in this context might raise an important concern: many houses in which the first generation of refugees used to live do not exist anymore, or other people have occupied them. Therefore, some might claim that the right of return of Palestinian refugees has become null in the absence of a physical place to which they can return. However, this position does not diminish Palestinians’ demand to return as “a right of return is not defeated by the fact that the area from which a person was displaced has changed in character.”³⁴ Additionally, a reasonable accommodation and settlement can still be made between the ones that are returning and the inhabitants.

Therefore, the right to return of Palestinian refugees can be summarized in the following premises:

- The return of Palestinian refugees to houses and lands that they left around the year 1948
- These lands belong to historic Palestine, which are now part of Israel
- The actual right to return of Palestinian refugees expelled in 1948 is distinct from the creation of a Palestinian state according to pre-1967 borders

Israel has been implementing a different version of the right to return, which of course excludes Palestinians. In 1950, Israel enacted the “Law of Return”, which allows any Jewish individual to enter Israel and become an Israeli citizen.³⁵ The sheer justification of the Israeli law

³³ Ibid., 74

³⁴ J. Quigley, “The Right of Displaced Palestinians to Return to Home Areas in Israel” in *The Palestinian Exodus 1948–1998*, edited by G. Karmi and E. Cotran. Reading, UK: Ithaca Press (1999), p.161

³⁵ The Israeli “Law of Return” was passed by the Israeli Knesset on 5 July 1950, Accessed on 04/11/2018, <https://knesset.gov.il/laws/special/eng/return.htm>

lays in historical claims that Jews are entitled to the land as they suffered in exile for centuries, and as Shlomo Avineri explains it: Jews have always considered themselves as a minority, “a minority in exile.” This law ignores the indigenous population who happened to be living in present day Israel for centuries. It reaffirms the claim that Israel is a Jewish State, and the exclusivity of the right of return for Jews only.

Moreover, the right to return of Palestinians might break the existing demographical balance; hence threaten the Jewish identity of Israel. In this regard, several Israeli politicians have raised these concerns explicitly. Ben-Gurion, who was the first Prime Minister in Israel, had declared in 1961 that “Israel categorically rejects the insidious proposal for freedom of choice for the refugees, for she is convinced that this proposal is designed and calculated only to destroy Israel.”³⁶ Additionally, the former Prime Minister Ehud Barack had issued similar statement during his interview with the Israeli Historian Benny Morris in 2004, in which he stated that the Israeli government will not allow any “refugee back on the basis of the right of return.”³⁷

To add more to the Israeli position, the official narrative denies the existence of this right to Palestinians, claiming that the vast majority decided willingly to flee the conflict prior to the establishment of the state of Israel³⁸. Furthermore, it refuses to hold Israel responsible for the refugee crisis, and puts the blame on the Arab policy in 1948.³⁹ Critics go further by saying that a right to return cannot be based merely on a simple wish to form a cultural identity in a defined

³⁶ The quote was taken from D. Artz’ book *Refugees into Citizens: Palestinians and the End of the Arab-Israeli Conflict*, New York: Council on Foreign Relations (1997), p.133

³⁷ The statement of former Prime Minister Ehud Barack can be found in B. Morris’ “An Interview with Ehud Barack”, *The New York Review of Books* 49 (10) (2002), p.44

³⁸ M. Zell & S. Shnyder, “Palestinian Right of Return or a Strategic Weapon: a Historical, Legal, and Moral-Political Analysis”, *Nexus - A Journal Of Opinion* 77(2003),p. 3

³⁹ *Ibid.*, p.88

territory.⁴⁰ Moreover, questions regarding the interests of Palestinians demanding to return might also rise. One can debate the worthiness of this right, as it might be costly⁴¹, and can threaten the existence of Jews in Israel⁴².

In challenging all these claims, it is worth examining the right to return, firstly, as a moral right for Palestinians, and secondly as a legal right. The following section will deal with the nature of the right to return and then apply this right on the case of Palestinian refugees.

Palestinians' Moral Right of Return

For a right to be moral, it is important to establish the existence of the right itself then examine its nature.⁴³ In order to address the existence of a right, four criteria should be fulfilled: 1) the right should impose some limits on the behavior of individuals, 2) can be waived, 3) entails an option 4) and lastly it should be enforced.⁴⁴ In demonstrating the existence of the right to return of Palestinian refugees, Professor and Philosopher, Raja Halwani, had applied these four aspects of a right on the right to return of Palestinians.⁴⁵ He considered that, firstly, Palestinians' claim to return imposes certain constraints on others as it prohibits the interference of others in "the implementation and exercise of the right." Secondly, a Palestinian refugee can give up this right, thus the right of return is waivable. Thirdly, the right to return incorporates an option for Palestinian refugees as they are free to choose the time of their return. Lastly, the right

⁴⁰ V. Tadros, "The Persistence of the Right to Return", *Politics, Philosophy, and Economics* 16(4) (2017), p.382

⁴¹ Ibid.

⁴² M. Zell & S. Shnyder, *supra* note 38, quotes the statement of Benny Morris that was given in a lecture at the University of California (2001). The statement goes as the following: "They [Palestinians] want to throw [the Jews] into the ocean, and anyone who holds a different opinion is mistaken. These are the words of the Historian", p.15

⁴³ See *supra* note 29, p.78

⁴⁴ K. Shelly, *Normative ethics*. Boulder, Colo: Westview Press (1998), p. 172-175

⁴⁵ See *supra* note 30, p.79-83

can be enforceable either by the refugees themselves or through an agency that is acting on their behalf and can rely on morally “severe measures” (such as sanctions and boycotts) in order to exercise the right.

Professor Halwani further explains that the general structure of a right covers a subject(s), respondent(s) and content. In relating this structure to the right to return of Palestinians, he explains that the right of return is an individual claim or right, hence the subjects of the right include as many individual refugees as there are.⁴⁶ The respondents in this case will be everyone else who has the duty to not prevent the return of Palestinian refugees. The content of the right will be Palestinians’ right of return to their original homes that these refugees had once inhabited. In his discussion of the right to return of Palestinian refugees, Professor Halwani insists on the notion that this right is an individual right and not merely a collective right. Even if Palestinians were collectively driven out of their homes, this does not entail that Palestinians, as individuals, do not have the right to make the decision of returning or staying wherever they are. To further explain this point, the following will approach the morality of the right of return for Palestinians of first generation and their descendants.

When morally justifying the right to return of the first generation of Palestinian refugees, it is often established that this category of refugees might have wanted to go back to the land in which they had lived and worked, to where they have a strong emotional connection. However, the issue is more complex and broad. The attachment to one’s land is transgenerational, and does not depend only on the present relationship to their homeland. People would want to reconnect to

⁴⁶ Halwani reached this conclusion by comparing the right of return to the right of not to be killed, as the latter has as many subjects as there are people that have this right

their identity that was long established in a specific territory and to the origin of the culture of their ancestors.⁴⁷

In the Palestinian case, having lived in camps since 1948, an old rusted key is being inherited from one generation to another, a key that has no meaning but a moral one: to return to the house to which this key belongs. Palestinians are well aware that the house had been destroyed or inhabited by others long time ago, they are well aware that the key will not open the door of the house even if it still exists. This very key is the manifestation of the morality of the right to return of Palestinians. They are looking forward to return to what was once their home, city, or village; they are claiming this right to return mainly as individuals.⁴⁸ In the eyes of Palestinians, return is a “sacred” right.⁴⁹

In this context, Euripides, a famous Greek tragedian, had perfectly expressed the grief of those who lost their lands when he stated that “[t]here is no greater sorrow on earth than the loss of one’s native land.⁵⁰” The native land is where one develops his/her distinct identity, thus losing this land will only generate endless grief and pain. There is a strong cultural and emotional connection that exists between the individual and his/her native country, which can explain the refugees’ continuous desire to return. This kind of “yearning” illustrated by Euripides

⁴⁷ See supra note 40, p. 382

⁴⁸ R.Halwani, “On the right of return”, *Electronic Intifada* (2013), Accessed on 05/12/2017, <https://electronicintifada.net/content/right-return/4643>

⁴⁹ S. Abu Sitta, “The Implementation of the Right of Return”, *Palestine - Israel Journal of Politics, Economics, and Culture* vol. 15/16 (4/1) (2008/2009), p.24 & J. Redwine, “Peace Talks, Palestinian Refugees and Their Right of Return”, *The Washington Report on Middle East Affairs* vol. 29 (9) (2010), p.18

⁵⁰ Euripides, Verse 650 in *Medea* (431 BCE), Quoted in “The Right to Return of Palestinian people”, a Study Prepared by the Committee on the Exercise of the Inalienable Rights of the Palestinian People as a Part of its Mandate Provided by the UN GA Resolution 32/40B of 2 December 1977 (1 November 1978), p.3, Accessed on 05/11/2018, <https://unispal.un.org/DPA/DPR/unispal.nsf/0/805C731452035912852569D1005C1201> (English) and <https://unispal.un.org/pdfs/STSGSERF2f.pdf> (French)

is “so spiritual” and “instinctive”, which explains the desire of living in the place where one belongs.⁵¹

When it comes to the second and third generations of refugees, some might argue that these refugees, unlike the first generation, do not have any emotional or physical connection to their original land, hence they are not entitled to the right to return. However, this can be easily contested if the time factor is considered. The Palestinian refugee problem was created in 1948, roughly 70 years ago. Thus, descendants of the first generation refugees do not isolate themselves from the events that occurred in 1948, as they are not “remote in time” from these events.⁵² Moreover, the descendants have a strong sense of belonging to the lands of their ancestors, which is rooted and maintained through educational, historical, and even political ties.⁵³

Professor Halwani has addressed the issue of return again in a more recent writing on the moral right to return, which offered an explanation of the ways in which a right can become moral. He starts by stating that a refugee is a person that was forced “directly or indirectly” to leave his/her home.⁵⁴ Thus, when someone was forced to suddenly change their lifestyles under an external factor, they morally have the right to go back to the original state and to the villages from which they were forced to leave. He goes further by examining the dangers that a refugee’s identity faces when he/she is away from the land, history, and the culture to which they associate themselves. Therefore, he concludes that the right to return is moral as it contributes to the revival of the refugee’s shaking identity.

⁵¹ D. Nsereko, “The Right to Return Home”, *Indian Journal of International Law* (1981), p. 335-336.

⁵² R. Halwani, see supra note 30, p.96

⁵³ Ibid., p. 97

⁵⁴ See supra note 48

On the Israeli side of the story, the popular story is that Palestinians have left their properties and homes willingly, hence they do not have the right to return. This claim is misleading and vague, as many historians, including Israeli academics, have already examined the violent circumstances and the use of vicious force that drove a big number of Palestinians to flee their homes.⁵⁵ However, we can still approach this claim from a moral perspective. Assuming that the Israeli narrative is that Palestinians had left based on the orders of the Arab leaders at that time, thus entailing that Israel is not responsible for the creation of the refugee problem and subsequently their return.⁵⁶ Nevertheless, leaving properties does not mean that this person had forfeited his/her rights to the properties in question. Leaving, whether willingly or under the threats of war, does not imply that the rights are lost especially when one had left a conflict zone.

Right of return is also associated with the notion of justice. A moral justification for this right lies in the fact that some perceive return as a “natural restorative justice” used in order to correct a wrongdoing.⁵⁷ Refugees have lost their properties and homes as the result of expulsion or fleeing, hence the proper action to repeal this injustice is by allowing them to return to their homes.⁵⁸ This understanding may apply in the case of Palestinian refugees that raise a moral claim to return to their homes of origin as part of a just scheme. In addition to justice, return is also an attempt to reverse the actions of ethnic cleansing, as was the case when the Dayton

⁵⁵ See for example the account of Ilan Pappé in *The Ethnic Cleansing of Palestine*, Oxford: Oneworld(2006), the account of Walid Khalidi in *All that Remains: the Palestinian Villages occupied and Depopulated by Israel in 1948*, Washington, D.C: Institute for Palestine Studies (2006), and that of Benny Morris in *Righteous Victims : a History of the Zionist-Arab Conflict, 1889-1990*, New York: Knopf(1999)

⁵⁶ See supra note 40, p.388

⁵⁷ A. Howard and E. Barkan, *No return, no refuge: Rites and rights in minority repatriation*. New York: Columbia University Press (2011), p.231

⁵⁸ Ibid.

Agreement was signed.⁵⁹ Taking the Bosnian example, returning Bosnian refugees and displaced persons to their homes was seen by European countries as a “moral desire to reverse the process of ethnic cleansing in Bosnia.”⁶⁰ Therefore, in this context, return is a moral remedy for the acts of ethnic cleansing and forced expulsion.

It is important to understand the moral and political aspects of the right of return that add to its legal dimension. The question of return should not merely be addressed in a narrowly legal perspective, but it should incorporate an understanding of the complex political process that address claims of redress of historical wrongdoings and reversion of ethnic cleansing.⁶¹ Palestinians’ claims for return hold moral connotations, as they demand a just redress to their seven decades old exile. Furthermore, the exercise of the right of return by Palestinians is a means of preserving their national identity that is tightly linked to their lands of origin, in addition to reconnecting with their history. As Bosnians have claimed this right as an act of “defiance”⁶², Palestinians do also consider the exercise of the right of return as a means to defy the historical injustices placed upon them, and overcome the struggles of their everyday lives as refugees in exile.

Approaching the morality of a right is crucial to the discussion of the right to return of Palestinians. Academics and researchers might prefer to approach this right first and foremost from the political and legal aspects of self-determination, but moral rights might have a greater significance in this regard. In this context, moral rights could be considered as natural rights that

⁵⁹ See supra note 57, p.78

⁶⁰ BADIL, “Refugee return and real property restitution in Bosnia-Herzegovina - lessons learned for the Palestinian case”, *BADIL Resource Center for Palestinian Residency and Refugee Rights* (2003), Accessed on 04/11/2018, http://www.BADIL.org/phocadownloadpap/BADIL_docs/Working_Papers/WP-E-01.pdf

⁶¹ M. Bradley, “Durable Solutions and the Right of Return for IDPs: Evolving Interpretations”, *International Journal of Refugee Law* vol30 (2) (2018), p.218

⁶² Ibid., 233

fall within the framework of natural law.⁶³ As Professor Halwani says, moral rights might even supersede political and legal rights, hence it will have a higher ground when arguing in their favor⁶⁴. For instance, Apartheid regime was legal in South Africa but this did not generate the morality of such discriminatory system.

Palestinians' Legal Right of Return

Legal Basis for the Right to Return

In a study prepared by the 'Committee on the Exercise of the Inalienable Rights of the Palestinian People' upon the request of the United Nation General Assembly, an overview of the right of return in classical legal theory is presented.⁶⁵ The study refers to Socrates' perception towards the right to return, which was implicitly implied in the following statement: "...we further proclaim to any Athenian by the liberty which we allow him that...he may go where he pleases and take his goods with him. Anyone...may go where he likes, retaining his property...⁶⁶". Socrates' approach to the right to return is expressed through one's right to retain their own property; the right of return is treated as a part of one's freedom of movement to leave his or her properties and then come back to reclaim them at any given time.

The study also refers to the right to return as established in the Magna Carta (1215), which considers it as one of the first legal document to codify the right to return. As an essential

⁶³ For further information on the relationship between moral rights and natural rights, see J. Feinberg, "In Defense of Moral Rights" *In Problems at the Roots of Law: Essays in Legal and Political Theory*, New York: Oxford University Press (2003)

⁶⁴ See supra note 48

⁶⁵ "The Right to Return of Palestinian people", a Study Prepared by the Committee on the Exercise of the Inalienable Rights of the Palestinian People as a Part of its Mandate Provided by the UN GA Resolution 32/40B of 2 December 1977 (1 November 1978), Accessed on 05/11/2018, <https://unispal.un.org/DPA/DPR/unispal.nsf/0/805C731452035912852569D1005C1201> (English) and <https://unispal.un.org/pdfs/STSGSERF2f.pdf> (French)

⁶⁶ Ibid., p.3

part of the freedom of movement, the Magna Carta explains the right to return as the right “...to depart from our kingdom, and to return to it, safely and securely, by land and water...⁶⁷”. The right to return is also referred to implicitly, but it can be easily understood from the text that an individual has the right to leave the country in which they reside, and has the freedom to return to it without any threat. In the examples mentioned so far, there is a strong connection between individuals’ rights to leave their own territories and lands, and their right to return to what was originally left. These two rights fall under the broad freedom of movement, which was explicitly stated in ancient legal documents, and the other international human rights’ instruments.

Another way to approach the legal basis of the right to return is by examining the opposite side of the right: whether there exists a right to expel or not. In the 16th century, the punishment of exile was considered among the harshest sentences.⁶⁸ Therefore, sending a person into exile is used as a high degree punishment, there is not such right as expelling individuals, but merely be used as a sentence for criminal offences in certain cases. If expelling criminals has been regarded as one amongst the most severe punishments, how could one justify the expel of thousands of Palestinians in 1947-1948 from their homes? If the answer is that Palestinians had left because of the ongoing conflict at that time, the Committee on the Exercise of the Inalienable Rights of the Palestinian People stated in its study that “[i]n cases where persons had been forced to leave their country because of force majeure, such as war, the right of return could not be questioned.⁶⁹” Palestinians were expelled from their country, as proved by many historians including Israeli academics, they did not commit a criminal offence that deserves this kind of

⁶⁷ Ibid.

⁶⁸ Ibid. The Study quotes the Political Theorist Francisco de Vitoria that said in this regard: “Exile is included among the capital penalties”

⁶⁹ Ibid., p.1

‘punishment’, hence they are entitled to reclaim their right to return to the lands that they left or were forced to leave more than 70 years ago. The right to return is perceived among the most fundamental rights for Palestinian refugees. It is not only the case for Palestinian refugees, but the right to return is generally perceived as an essential right. It is fundamental “because exile is a fundamental deprivation of homeland,” a deprivation that extends to cover the very personal characteristics of identity and culture⁷⁰. In general, people have right to live peacefully and safely in their homeland where their ancestors have lived, and their culture exists⁷¹.

