



NANSEN NOTE 2024-1

Palestinian origin or nationality? The case of minors born in Belgium**

The NANSEN NOTE is a thematic tool for legal practitioners and lawyers who assist asylum seekers. It provides a legal framework and analysis of a practice that has an impact on access to international protection and the effective benefit of it, as well as on the right to liberty and standards of protection in relation to detention. Particular attention is paid to vulnerability, detention and effective access to quality legal aid.

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Summary

Persons of Palestinian origin¹ face difficulties in enforcing Article 10 of the Code of Belgian Nationality (hereafter "CBN") as regards their children born in Belgium. The main arguments put forward by the courts and civil registrars are based on the issue of whether a "Palestinian nationality" and "Palestinian nationals" actually exist within the meaning of Article 1, §1 of the 1954 Convention relating to the Status of Stateless Persons. This NANSEN Note presents and analyses the arguments and sources that may be useful to lawyers or legal services assisting parents of children of Palestinian origin in disputes relating to Article 10 of the CBN.

Certain elements of the definition of statelessness are examined in depth, and then applied specifically to people of Palestinian origin. These include the existence of Palestinian nationality legislation, the existence of a competent nationality authority, and the validity of certain civil status documents as proof of Palestinian nationality.

Central to this analysis is the importance of adopting a proportionate approach that respects fundamental rights in all decisions taken under Article 10 of the CBN, and for all the authorities involved. Authorities must pay particular attention to the best interests of every child concerned. They must consider their right to be registered at birth and their right to acquire a nationality, while taking into account the impact that statelessness could have on these children. They are also obliged to carry out a proportionality assessment in accordance with the case law of the European Court of Human Rights and the Court of Justice of the European Union.

¹ In this NANSEN Note, the terms "persons of Palestinian origin" and "Palestinians" will be used interchangeably without implying recognition of the existence of a Palestinian nationality within the meaning of the 1954 Convention.

1. Introduction

The purpose of this document is to present and analyse arguments and sources that may be useful to lawyers or legal services assisting parents of children of Palestinian origin who apply to the civil registrar under Article 10 of the Code of Belgian Nationality (hereafter "CBN"). It will also be able to document applications filed in the context of the procedure for recognition of statelessness with a family court or court of appeal. NANSEN's work on this issue therefore falls within the scope of both the 1954 Convention relating to the Status of Stateless Persons (hereafter 1954 Convention)², and the 1961 Convention on the Reduction of Statelessness (hereafter 1961 Convention)³.

In 2022, NANSEN had already started to look into the refusal of certain civil registrars to apply Article 10 of the CBN to children of Palestinian origin. We examined birth registration and its importance in preventing statelessness, and then discussed a number of avenues to explore after reviewing the case law (1954 Convention) and practice (Article 10 of the CBN) at the time. Since August 2023, NANSEN has been made aware of the fact that several municipalities have received letters from the Immigration Office inviting them to withdraw Belgian nationality from children born in Belgium to parents of Palestinian origin, who had acquired this nationality under Article 10 of the CBN.

In both 2022 and 2023, the arguments adopted by civil registrars and by courts, possibly after obtaining the opinion of the public prosecutor's office, concern the issue of the existence or not of a Palestinian State,⁴ as well as the issue of whether persons of Palestinian origin can be considered as Palestinian nationals within the meaning of Article 1, §1 of the 1954 Convention relating to the Status of Stateless Persons.⁵ Here, NANSEN focuses solely on this

² Convention relating to the Status of Stateless Persons, 28 September 1954, <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-relating-status-stateless-persons>. For Belgium, Act of 12 May 1960 approving the Convention relating to the Status of Stateless Persons and its annexes, *M.B.*, 10 August 1960.

³ Convention on the Reduction of Statelessness, 30 August 1961, <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-reduction-statelessness>. For Belgium, Act of 10 June 2014 assenting to the United Nations Convention on the Reduction of Statelessness, concluded in New York on 30 August 1961, *M.B.*, 4.11.2014.

