

THE BROADENING PROTECTION GAP FOR STATELESS PALESTINIAN REFUGEES IN BELGIUM

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This paper reflects upon the issue of statelessness, Palestinians and a recent evolution of Belgian caselaw. When seeking to apply the definition of a ‘stateless person’, as found in art 1 of the 1954 Convention Relating to the Status of Stateless Persons to Palestinians, judges are confronted with specific challenges. Since 2016, divergent standards are developing as to the question of whether, and in which circumstances, Palestinians may be stateless for the purposes of international law. This evolution takes place in a national landscape characterised by a statelessness determination procedure that falls short of standards set out in the United Nations High Commissioner for Refugees Handbook on Protection of Stateless Persons in a number of areas, while a growing number of asylum seekers originating from Palestine are registered over the period 2016–19. This paper exposes, anno 2020, the protection gaps left open by the remarkably divergent approaches to this question taken by the different national actors involved.

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The Broadening Protection Gap

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I INTRODUCTION

Like the recent #*StatelessJourneys* project,¹ different reports² and academic publications³ identify Palestinians among those who experience difficulties accessing protection and exercising other rights. Among other reasons cited in these works, this is because Palestinians may not be recognised as stateless and provided assistance accordingly.

Specific challenges arise in applying the definition of a ‘stateless person’, as found in art 1 of the *1954 Convention Relating to the Status of Stateless Persons* (‘*1954 Convention*’), to Palestinians.⁴ The United Nations High Commissioner for Refugees (‘UNHCR’) has not taken any formal position on the question of the

¹ European Network on Statelessness and Institute on Statelessness and Inclusion, ‘About the Initiative’, *Stateless Journeys* (Web Page, 2019) <<https://statelessjourneys.org/about-the-initiative/>>.

² *From Syria to Europe: Experiences of Stateless Kurds and Palestinian Refugees from Syria Seeking Protection in Europe* (Report, European Network on Statelessness January 2019) <https://www.statelessness.eu/sites/www.statelessness.eu/files/attachments/resources/ENS-ISI-From_Syria_to_Europe_Jan-2019.pdf>; *The World’s Stateless* (Report No 2, Institute on Statelessness and Inclusion 2017) <<http://www.worldsstateless.org/>>; Susan Akram and Nidal Al-Azza (eds), *Closing Protection Gaps: Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention* (2nd edn, BADIL Resource Centre February 2015) <<http://www.badil.org/en/publication/handbook-on-protection.html>> (‘*BADIL Handbook*’); Marjan Claes, *NANSEN NOTE 2019/1 Palestijnse Vluchtelingen van Gaza — Toepassing Artikel 1D Vluchtelingenverdrag [Palestinian Refugees from Gaza Application of Article 1D of the Refugee Convention]* (Report, NANSEN 5 April 2019) <<https://nansen-refugee.be/wp-content/uploads/2019/04/NANSEN-NOTE-2019-1-Beschermingsnood-Gaza.pdf>> (‘*NANSEN Note*’); *Addendum NANSEN Note 2019/1: Situatie in de Gazastrook tussen April en Augustus 2019 [Addendum NANSEN Note 2019/1: Situation in the Gaza Strip between April and August 2019]* (Report, NANSEN 14 October 2019) <https://nansen-refugee.be/wp-content/uploads/2019/10/Addendum-NANSEN-note-2019_1-final.pdf> (‘*NANSEN Note Addendum*’).

³ Susan Akram, ‘The Search for Protection for Stateless Refugees in the Middle East, Palestinians and Kurds in Lebanon and Jordan’ (2018) 30(3) *International Journal of Refugee Law* 407; Susan Akram, ‘Self-Determination, Statehood, and the Refugee Question under International Law in Namibia, Palestine, Western Sahara, and Tibet’ in Susan Akram and Tom Syring (eds), *Still Waiting for Tomorrow: The Law and Politics of Unresolved Refugee Crises* (Cambridge Scholars Publishing 2014) 75; Victor Kattan, ‘The Nationality of Denationalized Palestinians’ (2005) 74(1) *Nordic Journal of International Law* 67; Annelieke Beversluis et al, ‘Forced to Leave But Nowhere to Return to: Rights of Non-Returnable Stateless Palestinians in the Netherlands’ (Expert Opinion, VU University Amsterdam April 2016) <https://migrationlawclinic.files.wordpress.com/2016/04/mlc_report-stateless-palestinians_final-april-20161.pdf>; Khalil Asem, *Palestinian Nationality and Citizenship Current Challenges and Future Prospects* (CARIM Research Reports No 7, 2007); Katia Bianchini, *Protecting Stateless Persons: The Implementation of the Convention Relating to the Status of Stateless Persons across EU States* (Brill Nijhoff 2018).

⁴ *Convention Relating to the Status of Stateless Persons*, opened for signature 28 September 1954, 360 UNTS 117 (entered into force 6 June 1960) art 1 (‘*1954 Convention*’).

statelessness of Palestinians, while in the policy and practice of European states there seems to be a significant diversity in approaches.⁵

This contribution does not intend to answer the question of whether and in which circumstances Palestinians may be stateless for the purposes of international law. Rather, we intend to sketch a picture of the remarkably diverging approaches taken by different actors within the same host state, Belgium, and of the protection gaps that this creates.

II WHO ARE THE “PALESTINIANS” ARRIVING IN BELGIUM?

Globally, there are an estimated 13 million Palestinians.⁶ This term describes people who share a common heritage and attachment to (historic) Palestine, but who are now dispersed across different countries and territories in the Arab region and around the world. Not all Palestinians are similarly situated in terms of their legal status, including their citizenship.⁷

Palestinians enjoy a distinct position under international law. The 1948 Arab–Israeli conflict led to the displacement of Palestinians from territory that had been under the *British Mandate for Palestine* (historic Palestine).⁸ In response, the United Nations established two agencies:

the United Nations Conciliation Commission for Palestine [‘UNCCP’], which was mandated to advocate for the *protection* of Palestinian refugees,⁹ and the United Nations Relief and Works Agency for Palestine Refugees [‘UNRWA’], which was mandated to provide *assistance* to ‘Palestine refugees.’¹⁰

The UNRWA defined ‘Palestinian refugees’ as anyone ‘whose normal place of residence was Palestine during the period 1 June 1946 to 15 May 1948, and who lost both home and means of livelihood as a result of the 1948 conflict’, as well as descendants through male lines.¹¹ Following the 1967 conflict, the UNRWA

⁵ ‘Learning Exchange Webinar: Statelessness and the Treatment of Palestinians in Europe’ (Webinar, Institute on Statelessness and Inclusion and European Network on Statelessness, 25 November 2019) (*‘Statelessness Webinar’*). Notes on file with the author.