In order to establish the legality of this right for Palestinian refugees, the following will deal with the right to return for Palestinian refugees in United Nations’ resolutions, International Human Rights law, International Humanitarian law, and in Nationality laws.

UN General Assembly Resolution 194 (III)

Palestinians, when referring to their right to return, use the United Nations’ General Assembly resolution 194 (III) in order to prove that their right is codified in a legal instrument. The main challenge to this claim is the fact that General Assembly resolutions do not have a binding nature, thus the questions remains whether Palestinians can actually use this document when arguing for their right or it is not enough to establish the legality of their right to return. This chapter will shortly address the background of the document, its content, and its significance.

The Resolution 194 (III) was adopted by the General Assembly following the draft of Count Folke Bernadotte⁷², the UN appointed mediator for Palestine "to promote a peaceful

⁷⁰ Bill Frelick, “The Right of Return”, *International Journal of Refugee Law* (1990), p. 444

⁷¹ Ibid.

⁷² J.M. Bracka, “Past the Point of No Return? the Palestinian Right of Return in International Human Rights Law”, *Melbourne Journal of International Law* 6(2) (2005), p. 290

adjustment to the future situation in Palestine.⁷³ In his report, Bernadotte suggested that the optimal solution for Palestinian refugees would be “[t]hat recognition be accorded to the right of residents of Palestine who, because of conditions created by the conflict there, have left their normal places of abode, to return to their homes without restriction and to regain possession of their property.⁷⁴” Bernadotte had reaffirmed the right to return for Palestinian refugees at the earliest possible date several times throughout the report. However, he paid a high price for his firm position towards Palestinian refugees, as he was assassinated by the Israeli terrorists one day after submitting his report on 16 September 1948⁷⁵.

The efforts of Count Bernadotte led to the adoption of Resolution 194, a sacred document for many Palestinians due to its emphasis on Palestinians’ right to return. The document followed the suggestions in Bernadotte’s report, and it included in paragraph 11 (1) that the General Assembly:

“Resolves that the refugees wishing to return to their homes and live at peace with their neighbours should be permitted to do so at the earliest practicable date, and that compensation should be paid for the property of those choosing not to return and for loss of or damage to property which, under principles of international law or in equity, should be made good by the Governments or authorities responsible.

⁷³ See supra note 65, p.13-14

⁷⁴ “Progress Report of the United Nations Mediator on Palestine Submitted to the Secretary-General for Transmission to Members of the United Nations”, United Nations General Assembly (UNGA), 3rd session, Supplement no. A/648 (16 September 1948), Accessed on 04/10/2018, https://www.BADIL.org/phocadownload/International_and_Regional_Instruments/UNGA_Resolutions/PROGRESS-REPORT-OF-THE-UNITED-NATIONS-MEDIATOR-ON-PALESTINE-1948.pdf

⁷⁵ S. Akram, “Myths and Realities of the Palestinian Refugee Problem: Reframing the Right of Return” in *International Law and the Israeli-Palestinian Conflict* Edited by S.M. Akram, M. Dumper, M. Lynk & L. Scobbie, New York: Routledge (2011), p. 47

Instructs the Conciliation Commission to facilitate the repatriation, resettlement and economic and social rehabilitation of the refugees and the payment of compensation, and to maintain close relations with the Director of the United Nations Relief for Palestine Refugees and, through him, with the appropriate organs and agencies of the United Nations;⁷⁶

The 11th paragraph of Resolution 194 (III) identified the ‘durable solutions’ that Palestinian refugees are entitled to under international law, which include return, restitution, and compensation⁷⁷. The content of paragraph 11 of Resolution 194 did not contribute to the creation of any new right, and this was acknowledged by the United States’ representative at the time who clearly stated that the paragraph just reaffirms existing rights and provides the necessary instruments for its implementation.⁷⁸

The second sub-paragraph of paragraph 11 indicates that the Conciliation Commission should facilitate the resettlement of refugees and their compensation. However, the resolution had clearly focused on the importance of individual choice in this matter, and it can be concluded from the language of sub-paragraph 1 that refugees wishing to return “should be permitted to do so.” Hence, resettlement and compensation come as a personal choice for refugees that wish not to return to their homes. Moreover, the resolution was the result of Bernadotte’s report, which dealt with the right to return as a core element. Therefore, the language of the Resolution is crystal clear: it prioritizes the right to return for Palestinian refugees to their homes and lands over any other durable solutions.⁷⁹

⁷⁶ United Nations General Assembly (UNGA) Resolution 194 (III), “Palestine -- Progress Report of the United Nations Mediator”, A/RES/194 (III) passed on 11 December 1948

⁷⁷ G.J. Boling, “Palestinian Refugees and the Right of Return: an International Law Analysis”, *BADIL- Information and Discussion Brief* (8) (2001), p.2

⁷⁸ Ibid., p. 3.

⁷⁹ There are three durable solutions under International Law for refugees: Return, Resettlement, and Integration. For further details on durable solutions see UNHCR’s publication “The Framework for Durable Solutions for

Furthermore, the resolution has stated the steps that must be taken in order to implement the right to return on the ground. *Badil*, the Resource Center for Palestinian Residency and Refugee Rights, had previously discussed the principles that guide the implementation of Resolution 194 (III).⁸⁰ First, the Resolution has referred to the exact place where refugees should return to, which is their “homes” and not simply the lands from which these refugees come. Secondly, the Resolution emphasized on the importance of individual choice in making the decision of return. The draft history shows that the aim was to reassure that the right to return is based on an individual choice that each refugee can make.⁸¹ Additionally, the time frame of the implementation is also included, which is “at the earliest practicable date.” Fourthly, Israel is held responsible for the admission of Palestinian refugees as the language of the Resolution affirms that refugees wishing to return “should be admitted to do so.” Lastly, the Resolution covers all refugees with non-discrimination on any base.

There is no doubt that Resolution 194 considered the right to return of Palestinian refugees as the milestone of solving the refugee problem. The admission of Israel as a member of the UN in Resolution 273 was even “conditioned on acceptance and implementation of Resolution 194 (III).⁸²” Nevertheless, the document is still a General Assembly resolution, which renders it non-binding in principle. Regardless of its original nature, the resolution can

Refugees and Persons of Concern” (May 2003), Accessed on 04/11/2018, <http://www.refworld.org/docid/4124b6a04.html>

⁸⁰ See supra note 77, p. 4

⁸¹ Boling, in supporting his argument that the right of return depends on an individual choice, recommended “Paolo Contini, Legal Aspects of the Problem of Compensation to Palestine Refugees, 22 Nov. 1949, attached to Letter and Memorandum dated 22 November 1949, Concerning Compensation, received by the Chairman of the Conciliation Commission from Mr. Gordon R. Clapp, Chairman, United Nations Economic Survey Mission for the Middle East. U.N. Doc. W/32, 19 January 1950”

⁸² H. Ibish & A. Abuminah, “The Palestinians’ Right of Return”, Global Policy Forum (2001), Accessed on 08/02/2018, <https://www.globalpolicy.org/security-council/index-of-countries-on-the-security-council-agenda/israel-palestine-and-the-occupied-territories/38364-the-palestiniansa-right-of-return.html>

become a binding document if it is proven that it has become a custom or part of international customary law. In order for a norm to transform into a custom under international law, it should fulfill two main requirements: the presence of a constant state practice and opinion juris. Thus, the following will examine the possibility of considering Resolution 194 (III) as a customary law, hence becoming a binding legal instrument that Palestinian refugees can rely on.

In general, the right to return can be considered as a customary law because it was 1) recognized by major international human rights instrument (i.e. UDHR and ICCPR), 2) affirmed in several draft declarations on the right to return (i.e. “Declaration on the Right to Leave and the Right to Return” in 1972), 3) referred to in international humanitarian law (i.e. article 34 of the Fourth Geneva Convention, and 4) included in several UN resolutions on the rights of refugees⁸³. When it comes to the specific nature of Resolution 194 (III), the latter has been reaffirmed by the UN General Assembly on a yearly basis, which makes it the sole resolution in the history of the United Nations that has ever reflected such repetition and international consensus on the Palestinians’ right of return⁸⁴. These resolutions express the will of the majority member states of United Nations’ General Assembly, which have kept their repetitive attitude towards the Resolution throughout the years. Moreover, the right to return of Palestinian refugees was

⁸³ K. Lawand, “The Right to Return of Palestinians in International law”, *International Journal of Refugee Law* 8 (4) (1996), p. 544

⁸⁴ S.M Akram, *supra* note 75, attaches a list of resolutions that reaffirmed Resolution 194 (III), which include the following: “G. A. Res. 273(III) (1949); 302 (IV) (1949); 303(IV) (1949); 393(V) (1950); 614(VII) (1952); 720(VIII) (1953); 818(IX) (1954); 916(X) (1955); 1018(XI) (1957); 1191(XII) (1957); 1315(XIII) (1958); 1456(XIV) (1959); 1604(XV) (1961); 1725(XVI) (1961); 1856(XVII) (1962); 1912 (XVIII) (1963); 2052(XX) (1965); 2154(XXI) (1966); 2341(XXII) (1967); 2452(XXIII) (1968); 2535(XXIV) (1969); 2672(XXV) (1970); 2792(XXVI) (1971); 2963(XXVII) (1972); 3089(XXVIII) (1973); 3331(XXIX) (1974); 3419(XXX) (1975); 31/15 (1976); 32/90 (1977); 33/112(1978); 34/52 (1979); 35/13 (1980); 36/146 (1981); 37/120 (1982); 38/83 (1983); 39/99 (1984); 40/165 (1985); 41/69 (1986); 42/69 (1987); 43/57 (1988); 44/47 (1989); 45/73 (1990); 46/46 (1991); 47/69 (1992); 48/40 (1993); 49/35 (1994); 50/28 (1995); 51/129 (1996); 51/128 (1996); 51/124 (1996); 52/61 (1997); 52/62 (1997); 52/57 (1997); 53/51 (1998); 53/50 (1998); 53/46 (1998); 54/74 (1999); 54/73 (1999); 54/69 (1999); 55/128 (2000); 55/127 (2000); 55/123 (2000); 56/57 (2001); 56/56 (2001); 56/52 (2001); 57/122 (2002); 57/121 (2002) 57/117 (2002); 58/94 (2003); 58/93 (2003); 58/91 (2003); 59/120 (2004); 59/119 (2004); 59/117 (2004); 60/103 (2005); 60/102 (2005); 60/100 (2005).”, p.42-43

referred to in other UN resolutions.⁸⁵ It can be then concluded that opinion juris on the right to return of Palestinian refugees, referred to in Resolution 194 (III), is present and well established.

Since opinion juris has been identified, it is still necessary to examine state practice on the right to return in order to prove that Resolution 194 (III) has reached the level of customary international law. In the last decades, there has been an evident state practice of allowing refugees to return to their homes by implementing “bilateral or multilateral mechanism for repatriation.”⁸⁶ The return of refugees was done based on agreements by the parties and the international community, which affirm that refugees are exercising a right by returning to their lands.⁸⁷ Around 12 million refugees globally returned to their homes during the 1990’s⁸⁸ in contrast to 1.3 million refugees who were resettled in the same period⁸⁹. Furthermore, whenever a large-scale conflict occurs, the UN would always state ‘the right to return’ as a key solution in its proposals. Following the occupation of Northern Cyprus by Turkey, refugees fled from both sides of the conflict (Greek Cypriots sought refuge in the South while Turkish Cypriots moved to the North)⁹⁰, which moved the General Assembly to “call for ... urgent measures for the

⁸⁵ J. Quigley in his article “Displaced Palestinians and a Right to Return”, published in *Harvard International Law Journal* 39 (1) (1998), cites several resolutions including UNGA Resolution 3236, Doc. A/9631 (1974), p.187. And Introduction to the Annual Report of the Secretary-General on the Work of the Organization, U.N. Doc. A/6701/Add.1 (1967), p.189

⁸⁶ See supra note 77, p.13

⁸⁷ Ibid., Boling gives some examples of such agreements, which include: 1994 Bosnia agreement, the 1995 Dayton Accord, the 1995 Croatia agreement, and the 1994 Guatemala agreement

⁸⁸ Boling accesses the figure from O. Bakewell, *Returning Refugees or Migrating Villagers? Voluntary Repatriation Programmes in Africa Reconsidered*, Working Paper No. 15, UNHCR (1999)

⁸⁹ “Refugee Resettlement in Selected Countries, 1990-99”, Table V.20, Refugees and Others of Concern to the UNHCR 1999, *Statistical Overview*, UNHCR (1999).

⁹⁰ See supra note 85, p. 214

voluntary return of the refugees to their homes in safety.⁹¹" There are other UN documents that demonstrate a continuous state practice in regards of demanding the return of refugees⁹².

Therefore, Resolution 194 (III) is a legal document that was adopted by the UN General Assembly, and incorporated the sacred right of return for thousands of Palestinian refugees. Even though the original nature of the document is non-binding, it has amounted to the level of customary international law due to the continuous renewal of the resolution reflecting a general opinion juris, and the existence of a standard state practice that endorses the right to return.

The Right of Return under International Human Rights Law

The main document in international human rights law that had referred to the right of return is the Universal Declaration of Human Rights (UDHR). The declaration, which was adopted by the UNGA one day before the adoption of Resolution 194 (III)⁹³, phrased the right to return in article 13(2) as the following: "[e]veryone has the right to leave any country, including his own, and to return to his country."⁹⁴ Even though the UDHR by itself is not a binding document, as it was adopted by the General Assembly, the Declaration remains the main source for major human rights instruments internationally, and it was recognized by many states as a source of law and human rights.⁹⁵

In addition to the UDHR, the International Covenant on Civil and Political Rights (ICCPR) has incorporated the right of return in article 12(4) as the following: "No one shall be

⁹¹ UNGA Resolution 37/253, "Question of Cyprus", UN. Doc. A/RES/37/253

adopted on 16 May 1983, Accessed on 06/11/2018 <http://www.un.org/documents/ga/res/37/a37r253.htm>

⁹² See supra note 85, Quigley refers to some examples such as the aftermath of conflicts in Abkhazia, Croatia v. Serbia and Namibia

⁹³ See supra note 77, p.10

⁹⁴ Universal Declaration of Human Rights (UDHR), Adopted by the UN GA in Resolution 217 A on 10 December 1948

⁹⁵ H. Hannum, "The UDHR in National and International law", *Health and Human Rights* 3 (2) (1998), p. 146

arbitrarily deprived of the right to enter his own country.⁹⁶ The phrasing in the ICCPR is broader than it is in the UDHR as the term used is “enter” and not “return”, hence it can incorporate not merely the first generation of Palestinian refugees, but also their descendants who were born outside their original country.⁹⁷ In determining the meaning of the term “arbitrarily” in the article, Jose Ingles, the Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, stated that “the right to enter one's country may be denied or restricted according to law provided that such denial or restriction is not basically incompatible with the right to personal liberty and freedom of movement⁹⁸.” Therefore, there should be a lawful ground upon which entrance to one's country can be denied.

It is important to examine the meaning of the term “to his own country” in article 14(2) of the ICCPR in order to apply the article on the special case of Palestinian refugees. In Kathaleen Lawand's analysis of the article, she considers the term ‘country’ to be much wider than a ‘state’. This analysis was reaffirmed by the General Comment no.27 on Article 12(4), which confirmed that the term “to his own country” does not merely cover the nationals of a particular country⁹⁹. The General Comment no. 27 in this regard states that “nationals of a country who have there been stripped of their nationality in violation of international law, and of individuals whose country of nationality has been incorporated in or transferred to another national entity, whose nationality is being denied them... [and] other categories of long-term

⁹⁶ International Covenant on Civil and Political Rights (ICCPR), adopted by UNGA Resolution 2200A (XXI) of 16 December 1966 and entered into force on 23 March 1976

⁹⁷ G.J. Boling, *supra* note 77, p.10 & K. Lawand, *supra* note 83, p.547

⁹⁸ J. Ingles, “Study of Discrimination in Respect of the Right of Everyone to Leave any Country, Including his Own, and to Return to his Country”, prepared by UN Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, E/CN.4/Sub.2/220/Rev.1 (1963),p. 39

⁹⁹ See *supra* note 77, p.10

residents, including but not limited to stateless persons arbitrarily deprived of the right to acquire the nationality of the country of such residence.¹⁰⁰”

The categories referred to in GC No.27 could be applied on the case of Palestinian refugees who were forced to leave the country of their nationality (this will be discussed in further details when addressing nationality law), whom their country has been transferred into another entity (the creation of the Israeli state in 1948), and lastly Palestinians refugees that are residing in Lebanon and Syria, and that are ineligible to acquire the nationality of the countries in which they reside as refugees.

In addition to the UDHR and ICCPR, the International Convention on the Elimination of Racial Discrimination (ICERD) had referred to the right of return in article 5 (d) indicating that parties to the conventions undertake “to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights: [...] The right to leave any country, including one's own, and to return to one's country.¹⁰¹” The nationality law in Israel, which has been briefly referred to previously in this section, clearly violates this article as it allows for the return of Jews only and ignores hundred thousands of Palestinian refugees.

Israel is a state party to all the mentioned declarations and treaties (UDHR, ICCPR, and the ICERD), and it did not make any reservation on an article that is relevant to Palestinians’

¹⁰⁰General Comment No. 27 on Article 12 of the ICCPR issued by the Human Rights Committee on 2 November 1999, CCPR/C/21/Rev.1/Add.9, Accessed on 10/07/2018, https://www.nichibenren.or.jp/library/ja/kokusai/humanrights_library/treaty/data/HRC_GC_27e.pdf

¹⁰¹ International Convention on the Elimination of Racial Discrimination adopted by United Nations General Assembly resolution 2106 (XX) of 21 December 1965 and entered into force on 4 January 1969, Accessed on 10/07/2018, <https://www.ohchr.org/en/professionalinterest/pages/cerd.aspx>

right of return.¹⁰² Therefore, Israel is still bound by its obligations under international law, and is responsible for providing a convenient remedy for the expulsion and “denationalization” of Palestinian refugees.¹⁰³ Professor Akram perceived the right to return as the appropriate remedy under international law for Palestinian refugees,¹⁰⁴ as the passage of time does not render the right to return inapplicable.¹⁰⁵

The right to return is a well-grounded right in many human rights instruments, whether instrumental, regional, and even national. The right to return was referred to in the major human rights documents that are binding on the state parties, and many scholars based the right of Palestinian refugees on such these instruments. However, there remains the contested problem of the Palestinian nationality prior to the establishment of Israel in May 1948, which was not properly addressed by this sub-chapter. The relevance of Nationality laws on the return of Palestinian refugees will be approached in this Chapter after discussing the right to return in International Humanitarian Law.