⁴ The considerations that have prevailed until now in determining the existence of a Palestinian State have taken into account the criteria of the Montevideo Convention (Convention on the Rights and Duties of States, adopted by the Seventh International Conference of American States, signed at Montevideo on 26 December 1933). These criteria are as follows: a permanent population, a defined territory, a government, and the capacity to maintain relations with other States. However, it seems likely that current circumstances and geopolitical developments since 7 October 2023 in Gaza - as well as other factors - will lead to a re-evaluation of this whole line of reasoning. For an in-depth analysis of the application of the Montevideo criteria to Palestine, see: VAN DOREN, W., LEJEUNE, J., CLAES, M., KLEIN, V., "The Broadening Protection Gap for Stateless Palestinian Refugees in Belgium", *Statelessness and Citizenship Review*, 2020, 2(2), pp. 300-316; FRANSSSEN, M., and MINY, X, "To be, and not to be" - La 'reconnaissance juridictionnelle' de la Palestine dans le contentieux de l'apatridie en Belgique, *Revue Belge de Droit International*, 2020 (1), pp. 287-322; CROKART, H., "Le statut d'apatride en Belgique: focus sur la situation des Palestiniens", *Rev. Dr. Étr.*, 2019, No. 204, pp. 473-493.

⁵ On the need to protect persons of Palestinian origin, see: European Network on Statelessness & BADIL, "Palestinians and the Search for Protection as Refugees and Stateless Persons", June 2022, online: <https://www.statelessness.eu/updates/publications/palestinians-and-search-protection-refugees-and-stateless-persons>; NANSEN, "NANSEN PROFIEL 3-20 De beschermingsnood van Palestijnse kinderen in Libanon", 2020, online: <https://nansen-refugee.be/wp>

second element of the definition of a stateless person, and thus on the issue of the possible existence of a "Palestinian nationality" and "Palestinian nationals", without addressing the issue of the existence or not of a Palestinian State.

Procedural issues relating to statelessness are not dealt with here, but are set out in another NANSSEN publication: the [Practical Guide to Statelessness in Belgium](#). Aimed at lawyers in particular, this Practical Guide is a tool designed to improve stateless persons' access to their rights. It presents and provides the keys to understanding the various useful procedures: recognition of statelessness, residence permit for recognized stateless persons, access to material assistance while awaiting a decision and, where applicable, release. It is accompanied by three annexes, which provide practitioners with an overview of useful documentation on statelessness, an overview of case law and an indicative checklist for identifying stateless persons. A bill to introduce a procedure for admission to residence on the grounds of statelessness was passed by Parliament on 22 February 2024 and is due to come into force shortly. This new legislation has been the subject of a joint analysis by the European Network on Statelessness and NANSSEN.⁶

The first section addresses the international obligations relating to the prevention of statelessness and the prohibition of arbitrary deprivation of nationality, by linking them to Article 10 of the CBN for cases of attribution (2) and loss (3) of Belgian nationality. Next, the concept of nationality and its meaning are analysed (4), allowing to analyse the elements defining statelessness according to the 1954 Convention (5), before applying them to the situation of persons originating from Palestine (6). Finally, the obligations incumbent on the Belgian authorities when taking measures concerning the nationality of a minor, in particular taking into account the best interests of the child and the requirement of proportionality will be discussed (7).