⁶ By the end of 2018, roughly 8.7 million (66.7 per cent) of 13.05 million Palestinians worldwide were forcibly displaced persons. Among them are approximately 7.94 million Palestinian refugees and 760,000 internally displaced persons: Nidal al Azza and Lubnah Shomali (eds), ‘Survey of Palestinian Refugees and Internally Displaced Persons 2016–2018’ (Survey No IX, BADIL Resource Centre 2018) xiv <<http://www.badil.org/en/publication/survey-of-refugees.html>> (*‘BADIL Palestinian Survey’*).

⁷ *Statelessness Webinar* (n 5).

⁸ *British Mandate for Palestine*, 8 LNTS 1007 (signed and entered into force 24 July 1922).

⁹ *Palestine — Progress Report of the United Nations Mediator*, UN Doc A/RES/194(III) (11 December 1948); *BADIL Palestinian Survey* (n 6) 59. The United Nations Conciliation Commission for Palestine is a dormant institution due to lack of political will to find a durable solution in line with resolution 194(III): at 61–63.

¹⁰ *Assistance to Palestine Refugees*, UN Doc A/RES/302(IV) (8 December 1949); *BADIL Palestinian Survey* (n 6) 59.

¹¹ *Consolidated Eligibility and Registration Instructions* (Guidelines, United Nations Relief and Works Agency for Palestine Refugees 1 January 2009) <<https://www.unrwa.org/resources/strategy-policy/consolidated-eligibility-and-registration-instructions>>. Persons not counted as part of the official registered refugee population of the United Nations Relief and Works Agency for Palestine Refugees (‘UNRWA’) but registered for the purposes of receiving UNRWA services include husbands and descendants of women who are registered refugees and are (or were) married to husbands who are not registered refugees. The husbands and descendants, including legally adopted children, of these women are eligible to register to receive UNRWA services: at 5.

extended assistance to the 1967 Palestinian ‘displaced persons’.¹² The UNRWA operates in Lebanon, Jordan, Syria, the West Bank and the Gaza Strip and provides assistance to approximately 5.5 million Palestine refugees across these five locations.¹³ Palestinian refugees who live outside of the UNRWA operating areas do not fall under its mandate and cannot receive the UNRWA assistance.

Every year, a considerable number of individuals who identify as Palestinian arrive in Belgium.¹⁴ These individuals originate from the Gaza Strip and the West-Bank, from different neighbouring countries under UNRWA’s area of operation (Jordan, Syria and Lebanon), other Arab countries like Iraq, Egypt and Libya, or from the Gulf states (Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and the United Arab Emirates (‘UAE’)). These persons are registered as either of Palestinian origin, of undetermined nationality¹⁵ or stateless,¹⁶ which makes it difficult to provide accurate statistics on this group.¹⁷

III ASSESSMENT OF THE STATELESSNESS OF PALESTINIANS BY DIFFERENT BELGIAN AUTHORITIES

A *The Family Tribunals, Courts of Appeal, and the Court of Cassation in the Framework of the Statelessness Determination Mechanism*

1 *The Mechanism for Determination of Statelessness in Belgium*

In Belgium, the judiciary is competent to determine statelessness.¹⁸ Persons seeking to be recognised as stateless have to apply to one of six family courts

¹² *ibid.*

¹³ ‘Eligibility & Registration’, *United Nations Relief and Works Agency for Palestine Refugees* (Web Page) <<https://www.unrwa.org/what-we-do/eligibility-registration>>.

¹⁴ For 2019: 2,321 (out of a total of 23,379) initial applications for international protection (third largest group); *Statistiques d’Asile Décembre 2019* [*Asylum Statistics December 2019*] (Report, Commissariat Général aux Réfugiés et aux Apatrides 9 January 2020) 4 <https://cgra.be/sites/default/files/statistiques_dasile_2019_decembre.pdf>. For 2018: 2,421 (out of a total of 19,038) initial applications for international protection (second largest group); *Statistiques d’Asile Décembre 2018* [*Asylum Statistics December 2018*] (Report, Commissariat Général aux Réfugiés et aux Apatrides 9 January 2019) 4 <https://www.cgra.be/sites/default/files/statistiques_dasile_2018_decembre_fr_0.pdf>. For 2017: 817 (out of a total of 15,373) initial applications for international protection (sixth largest group); *Statistiques d’Asile Décembre 2017* [*Asylum Statistics December 2017*] (Report, Commissariat Général aux Réfugiés et aux Apatrides 9 January 2019) 4 <https://www.cgra.be/sites/default/files/statistiques_dasile_2017_decembre_fr_0.pdf>. It appears from these figures that, in 2018, the number of applications submitted by Palestinian nationals (mainly from Gaza) increased dramatically when compared to 2017 — from 817 to 2,421 applications (almost three times more). This was the first time that Palestine was in the top three for asylum applications in Belgium.

¹⁵ Together with other non-Palestinian people who are not able to prove their nationality.

¹⁶ If they have been recognised as such by the Belgian courts.

¹⁷ *Country Briefing: Belgium* (Report, European Network on Statelessness October 2020) <https://index.statelessness.eu/sites/default/files/Country%20Briefing%20Belgium%20ENG_2020%20final.pdf>.

¹⁸ ‘Judiciary of Belgium’, *Wikipedia* (Web Page) <https://en.wikipedia.org/wiki/Judiciary_of_Belgium>:

territorially competent for their place of residence.¹⁹ Appeals would have to be made to one of the five courts of appeal. The procedure is initiated in writing with a unilateral petition, and the request is decided upon by a judge after advice from the public prosecutor and a hearing.²⁰

There are, however, no specific safeguards in place for the determination of statelessness,²¹ and the person recognised as stateless does not derive any rights

As of 2018, the territory of Belgium is subdivided into 5 judicial areas (Antwerp, Brussels, Ghent, Liège and Mons), 12 judicial arrondissements and 187 judicial cantons... The Court of Cassation ... is the supreme court of the Belgian judicial system. It only hears appeals in last resort against judgments and other decisions of lower courts (mostly the appellate courts), and only on points of law. This means the Court of Cassation will not review or reconsider the findings of fact established by lower courts... The courts of appeal [five] ... are the main appellate courts in the Belgian judicial system... They have appellate jurisdiction over the judgements made by the tribunals of first instance and enterprise tribunals in their judicial area, except for petty cases and judgements in which a tribunal of first instance already exercised appellate review.

The courts of first instance (12) are divided into several sections: the Civil Court, the Criminal Court, the Youth Court, the Family Court and the Sentence Enforcement Court. The Civil Court hears all cases which have not been expressly assigned, by the legislator, to another court.