The Right of Return under International Humanitarian Law

International humanitarian law (IHL), also known as the law of war, is the applicable law during times of conflicts. The right to return, in international humanitarian law, was referred to in the Hague Regulations that was annexed to the Hague Convention Respecting the Laws and

¹⁰² J. Quigley, “Family Reunion and the Right to Return to Occupied Territory,” *Georgetown Immigration Law Journal* 6 (1992), p. 230-231

¹⁰³ See supra note 75, p.28

¹⁰⁴ Ibid.

¹⁰⁵ V. Ullom, “Voluntary Repatriation of Refugees and Customary International Law”, *Denver Journal of International Law and Policy* Vol. 29 (2) (2000), p. 115

Customs of War on Land, and the Geneva Civilians Convention.¹⁰⁶ Both documents include the right of displaced people to return to their houses following the end of the conflict.¹⁰⁷

The right to return is an implied right in Article 43 of the Hague Regulations, which goes as the following: “[t]he authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all the measures in his power to restore, and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country.” In this context, the occupying force should ensure the preservation of the current “status-quo” in the occupied land by allowing the population to continue living normally and a minimum level of intervention.¹⁰⁸ This would translate to permitting the indigenous population to safely remain in the land and to return to once hostilities are over.¹⁰⁹

The Fourth Geneva Convention provides for the right to return of forcibly deported individuals in several articles. Article 49 deals with the individual and mass deportation of “protected persons¹¹⁰” which are strictly prohibited under IHL.¹¹¹ However, if evacuation occurs, those who were evacuated “shall be transferred back to their homes” following the cessation of the hostilities in the given territory. Article 134 of the same convention also imposes an obligation on the contracting state to ensure the return of “all internees to their last place of residence” after the end of the conflict. Additionally, the concepts of prohibiting the transfer of

¹⁰⁶ See supra note 77, p. 8. In the report, Boling mentions that Israel has accepted that the 1939 Hague Regulations have reached the level of customary law, and that it is also a party to the 1949 Geneva Civilians Conventions

¹⁰⁷ Ibid.

¹⁰⁸ Ibid.

¹⁰⁹ Ibid.

¹¹⁰ IHL does not refer to refugees’ rights, but it distinguishes between two categories: protected persons and non-protected persons. Civilians fall under the category of protected persons.

¹¹¹ Article 49 of the “Fourth Geneva Convention related to the Protection of Civilian Persons in Times of War”, adopted on 12 August 1949, Accessed on 10/07/2018, <http://www.refworld.org/docid/3ae6b36d2.html>

populations and the necessity of their repatriations after the cessation of hostilities are generally treated as customary international humanitarian law.¹¹²

Furthermore, in customary international humanitarian law, Rule 132 indicates that persons displaced during the conflict have the right to safely return “to their homes or places of habitual residence” as soon as the reason behind their displacement is terminated.¹¹³ The explanation of this rule provides that the right to return has become part of international customary law that is enforced in both international and non-international conflicts.¹¹⁴ The right to voluntary return has been recognized not only in the fourth Geneva Convention, but also in numeral other treaties as mentioned previously. In the context of non-international conflicts, the right of displaced refugees to return has been recognized by major international documents in the cases of Abkhazia (Georgia), Bosnia and Herzegovina, the Philippines and Tajikistan.¹¹⁵

International humanitarian law provides for the right of displaced person to return to their houses after the end of the conflict. It prohibits the forceful eviction of protected persons (as individual and masses), and provides for their repatriation as well. In the case of Palestinian refugees, it is no doubt that Palestinians were displaced during the course of the conflict, and accordingly are entitled to come back to their houses and territories. It is irrelevant under international humanitarian law whether displaced persons were expelled under the threat of guns, or left their houses after hearing about the atrocities committed in other areas. The point that

¹¹² See W.T Mallison and S.V. Mallison, “International Law Analysis of the Major United Nations Resolutions Concerning the Palestine Question”, UN Doc. ST/SG/SER.F/p (1979),p. 28–29

¹¹³ J.M. Henckart & L. Doswald-Beck, *Customary International Humanitarian Law: Volume I Rules*, submitted to the International Red Cross Committee, New York: Cambridge University Press (2005), p.468

¹¹⁴ Ibid.

¹¹⁵ Ibid., 469

matters is that the majority of displaced Palestinian refugees were protected persons under IHL, hence they were entitled to the right to return to their houses after the cessation of hostilities.

Palestinian Nationality and the Effects of State Succession

Following the fall of the Ottoman rule, Palestine fell under the British mandate, which took the form of a civil administration¹¹⁶. The British mandate had a clear aim when formulating the new nationality policy in the territory: to facilitate the acquisition of the nationality by the growing Jewish immigrants¹¹⁷. After the end of the First World War, the treaty of Lausanne specified that the former inhabitants of the Ottoman States are to fall under laws and regulations of the successor state.¹¹⁸ The creation of a Palestinian nationality law was also an indicated obligation under article 7 of the 1922 Palestine Mandate¹¹⁹. As a result, the Palestine Citizenship Order-in-Council was passed by the King of England in 1925, which gave the Palestinian citizenship to those who were born in Palestine and established easy standards for the naturalization of non-Ottoman citizens. In order to determine the changes of Palestinians' citizenship status, there is a need to examine the laws related to state succession and their effect on Palestinians' nationality.

The law of state succession is applied when the administration of a particular state (in this case, Palestine under the British custody) is replaced by another state (Israel)¹²⁰. It is important to

¹¹⁶L. Banko, "The Creation of Palestinian Citizenship Under an International Mandate: Legislation, Discourses and Practices, 1918-1925", *Citizenship Studies* Vol. 16 (5-6) (2012), p. 640

¹¹⁷ Ibid., p. 651-652

¹¹⁸ Ibid., p. 650. Check Article 30 of the Lausanne Treaty signed on 24 July 1923, Accessed on 08/11/2018, http://sam.baskent.edu.tr/belge/Lausanne_ENG.pdf

¹¹⁹ Article 7 of the 1922 Palestine Mandate states that "[t]he Administration of Palestine shall be responsible for enacting a nationality law. There shall be included in this law provisions framed so as to facilitate the acquisition of Palestinian citizenship by Jews who take up their permanent residence in Palestine." Text found on The Avalon Project by Yale Law School, http://avalon.law.yale.edu/20th_century/palmanda.asp

¹²⁰ G.J. Boling, supra note 77, p.6 & K. Lawand, supra note 83, p. 563

note that state succession, in the current context, applies to the State of Israel and not to the territories of the West Bank and Gaza, and that the general assumption is that there was a “lawful” state succession.

Authors in the late 20th century had opposing opinions regarding the role of the successor and whether it is responsible for giving the nationality to the inhabitants or not. Regarding this matter, O’Connell holds the opinion that the successor state does not have an obligation, under international law, to grant citizenship for natural inhabitants.¹²¹ On the other hand, many were supporters of the rights of natural inhabitants to gain the new nationality of the successor state. For instance Brownlie argues that a change in sovereignty does not automatically allows the successor state to “dispose of the population”, and “it would be illegal for the successor to take any steps which involved attempts to avoid responsibility for conditions on the territory, for example by treating the population as de facto stateless.”¹²² Chan holds the opinion that inhabitants and persons with “a genuine and effective link” in relation to the newly established state, will automatically be admissible for acquiring the nationality of the new state.¹²³

Nevertheless, Goil argues that under the law of state succession, the newly created state is under the obligation of granting nationality to the habitual inhabitant within the state’s territory.¹²⁴ This rule has become part of international customary law, and it applies to habitual residents even when they were not physically living in the specified territory where the change has happened.¹²⁵

¹²¹ D.P. O’Connell, *State Succession in Municipal Law and International Law: Internal Relations*, Cambridge: Cambridge University Press (1967), p. 503

¹²² I. Brownlie, *Principles of Public International Law*, Oxford: Clarendon Press (1990), p. 664-665

¹²³ J.M.M. Chan, "The Right to a Nationality as a Human Right", *Human Rights Law Journal* 12 (1-2) (1991), p. 12

¹²⁴ G.J. Boling, *supra* note 77, p.5

¹²⁵ *Ibid.*

The Articles on Nationality of Natural Persons in Relation to the Succession of States introduces important provisions that are directly related to the question of Palestinians' right of return. Prior to the examination of the document, it is important to note that this document was drafted in the purpose of 'clarifying' some rules and principles related to the law of state succession, hence the Articles on Nationality of Natural Persons in Relation to the Succession of States are treated as part of customary international law.¹²⁶ Article 14(2) of this document refers to the right to return of habitual residents, who were forced to leave the territory during the course of succession. The rule is phrased as the following: "A State concerned shall take all necessary measures to allow persons concerned who, because of events connected with the succession of States, were forced to leave their habitual residence in its territory to return thereto."

Following this line of logic, based on the Article on Nationality of Natural Persons in Relation to the Succession of States, and the opinions of academics stated previously, Palestinian citizens (under the Palestinian Nationality Order 1925) who were the habitual residents in Palestinian land that became part of Israeli, were entitled to acquire a nationality up until the issuing of the Israeli Nationality law of 1952.¹²⁷ The Israeli Nationality Law, which repealed Palestinian Citizenship Order of 1925,¹²⁸ gave Jewish residents the Israeli citizenship automatically, while non Jewish residents should meet certain criteria, including their physical presence in Israel when it was established.¹²⁹ The law presents a clear attempt to prevent Palestinians who fled in 1947-8 from acquiring a citizenship, and hence return. The law clearly

¹²⁶ UNGA Resolution 55/153, A/RES/55/153, adopted on 12 December 2000. Boling, *supra* note 77, considers the Articles as part of binding international customary law, as their purpose was "to clarify the status of certain rules from the law of state succession", p.17

¹²⁸ See *supra* note 83, p. 562

¹²⁹ *Ibid.*, p.562-3

goes against article 15 of the Articles on Nationality, which prohibits the successor state from discriminating when granting the nationality status. Furthermore, the law only grants the right of return to Jews and excludes Palestinians, thus making it impossible for them to challenge in Israeli courts the legality of the Nationality Law under international law¹³⁰.

¹³⁰ See supra note 77, p.6

CHAPTER II

Right of Return and Palestinian Reality in UNRWA Mandate Area

The status of Palestinian refugees in the region has been influenced by the national politics of hosting states, which rendered Palestinians extremely vulnerable to changing circumstances in the host state and the region. In the period ranging from 1948 until today, several events have shaped the legal and de facto existence of Palestinian refugees in host states, which left a huge impact that is still apparent in the present day. In the memory of Palestinian refugees, the occasions of Black September in Jordan and the Israeli invasion of Beirut are considered key events in history that forever changed their lives in exile.¹³¹ Even in places where Palestinian refugees lacked-and still are lacking- political and civil rights, Palestinians were still able to become significant players in national politics and conflicts, especially during the Lebanese civil war (1975-1990).

In 1994, a study known as the FAFO Report has identified three main factors that shape the legal status of Palestinian refugees in hosting states.¹³² Firstly, there is an external character to the legal definition of Palestinian refugees due to the involvement of external parties such as the UNRWA and/or the host state in developing the legal framework of Palestinian refugees. Secondly, there is a significant conflict of interests at the state level in terms of state's approach towards the Palestinian refugee population. In this regard, a state may prioritize its security concerns and consider an exclusionary policy (i.e. Lebanon) or support the extension of certain civil and political rights (i.e. Jordan). Lastly, there is an "inherent contradiction" on the

¹³¹ J. Hammer, *Palestinians Born in Exile : Diaspora and the Search for a Homeland*, University of Texas Press (2005), p.12

¹³² Ibid, p.13. Hammer explains the factors by referring to the FAFO Report: S. Gilen, A. Hovdenak, R. Maktabi, J. Pederson & D. Tuastad, "Finding ways: palestnians coping strategies in changing environments", *Fafo Report* 177, p.40-41, Accessed on 20/08/2018, http://www.fafo.no/media/com_netsukii/177.pdf

individual level when it comes to balancing the civil rights given to Palestinian refugees on one hand and maintaining the refugee identity through segregation on the other hand.

Generally speaking, “[r]efugees are perceived as a problem rather than people with problems”¹³³, and this statement is also true for Palestinian refugees in host states. As has been highlighted by FAFO report, the relationship between the Palestinian refugee community and the host states is inconsistent due to the existing variation in the legal understanding and enforcement of Palestinian-related policies. The rights of Palestinians in host Arab states are hindered then by the lack of a “well-defined legislation” that determine their legal status.¹³⁴

The following section will discuss in depth the different legal status of Palestinians in the affected region, particularly Lebanon, Jordan, and Syria. It will examine the official state policy of the mentioned states, their influence on the Palestinian population, and the ways through which such policies influence the broad right of return of Palestinians. In addition, the Palestinian position would be presented through the examination of the overall situation in the Occupied Palestinian Territories (OPTs).

¹³³ D. McSpadden, “Resettlement for Status Quo or Status Mobility: Ethiopian and Eritrean refugees in the Western United States” In P.W. Van Arsdale’s book *Refugee Empowerment and Organizational Change: a Systems Perspective*, Arlington, VA: Committee on Refugee Issues, American Anthropology Association (1993), p.63. Quoted by R. Roberts, *Palestinians in Lebanon: Refugees Living with Long-Term Displacement*. Vol. 4. London: I.B. Tauris (2010), p.28.

¹³⁴ A. Shiblaq, “Residency Status and the Civil Rights of Palestinian Refugees in Arab countries”, *Journal of Palestine Studies* 25(3) (1996), p.39. Quoted by R. Roberts, *Palestinians in Lebanon: Refugees Living with Long-Term Displacement*. Vol. 4. London: I.B. Tauris (2010), p.29

Palestinians in Jordan: “Refugee Citizens”¹³⁵

The experience of Palestinians in Jordan has been considered the best in contrast with that of Palestinians in other neighboring states, but this experience has not been perfect in all stages since 1948. In the beginning, Jordan had received around 70,000 Palestinian refugees out of the approximately 726,000 expelled Palestinians.¹³⁶ The number of Palestinians in the Hashemite Kingdom later on increased following Jordan’s annexation of the West Bank in 1950, which rendered Jordan the largest host country of Palestinian refugees.¹³⁷ It is important to note that not all the inhabitants of the West Bank by the time of annexation were refugees. It is estimated that in 1949, there were 740,000 inhabitants in the West Bank, 460,000 among whom were original inhabitants while the rest were refugees.¹³⁸

Jordanian Assimilative Policy 1949-1967

Jordan had employed an assimilative policy towards its Palestinian population as it tried to absorb Palestinians into the Jordanian society. Al Hussein and Bocco have thoroughly explained the Jordanian policy in their article on the status of Palestinian refugees in the UNRWA region; the article refers to the early policies (starting in 1949) of the Hashemite kingdom in granting citizenships to Palestinians that lived in the region falling under the kingdom’s control.¹³⁹ The Jordanian law of 1954 on Nationality provides in Article 3 that “[a]ny person who, not being Jewish, possessed Palestinian nationality before 15 May 1948 and was a regular resident in the Hashemite Kingdom of Jordan between 20 December 1949 and 16

¹³⁵ The term “refugee-citizen” was used by J. Al Hussein and R. Bocco, see supra note 14, p. 263. The term refers to Palestinians in Jordan that were granted the Jordanian citizenship, but kept their refugee status at the same time

¹³⁶ J. Al Hussein, “Jordans and the Palestinians”, published by *L’institute francais du proche-orient IFPO* (2013)

¹³⁷ Ibid.

¹³⁸ Ibid.

¹³⁹ See supra note 14, p. 263

February 1954.”¹⁴⁰ The Law also allows for the renunciation of nationality if the Jordanian national wants to acquire “the nationality of an Arab State.”¹⁴¹ Al Hussein and Bocco describe this Jordanian approach as creating a new refugee status of “refugee-citizen”, which implies that the citizenship status is just temporary until these refugees are granted the choice of returning to Palestine or staying in Jordan.¹⁴² The Nationality Law generates a choice for naturalized Jordanians of Palestinian origin to revoke their Jordanian nationality once they acquire a new Palestinian identity, meaning returning to Palestine.

As ideal as it sounds, the motivations behind King Abdullah I’s naturalization policy did not come out of empathy, but was outlined by two key objectives: to prevent the rise of Palestinian nationalist movements and to take advantage of the significant number of Palestinian population in strengthening and consolidating King Abdullah’s rule on the newly created Jordanian state.¹⁴³ Overall, his plan fell under his ultimate goal of establishing greater Syria that fall under the Hashemite rule.¹⁴⁴

The status of “refugee-citizen”, explained by Al Hussein and Bocco, was understood to be directly linked to the right of return, as the status is temporary until the choice of returning is available to Palestinians. However, the Jordanian government has been hostile towards Palestinian nationalist movements and the development of a distinct Palestinian identity. Under the naturalization approach, Palestinians enjoyed the privilege of participating in the public

¹⁴⁰ Jordanian Law. No.6 on Nationality issued on 1 January 1954. Accessed on 28/10/2018, <http://www.refworld.org/docid/3ae6b4ea13.html>

¹⁴¹ Ibid., Article 16

¹⁴² See supra note 14, p.263

¹⁴³ In explaining the intentions of King Abdullah I, Al Hussein and Bocco refer to S. Mishal’s publication: *West Bank/East Bank – The Palestinians in Jordan, 1947–1967*, released by Yale University Press in 1978

¹⁴⁴ Ibid.

sphere and enter the labor market, but were still banned by a Royal decree from expressing a distinct “Palestinian Identity” in national politics.¹⁴⁵

Jordanian Policy Post 1967

Following the seizure of the West Bank by Israel in 1967, West Bankers were still able to enjoy the privileges of Jordanian citizens except for Palestinian refugees coming from Gaza in 1967 that were not granted Jordanian citizenship.¹⁴⁶ As for the West Bankers seeking refuge in Jordan after 1967, they were considered by Jordan as “internally displaced” and not refugees, unlike those coming from Gaza.¹⁴⁷

However, there are two notable events that occurred after 1967, which reshaped the Jordanian approach. The first incident happened in 1970, known as Black September, during which King Hussein ordered “an all-out military offensive” in order to expel Palestinian guerilla movements from Jordan.¹⁴⁸ The decision was taken as a result of a series of hijacking events implemented by the Popular Front for the Liberation of Palestine PFLP.¹⁴⁹ PFLP members and other ‘freedom fighters’, along with some refugees were expelled and had to switch their operation base to Lebanon. The second incident happened following the PLO’s declaration of independence in 1988, when Jordan decided to modify the Jordanian Citizenship Law and deprive West Bankers from the Jordanian citizenship so they can become citizens of the soon to be established Palestinian state.¹⁵⁰ This step has been referred to as the “disengagement decision”

¹⁴⁵ See supra note 14, the authors also explain that the use of word “Palestine” was banned from all administrative documents in accordance with a Royal Decree of 1 March 1950

¹⁴⁶ S.M. Gabbay, “The Status of Palestinians in Jordan and the Anomaly of Holding a Jordanian Passport”, *Political Science and Public Affairs* 2(1) (2014), p.1

¹⁴⁷ A. Halasa, “Revoking Jordanian Citizenship: Disengagement or Discrimination”, *Legal Agenda* (2016), Accessed on 12 August 2018, <http://legal-agenda.com/en/article.php?id=3127>

¹⁴⁸ See supra note 146, p.4

¹⁴⁹ Ibid.

¹⁵⁰ See supra note 14, p.265

in which King Hussein declared that Jordan “respects the desire of the Palestinian Liberation Organization (PLO), the sole legitimate representative of the Palestinian people, to separate from us as an independent Palestinian state.”¹⁵¹

Therefore, Palestinians in Jordan were vulnerable to the hosting state’s changing policies, even when theoretically speaking they enjoyed the same privileges as other Jordanian citizens. In addition, many observers have documented “informal discrimination” against Palestinian-Jordanians in terms of employment in the public sector and political representation in the parliament and other institutions.¹⁵² Moreover, stripping the West Bankers from their Jordanian citizenship was found to be arbitrary and random in some cases.¹⁵³ The process of withdrawing citizenships is still ongoing, and unofficial figures estimate that around 2,700 Palestinian Jordanians had their Jordanian citizenship revoked between 2004 and 2008.¹⁵⁴

Despite all this, Palestinians in Jordan still had it better than Palestinian refugees in Lebanon and Syria. The harshest country for Palestinians to reside in is, with no doubt, Lebanon. Lebanon has placed strict limitations on Palestinian refugees since 1948 that were endorsed by the sectarian structure of the country and the civil war that started in 1975 and lasted until 1990. In Syria, the recent war had a great impact on the Palestinian population that had to flee for refuge. The vulnerability of Palestinians to the international politics of the hosting state is evident in all three countries, but with different degrees of impact. The following sections will examine the legal and political contexts in Lebanon and Syria concerning Palestinian refugees.

¹⁵¹ See supra note 146

¹⁵² See supra note 14, p265

¹⁵³ See supra note 146

¹⁵⁴ See supra note 147, the figures were taken from Human Rights Watch (HRW) Report “Stateless Again: Palestinian-Origin Jordanians Deprived of their Nationality” published on February 2010. <https://www.hrw.org/sites/default/files/reports/jordan0210webwcover.pdf>

Palestinians in Lebanon: ‘The Forgotten People’¹⁵⁵

Palestinians and the Lebanese Confessional System

The experience of Palestinian refugees in Lebanon has been the toughest among all the exiled Palestinian community. Palestinians in Lebanon refer to themselves as the ‘forgotten people’ to describe the hostile environment created by a systematic Lebanese policy, which aims at restricting the rights of Palestinians and preventing them from ever improving their status in the country.¹⁵⁶

The bad experience of Palestinians in the country is a mere reflection of Lebanon’s helplessness in dealing with the sectarian problems within the Lebanese population itself, which is divided along multi-confessional lines.¹⁵⁷ Following the end of the First World War, Lebanon was created as a potential Christian state that can be an ally of the West, hence Christian Maronites had the upper hand in politics and public administration.¹⁵⁸ For instance, parliamentary seats were distributed among Christians and Muslims on a ratio of 6:5 in favor of Christians. The situation changed after the end of the civil war in 1990, when the main religious parties agreed on forming a power-sharing rule based on equality between Christians and Muslims and proportionality among the various confessions in the purpose of ensuring the security and stability of Lebanon.

The existing confessional tensions have put the Palestinians in an unwanted position due to the sectarian threat that their presence imposes on the “demographic balance” in Lebanon.¹⁵⁹

¹⁵⁵R. Roberts, *Palestinians in Lebanon: Refugees Living with Long-Term Displacement*. Vol. 4. London: I.B. Tauris (2010), p. 3

¹⁵⁶ Ibid.

¹⁵⁷ Ibid., p. 69 & R. Sayigh, *Too Many Enemies: the Palestinian Experience in Lebanon*, London: Zed Books (1994), p.15

¹⁵⁸ See supra note 155, p.71

¹⁵⁹ Ibid., 70

In 1943, after the independence of Lebanon, an unwritten pact was reached between Christian Maronites and Muslim Sunni leaders to establish a power-sharing form of rule. In the light of such an agreement, the flow of Palestinian refugees-that are of a Muslim Sunni majority- in the 1948 had “jeopardized” the sectarian equilibrium in Lebanon.¹⁶⁰ Therefore, the long-term existing confessional structure had a great impact on determining the legal status of Palestinians and the location of their camps.¹⁶¹

In fact, the presence of Palestinian refugees was a main war card (during the civil war) to push forward the xenophobic agenda of the Lebanese nationalist groups, which were mainly Christian. Additionally, Muslim parties, which resented the Christian favoritism in power, considered the Palestinian armed presence as a tool for change and formed alliances with them.¹⁶² In the civil war, Palestinians played an active role against the Christian ultra-nationalist groups (mainly Phalangists) that have collaborated with the Israelis against the Palestinian armed groups during the 1982’s invasion of Beirut. As Milton-Edwards and Hinchcliff describe, Palestinians would have been more accepted if they were hosted by a more normal state that can cope with the existence of Palestinians.¹⁶³

Rosemary Sayigh, a notable author on Palestinian refugees, states that the government’s choice of camps for Palestinian refugees took into consideration the sectarian divisions of the country, hence placed refugees in Muslim dominant regions.¹⁶⁴ As Sayigh claims, the official Lebanese policy in every aspect aimed at constraining the rights of the Palestinian community,

¹⁶⁰ R. Sayigh, *Too many enemies: the Palestinian experience in Lebanon*, London: Zed Books (1994), p.23

¹⁶¹ Ibid.

¹⁶² See supra note 155, p. 74

¹⁶³ B. Milton-Edwards & P. Hinchcliff, *Conflicts in the Middle East Since 1947*, London & New York: Routledge (2001), p.62

¹⁶⁴ See supra note 160, p.24

and it went through two major shifts that left a great impact on the Palestinian population.¹⁶⁵ The first phase, ranging from 1949 throughout the 1950's, was characterized by the tight security measures enforced by President Fouad Chehab in every camp. The security situation changed in Lebanon after the camps' uprising in 1969 that forced the Lebanese government, in accordance with the Cairo Agreement of 1969, to withdraw its forces from the camps and leave its protection to the Palestinian militant groups so they can pursue their 'armed struggle'.¹⁶⁶

The Cairo Accord had paved the way towards the establishment of Palestinian resistance groups that operated against Israel from within the Lebanese territories. These groups, particularly the Palestinian Liberation Organization (PLO), played a major role in the civil war period as an armed fraction fighting against Lebanese Christian Phalangists. As the political agenda for various Lebanese and Palestinians fractions clashed, the main victims of the war were innocent civilians belonging to both Lebanese and Palestinian sides. Several Palestinian refugee camps fell during the war, and others were demolished like Tal al Za'tar Camp in 1976 that lasted under siege for 53 days, during which 3000 Palestinians and local Lebanese in the camp were killed.¹⁶⁷

The year of 1982 is considered a landmark year for the Palestinian refugees in Lebanon as it marks the beginning of the Israeli invasion of the Lebanese capital Beirut. The Israelis imposed a siege on the city, which led to a humanitarian crisis that ended with the forced evacuation of PLO fractions from Beirut to other Arab countries.¹⁶⁸ However, the misery of Palestinians did not end with the evacuation of Palestinian fighters, as Phalangist fighters under

¹⁶⁵ Ibid, p.25

¹⁶⁶ See the text of the Cairo agreement: http://prn.mcgill.ca/research/papers/brynen2_09.htm

¹⁶⁷ R. Siklawi, "The Palestinian Resistance Movement in Lebanon 1967–82: Survival, Challenges, and Opportunities", *Arab Studies Quarterly* 39 (3) (2017), p.929

¹⁶⁸ Ibid., p.932

the protection of Israeli troops entered the camps of Sabra and Chatila in Beirut, and slaughtered over 1000 innocent Palestinians.¹⁶⁹

All of these events have influenced the legal status of Palestinian refugees in Lebanon. The politics of sectarianism in the country did not fall for the benefits of the refugees, and placed them in a far worse situation than Palestinians in other countries such as Syria and Jordan. After providing a historical overview of the Palestinian presence in Lebanon, the following will explain the legal framework that governs Palestinian refugees in Lebanon.

Lebanese Discriminatory Policies towards Palestinian Refugees

The suffering of Palestinians in Lebanon is usually blamed on the role that they played during the Lebanese civil war despite the fact that the official Lebanese attitude towards Palestinians since the very beginning has been hostile. In an Arabic publication titled “The Dilemma of Granting the Palestinian Refugees in Lebanon Their Civil Rights”, the author justified the mistreatment of Palestinian refugees in the Lebanese law by considering that Lebanese policies governing Palestinian refugees follow the principle of ‘reciprocity’ between states.¹⁷⁰ Hence, as long as there is no Palestinian state that treats Lebanese people in the same manner, Palestinian refugees in Lebanon will not enjoy equal rights to Lebanese in matters related to education, health, work, social security, and joining Lebanese syndicates. Consequently, the Lebanese government is not responsible for the social, economic, and political

¹⁶⁹ Ibid., p.933. The massacre came as a reaction to the assassination of the Phalangist leader, then-elected president, Bachir El Gemayel.

¹⁷⁰ The Publication “The Dilemma of Granting the Palestinian Refugees in Lebanon their Civil Rights” was published in Arabic by the Information Department at *Al-Zaytouna Centre for Research and Consultation* in Lebanon as part their 18th Information Report (2011), p.17

إشكالية إعطاء اللاجئين الفلسطينيين في لبنان حقوقهم المدنية، إعداد قسم الأرشيف والمعلومات، بيروت: مركز الزيتونة للدراسات والاستشارات (2011)، ص.17

burdens that are placed on Palestinian refugees, and does not intervene in their livelihood matters except in the registration of their names and the provision of identity and travel documents.¹⁷¹

The reciprocity principle presents a shallow justification for the systematic discrimination against Palestinian refugees. The previously illustrated situation related to the perceived threat of Palestinian on the Lebanese sectarian context provides a more comprehensive explanation for the detrimental body of the law that the government has imposed on Palestinian refugees.¹⁷² The main goal behind such strategy was to push Palestinian refugees to the edge of despair so they leave Lebanon whenever they have the chance to do so.¹⁷³

Legally speaking, Palestinians are treated as “foreigners” in Lebanon as they do not hold the Lebanese citizenship, and they are forbidden from acquiring it in the long-term. The status of Palestinian refugees as foreigners was established by the ministerial decree 319 of 1962 that forced Palestinians to get a working permit in order to practice any profession and without taking into consideration their peculiar situation and the incapability of Palestinians to perform their right of return.¹⁷⁴ In 1982, following the departure of the PLO from Lebanon, further restrictions were imposed on Palestinians upon the issuing of the ministerial decree No. 1/289, which barred them from practicing over 70 professions.¹⁷⁵ These restrictions were later on lessened in 2005 and 2010, but restrictions remained in place for accessing around 36 liberal and syndicated professions, including medicine, law, and engineering.¹⁷⁶

¹⁷¹ Ibid.

¹⁷² See supra note 155, p.100

¹⁷³ Ibid.

¹⁷⁴ Ibid.

¹⁷⁵ ILO, *Palestinian Employment in Lebanon: Facts and Challenges*, published by International Labour Organization (ILO) & Committee for the Employment of Palestinian Refugees (CEP) (2012), p. 22. Accessed on 12 August 2018 http://www.ilo.org/wcmsp5/groups/public/---arabstates/---ro-beirut/documents/publication/wcms_236502.pdf

¹⁷⁶ “The Situation of Palestinian Refugees in Lebanon”, a study prepared by the UNHCR (2016), p.5, Accessed on 13/08/2018, <http://www.refworld.org/pdfid/56cc95484.pdf>; supra note 156, p. 100; and supra note 171, p.22

The difficulties in accessing the labor market have a significant impact on the livelihood of Palestinian refugees in Lebanon. A survey conducted by the American University of Beirut (AUB) revealed the enormous marginalization of Palestinian refugees in Lebanon, as 66.4 per cent of Palestinians are poor 6.6 are extremely poor, hence making almost two third of the population economically suffering.¹⁷⁷ Even when employed, the wages of Palestinians are very low as a report by the International Labor Organization revealed in 2014 that 50 per cent of Palestinians earn less than 500,000 LBP (approximately 340\$) which is less than the minimum wage.¹⁷⁸

The cruel employment conditions present one of the strategies used by the Lebanese government to strengthen its control over the Palestinian population. For instance, residency and movement measures are extremely harsh. In the late 1950s throughout the 1960s, Palestinian camps were placed under the Lebanese military rule in Lebanon, and camps became “ghettoized” in a way to prevent the movement of Palestinians from one camp to another.¹⁷⁹ The restrictions imposed included the prohibition of reading newspapers or listening to news publicly, meetings involving more than 2 persons, and prohibition of turning the lights on after 10pm.

Residency papers that were provided for Palestinians were different from that of foreigners due to the special situation of Palestinians, and these papers were considered temporary until they return to their country. Residency issues rose in the 1990s’ when the Lebanese government prevented the return of Palestinians who used to reside in Lebanon but fled to Libya to work during the war in an apparent attempt to reduce the number of Palestinian

¹⁷⁷“The Situation of Palestinian Refugees in Lebanon”, *ibid.*, p.6

¹⁷⁸ See *supra* note 175, p. 17

¹⁷⁹ See *supra* note 170, p.29

refugees in the country.¹⁸⁰ To make it more difficult on Palestinians, property ownerships in Lebanon is prohibited for all foreigners, implicitly affecting Palestinians as they do not own a Lebanese citizenship¹⁸¹. Property law also prevents Palestinians that do own properties from inhering it to their descendants.¹⁸² Overall, constraints on Palestinian refugees are evident in all aspects of life, forcing them to live their whole life in camps until their right of return is guaranteed, a right that is unfortunately unforeseeable in the near future.

The difficult reality of Palestinians in Lebanon has been justified by the right of return, as the Lebanese government considers the provision of basic rights to Palestinian refugees would open the doors for settlement. Whenever the topic of settlement is brought up in popular media and by Lebanese officials, the right of return would come as a casual defense against this idea. In fact, the idea of settlements has been referred to in popular media and in the political scene “the ghost of settlement” that should be avoided at any cost.

Lebanon has failed to meet the basic needs and expectations of Palestinian refugees, and instead has offered the solution of traveling abroad to seek a better life. The current president of the Lebanese Republic, Michel Aoun, has previously declared that the countries that voted on the partition plan of 1947 in the UN should be the ones carrying responsibility for the living conditions of Palestinians refugees, implying indirectly that such countries should take in as many Palestinians as possible and decrease the burden on Lebanon.¹⁸³ He also stated that Lebanon wants to “implement the right of return and will stand against any suspicious plan of resettlement.” More interestingly, the former president Michel Sleiman stated in his pledge of

¹⁸⁰ See supra note 155, p.100

¹⁸¹ Ibid., p.101

¹⁸² Ibid.

¹⁸³ See supra note 170, p.39

allegiance speech in 2008 that “our absolute refusal to settlement does not imply our refusal to host our Palestinian brothers, and ensuring their human rights, but our refusal is just an establishment of the right of return until the creation of the Palestinian state.”¹⁸⁴ This statement, as ideal as it sounds, is just a political declaration with no context. Palestinians, until today, are unwelcomed in Lebanon and the conditions in the camps remain miserable.¹⁸⁵

Lebanon has politically used the right of return to marginalize Palestinians and keep them isolated from the society in ghettoized camps. Settlement and right of return, in Lebanese politics, are two faces of the same coin. The right of return has been used as a justification of the inhumane treatment that the government has been enforcing for decades. As Amnesty International has pointed in its report in 2007, Palestinians in Lebanon have to endure the systematic discrimination in Lebanon that just adds to the pain that accompanied them with expulsion and decades of exile.¹⁸⁶ For Palestinian refugees in Lebanon, life is “a daily struggle for survival” with no lights of hope.¹⁸⁷

The tough conditions that Palestinian refugees live under have pushed them to seek refuge elsewhere. Many of these Palestinians have applied for Asylum in European countries. In addition to Palestinians living in Lebanon, many Palestinians coming from Syria (PRS) have also sought refuge outside UNRWA mandate area, especially in EU Member States. This movement, from UNRWA operations’ area to areas that are not covered by UNRWA, increases the complications of the right of return of Palestinians, making it debatable whether return refers to

¹⁸⁴ Ibid., p.33

¹⁸⁵ For more on living conditions inside Palestinian refugee camps in Lebanon, see UNHCR, “The Situation of Palestinian Refugees in Lebanon”, supra note 176

¹⁸⁶ “Exiled and Suffering: Palestinian Refugees in Lebanon”, published by Amnesty International on October 2007, p. 4. Accessed on 12 August 2018, <https://www.amnesty.org/download/Documents/68000/mde180102007en.pdf>

¹⁸⁷ Ibid.

returning to first country of refuge (Lebanon for example), present day Israel where they originally came from, or to a future state in the Palestinian territories of 1967¹⁸⁸. The complications of Palestinians' secondary movements from within UNRWA mandate area will be discussed in the Third Chapter of this Thesis.