The type of court that must hear the case is determined by the nature and severity of the offence, or the nature of the dispute, and also the size of the sums involved. In some circumstances it is the nature of the dispute that determines the court with jurisdiction.

...

The Council of State is a superior administrative court and monitors the administration. It considers applications from members of the public who believe that an administrative body has not observed the law. The role of the Constitutional Court is to ensure that acts, decrees and ordinances are in conformity with the Constitution [and international law] and to oversee proper separation of powers between the public authorities.

‘Belgium’, *European Justice* (Web Page, 3 August 2017) <https://e-justice.europa.eu/content_judicial_systems_in_member_states-16-be-en.do?member=1>.

¹⁹ *Code Judiciaire* [Judicial Code] (Belgium) art 632bis <<https://www.ejustice.just.fgov.be/eli/loi/1967/10/10/1967101054/justel#Art.632bis>>.

²⁰ *ibid* arts 1025, 1034.

²¹ Because of the absence of any centralised data collection regarding the judiciary, it is impossible to know how many applications there are by year for the statelessness determination procedure, or how many positive decisions, rejections or (un)successful appeals there are. This population is, strictly speaking, impossible to estimate or to quantify. As a consequence, no targeted policy can be conducted, no insight developed on the merits of the procedure, nor scientific research undertaken on profiles.

from this recognition, nor do they receive a residence permit.²² If a person is recognised as stateless by the courts, they can apply for a residence permit ‘for humanitarian reasons’ with the Immigration Office. If the decision of the administration is negative, an appeal can be filed (legality control) before the Council for Alien Law Litigation (‘CALL’).²³

2 *Application of the Definition of a Stateless Person to Palestinians*

Until 2016, persons who could demonstrate their Palestinian origin and show that they did not acquire the nationality of a country that they previously resided in, were recognised as stateless by all Belgian courts.²⁴ In the northern half of the country, however, jurisprudence has shifted. The courts of appeal in Ghent, Brussels (Dutch language role) and Antwerp have ruled that Palestine can be considered a state for the purposes of art 1 of the *1954 Convention*,²⁵ and that the applicants did not succeed in demonstrating they were not considered as nationals by this state.²⁶ The first limb of this approach has been validated by the Court of Cassation, the highest civil court, while appeals are pending challenging the second prong.²⁷

(a) *Whether Palestine Can Be Considered a State*

There has been considerable debate in Belgian jurisprudence on what criteria should be applied to determine whether an entity, *in casu* Palestine, can be considered a state for the purposes of art 1 of the *1954 Convention*. The debate

²² Carine Rustom and Quentin Schoonvaere, *Mapping Statelessness in Belgium* (Report, United Nations Human Rights Commissioner, October 2012) 48 [221]–[222] (‘*Mapping Statelessness*’); *Establishing Statelessness Determination Procedures to Protect Stateless Persons* (Good Practices Paper No 6, United Nations Human Rights Commissioner 11 July 2016) 2–3; Julie Lejeune and Wout Van Doren, ‘Statelessness in Belgium: A Blurred Landscape’, *European Network on Statelessness* (Blog Post, 7 March 2019) <<https://www.statelessness.eu/updates/blog/statelessness-belgium-blurred-landscape>>; *Avis Conjoint du Réseau Européen sur l’Apatridie et de NANSEN sur la Proposition de loi modifiant la loi du 15 décembre 1980 sur l’accès au territoire, le séjour, l’établissement et l’éloignement des étrangers, en vue de régler le droit de séjour des apatrides* [Joint Opinion of the European Network on Statelessness and NANSEN on The Bill Modifying the Law of 15 December 1980 on the Entry, Stay, Settlement and Removal of Foreign Nationals, Regarding the Regulation of Stateless People’s Ability to Remain] (Report, European Network on Statelessness and NANSEN 1 March 2019) <https://www.statelessness.eu/sites/default/files/2020-09/NANSEN_ENS-Avis-Conjoint-Apatridie.pdf>.

²³ *Loi Du 15 décembre 1980 sur l’accès au territoire, le séjour, l’établissement et l’éloignement des étrangers* [Law of December 15 1980 on the Entry, Stay, Settlement and Removal of Foreign Nationals] (Belgium) art 39/2.

²⁴ *Rechtbank van Eerste Aanleg West-Vlaanderen, Afdeling Brugge, Sectie Burgerlijke Rechtbank*, App No 14/1508/B, 23 November 2015 (Court of First Instance, Brugge) <https://www.agii.be/sites/default/files/20151123_rb_brugge.pdf> .

²⁵ See below Part III(A)(2)(a).

²⁶ See below Part III(A)(2)(b)

²⁷ Regarding the first limb, see Hof van Cassatie van België [Belgium Court of Cassation], App No C.16.0325.N1, 23 January 2017 <http://www.agii.be/sites/default/files/20170123_cass.pdf> (‘*Cassation C.16.0325*’). The appeals to the second limb are not public at the time of writing.

culminated when in 2016 the Court of Appeal of Ghent²⁸ was overturned by the Court of Cassation,²⁹ which found Ghent's reasoning contradictory; it held, on the one hand, that the question whether Palestine was a state needed to be answered according to the principles of the *Montevideo Convention on the Rights and Duties of States* ('*Montevideo Convention*'),³⁰ while on the other hand stating that recognition by other states is determinative, even though the *Montevideo Convention* excludes recognition as a criterium for statehood.

The Court of Appeal of Ghent subsequently changed its jurisprudence and applied the four criteria of the *Montevideo Convention* — permanent population, defined territory, government and capacity to enter into relations with other states.³¹ The Court found that Palestine fulfils these criteria and did not analyse further the other components of the definition in art 1 of the *1954 Convention*.³² The two other courts of appeal in the northern half of the country followed suit.³³

The Court of Cassation, confirmed that the four criteria of the *Montevideo Convention* are determinative when deciding whether an entity should be considered a state, and that recognition by other states is in principle not relevant.³⁴ Because of its limited powers of appreciation, however, the Court of Cassation could not scrutinise the application of these four criteria to the concrete case at hand.

In the southern half of the country (and at the Dutch-speaking First Instance Family Tribunal of Brussels) however, the prevailing jurisprudence remains that Palestine is not an independently functioning state. Therefore, persons who demonstrate their Palestinian origin and show they did not acquire the nationality of a country that they previously resided in, have a greater chance to be recognised as stateless.³⁵

²⁸ App No 2015/AR/3257, 16 June 2016 (Ghent Court of Appeal) <http://www.kruispuntmi.be/sites/default/files/20160616_gent.pdf>. The Court held that even if it would be accepted that Palestine fulfils the four conditions for statehood set out in the *Montevideo Convention*, and despite the restrictions due to the ongoing Israeli control/occupation, recognition by the international community remains decisive. See *Montevideo Convention on Rights and Duties of States*, opened for signature 26 December 1933, 165 LNTS 19 (entered into force 26 December 1934) ('*Montevideo Convention*'). While acknowledging that the political existence of a state does not depend on recognition by other states (at art 3), the Court found that the fact that a significant number of states have not officially recognised Palestine as a state remains problematic. In these circumstances, the Court found that a sovereign (functioning) Palestinian state does not exist.