Palestinians in Syria: “Informal Citizens”¹⁸⁹

The experience of Palestinian refugees in Syria was more pleasant than that of the Palestinians in Lebanon. There are several reasons to explain the difference in treatment, despite the close geographical distance between the three countries. Gabiam, in his book, refers to the main factors explaining the warm welcome received by Palestinians in Syria in 1947-48. He explains that the existing bond between Syrians and Palestinians is traced back to the mutual national imagination of “Bilad al Shaam” or the Levant area, a thinking that opposed the fragmentation of the land and Sykes-Picot agreement that divided the region and allowed the British and French to control it.¹⁹⁰ Secondly, the emergence of the Ba’athist ideology in Syria contributed to the idea of the “reunification of the Arab nation” and the continuous struggle against capitalism, under which Palestine falls as a former part of the Levant region and a victim of western imperialism. Gabiam notes that the good treatment of Palestinians is not merely explained by the rise of the Baathist party to power in 1963, but the Syrian policy has always been generous towards Palestinians as in 1956, the government passed law No 260 that allowed Palestinians access to “public education, employment, and health care.” Lastly, he mentions that the Syrian attitude is different than that of Lebanon due to the small number of Palestinian

¹⁸⁸ This issue will be addressed in Chapter III of this Thesis

¹⁸⁹ N. Gabiam, *The Politics of Suffering: Syria's Palestinian Refugee Camps*, Bloomington: Indiana University Press (2016), p.17. The term “informal citizens” is used by Gabiam to describe the legal status of Palestinian refugees in Syria

¹⁹⁰ Ibid, p. 20-22

refugees in Syria (around 3 to 4% of the country), hence they did constitute a threat in the eyes' of the Syrian government. For the mentioned reasons, Palestinian refugees in Syria were accepted more in the society, and enjoyed better life conditions as compared to their fellows in Lebanon.

Legal Status of Palestinian Refugees in Syria

The issue of settling Palestinians in Syria comes at the heart of the Syrian policy towards Palestinian refugees. However, the Palestinian reality in Syrian was different from that of Palestinians in Lebanon. Palestinians enjoyed a broad range of social and economic rights that contributed to their well-being in Syria. These rights were guaranteed under Law no. 260 issued in 1956, which granted Palestinian refugees an equal status to Syrians when it comes to employment, trade, and military service while maintaining their original nationality as Palestinians.¹⁹¹ In fact, Law no.260 outlines two main principles:

1. Palestinians have an equal status to Syrians and must be treated in the same manner
2. The absolute refusal of the Syrian government to resettle Palestinian refugees¹⁹²

Palestinian refugees were treated as equal to Syrian citizens in all domains except in some civil rights such as voting and running for parliamentary and municipality elections.¹⁹³ However, they were allowed to join political parties and other social and cultural associations.¹⁹⁴ The title of informal citizens refer to the status of Palestinians in Syria as refugees with citizens' rights,

¹⁹¹Gapar, The general authority for Palestinian Arab refugees in the Syrian Arab Republic [Arabic: الهيئة العامة للاجئين الفلسطينيين العرب]. Gapar is an official Syrian Website that falls under the Ministry of Social Affairs and Labor, and that includes Syrian laws and regulations related to Palestinian refugees in Syria. Accessed on 12 August 2018, <http://www.gapar.sy/ar/qawanin.html>

¹⁹² Supra note 54, p.23. Gabiam accessed the information cited on Gapar (Ibid)

¹⁹³ A. Badwan, "Palestinians of Syria and existing Laws" [original title in Arabic: فلسطينيو سوريا والقوانين الناعمة], *The Palestinian Information Center* (2014)

¹⁹⁴ See supra note 189, p.24

but without acquiring an actual citizenship.¹⁹⁵ The Syrian policy of citizenship rights without citizenship was a tool to preserve the right of return of Palestinians while at the same time provide a humane treatment to them.

Due to the flexible legal framework governing Palestinians in Syria, Palestinian refugees were able to integrate in the Syrian society, and around 70 per cent of them had the chance to move outside the refugee camps.¹⁹⁶ Moreover, Syria has granted freedom of movement to Palestinian refugees, and it provided them with full access to all government services.¹⁹⁷ In this regard, Syria was considered the only state within UNRWA area that absolutely guaranteed these rights throughout the years.¹⁹⁸ In fact, the situation of Palestinian refugees in Syria is often compared to that of Palestinians in Lebanon, as in both cases they cannot obtain citizenships but the differences are still major. In Syria, one is not able to tell where the camp is located or where it begins and ends unlike the case in Lebanon where a Palestinian camp is surrounded by check-points.

Palestinian Refugees in Light of the Syrian War

The Syrian war has reshaped this reality and imposed a great burden on Palestinian refugees. Palestinian refugees, like Syrians, had to flee the brutal war that started in 2011, but faced many obstacles on their way to refuge. The main challenges were linked to their shaken international status as refugees, which influenced hosting states' treatment as they did not enjoy the same privileges as Syrian refugees, even though they fled under the same circumstances.

¹⁹⁵ Ibid.

¹⁹⁶ L. Morrison, "Discrimination and the Abuse of Human Rights Characterises the Current Plight of Palestinian Refugees from Syria", *Journal of Palestinian refugee studies* 4-5 (2-1) (2015), p. 35

¹⁹⁷ Ibid.

¹⁹⁸ Ibid.

Unfortunately, Palestinians in Syria are now considered as double refugees having fled the first time in 1948 and then following 2011.

Throughout the Syrian crisis, Palestinians in Syria have relatively maintained a neutral position to avoid the repetition of the unfortunate events that befell on Palestinians in the previous decades such as Sabra and Chatila massacre in Lebanon and 1982 and the expulsion of “stateless Palestinians” from Kuwait during the Gulf war in 1990.¹⁹⁹ However, Palestinian refugee camps in Syria were still not spared and they were turned into battle fields, including the infamous Yarmuk Camp that fell under the control of ISIS in 2015.²⁰⁰ Hence, the Syrian government imposed a siege on the camp that prevented the entry of food and basic supplies to residents inside the camp.

The drastic situation has forced thousands of Palestinians to seek refuge in neighboring countries, including Lebanon that was already hostile towards its own Palestinian population. According to a report by the UNRWA the vulnerability of Palestinians coming from Syria (PRS) was increased by the marginalized status of Palestinians in Lebanon.²⁰¹ PRS live in a discriminatory environment in Lebanon, where they live in overly crowded Palestinians camps (approx. 50 per cent) and lack access to a great number of services. Amnesty International and Human Rights Watch have documented cases of forcibly returning PRS to Syria after arresting

¹⁹⁹ “Palestinian Refugees from Syria: Ongoing Nakba, Ongoing Discrimination”, published by BADIL Resource Center for Palestinian Residency and Refugee Rights in Al Majdal Magazine issue no. 56 (2014). Accessed on 12 August 2018 <https://reliefweb.int/sites/reliefweb.int/files/resources/al-majdal-56.pdf>

²⁰⁰ F. Najjar, “Syria's Yarmouk Camp: from a 'War on Stomachs' to 'Annihilation'”, *Al Jazeera* (2018). Accessed on 12/08/2018, <https://www.aljazeera.com/news/2018/04/syria-yarmouk-camp-war-stomachs-annihilation-180423212111918.html>

²⁰¹ “Syria Crisis Response Annual Report 2013” released by UNRWA (2014), p. 10. Accessed on 12/08/2018, https://www.unrwa.org/sites/default/files/syria_crisis_response_annual_report_2013_1.pdf

them in the airport in Beirut.²⁰² Even though there was no official policy against the entry of PRS into the country, a document leaked from Beirut Rafiq Hariri Airport revealed that no PRS shall be allowed to enter Lebanon “no matter the reason and regardless of the documents or IDs that they hold, under penalty of fining the transporting company in case of non-compliance as well as return of the traveller to where they came from.”²⁰³ In Jordan, PRS are also placed in a marginalized and vulnerable situation. In fact, Jordan officially declared a policy of “non-admission” of PRS in 2013 while allowing Syrians to seek refuge in the country.²⁰⁴ The UNRWA report considers the lack of protection for PRS as the key concern in Jordan, as the agency had documented numerous cases of forcible return.

The situation of PRS in Lebanon and Jordan, in contrast with Syrian refugees, is further influenced by their exclusion from Article 1D of the 1951 Convention Relating to the Status of Refugees, which excludes Palestinians within UNRWA mandate from the assistance provided by UNHCR.²⁰⁵ It is worth noting that this exclusion is the main tool used by host states to discriminate against Palestinian refugees under the “guise” of protecting Palestinians’ legitimate right of return.

The Syrian crisis has brought to light the great marginalization of Palestinian refugees that goes back to 1948. Badil, in its report on Palestinian refugees from Syria, notes that suffering of PRS is a result of the discriminatory policy against Palestinians refugees that is

²⁰² *Denied refuge: Palestinians from Syria Seeking Safety in Lebanon*, a report by Amnesty International published in 2014. P.13. Accessed on 12/08/2018, <http://www.refworld.org/docid/56cabdd14.html> and Human Rights Watch’ article “Lebanon: Palestinians Barred, Sent to Syria” (2014). Accessed on 12/08/2018, <https://www.hrw.org/news/2014/05/05/lebanon-palestinians-barred-sent-syria>

²⁰³ *Denied refuge: Palestinians from Syria seeking safety in Lebanon*, a report by Amnesty International published in 2014. P.14

²⁰⁴ *Ibid.*, p.11

²⁰⁵ See Article 1D of “Convention Relating to the Status of Refugees” issued by the UNGA Resolution 429 (V) on 22 April 1954

maintained by the hosting states and the international community.²⁰⁶ As has been mentioned throughout this chapter, the stateless status of Palestinians have always put them in a vulnerable position in host states, in which these states enjoy a great discretion in their treatment of Palestinian refugees. Prior to the Syrian crisis, Palestinians were subject to the changing politics of the region on many occasions such as the black September in Jordan, the Israeli invasion of Beirut, the expulsion of Palestinians from Kuwait and then from Libya, and currently the Syrian war. Palestinians, until today, continue to suffer from secondary displacements while lacking the right of return to their homes of origin in present day Israel. Badil further notes that the denial of this right, along with the discriminatory regulations and policies of host states, have resulted in a cycle of “forced population transfer” that left Palestinians in “limbo.”²⁰⁷

The continuous displacement of Palestinians from one host state to another is influencing the dynamics of the right of return. The main question that the present thesis is tackling relates to the dynamics of the right of return of Palestinians, and the impact of hosting states’ policies on this right. As this part has illustrated the policies of the states that host the largest number of Palestinian refugees, the following would examine the links between the creation of Palestinian States within the pre-1967 borders and the right of return of Palestinians, noting that many Palestinians residing in the Occupied Palestinian Territories (OPT) are themselves refugees from the 1948 war.

Reinterpreting the Right of Return Vis a Vis Establishing a Palestinian State

The Oslo Agreement of 1992 has drastically changed the discourse of the Israeli/Palestinian conflict, and further divided the community on key issues including the right

²⁰⁶Ibid., p.199

²⁰⁷ Ibid.

of return of Palestinian refugees. The idea of creating a Palestinian state, as agreed upon in the agreement, has raised the question of whether return refers to returning to lands of origin in present day Israel, or to a Palestinian State which to be established within the pre-1967 borders. The following will briefly examine the impact that the agreement has on the debate surrounding the right of return of Palestinians.

Prior to the PLO's declaration of the Palestinian State in 1988, the official Palestinian narrative had always been related to the liberation of historic Palestine, and the return of all Palestinians to their lands of origin.²⁰⁸ However this declaration, followed by the Oslo agreement, have contributed to a different understanding of the right of return; it relates to the establishment of a secure state that has a distinct Palestinian political identity and to which Palestinians can exercise their natural and legal right of return.²⁰⁹ The idea of return in such a context is best described as a political compromise in order to facilitate the negotiations between the Palestinians and Israelis. However, up until our present day, Palestinian territories are still under the Israeli Occupation and there has been no plan to implement the right of return of Palestinians.

²⁰⁸ The original position of the PLO can be found in numerous documents, including the "Political Program of the Palestinian Liberation Organization Published by the Palestinian National Council in its 12th Session" (1 June 1974-8 June 1974) that was issued in Cairo (published in Arabic). In the second article of the document, the Council states that the PLO will fight with all means, including military struggle, to liberate the Palestinian land and establish a Palestinian State on every single part of the Palestine. In the third article, the Council states that it will fight every attempt leading to the recognition of Israel and compromising on the Right of Return, etc...

"البرنامج السياسي المرحلي لمنظمة التحرير الفلسطينية المقر من المجلس الوطني الفلسطيني في دورة انعقاده الثانية عشرة" (1 حزيران 1974-8 حزيران 1974)

Arabic text published by The Institute for Palestine Studies on http://www.palestine-studies.org/sites/default/files/Interim_political_program.pdf

²⁰⁹ F. Husayni, "Interview with Faysal Husayni", *Journal of Palestine studies* 18(4) (1989), p.11 and N. Shaath, "Reflections on the peace process: an Interview with Nabil Shaath", *Journal of Palestine Studies* 18(4) (1992), p.76. For more details on the right of return and the establishment of a Palestinian political identity, see R. Kuzar, "The Term Return in the Palestinian Discourse on the Right of Return", *Discourse and society* 19(5) (2008), p.629-644

The current Palestinian political sphere is divided into two camps: the ideologues and the pragmatists.²¹⁰ The former has taken a righteous approach towards return by making it a precondition for any peace agreement and supporting the individual right of return to the 1948 lands.²¹¹ Pragmatists, on the other hand, seek a mere acknowledgment of the right of return and consider it as a general right to return to a homeland rather than “individual homes.”²¹² The pragmatist approach seems to be the dominant position as it represents the official policy of the Palestinian Authority (PA), while the ideological approach is usually advocated for by Hamas.

However, Palestinians might have a different perspective of return other than that of their official representative. The greatest evidence is the current Great Return March in Gaza that has been taking place since early March 2018. The Great Return March is a peaceful movement led by Palestinian youth that protest near the fences separating Gaza from Israeli borders in an attempt to cross the barrier and achieve their right of return. It is important to note that the majority of Gazans come originally from historic Palestine, hence enjoy the right of return. The Great Return March is significant for the mere reason that Gazans are supposedly residing in a part of the future Palestinian State, hence they do not need to reclaim their right of return from a pragmatist perspective. However, the Great Return March has revived the idea of return as a collective demand of Palestinians not only in the diaspora, but within the Occupied Palestinian Territory (OPT) as well. It raises the questions on whether Palestinian pragmatism is a representative of the actual desires of the Palestinian people. In addition, it has also proved to the

²¹⁰ A. Howard and E. Barkan, *No return, no Refuge: Rites and Rights in Minority Repatriation*. New York: Columbia University Press (2011), p.195

²¹¹ Ibid.

²¹² Ibid.

international community that Palestinians in the OPT and those in the diaspora do not have separate aspirations, but share a common claim of return to their homes of origin.

In general, the Oslo agreement has further deteriorated the situation of the Palestinian people and reestablished the dominant position of Israel in the OPT. In fact, Oslo agreement has given Israel the chance to continue its occupation instead of bringing an end for it.²¹³ Edward Said, a prominent Palestinian American scholar, claimed in an old interview that no peace agreement can be reached without justice, and the Oslo accords did not bring justice to the Palestinian people.²¹⁴ The question for justice for the Palestinian people is linked to both the rights of return and self-determination. The existence of the right of return for the Palestinian people has been already established, but its physical occurrence is the key concern. While all Palestinians fractions agree that the principle of return exists, its possibility and dynamics are still subject to debates especially that the negotiations between the PA and Israel have never been stable and did not succeed in ending the ongoing occupation.

Determining the place of return for the Palestinians raises moral and legal concerns. Considering that every Palestinian has a moral and legal right to return to the homeland of their ancestors, the relocation of the supposed place of return would be perceived as a violation of their own rights. Moreover, the approach that Palestinians are to return to a futuristic Palestinian State demeans the right of return of those displaced by the 1948 war and that reside in Gaza or the West Bank. One might argue that with the creation of a Palestinian state in the West Bank and Gaza Strip, the right of return of those living in this state would cease to exist as they

²¹³ Ilan Pappé from a series of interviews with him and Naom Chomsky documented by Frank Barat in the book *On Palestine*, Penguin Books (2015), p.134

²¹⁴ E. Said, "The Palestinian Right of Return: An Interview with Ari Shavit", *Raritan: A Quarterly Review* 20 (3) (2001), p.43

become nationals of the newly created state. Badil Center had previously addressed the topic of the right of return of Palestinians that live in the OPTs by highlighting the voluntary aspect of the right.²¹⁵ Right of return for refugees is based on the “premium” that refugees have a free choice in deciding where they want to live.²¹⁶ In this context, Palestinians should have the right to decide, based on an individual choice, whether to return to present day Israel, live in a Palestinian state, or to resettle in a third country. Until this choice is available to them, the legal status of Palestinians as refugees would remain the same.²¹⁷

However, in the questions of self-determination and return of Palestinians, law seems to play a minimal role in contrast to politics. Regionally speaking, the politics of host state had a great influence on the understanding of return of Palestinians as has been illustrated in this chapter. Even within the Palestinian fractions themselves, politics and Israeli influence seem to be the main determinants of the patterns of creating a Palestinian state and refugee rights, hence leaving the fate of millions of Palestinians unpredictable. In such a context, the obligations of states towards Palestinian refugees, outside the UNRWA region, are also vague. If there is a Palestinian refugee residing in a European country, and wishes to return home, it gets unclear for the host state whether the Palestinian refugee is ought to return to a future Palestinian state, to the homeland of their ancestors, or even to a first country of asylum. In other words, it is important to examine the influence that the secondary movements of Palestinians to outside UNRWA mandate area have on their right of return.

²¹⁵BADIL, “Palestinian refugees in the OPTs Citizens or Refugees?” Paper presented to the Basic Rights of Palestinian Refugees In Host Countries: Reality And Responsibilities, A two-day symposium organized by A'idun Group (2005), Accessed on 11/11/2018, http://www.BADIL.org/phocadownload/BADIL_docs/Working_Papers/Palestinian-Refugees-OPT-Citizens-or-Refugees.pdf

²¹⁶ Ibid., p.2

²¹⁷ Ibid.

The last Chapter of this Thesis will tackle the issue by focusing on the status of Palestinian refugees outside UNRWA operations' area as approached by the EU. The choice of the EU is related to the major developments that the decisions issued by the Court of Justice of the European Union (CJEU) have contributed to in relation to the determination of the legal status of Palestinian asylum seekers.

CHAPTER III

Reaching the EU: Palestinians Asylum Seekers under the EU Refugee System

Palestinians' secondary movements to Europe have added complexity to the question of return. Palestinian refugees in majority reside within UNRWA area (Jordan, Lebanon, Syria, and the Occupied Palestinian Territories), where they benefit from the assistance provided by UNRWA if they are registered at the agency as refugees.²¹⁸ To add to this, Palestinians do not fall under the refugee regime created by the 1951 Convention, as they are excluded under Article 1D, which states the following:

“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.”²¹⁹

Article 1D has both an exclusion and an inclusion sections. Firstly, it considers any person receiving assistance from a UN agency other than the UNHCR (UNRWA or UNCCP in the case of Palestinians) as not eligible to be covered by the Convention. Secondly, this

²¹⁸ Some Palestinians did not register their names at the agency, hence they do not benefit from its services

²¹⁹ Convention Relating to the Status of Refugees adopted by the United Nations General Assembly resolution 429(V) of 14 December 1950 and entered into force on 22 April 1954. Full text can be found on: <https://cms.emergency.unhcr.org/documents/11982/55726/Convention+relating+to+the+Status+of+Refugees+%28signed+28+July+1951%2C+entered+into+force+22+April+1954%29+189+UNTS+150+and+Protocol+relating+to+the+Status+of+Refugees+%28signed+31+January+1967%2C+entered+into+force+4+October+1967%29+606+UNTS+267/0bf3248a-cfa8-4a60-864d-65cdfce1d47>

exclusion clause is not absolute as the second paragraph provides an exception in case the protection provided by the UN agency has ceased, rendering its beneficiaries “ipso facto” refugees under the Convention.

Therefore, understanding the secondary movements of Palestinians to Europe, and the ways through which the EU deals with the cases of Palestinians coming from UNRWA zone require a thorough assessment of the scope of article 1D, in addition to the various European practices in this regard. It is important to highlight the fact that the question of return at this stage is not merely related to the fate of creating a Palestinian state, but it includes the whole UNRWA entity.

The international community has successfully created a primary zone for Palestinians that does not relate to a single country, but to a region formed of five main entities. Furthermore, the creation of this zone has somehow shifted the question of return from return to present day Israel or a future Palestinian state, to considering return to first country of refuge, or to even another country within UNRWA region. In addition, the lack of a consensus on a suitable interpretation of Article 1D of the 1951 Convention has added to the difficulties that Palestinian asylum seekers go through. In other words, when discussing return in the context of the Palestinian question, we are examining a dual return: A return to the place of origin or to a Palestinian state, and another return to the first country of refuge or to UNRWA working zone.

The Third Chapter will further discuss the duality of return of Palestinian refugees in the context of secondary movements to the European continent. It will examine the dynamic European policy towards Palestinian asylum seekers in the light of new interpretations of Article 1D and the changing political circumstances.

Palestinian Refugees under Article 1D of the Refugees Convention 1951

According to UNHCR, Article 1D of the Refugee Convention holds two main purposes: Firstly, the article aims at avoiding the overlapping functions between UNHCR and other UN agencies, particularly UNRWA. Secondly, it aims at ensuring the continuity of protection and assistance provided to Palestinians services in case their UNRWA protection has ceased.²²⁰ While these purposes are the formally recognized ones, there are other reasons that explain the exclusion of Palestinians from the international refugee regime. One main reason relates to the collective decision of Arab states to keep the question of Palestinian refugees under a distinct UN agency fearing the fact that Palestinian refugees would be resettled in Arab countries under the Refugee Convention.²²¹ This fear was justified by the international community efforts in resettling post World War II refugees in third states in Europe.²²² In addition, Arabs wanted to emphasize on the fact that the Palestinian refugee problem is the direct result of the United Nation's actions (referring to the two states solution presented in the 1947 Resolution).

Therefore, in the process of determining whether Palestinians asylum seekers are eligible for the refugee status or not, national courts would have to see if the persons concerned fall under Article 1D of the Refugees Convention. The inclusion paragraph of Article 1D includes two main groups that fall under UNRWA's scope²²³:

²²⁰ UNHCR, "Note on UNHCR's Interpretation of Article 1D of the 1951 Convention Relating to the Status of Refugees and Article 12(1)(a) of the EU Qualification Directive in the Context of Palestinian Refugees Seeking International Protection" issued in 2013 and it is considered the most updated version published by the UNHCR regarding the proper interpretation of Article 1D, p.5 Full text can be accessed on: <http://www.refworld.org/pdfid/518cb8c84.pdf>

²²¹ See supra note 18, p.43

²²² Ibid.

²²³ See supra note 220, p.2-3

1. Palestinian refugees who were displaced as the results of the 1948 Arab-Israeli conflict, and to whom Resolution 194 refers to, and their descendants.
2. Palestinians that became displaced as the results of the 1967 Arab-Israeli conflict and that are considered displaced “within the sense of UN General Assembly Resolution 2252 (ES-V) of 4 July 1967 and subsequent UN General Assembly resolutions”. Their descendants are also included.

However, it is important to note that the interpretation of article 1D, as suggested by UNHCR, should not be narrow as this could lead to the denial of protection for Palestinians under the 1951 Convention, thus creating a protection gap under the current regime.²²⁴ In this regard, Suzan Akram, a professor at Boston University, has noted that any interpretation by national courts for Article 1D should take into consideration the “wording, historical context, and purpose” of the article.²²⁵ When the article was first drafted, Palestinian refugees were considered to have the same “characteristics” as other refugees that fall under Article 1A of the 1951 Convention, and they are entitled to become “ipso facto” refugees once their assistance/protection under Article 1D ceases to exist.²²⁶

In order to guarantee a flexible interpretation for Article 1D to assist Palestinian refugees falling under the scope of the Convention, UNHCR has previously published a commentary in 2009 on the interpretation of Article 1D titled “Revised Note on the Applicability of Article 1D

²²⁴ Ibid., p.4

²²⁵ S. Akram, “Palestinians Who Fall Under the 1951 Convention”, Refugee Legal Aid Information for Lawyers Representing Refugees Globally, Accessed on 23/10/2018, <http://www.refugeelegalaidinformation.org/palestinians-who-fall-under-1951-convention>

²²⁶ The two organizations that were responsible for the protection and assistance of Palestinian refugees at the time of drafting were the United Nations Conciliation Commission for Palestine (UNCCP) and the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA)

of the 1951 Convention relating to the Status of Refugees to Palestinian Refugees.”²²⁷ Another revised revision of this commentary was then published in 2013, which contains a major difference in interpretation that would be addressed later in this section. These notes published by the UNHCR aim at assisting the legal bodies that are looking into asylum applications of Palestinian refugees in order to fill the protection gap that Palestinians are vulnerable to. Even though there is no binding force for the notes, they can serve as a guideline for the courts and provide a reflection on the official UN approach towards the implementation of Article 1D. In fact, the UNHCR mentioned that the Notes reflects the “overall position” of the agency on the subject.²²⁸ They are necessary as the status of Palestinian refugees in the international arena is too complex and keeps on evolving.

The 2009 Note has provided a geographical interpretation for the inclusion paragraph of Article 1D. It considered that the mere existence of Palestinians outside UNRWA operating area as a sufficient indicator for the cessation of the protection/assistance provided by the agency.²²⁹ The persons concerned, when they are outside UNRWA operating zone, are not benefitting from the protection and assistance of UN organs other than the UNHCR. Hence, they should be considered as “ipso facto” refugees as the second paragraph of Article 1D entails. The Note adds in the subsequent paragraph that whenever a person falls within the scope of the second paragraph of Article 1D, they do not need to go through the screening process required by Article 1A(2) to determine whether there is a well-founded fear.

²²⁷ UNHCR, « UNHCR Revised Statement on Article 1D of the 1951 Convention in relation to Bolbol v. Bevándorlási és Állampolgársági Hivatal pending before the Court of Justice of the European Union” published on October 2009, p.3, Accessed on 28/10/2018, <http://www.refworld.org/pdfid/4add79a82.pdf>

²²⁸ Ibid., p.3

²²⁹ Ibid., p.7-8

However, the benefits of the 1951 Convention, if the refugee status for Palestinians was granted in accordance with Article 1A, would cease upon the return of the person concerned to UNRWA zone, noting that they would still enjoy the refugee character within the meaning of the first paragraph of Article 1D.²³⁰ In this context, the question of return rises again in the dual refugee system that is created for Palestinians. In normal cases, the refugee status granted by the Convention would cease once the refugee is returning to their homes of origin. Nevertheless, refugee status and return are far more complicated for Palestinian refugees. Refugee status as guaranteed for Palestinian refugees would cease upon their return to UNRWA area, but they would still be able to keep their status as refugees under international law within a different framework. The characteristic of a refugee for Palestinians would only cease to exist internationally when their ultimate return is achieved: a return to their homes of origin or to a future Palestinian state.

The geographical understanding of the cessation provided by 2009 Note was then revoked by the subsequent Note published in 2013. This Note contains a major difference, as it does not consider the mere existence outside the geographical area of UNRWA sufficient to treat Palestinians refugees as ipso facto refugees under 1951 Convention. The 2013 Note specifies the cases for which the second paragraph of Article 1D applies, which includes “the termination” of UNRWA as an agency, the cessation of its activities, and the existence of an “any objective reason outside the control of the person concerned such that the person is unable to (re-)avail themselves of the protection or assistance of UNRWA”²³¹. It is noticeable that the UNHCR has shifted its interpretation from a geographical approach to focusing on UNRWA’s activities,

²³⁰ Ibid., p.8

²³¹ See supra note 220, p.4

making it possible for those that were previously residing within UNRWA to be considered under the inclusion paragraph of Article 1D if proven that they could not have had access to UNRWA activities or did not register at UNRWA²³². In addition, the Note came as a response to the latest case laws (*El Kott* and *Bolbol*) examined by the Court of Justice of the European Union (CJEU) that gave an interpretation to the application of Article 1D on Palestinian refugees arriving to EU states. The cases would be examined thoroughly in the following section.

In regard of the objective reasons referred to by the 2013 Note, UNHCR has provided a list of examples that are not limited and can be open to the court's interpretation. The list includes two categories, with one related to "[t]hreats to life, physical security or freedom, or other serious protection related reasons", and the other referring to "practical, legal, and safety barriers" that prevent the return of the concerned person.²³³

EU Approach towards Palestinian Asylum Seekers in EU Member States

Even though UNHCR has provided an interpretation for Article 1D to guide national courts in addressing the applications of Palestinian asylum seekers, the reality reflects major disparities in dealing with such applications among different countries. Some cases on Palestinian asylum seekers have reached the Court of Justice of the European Union (CJEU) in order to provide assistance to national European courts in determining Palestinian asylum cases. In this regard, the CJEU has applied a thorough examination and analysis of Article 1D in order to address the existing inconsistencies in its application by EU Member States.²³⁴

²³² See supra note 18, p.56

²³³ See supra note 220, p.5

²³⁴ See supra note 18, p. xvi

It is important to note that within the context of EU legislation framework, Directive 2004/83/EC, known as the Qualification Directive, is the main document, along with the 1951 Convention, that guide EU states in assessing asylum applications. Directive 2011/95/EU then repealed Directive 2004/83/EC, but this change did not add much to the case of Palestinians as the exclusion clause in both Directives (Article 12) remains the same. Article 12(1) is directly related to Palestinian asylum seekers as it states the following:

“A third country national or a stateless person is excluded from being a refugee, if: (a) he or she falls within the scope of Article 1D of the Geneva Convention, relating to protection or assistance from organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees. When such protection or assistance has ceased for any reason, without the position of such persons being definitely 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 Directive.”²³⁵

The Article is worded in a similar manner to Article 1D of the 1952 Convention as it provides for both the exclusion of refugees benefiting from an existing UN agency other than UNHCR, and for the inclusionary condition when such protection or assistance has ceased to exist. Thus, CJEU has become able to indirectly interpret Article 1D of the Convention by examining the cases of Palestinian asylum seeker in EU Member States.

²³⁵ “Council Directive 2004/83/EC on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted” issued on 29 April 2004 and “Directive 2011/95/EU on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted” issued on 13 December 2011

The major rulings issued by the Court in this regard were in the cases of *Bolbol v. Bevándorlási És Állampolgársági Hivatal* (2010) and *Mostafa Abed El Karem El Kott and Others v. Bevándorlási És Állampolgársági Hivatal* (2012), which both happen to be in Hungary. In the following parts, both cases would be referred to as *Bolbol* and *El Kott*. Both cases constituted the milestone for the changing European approach towards Palestinian asylum seekers, and they present an evolution in the manner through which asylum applications of Palestinians are dealt with under Article 12(1) (a) of Qualification Directive.

Most recently, CJEU has dealt with the case of *Serin Alheto v Zamestnik-predsdatel na Darzhavna agentsia za bezhantsite* that revolves around the asylum application of a Palestinian in Bulgaria.²³⁶ This case differs from the previously mentioned case as it deals more with the concept of effective protection in the first country of asylum and internal movement within UNRWA operation area prior to arriving to an EU Member State.

The cases before CJEU provide an overview on the main challenges that national courts face while examining asylum applications of Palestinian refugee arriving from UNRWA zone. Hence, it is important to explain these cases in order to understand the patterns of the secondary movements of Palestinians to EU Member States. The cases highlight the European understanding of the scope of Article 1D and the question of effective protection for Palestinian refugees. They also present the starting point for the examination of the concept of ‘dual return’ of Palestinians and other issues that usually arise from secondary movements of refugees such as internal flight alternative. The following would briefly explain the three cases before CJEU concerning Palestinian asylum seekers in EU Member States. Secondly, it will address the issue

²³⁶ Press Release of *Serin Alheto v Zamestnik-predsdatel na Darzhavna agentsia za bezhantsite* case C-585/16 published by the Court of Justice of the European Union on 25 July 2018, Accessed on 16/10/2018, <https://curia.europa.eu/jcms/upload/docs/application/pdf/2018-07/cp180112en.pdf>

of whether secondary movements of Palestinians create a dual right of return that cover their original right of return and an additional right of return to their first countries of refuge within UNRWA zone.

Case of Bolbol v. Bevándorlási és Állampolgársági

The case of Belbol revolves around a Palestinian woman from Gaza that reached Hungary on a visa in 2007, and then applied there for asylum.²³⁷ The Hungarian Immigration Authority rejected her application on the basis that she “she did not leave her country of origin owing to persecution for reasons of race, religion, nationality or because of political persecution”.²³⁸ Ms. Belbol then appealed the decision at Budapest Municipal Court, which referred the case to the CJEU to issue a preliminary ruling on the interpretation of Article 12 (1) (a) in regards of Palestinian asylum seekers.²³⁹ Budapest Municipal Court has primarily raised three main question for the CJEU to look into:

1. The first question deals with the protection and assistance that the UN agency (other than UNHCR) is providing. In other words, the Municipal Court asked the CJEU whether the entitlement to such protection and assistance is enough in itself or the person needs to avail himself/herself of that protection or assistance.
2. The second question deals with the particular meaning of “cessation”, particularly whether it refers to the mere existence of the person outside the geographical area of UNRWA or the existence of an objective reason behind the cessation.

²³⁷ Summary of C-31/09 Nawras Bolbol, judgment of 17 June 2010 published by the European Commission on October 2010, Accessed on 26/10/2018, http://ec.europa.eu/dgs/legal_service/arrets/09c031_en.pdf

²³⁸ Ibid.

²³⁹ Grand Chamber Judgment in Case C-31/09 *Belbol v. Bevándorlási és Állampolgársági Hivatal* issued on 17 June 2010, para. 1

3. The third question refers to whether to the extension of the benefits of the direction, meaning whether the person is entitled to refugee status or subsidiary protection depending on the discretion of the concerned state.²⁴⁰

CJEU focuses on answering the first question imposed, which aims at establishing whether a person's eligibility to receive assistance from UNRWA is in itself enough to fall under Article 12 (1)(a) or whether that person has already availed himself/herself of this assistance.²⁴¹ In the Court's interpretation of Article 1D, to which article 12(1)(a) of the Directive refers to, it is clear that only those that have actually "availed" themselves of the assistance given by UNRWA fall within the exclusion clause of the refugee status, hence the eligibility criterion is irrelevant.²⁴² In this context, the Court stated that the exclusion clause should be "construed narrowly".²⁴³ Furthermore, registration in itself is not the only required proof to demonstrate that a person has availed themselves of assistance/protection, as some "non-registered persons" benefit from UNRWA services (specifically those that were displaced as the result of 1967 war).²⁴⁴

The Court did not proceed in its examination of the second and third questions imposed by Budapest Municipal Court. CJEU found it unnecessary to do so following its ruling that Ms. Belbol has not availed herself of the protection or assistance of UNRWA. Hence, the application of Ms. Belbol can be examined under Article 2 (c) of the Directive.²⁴⁵ Following the preliminary ruling of the CJEU, UNHCR had issued a statement (Note 2009) that provided answers for the three imposed questions. UNHCR had reaffirmed in its statement that the interpretation of

²⁴⁰ Ibid., para.35

²⁴¹ Ibid., para.49

²⁴² Ibid., para.51

²⁴³ Ibid.