²⁹ *Cassation C.16.0325* (n 28).

³⁰ *Montevideo Convention* (n 28) art 1.

³¹ *ibid.*

³² App No 2017/FE/0029, 31 May 2018 (Ghent Court of Appeal) <<https://www.agii.be/hof-van-beroeop-gent-31-05-2018>>.

³³ App No 2017/FA/707, 5 June 2018 (Brussels Court of Appeal) <https://www.agii.be/sites/default/files/20180605_brussel.pdf>; App No 2018/EV/6, 3 October 2018 (Antwerp Court of Appeal) <https://www.agii.be/sites/default/files/20181003_antwerpen.pdf>.

³⁴ App No C.18.0400.N1, 18 February 2019 (Belgium Court of Cassation) <http://jure.juridat.just.fgov.be/pdfapp/download_blob?idpdf=N-20190218-4>.

³⁵ See the judgment of App No 2019/FU/20, 30 January 2020 (Court of Appel Liège), summarised in *Newsletter Mars 2020 No 162* [Newsletter March 2020 No 162] (Newsletter, Association pour le Droit des Étrangers March 2020) <<https://www.adde.be/publications/newsletter-juridique>>. Note that an appeal against this decision is pending before the Court of Cassation. There are a number of cases of the Court of First Instance Liège in support of these propositions, on hand with the author. See also App No 106/253B/2017, 3 April 2017 (Dutch-Speaking Court of First Instance Brussels).

(b) *Whether the Applicant is Considered as a National by the State of Palestine*

Until recently the question whether individuals of Palestinian origin were considered nationals of (the state of) Palestine had not come up in Belgian case law, as all courts considered Palestine not to be a state in the sense of the *1954 Convention*. After the switch in jurisprudence described above however, this question entered the debate, but it has unfortunately not been thoroughly assessed by the courts.

The courts of appeal of Ghent³⁶, Brussels³⁷ and Antwerp³⁸ have all ruled that art 1 of the *1954 Convention* does not require the existence of detailed nationality legislation,³⁹ referring to the *UNHCR Handbook on the Protection of Stateless Persons*.⁴⁰ In those cases, the courts drew the conclusion that the applicants were considered nationals by the state of Palestine from documents mentioning Palestine itself — documents issued by the Palestinian Authority ('PA'), the UNRWA and even the applicants' former host states (such as Syrian travel documents or Lebanese residence permits). At least, the Courts considered that these documents created a sort of rebuttable presumption of Palestinian nationality and that the applicants had not shown that they were not considered as such. This placed the burden of proof entirely on the applicant and the corresponding focus on this issue meant that not all of the applicants' arguments were addressed. Appeals challenging this line of jurisprudence are pending in the Court of Cassation.⁴¹

This reasoning is clearly faulty. At first instance, it seems obvious that the mere mention of Palestinian origin, or even nationality, on documents issued by another state or international organisation (such as the UNRWA) cannot create a legal presumption of Palestinian nationality. Clearly the issuing institutions are not competent authorities for Palestinian nationality matters.⁴²

Secondly, regarding documents issued by the Palestinian National Authority ('PA'), the 1995 *Oslo Accords* gave the PA the 'right' to issue identity cards and Palestinian passports.⁴³ These can only be issued to the inhabitants of the West Bank and Gaza, and only after notifying Israel and getting their permission.⁴⁴

³⁶ Application of 18 October 2018 (Belgium, Court of Appeal Ghent) (forthcoming) (in Dutch).

³⁷ App No 2017/FA707, 5 June 2018 (Brussels Court of Appeal) <https://www.agii.be/sites/default/files/20180605_brussel.pdf>.

³⁸ App No 2018/EV/6, 3 October 2018 (Antwerp Court of Appeal) <https://www.agii.be/sites/default/files/20181003_antwerpen.pdf>.

³⁹ Indeed, to date, Palestine has not adopted a nationality law.

⁴⁰ *Handbook on Protection of Stateless Persons under the 1954 Convention on Relating to the Status of Stateless Persons* (United Nations High Commissioner for Refugees 2014) ('*UNHCR Statelessness Handbook*') [22], which states

The reference to "law" in Article 1(1) should be read broadly to encompass not just legislation, but also ministerial decrees, regulations, orders, judicial case law (in countries with a tradition of precedent) and, where appropriate, customary practice.

⁴¹ These matters are not publicly available at the time of writing.

⁴² *UNHCR Statelessness Handbook* (n 40) [27]–[30].

⁴³ *Israeli and Palestinian Interim Agreement on the West Bank and the Gaza Strip*, Israel–Palestine 36 ILM 551 (signed and entered into force 28 Sep 1995) annex III ('*Protocol Concerning Civil Affairs*') art 28 <<https://mfa.gov.il/mfa/foreignpolicy/peace/guide/pages/the%20israeli-palestinian%20interim%20agreement%20-%20annex%20iii.aspx#app-28>>.

⁴⁴ *Forget About Him, He's Not Here: Israel's Control of Palestinian Residency in the West Bank and Gaza* (Report, Human Rights Watch February 2012) 22–25. <<https://www.refworld.org/docid/4f3374972.html>>.

Israel has control over who obtains a PA identity card or passport, and can freeze requests for granting permanent residency or Palestinian passports to Palestinians.⁴⁵ Palestinian holders of PA passports can travel abroad, however, they need permission from Israeli authorities that are stationed between Gaza and Egypt, and the West Bank and Jordan.⁴⁶ It follows that the state of Israel, and not the PA, retains exclusive control of the borders of historic Palestine, as was the case before the PA was established. The legal status of Palestinians in the West Bank and Gaza could therefore be considered more akin to permanent residency and Palestinian passports issued by the PA understood as travel documents, rather than evidence of citizenship.⁴⁷

At the very least, the jurisprudence cited above does not thoroughly answer the specific questions that arise when applying the definition of a stateless person to Palestinians. In particular, the cases fail to identify the competent authority regarding Palestinian nationality matters⁴⁸ or the concept of nationality itself, including whether such a status should have a ‘minimum content’, ie, at a minimum, be associated with the right of entry, re-entry and residence in the state’s territory.⁴⁹

3 Application of the Exclusion Clause

Similar to art 1D of the *1951 Convention Relating to the Status of Refugees* (‘*1951 Refugee Convention*’),⁵⁰ the *1954 Convention* provides that The 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, so long as they are receiving such protection or assistance.⁵¹

Palestinian refugees receiving assistance from the UNRWA are thereby excluded from protection as stateless persons under the *1954 Convention*.

The Court of Cassation has held that when a Palestinian refugee has left the territory covered by the UNRWA’s mandate, they no longer enjoy the protection or assistance of the Agency and, therefore, cannot be excluded from the application of the *1954 Convention*.⁵² Public prosecutors have attempted to challenge this ruling as no longer relevant, referring to the considerable progress

⁴⁵ *ibid.*

⁴⁶ *ibid.*

⁴⁷ *Statelessness Webinar* (n 5).

⁴⁸ *UNHCR Statelessness Handbook* (n 40) [27]–[30].

⁴⁹ *UNHCR Statelessness Handbook* (n 40) [53]; *The Concept of Stateless Persons under International Law* (Expert Meeting, United Nations High Commissioner for Refugees May 2010) 2–3 [9] <<http://www.refworld.org/docid/4ca1ae002.html>>; Alice Edwards, ‘The Meaning of Nationality in International Law in an Era of Human Rights’ in Alice Edwards and L Van Waas (eds), *Nationality and Statelessness under International Law* (Cambridge University Press 2014) 11; Gabor Gyulai, ‘Should Nationality Have a “Minimum Content”?’ Italian Supreme Court Passes Landmark Decision’, *European Network on Statelessness* (Blog Post, 19 September 2014) <<https://www.statelessness.eu/blog/should-nationality-have-%E2%80%9Cminimum-content%E2%80%9D-%E2%80%93-italian-supreme-court-passes-landmark-decision>>.

⁵⁰ *Convention Relating to the Status of Refugees*, opened for signature 28 July 1951, 189 UNTS 150 (entered into force 22 April 1954) (‘*1951 Refugee Convention*’).

⁵¹ *1954 Convention* (n 4) art 1 [2](i).

⁵² App No C.06.0427.F 22 January 2009 (Court of Cassation) <<https://www.refworld.org/cgi-bin/texis/vtx/rwmain/opendocpdf.pdf?reldoc=y&docid=5065cf842>>.

made towards the establishment of a Palestinian state and to assistance received by the applicant from the diplomatic representation of the Palestinian Authority in Brussels throughout that case.⁵³ As far as we are aware, the courts have not followed this new line of reasoning and have upheld the ruling of the Court of Cassation.⁵⁴

B *The Civil Registrars and the Ministry of Justice in the Framework of Prevention of Statelessness at Birth*

1 *The Safeguard for Prevention of Statelessness at Birth*

Article 10 of the *Belgian Nationality Code* ('*BNC*') provides that a child born in Belgium is Belgian if they would otherwise be stateless at any moment before they reach the age of 18.⁵⁵ The authority responsible for the application of this safeguard is the civil registrar of the municipality of the parents' place of habitual residence.⁵⁶ In practice the civil registrar will often seek advice from the Nationality Service of the Ministry of Justice ('Nationality Service') — which has an advisory role regarding the interpretation and application of the *BNC* — or from the local public prosecutor. The Nationality Service has also published standard responses to recurring questions on an online platform available to civil registrars, among which is its position on Palestinian children.⁵⁷

2 *Application of the Safeguard to Palestinian Children*

The above shift seems to be taking place in the application of Belgium's safeguard to prevent statelessness at birth enshrined in art 10 of the *BNC*. Recently, the Public Prosecutor of Antwerp issued an opinion advising that this safeguard should not be applied to children born in Belgium of parents of Palestinian origin,⁵⁸ and it appears that some civil registrar communes have indeed refused to apply art 10 of the *BNC* to Palestinian children.⁵⁹

The Nationality Service, on the other hand, has always advised that the safeguard should be applied to Palestinian children and has recently sent out an

⁵³ See Crown Prosecutor Antwerp, *Advice* (4 May 2016) (on hand with author).

⁵⁴ App No 2017/FE/0029, 31 May 2018 (Ghent Court of Appeal) <<https://www.agii.be/hof-van-beroeep-gent-31-05-2018>>; App No 2017/FA/707, 5 June 2018 (Brussels Court of Appeal) <https://www.agii.be/sites/default/files/20180605_brussel.pdf>; App No 2018/EV/6, 3 October 2018 (Antwerp Court of Appeal) <https://www.agii.be/sites/default/files/20181003_antwerpen.pdf>.

⁵⁵ *Code de la Nationalite Belge* [*Belgian Nationality Code*] (Belgium) art 10 <https://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&table_name=loi&cn=1984062835>; *Mapping Statelessness* (n 22) [506]–[508].

⁵⁶ *Mapping Statelessness* (n 22) [511].

⁵⁷ 'Advies Toekenning Belgische Nationaliteit' ['Advice on Granting Belgian Nationality'], *Vlavabbs* (Web Page, 2019) <<https://www.vlavabbs.be/nieuws/20191218-advies-toekenning-belgische-nationaliteit>> ('*Advice on Granting Belgian Nationality*'). The advice itself is not public.

⁵⁸ Crown Prosecutor Antwerp, *Betreft: Toepassing Art 10 WBN bij Kinderen van Palestijnen* [*Concerning: The Application of art 10 of the Belgian Nationality Code to Palestinians*] (7 April 2019) (copy on hand with author).

⁵⁹ See eg People and Society Directorate Civil Affairs Team Kortrijk, *Toepassing Art 10 WBN* [*Concerning art 10 of the Belgian Nationality Code*] (26 February 2019) (copy on hand with author).

opinion to civil registrars confirming this position, which is unfortunately not public.⁶⁰

3 *The Asylum Authorities*⁶¹

(a) *Application of Art 1D of the 1951 Refugee Convention to Persons Previously Resident in UNRWA's Area of Operation*

An application for international protection should be filed at an arrival centre in Brussels where the Immigration Office will register it. The Immigration Office will also investigate 'whether Belgium is responsible for processing the application for international protection', according to the *Dublin Regulation*.⁶² If Belgium is responsible, the asylum application is sent to the office of the Commissioner General for Refugees and Stateless ('CGRS') to be examined on its merits. Despite its name, which suggests that it is competent for statelessness determination, the CGRS is exclusively competent for asylum decision-making. In a single procedure, the CGRS will first examine whether the applicant fulfils the eligibility criteria for refugee status. If the applicant does not meet these criteria, the CGRS will automatically examine whether the applicant is eligible for subsidiary protection. An appeal can be lodged with the CALL. This administrative court may confirm the CGRS' decision (the decision remains unchanged), amend it (the decision is changed) or annul it (the CGRS must conduct a new investigation). With the final decision made by the CALL, the procedure for international protection ends. As for any other administrative procedure, there is the possibility of lodging an appeal with the Council of State (on key legal issues only, there is no factual appreciation).