²⁴⁴ Ibid., para. 45 and 52

²⁴⁵ Ibid., para. 54

Article 1D should not be based on the wordings of the article only, but should take into consideration the object, purpose, and the historical context in which the Convention was drafted.²⁴⁶ As has been mentioned previously, UNHCR dealt with cessation within a geographical context as it linked cessation of UNRWA's assistance to the presence of the persons concerned outside UNRWA's zone of operation.²⁴⁷ In other words, the movements from "inside to outside the UNRWA area of operations and then back again, the person concerned moves back and forth between paragraphs 1 and 2 of Article 1D" regardless of the reasons behind these movements. This geographical interpretation of Article 1D has been replaced by the 2013 Note released by UNHCR on the interpretation of Article 1D. On answering the third question, the statement of UNHCR considered that persons falling within paragraph 2 of Article 1D are *ipso facto* refugees under the Qualitative Directive.²⁴⁸

In the UNHCR's subsequent 2013 Note, *Bolbol*'s decision was criticized. UNHCR in this statement considered that not only Palestinians benefitting from UNRWA services fall within the scope of Article 1D (as referred to in *Bolbol*), but also those that are actually eligible for UNRWA's assistance should be covered by Article 1D.

Case of El Kott v. Bevándorlási És Állampolgársági Hivata

The significance of *El Kott* case lies in the further examination conducted by the CJEU in answering the remaining questions from *Bolbol* case law. Similarly to *Bolbol*, the case was also brought before the CJEU by Budapest Municipal Court. The following case revolves around three Palestinian refugees who used to live in Lebanon's Palestinian refugee camps. The first

²⁴⁶ See supra note 227, p.6

²⁴⁷ Ibid., p.7

²⁴⁸ Ibid., p.8

person, Mr. El Kott, lived in Ein El Helwe camp in Southern Lebanon, and ended up leaving after his house was burned down and he was threatened.²⁴⁹ The other case, Mr. Radi, used to reside in Nah Al Bared Camp where there were intense clashes between the Lebanese Army and Islamic Fatah fraction. His house was destroyed during the clashes, and he was then mistreated by Lebanese soldiers that arrested him and subjected him to torture.²⁵⁰ The last case, Mr. Ismail, used to live in Ein El Helwe camp where he was asked by the conflicting parties to use the roof of his house, and his refusal to do so led to death threats by both parties.²⁵¹ All cases has their refugee applications refused by Hungary, but they were not returned under the principle of non-refoulement.

While the applicants sought recognition as refugees under the second paragraph of Article 1D of the 1951 Convention, to which article 12 (1)(a) of the Qualification Directive refers to, Budapest Municipal Court had two main questions proposed before CJEU for preliminary ruling. These questions are the same ones that were left unanswered by the Court during *Bolbol* case.²⁵² Therefore, El Kott and others case law has given the Court an opportunity to continue its unfinished work and provide further clearance on the European interpretation of Article 1D.

The Court firstly examined the meaning of cessation in the current context and how it should be established. It considered that the voluntary choice of a person to leave UNRWA operating area does not automatically invoke the “application of the second sentence of article 12(1-a) of

²⁴⁹ Grand Chamber Judgment in C-364/11 Mostafa Abed El Karem El Kott v. Bevándorlási és Állampolgársági Hivatal issued on 19 December 2012 by the CJEU, para-2, Accessed on 28/10/2018 <http://curia.europa.eu/juris/document/document.jsf?docid=131971&doclang=EN>

²⁵⁰ Ibid., para.30

²⁵¹ Ibid., para.32

²⁵² Ibid, para.41

Directive 2004/83” as this would go against the purpose of the exclusionary clause of Article 1D.²⁵³ The presence of the applicants outside UNRWA operating area does not automatically terminate the exclusion effect referred to in Article 1D and article 12 (1)(a), but it is necessary to assess the conditions under which the cessation of UNRWA’s assistance could have occurred.²⁵⁴

It further noted that the termination of an UNRWA as an agency is not the only reason that can trigger cessation, as the focus should be on whether the agency is capable of carrying out its mission.²⁵⁵ Thus, cessation does not relate to the physical presence of UNRWA as an agency, but to the activities of assistance that this organization is responsible of implementing. Therefore, a person must demonstrate that he did not voluntarily leave UNRWA area, but his decision was based on reasons that go beyond his will, leading to the cessation of assistance within the meaning of the second sentence of Article 12(1-a).

When it comes to answering the question regarding the scope of the Qualification Directive on whether the applicant should be recognized as a refugee or be granted subsidiary protection based on the state’s discretion. In this regard, the Court noted that for the purpose of the second sentence of Article 12 (1)(a), the benefits of the directive refers only to the recognition of a refugee status²⁵⁶, however subsidiary protection can be granted based on a different article of the Directive.²⁵⁷ The Court further examined whether persons “entitled to the benefits of [the] Directive” are automatically granted the refugee status (*ipso facto*) or they simply fall within the *rationae personae* of the Directive.²⁵⁸ The Court considered that those that are “*ipso facto* entitled

²⁵³ Ibid., para.51

²⁵⁴ Ibid., para.55

²⁵⁵ Ibid., para.56

²⁵⁶ Ibid., para.67

²⁵⁷ Ibid, para.68

²⁵⁸ Ibid., para.69

to the benefits of Directive 2004/83” under article 12 (1)(a) are not granted the refugee status unconditionally.²⁵⁹ However, the Court did not consider that such persons would have to go through the procedure of demonstrating that they have a well-founded fear as per article 2(c), but they still need to go through an application status to be examined by the concerned authority in the member state.²⁶⁰ Hence, in addition to proving that the person has availed of UNRWA’s assistance and that this assistance has been ceased, it should be shown that the applicant does not fall under any ground of exclusion within the scope of articles 12(1)(b) or (2) and (3) of the directive.²⁶¹

It could be noticed that the decision of the Court in *El Kott* case aligns with the UNHCR Note (2013) that was previously discussed in this chapter. It applied a broad interpretation that the UNHCR has referred to on a later stage in its note on the interpretation of Article 1D. Moreover, both *El Kott* decision and UNHCR 2013 Note have considered that not only those that are receiving assistance are covered by Article 1D, but also those that are eligible for such assistance fall within the scope of the article. In addition, UNHCR note 2013 had further elaborated on *El Kott* decision by providing two objective reasons that determine the cessation, noting that the list of objective reasons is not limited to what the UNHCR has referred to in its 2013 Note.

El Kott case was a chance for CJEU to readjust its approach towards Palestinian refugees seeking asylum in EU Member States. In addition, it was an opportunity for the Court to examine the unanswered questions from *Bolbol* case.

²⁵⁹ Ibid., para-75

²⁶⁰ Ibid., para-76

²⁶¹ Ibid.

Serin Alheto v Zamestnik-predsedatel na Darzhavna agentsia za bezhantsite

The case of *AlHeto* is the most recent judgment issued by the CJEU on Palestinian asylum seekers. In the previous cases, all applicants have directly moved from their place of residence (whether Gaza or Lebanon) to Hungary, where they started their asylum applications. However, the case at hand is special, as the applicant has moved within UNRWA operation area prior to arriving to Bulgaria, where she launched her refugee application. The applicant is a Palestinian that originally resided in Gaza, from which she moved to Jordan and then traveled to Bulgaria where she submitted her application for asylum and subsidiary protection.²⁶² In her application, the applicant claimed that she is threatened in Gaza by Hamas due to her work on women's rights, in addition to the existence of "indiscriminate violence" caused by the armed conflict between Hamas and Israel.²⁶³

Following the rejection of her application, Ms. AlHeto appealed to Sofia Administrative Court that brought the case before the CJEU. Sofia Administrative Court raised six questions before the CJEU, out of them the first and fifth questions are relevant to this Thesis. The first question deals with the possibility of examining the case of a Palestinian receiving assistance from UNRWA under Article 1A of the 1951 Convention instead of Article 1D.²⁶⁴ The fifth question refers to the principle of non-refoulement applied by the first country of Asylum (the Bulgarian court in this case is referring to Jordan).²⁶⁵ In particular, the question is related to whether the assistance provided by UNRWA in "the relevant country within the agency's area of

²⁶² See supra note 236

²⁶³ Grand Chamber Judgment in Case C-585/16 of *Serine AlHeto v. Zamestnik-predsedatel na Darzhavna agentsia za bezhantsite* issued by CJEU on 25 July 2018, para. 54 and 55, Accessed on 28/10/2018, <http://curia.europa.eu/juris/celex.jsf?celex=62016CJ0585&lang1=en&type=TEXT&ancre=>

²⁶⁴ *Ibid.*, Para. 66 (1)(a)

²⁶⁵ *Ibid.*, para. 66 (5)

operations” can be considered as ‘effective protection’ within the meaning of Article 35 (b) of Directive 2013/32.²⁶⁶

Regarding the first question, the Court explained that a person registered at UNRWA, such as the applicant, means that they are eligible to UNRWA’s assistance, hence they are by virtue excluded from the refugee status within the EU as she falls within the exclusion clause of Article 1D of the 1951 Convention.²⁶⁷ However, as explained previously, the exclusion from refugee status ceases to apply when the applicant for this status in the EU does not avail of UNRWA’s assistance or protection.²⁶⁸ The Court has reaffirmed its former position in *El Kott* and stated that cessation should be examined on an individual level in order to prove “that the personal safety of the Palestinian concerned is at serious risk and that it is impossible for UNRWA, whose assistance was requested by that person, to guarantee that the living conditions of that individual would be compatible with its mission, and that person is forced to leave the UNRWA area of operations owing circumstances beyond his control.”²⁶⁹

The fifth question is important as it deals with movements within UNRWA area prior to arriving to an EU member state. It poses the question of whether a country within UNRWA operations’ area can be perceived as a country of first asylum that provides “effective protection” within the meaning of Article 35 (b) of Directive 2013/32/EU. The question was raised by Bulgaria to the applicant first movement from Gaza to Jordan (both fall within UNRWA operating zone), and then from Jordan to Bulgaria. The question is crucial because UNRWA as

²⁶⁶ Directive 2013/32/EU on Common Procedures for Granting and Withdrawing International Protection Issued on 26 June 2013 by the European Parliament and the Council. Article 35 of the Directive defines the concept of first country of asylum

²⁶⁷ See supra note 263, para. 85

²⁶⁸ Ibid

²⁶⁹ Ibid., para.86 and supra note 251, para. 63-64

an agency is initially responsible of providing assistance and not protection (as this function was held by UNCCP). However, the agency had previously undertaken protection duties in certain occasions under UN Security Council Resolutions such as following Sabra and Shatila massacre in Beirut in 1982 and during the first Intifada in the OPTs in 1987-1993.²⁷⁰

The Court suggested that effective protective protection or assistance from UNRWA in an area of its operation could be assessed on the basis of the conditions mentioned previously regarding the safety of the person in this territory (Jordan in this case), enjoying dignified living conditions “without being at risk” of forced return or refoulement to the “territorial of habitual residence” (Gaza in this case) as long as the risks in the habitual residence are still present.²⁷¹ The Court stated that once these conditions are met, the applicant cannot be considered as has been forced to leave UNRWA’s area of operations for reasons beyond her/his will.²⁷²

The Court further assessed the application of article 35 of Directive 2013/32/EU on Jordan to determine if it meets the requirements of a first country of asylum within the meaning of paragraph b of the article. The Court came with three conditions to examine if the applicant in Jordan (or any other country in the UNRWA’s operating area) is enjoying effective protection, including “the benefit of the principle of non-refoulement”.²⁷³ Firstly, there should be a guarantee that the applicant would be readmitted to the third country (Jordan in the present case). Secondly, the applicant can avail of UNRWA’s effective protection or assistance that is “recognized, or regulated, by that third country.” Lastly, the Member State, in which the

²⁷⁰ H. Parvathaneni, “UNRWA’s role in Palestinian Refugee Protection”, *Rights in Principle-Rights in Practice: Revisiting the Role of International Law in crafting durable solutions for Palestinian refugees* (2009), ed. by T. Rempel, published by BADIL Center, p.260-262

²⁷¹ See supra note 263, para.134

²⁷² Ibid.

²⁷³ Ibid., para.140

application for international protection was submitted, must ensure that the applicant will enjoy safety in the third country and will live under dignified living conditions “for as long as necessary” as the risks in Gaza prevail.

The case of *AlHeto* triggers the issue of effective protection within UNRWA operations area. CJEU has developed a set of criteria to identify whether a country within UNRWA (other than the country of habitual residence of the Palestinian refugee can be perceived as a safe “first country of refuge.” However, Chapter II of this thesis has described the tough living conditions of Palestinians in the five areas covered by UNRWA, clearly showing the lack of protection, with the partial exception of Jordan. The question of protection of Palestinian refugees has been completely politicized and subjected to the state’s policy. Furthermore, CJEU and UNHCR have not addressed the protection gap left by the cessation of the UNCCP, the agency that had the mandate of providing protection for Palestinian refugees. Even though UNRWA’s mandate was extended on several occasions to cover protection duties, these attempts were insufficient to close the protection gap.²⁷⁴

The situation of Palestinian refugees in UNRWA mandate area is deteriorating. Safety and dignified living conditions, referred to by the CJEU as indicators of effective protection or assistance by UNRWA, are not present in Gaza, West Bank, Syria, and Lebanon. Chapter II has illustrated the current difficulties that Palestinians go through in these areas, the recent impact of the Syrian conflict, the continuous Israeli assaults on Palestinians in Gaza and its blockade of the strip, and the illegal military occupation of the West Bank. Security concerns are also present in Lebanon where Palestinian refugee camps represent ghettoized spaces that fall outside the

²⁷⁴ See supra note 23, p. 581

control of the Lebanese security forces. Security and dignified conditions are almost absent from entities where UNRWA operates, which trigger a major problem of protection.

Even though the situation in Jordan is relatively better than the other four areas, there is still the question of the effectiveness of the assistance provided by UNRWA in light of the financial challenges that the agency has been facing. The latest problem was the largest aid reduction faced by UNRWA due to the recent United States' decision of cutting \$300 million of funds to the agency.²⁷⁵ In the agency's statement on the matter, UNRWA's Commissioner-General has described the US cut "as an existential threat to UNRWA." The cut would have disastrous consequences on Palestinian refugees supported by UNRWA, as described by UNRWA's spokesperson in a recent interview.²⁷⁶ He claims that at the end of September, the agency would be lacking in terms of financial means necessary to operate UNRWA's schools, clinics, and other relief and social programs. Hence, the Palestinian refugee community is not only suffering from the protection gap left by the UNCCP, but also from the unclear fate of UNRWA that is also subject to the politics of supporting states. The cut, in other words, is an example of the process of "politicization of humanitarian aid".²⁷⁷

Therefore, the international community should reexamine the topic of protection of Palestinian refugees and the shortcomings of UNRWA's assistance. The need to set a framework

²⁷⁵ UNRA, "UNRWA Statement on Implications of Funding Shortfall on Emergency Services in the OPT", issued by UNRWA on 26 July 2018, Accessed on 30/10/2018, <https://www.un.org/unispal/document/unrwa-statement-on-implications-of-funding-shortfall-on-emergency-services-in-the-opt/>

²⁷⁶ "Wishing Away Palestinian Refugees: End of US' UNRWA Aid Explained", Al Jazeera (2018), Accessed on 30/10/2018, <https://www.aljazeera.com/news/2018/09/unrwa-funding-cut-deeply-regrettable-shocking-180901071620633.html>

²⁷⁷ The expression was used by UNRWA's Commissioner General in an Interview with Al Jazeera, "Donors to Increase UNRWA Support and Funding Despite US Cuts", Al Jazeera (2018), Accessed on 30/10/2018, <https://www.aljazeera.com/news/2018/09/donors-increase-palestine-refugee-agency-funding-cuts-180902085540064.html>

of international protection for Palestinian refugees is increasing in the current context of secondary movements to areas outside UNRWA, which is further complicating the legal status of Palestinian refugees and affecting their rights, including right of return. This is case particularly with Palestinians that come from Syria to Europe to seek asylum. The following part will further examine the implications of secondary movements of Palestinian refugees on the right of return, to assess whether such movements can broaden the right of return for Palestinian refugees to include first countries of refuge.

Secondary Movements of Palestinian Refugees and the Duality of Return

In *Bolbol* and *El Kott*, the CJEU focused on the interpretation of Article 1D as an attempt to clarify the process for the applications Palestinian asylum seekers within the EU. The contribution of the CJEU in this regard had not only influenced policies within EU Member States, but it had a global impact that is noticeable in the UNHCR 2013 Note on the interpretation of Article 1D, which refers to the ruling of the CJEU in *El Kott*. However, the situation for Palestinian refugees seeking protection outside UNRWA operating zone is still increasing in complexity in the absence of a unified interpretation of Article 1D and the lack of the international will in addressing the issue of increasing secondary movements of Palestinians.

Additionally, the question of return has not yet been addressed properly in the international arena. *Al Heto* case has further illustrated the complexity of return for Palestinian refugees under their special refugee system. The movements of Palestinians to Europe and elsewhere have indeed raised a key legal question regarding the legitimacy of returning these refugees to the first country of asylum when the implementation of their original right of return to historic Palestine (the implementation of a durable solution) has not yet been established by the international community after seven decades. However, it is also important to question

whether these refugees can voluntarily return to first countries of refuge, and whether they have such a right.