Following the Court of Justice of the European Union's decisions in *Bolbol v Bevándorlási és Állampolgársági Hivatal*⁶³ and *Mostafa Abed El Karem El Kott v Bevándorlási és Állampolgársági Hivatal*,⁶⁴ CALL⁶⁵ considers that for beneficiaries of UNRWA assistance, it should be assessed whether return is

⁶⁰ *Advice on Granting Belgian Nationality* (n 57).

⁶¹ *BADIL Handbook* (n 2) 91–102; Marjan Claes, 'Niet-erkende Beschermingsnood van Palestijnse Vluchtelingen uit Libanon: De Toepassing van Artikel 1D Vluchtelingenverdrag in de Belgische Asielprocedure' ['The Unrecognised Need for Protection of Palestinian Refugees from Lebanon: The Application of Article 1D of the Refugee Convention in the Belgian Asylum Procedure'] (2014) 1 *Tijdschrift voor Vreemdelingenrecht* 52 <<https://www.jurisquare.be/en/journal/tvreemd/2014-1/niet-erkende-beschermingsnood-van-palestijnse-vluchtelingen-uit-libanon-de-toepassing-van-artikel-1d/index.html>>; *NANSEN Note* (n 2); *NANSEN Note Addendum* (n 2).

⁶² 'Asylum Procedure', *Fedasil* (Web Page) <<https://www.fedasil.be/en/asylum-belgium/asylum-procedure>>; *Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 Establishing the Criteria and Mechanisms for Determining the Member State Responsible for Examining an Application for International Protection Lodged in One of the Member States by a Third-Country National or a Stateless Person* [2013] OJ L 180/31 ('*Dublin Regulation*').

⁶³ (C-31/09) [2010] ECR 5572 ('*Bolbol Judgment*') <<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:62009CJ0031&qid=1606614814722>>.

⁶⁴ (Court of Justice of the European Union, C-364/11, 19 December 2012) <<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:62011CJ0364&qid=1606615143512>>.

⁶⁵ The appellate administrative authority in asylum matters.

possible or not and whether the UNRWA assistance has ceased.⁶⁶ If it is assessed that this is not possible, refugee status should be granted automatically, without applying art 1A of the *1951 Refugee Convention*.

According to the CGRS,⁶⁷ two conditions should be met cumulatively in order for the second paragraph of art 1D to apply. First, the applicant must have fled because their ‘personal safety was at serious risk’⁶⁸ and, secondly, the applicant must demonstrate that the UNRWA is not able to fulfil its mission of assistance and protection.⁶⁹ Additionally the CGRS examines whether return to the UNRWA area of operation is legally, practically and safely possible.

In practice, this leads to Palestinians from Syria and, until very recently, from Gaza being recognised as refugees, while Palestinians from Lebanon were generally rejected (they must otherwise show *in concreto* that their personal safety was at risk or that they were vulnerable due to specific socio-economic hardship). Since the beginning of 2017, the practice of the CGRS towards Palestinians from Gaza has changed. Protection is no longer granted automatically as the CGRS is of the opinion that returns to Gaza are possible through Egypt. The CALL opposed these findings for a long time, holding that return through Egypt was not possible nor safe, and that the dire humanitarian situation⁷⁰ and continuing state of violence and insecurity⁷¹ were severe enough to prohibit all returns. Recently, however, the General Assembly of the CALL overturned this established jurisprudence and found that the UNRWA: is currently still operational in Gaza; that although the security situation in Gaza is precarious, a return for Gaza residents is possible; that there is no systematic persecution of Palestinians in the Gaza Strip; and that not all inhabitants of the Gaza Strip live in deplorable conditions. The CALL concludes that not all former Gaza residents are eligible for international

⁶⁶ The UNRWA-assistance has ceased in case: (1) of abolition of the UNRWA; (2) it is impossible for the UNRWA to carry out its mission; or (3) the departure of the individual is justified by reasons beyond his control and independent of his volition. The Council for Alien Law Litigation clarifies that the following elements should be taken into consideration: the general security situation; possibility of return; flight motives; socio-economic conditions; other elements specific to the applicant’s situation that put the party in a personal situation of serious insecurity. See App No 228.889, 18 November 2019 (Council for Alien Law Litigation) <https://www.rvv-ccce.be/sites/default/files/arr/a228889.an_.pdf> (*CALL 228.889*); App No 228.946, 19 November 2019 (Council for Alien Law Litigation) <https://www.rvv-ccce.be/sites/default/files/arr/a228946.an_.pdf> (*CALL 228.946*); App No 228.949, 19 November 2019 (Council for Alien Law Litigation) <https://www.rvv-ccce.be/sites/default/files/arr/a228949.an_.pdf> (*CALL 228.949*).

⁶⁷ The first instance administrative body in asylum matters.

⁶⁸ According to the Commissioner General for Refugees and Stateless (*‘CGRS’*) this entails ‘persecution’ in the sense of art 1A of the *1951 Refugee Convention* or ‘serious harm’ in the sense of art 15 of the *Qualification Directive*; socio-economic difficulties are, however, not considered to constitute this situation unless they reach a threshold level of persecution, being serious harm.

⁶⁹ *La Réception de la Directive Qualification en Droit Belge, Annexes au Rapport Intermédiaire [Receipt of the Qualification Directive under Belgian Law, Appendices to the 2013 Interim Report]* (Report, Equipe Droits Européens et Migrations 2013) 3.

⁷⁰ App No 182.381, 16 February 2017 (Council for Alien Law Litigation) <<https://www.rvv-ccce.be/sites/default/files/arr/A182381.AN.pdf>>; Raad voor Vreemdelingen-Betwistingen App No 190.280, 31 July 2017 (Council for Alien Law Litigation) <<https://www.rvv-ccce.be/sites/default/files/arr/A190280.AN.pdf>>.