The vast majority of Palestinian refugees have resided in UNRWA's operation areas for over seven decades, meaning that two or three generations of Palestinian refugees have lived their entire lives in exile, with no durable solution available to them. For these Palestinians, entities within UNRWA (whether Syria, Lebanon, Jordan, or OPTs) have become the habitual areas of residency. Therefore, the dilemma is not only regarding EU countries' decision on returning Palestinian asylum seekers to UNRWA area under certain conditions, but to establish whether these asylum seekers do also have a 'right' to return to this area. In other words, it is a matter of whether the right of return of Palestinian refugees can actually extend to cover, in addition to historic Palestinians or a future Palestinian state, their first countries of asylum that have become their de facto places of residency. This question is of great significance in the current context due to the existence of a big number of Palestinian refugees coming from Syria to EU countries. Hence, the question of return for these refugees to Syria might arise as the Palestinian community there was integrated in the society and had a broad range of rights.

Therefore, it is important to examine the patterns of return for recognized Palestinian refugees in Europe, particularly if this claimed return includes first countries of asylum. In this regard, one can invoke Article 12.4 of the ICCPR that reads as the following: "No one shall be arbitrarily deprived of the right to enter his own country."²⁷⁸ In this argument, one's "own country" is not referring only to countries of nationality but also "one's first country of asylum", which render first countries of asylum legally responsible for the readmission of concerned

²⁷⁸ See supra note 96

persons.²⁷⁹ The scope of one's "own country" is not restricted to one's country of nationality, as the UN Human Rights Committee had indicated previously in General Comment No.27 on Article 12 of the ICCPR.²⁸⁰ The Comment sets a broad sense of interpretation of the term "own country" that goes beyond the concept of nationality, and refers to the existence of "special ties or claims in relation to a given country." In the broader sense of the term, the General Comment gives the example of "long term residents". In this context, one's right to return would incorporate returning to their "former home" or places of "habitual residence."²⁸¹

Some commentaries and academics have applied Article 12.4 to invoke the right of return of Palestinians to their original homes in historic Palestine²⁸², but it can also be applied in the current context to Palestinian refugees living outside UNRWA area and wishing to return to this region. Palestinian refugees have been residing for decades in this area with no plan of durable solution in sight. There is a connection of Palestinian refugees to these first countries of asylum as the vast majority have spent their entire lives there, and for them these countries are the closest that they can get to their original roots. Hence, their main right of return passes through these countries, which creates a deep connection to them. This position was proclaimed previously by Palestinian refugees that fled the tensions of Nahr El Bared Camp in Lebanon.²⁸³ The leaders of Palestinians displaced due to the conflict in Nahr El Bared Camp considered that

²⁷⁹ S. H. Legomsky, *Secondary Refugee Movements and the Return of Asylum Seekers to Third Countries: the Meaning of Effective Protection* (PPLA/2003/01) published by the UNHCR on February 2003, p. 42, Accessed on 30/10/2018, <http://www.refworld.org/docid/3f4de85d4.html>

²⁸⁰ See supra note 100, p. 5

²⁸¹ M. Bradley, "Durable Solutions and the Right of Return for IDPs: Evolving Interpretations", *International Journal of Refugee Law* vol. 30 (2) (2018), p.230

²⁸² M. Masri, "The Implications of the Acquisition of a New Nationality for the Right of Return of Palestinian Refugees", *Asian Journal of International Law* Vol. 5 (2) (2015), p. 371-2

²⁸³ See Supra note 281, p.234

returning to the camp is essential for maintaining the original right of return to historic Palestine.²⁸⁴

Even though the General Comment no. 27 did not refer to the category of refugees, a broad interpretation of the article was encouraged by the HRC, as there can be particular circumstances that create special links between an individual and a given country. Therefore, it could be implied that Article 12.4 of the ICCPR may generate a right of return of Palestinian refugees, outside UNRWA, to their former areas of residency within UNRWA. It may also impose an obligation on the first country of asylum (within UNRWA) to readmit the person.

As has been mentioned previously, Article 12.4 of the ICCPR was also invoked to support Palestinians' right of return to their original homes in present day Israel. The broad sentence of "one's own country" has allowed commentaries to consider the term in terms of one's link to the territory and the nature of this link.²⁸⁵ Palestinians' link to their places of origin has been examined in length in Chapter I. It showed that Palestinians refugees, even when naturalized, have kept their faith in returning to their original homes.²⁸⁶ The dream of return to their "own country" is best described through the keys to the original houses that many refugees have kept with them since 1948. These refugees connect themselves with the villages of their ancestors, and preserve in their memories the original names of these villages.

Therefore, a broad interpretation of Article 12.4 of the ICCPR generates a dual right of return for Palestinian refugees: a right to return to their places of origin in historic Palestine/present day Israel, and a right of return to the first country of refuge. However, it

²⁸⁴ Ibid.

²⁸⁵ See supra note 281, p.367- 376.

²⁸⁶ Ibid., p.372

should be noted that the creation of a Palestinian State, in this context, does not end the right of return of Palestinians to their original homes. The General Comment on the Article clearly states that nationality is not the determinant, but it is about the special link between the individual and the territory to which he/she belongs. For many Palestinians in exile, their Palestinian identity is strongly linked to the villages of their ancestors and not to Gaza or the West Bank. Even for the Palestinians that live in Gaza and the West Bank, the dream of return has not vanished yet, and the ongoing Great Return March in Gaza is the living proof of Palestinians' desire of return.

The creation of a Palestinian state does not automatically replace the right of return of Palestinian refugees to their homes of origin. This has been clearly referred to in Resolution 3236 (xxix) that acknowledges the right to self-determination of Palestinians on one hand, and "the inalienable right of the Palestinians to return to their homes and property from which they have been displaced and uprooted."²⁸⁷ Even though the Resolution is non-binding as it was passed by the UN General Assembly, it still uses a strong language in referring to the 'inalienable' nature of the right of return, which may coexist with the right to self-determination of the Palestinian people.

Following the presentation of the tough conditions of Palestinian refugees in UNRWA operation areas, one might wonder if a right of return to a first country of refuge matters for Palestinians refugees. While many Palestinian refugees would not want to go back to their first country of refuge (such as those coming from Lebanon and Gaza), the case might be different for Palestinians that have escaped the Syrian war. Palestinians in Syria had a broad range of rights, and once the conflict reaches an end, the discussion of their right of return to Syria might arise.

²⁸⁷ UNGA Resolution 3632 (XXIX), "Question of Palestine", A/RES/3236 (XXIX) passed on 22 November 1974, Accessed on 10/11/2018, <https://unispal.un.org/DPA/DPR/unispal.nsf/0/025974039ACFB171852560DE00548BBE>

In this context, Article 12.4 of the ICCPR can create a state's obligation on Syria to readmit these Palestinian refugees. The right of Palestinians to return to Syria can also follow a circumstantial line of argumentation. The case of Palestinian refugees is unique, as they are not allowed to exercise their original right of return to their houses in historic Palestine. Moreover, there is no guarantee that any other state would readmit them. Therefore, due to the existing circumstances, it could be claimed that Syria is obliged to readmit these Palestinian refugees to its territories.

Additionally, the right of return of Palestinians reflects the general opposition of Palestinians to their "repeated displacement."²⁸⁸ For instance, the walls of Palestinian camps in Syria are covered now with Graffiti that addresses their right of return to both historic Palestine and their homes in their habitual residence in the camps²⁸⁹. Many Palestinians refugee in Europe might raise the right of return to their former places of habitual residence as a way of reinforcing their position of refusing the repetitive displacement and the fate of their ancestors.

It is important to note that throughout the years, there were cases where Palestinians were returned to first countries of asylum with the assistance of both UNRWA and UNHCR²⁹⁰. Two key examples of the assisted return of Palestinian refugees to first countries of asylum occurred following the Iraqi invasion of Kuwait in 1990-1991, and after the expulsion of Palestinians from Libya.²⁹¹ Following the Kuwait government decision to expel Palestinians due to the Palestinians' leaders support for the Iraqi invasion, the two agencies collaborated in order to

²⁸⁸ See Supra note 281, p.234

²⁸⁹ Ibid.

²⁹⁰ J. Bastaki, "The Legacy of the 1951 Refugee Convention and Palestinian Refugees: Multiple Displacements, Multiple Exclusions", *Berkeley Journal of Middle Eastern & Islamic Law* Vol 8. (2017), p. 11

²⁹¹ Ibid.

support the return of these Palestinians to their former host states²⁹². As for the Libyan example, the decision of expelling Palestinians from Libya by Muammar Gaddafi came as a response to the peace treaty signed between the PLO and Israel.²⁹³ UNHCR and UNRWA had to work together again to ensure the return of these Palestinians to their former host countries, but the attempts were not as successful as the Kuwait example due to the restrictions imposed by former host entities.²⁹⁴

Therefore, it is justifiable to consider that Palestinian refugees outside UNRWA's operation area enjoy a dual return for Palestinian refugees: the original return as per a just durable solution and the voluntary return to their first countries of refuge within UNRWA. Any plan for a durable solution should include Palestinian refugees within and outside UNRWA, in addition to those that were able to acquire the citizenship of other countries.

Palestinian Refugees and the Internal Relocation Alternative

If Palestinian refugees in the EU and elsewhere are willing to voluntarily return to their countries or regions of first refuge within UNRWA, then it could be assumed that there is a right of return to these areas along with the first hosting state's obligation of readmitting them. However, there is a major concern that has not yet been addressed within the EU on whether internal relocation alternative, referred to in Article 8 of the Qualification Directive, could be applied on Palestinian applicants seeking asylum within the EU. For instance, the CJEU did not consider in *El Kott and Others* case whether the applicants could be returned to other refugee camps in Lebanon where the situation could be considered relatively safer. However, in *Al Heto*

²⁹² See supra note 23, p.591

²⁹³ Ibid., p. 592

²⁹⁴ Ibid.

case, the CJEU introduced the possibility of actually returning the applicant to Jordan, a place that is different from her habitual residence in Gaza Strip but still falls within UNRWA operations' area.

In analyzing the applicability of Article 8 of the Qualification Directive on Palestinian asylum seekers, it is important to examine the wordings of the article itself. The first paragraph states that "...Member States may determine that an applicant is not in need of international protection if in a part of the country of origin, he or she: (a) has no well-founded fear of being persecuted or is not at real risk of suffering serious harm; or (b) has access to protection against persecution or serious harm as defined in Article 7; and he or she can safely and legally travel to and gain admittance to that part of the country and can reasonably be expected to settle there".²⁹⁵ The term "country of origin" is tricky in this case. If "the country of origin" refers to the country of nationality, hence the article would be inapplicable as Palestinian refugees are still treated as stateless people, and even if they come from the OPTs, the vast majority of these Palestinians come originally from present day Israel. However, if the term is interpreted as the country of habitual residence from which these refugees have come from, then internal flight relocation considerations could be examined. In other words, it can be invoked that a "country of origin" can be read in the same sense as "one's own country" referred to in Article 12.4 of the ICCPR. Nevertheless, the term country of origin is more specific than one's own country. After all, Palestinian refugees originally come from historic Palestine, thus it would not be acceptable to consider Lebanon or Syria as a Palestinian's country of origin as they still hold a refugee status in these countries.

²⁹⁵ See supra note 266

However, the UNHCR in its published Guidelines on International Protection No. 13 on the “Applicability of Article 1D of the 1951 Convention relating to the Status of Refugees to Palestinian Refugees” has addressed the issue of internal relocation of Palestinian refugees.²⁹⁶ It considered that the activities of UNRWA would not be considered to have ceased if an individual is able to “access or receive” UNRWA’s assistance elsewhere within the same UNRWA operation area. Therefore, in cases similar to El Kott and others, the concerned authority may consider the option of internal relocation.

Nevertheless, there are still some complications that should be taken into consideration. The overall security and living conditions for Palestinians in Lebanon are the same in all Palestinian refugee camps across the country, hence considering such possibilities would be void. For Palestinians coming from Syria, the situation is more complicated as the conflict has not ended yet in the country, and the whole question of return, even for Syrians, is still being discussed with no plan in sight. For Palestinians arriving from OPTs, the reality does not allow for relocation considerations. For instance, there is no safe area in Gaza that Palestinians could return to, and Gazans cannot be relocated to the West Bank due to the existing Israeli policies that prevent West Bankers from visiting Gaza and the vice is correct (for the exception of rare cases of seeking medical treatment outside Gaza).

The applicability of internal relocation alternative on Palestinian refugees arriving from UNRWA mandate area in the context of EU law is complex due to the use of “country of origin” in Article 8 of the Qualification Directive. A country of origin for Palestinian refugees of 1948 would be present day Israel, hence it is impossible for an EU state to apply the alternative flight

²⁹⁶ UNHCR, “Guidelines on International Protection No. 13: The Applicability of Article 1D of the 1951 Convention relating to the Status of Refugees to Palestinian Refugees” (2017), p.13, HCR/GIP/17/13. Accessed on 04/11/2018, <http://www.refworld.org/pdfid/5a1836804.pdf>

relocation for legal and political complications. In other words, an EU Member State would not be able to return a Palestinian that originally comes from Jaffa in historic Palestine to a majoritarian Arab city in present day Israel such as Nazareth. The second paragraph of Article 8 refers to the obligation of the Member State to thoroughly examine the general circumstances in the country of origin and the personal circumstances of the applicant. Therefore, alternative flight relocation of a Palestinian inside the country of origin (historic Palestine/present day Israel) is an impossible option to apply.

Moreover, the use of the term “country” has further limited the option of actually relocating a Palestinian applicant to another safe entity within UNRWA zone. UNHCR’s Guidelines have also addressed the issue of relocation to another entity within UNRWA operation area. It states that “it cannot be expected that the applicant relocate (or be returned) to a different country or territory where he or she has no previous connection.”²⁹⁷ In this context, the case of *Al Hetto* cannot be treated as a case of internal flight alternative, as one cannot perceive UNRWA’s operation zone as a single entity. Nevertheless, CJEU has still considered the option of referring to Jordan in *AlHetto* as a first country of asylum if it satisfies the criteria set by the Court. It is debatable whether Jordan could be perceived as a country of first asylum for the applicant, or whether such a description of Jordan could amount to a “previous connection” for the purpose of applying internal relocation alternative. Further analysis should be conducted as to whether a state could deal with another UNRWA entity as a ‘first country of asylum’ if the applicant has passed through it prior to arriving to the country of destination. The UNHCR seems to refuse the relocation of Palestinian refugees to an UNRWA entity other than the one in which

²⁹⁷ Ibid.

they used to reside. Consequently, considering a secondary UNRWA entity or state as a ‘first country of asylum’ would be problematic.

However, *AlHeto* is still an interesting case that raises the question of effective protection enjoyed not only in a Palestinian’s first place of refuge, but also in the whole UNRWA mandate area. Furthermore, it sheds the light on the fragility of Palestinian refugees’ legal status during their secondary movements within and outside UNRWA mandate area.

Conclusion

The right of return of Palestinian refugees falls at the heart of the Israeli Palestinian conflict. The question of Palestine, which has been on the UN agenda since 1947, is still open without any indication for a solution in the near future. Further complications arise from the politicization of the refugee problem, as they are subject to the will of international players that will decide on their future. In the end, it is up to the international community to decide on the peace plan that suit their benefit the most. Most likely, the peace plan would hold the vision of the failed ‘two-state solution’ advocated by Oslo agreement, and which ignored the question of Palestinian refugees. Unlike the Dayton Agreement, which set out the plan for the return of refugees and displaced persons as the result of the Bosnian conflict, a peace plan for Palestinians would not promote their return. If any, it would allow the return of a particular number to the ‘Palestinian State’, and might allow the return of a smaller number of refugees to present day Israel, but would leave the majority of refugees in a state of limbo.

Palestinian refugees’ continuous struggle in their first countries of asylum, as described in Chapter II, has forced many of them to seek refuge elsewhere. However, left without international and regional protection, Palestinian refugees face legal barriers in getting asylum outside UNRWA mandate area due to their special status under international law. Moreover, many Palestinians were forced to leave their first country of asylum due to wars and conflicts such as the case of PRS fleeing to Europe. For these Palestinians, the question of return might include return to the first country of refuge where they have a special connection. Chapter III has approached this issue, concluding that Palestinians can claim a dual right of return: one to their homes of origin and another to their habitual place of residence in first countries of asylum. It

also explored the dynamics of Palestinians' secondary movements in light of EU law and relevant decisions issued by CJEU.

However, the key question on return will remain whether Palestinian refugees coming from historic Palestine ought to return to the lands of their original homes and not simply to a future Palestinian State. Unfortunately, this question is linked to the politics of negotiations that will decide on the possibility of return. It is unknown what would take the international community to realize this right for a people that have been suffering since 1948. In the case of Bosnia, a genocide had to take place for the international community to end the conflict and acknowledge a right of return for refugees and displaced persons. For Palestinians, the world seems to be turning a blind eye to the question of return and refugees. Gazans are continuously trying to raise awareness on the issue of return through the weekly Great Return March, which took the lives of more than 200 Palestinians since March 2018.

Palestinians' suffering and secondary displacements could reach an end when their main grieving is addressed properly through a durable solution. Until then, the future of Palestinian refugees seems to be blurry. The late Palestinian poet, Mahmoud Darwish, had best described this tough reality in the following verse:

"I'm no longer a baby as soon as I've understood that the camps of Lebanon are the reality and that Palestine is imagination."²⁹⁸

²⁹⁸ M. Dawrsh, *The Hesitant Homecomer* [Arabic title: *حيرة العائد*] (2007), Lebanon: Riad El-Rayyes Books, P.40. Verse was quoted in F. Abreek-Zubiedat, "The Palestinian Refugee Camps: The promise of 'Ruin' and 'Loss', *Rethinking History* 19 (1) (2015), P. 72

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