⁷¹ App No 219.546, 8 April 2019 (Council for Alien Law Litigation) <https://www.rvv-ccce.be/sites/default/files/arr/a219546.an_.pdf>; App No 220.747, 6 May 2019 (Council for Alien Law Litigation) <https://www.rvv-ccce.be/sites/default/files/arr/a220747.an_.pdf>.

protection,⁷² while specific individual circumstances may give rise to such protection.⁷³

(b) *Application of Art 1A of the 1951 Refugee Convention to Persons Not Previously Resident in UNRWA's Area of Operation*

Certain Palestinian refugees were born and raised in a third country outside UNRWA's area of operation or have taken up residence there later. In many cases, Palestinian refugees are found in one of the Gulf states.⁷⁴ They usually have a precarious residence status there, depending on work or local sponsors.⁷⁵ If Palestinians no longer have a job or local sponsor, they can no longer legally reside in the Gulf states. They then risk detention and deportation.⁷⁶

The non-governmental organisation NANSSEN noted that the CGRS deals with such cases under the general regime of art 1A of the *1951 Refugee Convention*. The CGRS assesses whether there is a fear of persecution in relation to the third country, which is considered as a country of habitual residence, regardless of whether it is established that the applicant in question is a Palestinian refugee under the UNRWA mandate and registered with the UNRWA or, alternatively, eligible for such registration.⁷⁷ The CGRS states that a Palestinian refugee does not fall within the scope of art 1D of the *1951 Refugee Convention* if they have been living in a third country and have not shown that they have actually availed themselves of the assistance of the UNRWA shortly before submitting the application for international protection.⁷⁸ If a fear of persecution is not established in the third country within the meaning of art 1A of the *1951 Refugee Convention*, protection is refused, even if it is established that return to that third country is (practically) impossible. When it is established that return to the country of previous habitual residence is impossible for administrative reasons, which might have to do with the applicant's statelessness, the CGRS explicitly refers to the statelessness determination mechanism in some decisions.⁷⁹

⁷² CALL 228.889 (n 66); CALL 228.946 (n 66); CALL 228.949 (n 66).

⁷³ App No 228.888, 18 November 2019 (Council for Alien Law Litigation) <https://www.rvv-ccc.be/sites/default/files/arr/a228888.an_.pdf>.

⁷⁴ NANSSEN Note (n 2) 26.

⁷⁵ Lex Takkenberg, *The Status of Palestinian Refugees in International Law* (Clarendon Press 1998) 162.

⁷⁶ *Palestine and United Arab Emirates: Residence Status of Stateless Palestinians, Including Access to Employment, Education, Health Care and Other Services, and the Ability to Travel in and Out of the Country; The Requirements and Procedures to Renew Residence Status; Treatment of Stateless Palestinians Whose Residence Status Has Expired (2015–November 2017)* (Report, Canada: Immigration and Refugee Board of Canada 24 November 2017) <<https://www.refworld.org/docid/5a8400294.html>>.

⁷⁷ NANSSEN Note (n 2) 26.

⁷⁸ According to the CGRS, this interpretation is in line with the Court of Justice of the European Union's *Bolbol Judgment* (n 63) in which the Court states that in order to fall within the scope of art 1D, a Palestinian refugee has to prove that they are entitled to receive assistance from UNRWA and have actually invoked it.

⁷⁹ Eg the CGRS quoted in App No 213.238, 30 November 2018 (Council for Alien Law Litigation) <https://www.rvv-ccc.be/sites/default/files/arr/a213238.an_.pdf> which states:

Je tiens à vous signaler la possibilité d'obtenir un titre de séjour en Belgique en suivant la procédure appropriée, à savoir l'introduction d'une demande de reconnaissance du statut d'apatride auprès du tribunal des familles, suivi par l'introduction d'une "demande d'autorisation de séjour en raison de l'impossibilité d'un retour" auprès de l'Office des étrangers

This type of decision by the CGRS seems to be generally upheld by the CALL, but the case law is ambiguous.⁸⁰ In certain cases, the CALL applies the concept of ‘country of habitual residence’,⁸¹ while in others it applies ‘first country of asylum’.⁸² In one case, for a Palestinian refugee born and raised in the UAE registered with the UNRWA in Gaza, the CALL held that Gaza should be considered as a *second* country of habitual residence against which the need for international protection should be assessed.⁸³

The reasoning of the CGRS, which limits art 1D of the *1951 Refugee Convention*’s scope of application to individuals that have effectively relied on the assistance of the UNRWA shortly before the application for international protection, seems to run counter to the *ratio legis* and purpose of art 1D of the *1951 Refugee Convention* and to the position of UNHCR elaborated upon in cooperation with the UNRWA.⁸⁴

IV PROTECTION GAPS RESULTING FROM THE DIVERGING APPROACHES

The diverging approaches described above are not only problematic in and of themselves — in that the reasoning is often faulty, decisions between like concepts are unfairly and unjustifiably treated differently and subject to territorial competency — but also because they create major risks for protection gaps.

The most blatant protection gap is created for those Palestinians for whom it is decided that a fear of persecution is not established in their country of previous habitual residence (often a Gulf State) within the meaning of art 1A of the *1951 Refugee Convention*. Such a decision implicitly recognises that the need for international protection is not assessed with regards to a country of *nationality* and yet, at the same time, no recognition of their statelessness can be made by the courts. Thus, such applicants cannot claim protection as stateless persons.⁸⁵

Another, albeit less obvious, protection gap exists in the faulty mechanism for the determination of statelessness, which does not offer specific, effective and predictable protection standards to stateless persons who are found not to be in need of refugee or subsidiary protection status.⁸⁶

[I would like to point out to you the possibility of obtaining a residence permit in Belgium by following the appropriate procedure, namely the submission of an application for recognition of stateless status with the family court, followed by the introduction a “request for a residence permit due to the impossibility of returning” to the Immigration Office].

⁸⁰ *NANSEN Note* (n 2) 26.

⁸¹ App No 200.597, 1 March 2018 (Council for Alien Law Litigation) <https://www.rvv-cc.be/sites/default/files/arr/a200597.an_.pdf>.

⁸² App No 196.776, 18 December 2017 (Council for Alien Law Litigation) <<https://www.rvv-cc.be/sites/default/files/arr/A196776.AN.pdf>>.

⁸³ App No 188.541, 16 June 2017 (Council for Alien Law Litigation) <<https://www.rvv-cc.be/sites/default/files/arr/A188541.AN.pdf>>.

⁸⁴ *Guidelines on International Protection No 13: Applicability of Article 1D of the 1951 Convention Relating to the Status of Refugees to Palestinian Refugees* (Guidelines, United Nations Commissioner for Refugees December 2017) <<https://www.refworld.org/docid/5a1836804.html>>. For a detailed analysis see *NANSEN Note* (n 2) 27–28.

⁸⁵ See below Part IV(A).

⁸⁶ See below Part IV(B).

A *Stateless Palestinians for Whom it is Established that Return to a Country of Previous Habitual Residence is Impossible for Administrative Reasons (and Not Due to a Fear of Persecution)*

The approach described above places this particular category of Palestinian refugees in a situation of limbo and creates a protection gap.⁸⁷

Although we are not aware of a concrete case, it is conceivable that a single applicant who was born and raised in a third country outside UNRWA's area of operation, or who stayed within that country for a long period of time, would be refused international protection by the asylum authorities applying art 1A of the *1951 Refugee Convention* as it pertains to stateless persons. A court would consider only the country of previous habitual residence regarding a fear of persecution, and, at the same time, refuse to recognise them as stateless in the framework of the statelessness determination mechanisms.

Another conceivable situation is where an applicant is refused international protection by the asylum authorities for the same reasons, *is* recognised as stateless by the courts (eg in the southern half of Belgium) but is unable to secure a residence permit because of the lack of a legislative framework in this regard.⁸⁸

B *Stateless Palestinians for Whom Protection in Line with the UNHCR Handbook is Not Available in Another State*

Although the *1954 Convention* does not explicitly require that states grant stateless persons a right of residence, granting such permission would fulfil the object and purpose of the *Convention*.⁸⁹ Therefore, UNHCR recommends that recognition of statelessness should generally result in the issuance of a residence permit. In addition, UNHCR acknowledges that in some cases it may not be necessary to issue a residence permit where protection is available in another state. For instance, where a stateless person can return to another country.⁹⁰

UNHCR's position is that the possibility of return to another country can be grounds for limiting the protection of a stateless person only if protection is available in this other country. That protection can be apparent either when that person can (re)acquire a nationality through a simple, rapid and non-discretionary procedure, or when they enjoy permanent residence status in a country of previous habitual residence to which immediate return is possible.⁹¹

With respect to an individual's ability to return to a country of previous habitual residence, return must be accompanied by the opportunity to live there in security and dignity, in conformity with the object and purpose of the *1954 Convention*. Thus, this exception only applies to those individuals who already enjoy the status of permanent residence in another country, or would be granted such status upon arrival, where their return was accompanied by a full range of civil, economic, social and cultural rights, and where there is a reasonable prospect of obtaining the nationality of that state.⁹²

⁸⁷ See above Part III(C)(3)(b).

⁸⁸ See above Part III(A)(1).

⁸⁹ *UNHCR Statelessness Handbook* (n 40) [147].

⁹⁰ *1954 Convention* (n 4) art 31.

⁹¹ *UNHCR Statelessness Handbook* (n 40) [153]–[157].

⁹² *UNHCR Statelessness Handbook* (n 40) [157].

Because of the faulty mechanisms involved in the determination of statelessness in Belgium,⁹³ there are no clear legal criteria for determining whether a stateless person, who is recognised as such by the courts, is in need of a residence permit as a form of protection. The Belgian Constitutional Court in judgements of 2009, 2012 and 2018 held that a difference in treatment regarding the right of residence constitutes discrimination. In those cases, the difference was between recognised refugees and recognised stateless persons who involuntarily lost their nationality and could not obtain a legal and durable right of residence in another state.⁹⁴ The Court of Cassation held that judges are obliged to remedy the legislative gap identified by the Constitutional Court through investigation. Courts are thus obliged to inquire as to whether a recognised stateless person has involuntarily lost their nationality, and if they have demonstrated that they could not obtain a durable residence permit in another state with which they have ties.⁹⁵

Thus, the protection offered to stateless persons by the jurisprudence described above is limited to the verification of whether the person in question can obtain a ‘legal and durable right of residence in another state’, without the additional requirements required by UNHCR’s guidelines — such as a full range of civil, economic, social and cultural rights, and a reasonable prospect of obtaining the nationality of that state.⁹⁶ Therefore, Palestinians who do not receive refugee or subsidiary protection status are not assured of specific, effective and predictable protection in line with UNHCR guidance based on their statelessness.

V CONCLUSION AND UNANSWERED QUESTIONS

This contribution has shown how different actors in Belgium diverge on the question of whether, and in which circumstances, Palestinians may be stateless for the purposes of international law.

It has become clear that some of the reasoning in the jurisprudence cited is faulty. At the very least, the jurisprudence fails to address specific issues that arise when applying the definition of a stateless person to Palestinians, such as the identification of a competent authority, or the concept of nationality itself. Moreover, we have shown that the diverging approaches described above are problematic, as they often present faulty reasoning and unjustified unequal treatment between identical situations — a divergence determined by territorial competence.

⁹³ See above Part III(A)(1).

⁹⁴ App No 198/2009, 17 December 2009 (Belgium Constitutional Court), in French: <<http://www.const-court.be/public/f/2009/2009-198f.pdf>>; in Dutch: <<http://www.const-court.be/public/n/2009/2009-198n.pdf>>. See also App No 1/2012, 11 January 2012 (Belgium Constitutional Court), in French: <<http://www.const-court.be/public/f/2012/2012-001f.pdf>> <<http://www.const-court.be/public/n/2012/2012-001n.pdf>>; in Dutch: App No 18/2018, 22 February 2018 (Belgium Constitutional Court) <<http://www.const-court.be/public/f/2018/2018-018f.pdf>>.

⁹⁵ *MZ v Ville d’Eupen, Bourgmestre de la Ville d’Eupen et l’État belge*, App No C.13.0042.F, 27 May 2016 (Court of Cassation), in Dutch: <http://jure.juridat.just.fgov.be/pdfapp/download_blob?idpdf=N-20160527-2>; in French: <http://jure.juridat.just.fgov.be/pdfapp/download_blob?idpdf=F-20160527-2>. The Court later clarified that should judges refuse to apply the existing regulations because these violate the principle of equal treatment, it does not mean that stateless persons automatically fall under the category of aliens authorised to stay on the territory by law. They still need to be granted leave to remain; *BM v Openbaar Centrum voor Maatschappelijk Welzijn van Roeselare*, App No S.14.0014.N1, 27 June 2016 (Court of Cassation) <http://jure.juridat.just.fgov.be/pdfapp/download_blob?idpdf=N-20160627-2>.

⁹⁶ *UNHCR Statelessness Handbook* (n 40) [157].

This divergence also creates major risks for protection gaps. Notably, gaps arise with respect to stateless Palestinians for whom it is established that their return to a country of previous habitual residence is impossible for administrative reasons (and not due to a fear of persecution) and for stateless Palestinians for whom protection in line with the UNHCR guidelines is not available in another state.

We hope that our contribution will generate further debate, (academic) research, and perhaps even a clarification from authorities who are competent to decide upon Palestinian nationality. In any case, the need for authoritative guidance from UNHCR or other UN agencies has been established, especially regarding the legal nature of documents issued by the PA, on the concept of nationality in light of the limited powers of the PA enshrined in the *Oslo Accords* and resulting from the Israeli occupation.