[content/uploads/2020/07/NANSSEN-Profiel-3-20-De-beschermingsnood-van-Palestijnse-kinderen-Libanon.pdf](#); NANSSEN, "NANSSEN PROFIEL 2019-1 Palestijnse vluchtelingen van Gaza – Toepassing artikel 1D Vluchtelingenverdrag", 2019, online: <https://nansen-refugee.be/wp-content/uploads/2019/04/NANSSEN-NOTE-2019-1-Beschermingsnood-Gaza.pdf>; NANSSEN, "NANSSEN Bijdrage – De beschermingsnood van Palestijnen onder UNWRA-mandaat van Gaza en Libanon", 2021, <https://nansen-refugee.be/wp-content/uploads/2021/06/NANSSEN-bijdrage-Beschermingsnood-van-Palestijnse-vluchtelingen-onder-UNRWA-mandaat-van-Gaza-en-Libanon.pdf>; NANSSEN, "NANSSEN PROFIEL 1-21 De beschermingsnood van Palestijnen uit de Golfstaten", 2021, online: <https://nansen-refugee.be/wp-content/uploads/2021/02/NANSSEN-Profiel-1-21-De-beschermingsnood-van-Palestijnen-uit-de-Golfstaten.pdf>; NANSSEN, "NANSSEN Note 2022-2 Besoin de protection des Palestiniens de Gaza – Mise à jour", 2022, online: https://nansen-refugee.be/wp-content/uploads/2022/08/220802-NANSSEN-Analyse-Besoin-de-protection-des-Palestiniens-de-Gaza_def_clean.pdf.

⁶ Bill of 29 September 2023 amending the Act of 15 December 1980 on the entry, stay, settlement and removal of foreign nationals, with a view to regulating the right of residence of stateless persons, *Parl. Doc*, Chamber, 55 3600/001. For an analysis of this bill, see: European Network on Statelessness & NANSSEN, Joint opinion on the bill amending the Act of 15 December 1980 on the entry, stay, settlement and removal of foreign nationals, with a view to regulating the right of residence of stateless persons (Doc 55 3600/001, 29 September 2023), December 2023, online: https://nansen-refugee.be/wp-content/uploads/2023/12/231205-Avis-conjoint-Apatridie-NANSSEN-ENS_defi-1.pdf; UNHCR, Comments by the United Nations High Commissioner for Refugees on the bill amending the Act of 15 December 1980 on the entry, stay, settlement and removal of foreign nationals concerning applications for residence on the grounds of statelessness (3600/001), December 2023, online: <https://www.refworld.org/legal/natlegcomments/unhcr/2023/fr/147077>

2. Preventing statelessness at birth and granting Belgian nationality (Article 10, §1 of the Code of Belgian Nationality)

The **1961 Convention on the Reduction of Statelessness**⁷ aims to prevent and reduce statelessness worldwide. It “gives effect to Article 15 of the Universal Declaration of Human Rights, which recognizes that ‘everyone has the right to a nationality’”. Its “central focus is the prevention of statelessness at birth by requiring States to grant citizenship to children born on their territory, or born to their nationals abroad, who would otherwise be stateless”. The Convention further seeks “to prevent statelessness later in life by prohibiting the withdrawal of nationality from States’ nationals – either through loss, renunciation, or deprivation of nationality – when doing so would result in statelessness”.⁸

Article 1 of the 1961 Convention states:

1. A Contracting State shall grant its nationality to a person born in its territory who would otherwise be stateless. Such nationality shall be granted:

a) at birth, by operation of law, or

b) upon an application being lodged with the appropriate authority, by or on behalf of the person concerned, in the manner prescribed by the national law. Subject to the provisions of paragraph 2 of this Article, no such application may be rejected.

A Contracting State which provides for the grant of its nationality in accordance with sub-paragraph (b) of this paragraph may also provide for the grant of its nationality by operation of law at such age and subject to such conditions as may be prescribed by the national law.

Article 10, §1 of the Code of Belgian Nationality therefore meets an **international obligation**, in the context of preventing statelessness, by clarifying the conditions for granting Belgian nationality to minors born in Belgium who have no other nationality. This provision states:

A child born in Belgium who, at any time before the age of 18 or emancipation prior to that age, does not possess any other nationality, is Belgian.

However, paragraph 1 shall not apply if the child can obtain another nationality by means of an administrative procedure carried out by his or her legal representative(s) through the diplomatic or consular authorities of the country of his or her parents or of one of these parents.

The child's legal representative must provide the civil registrar in the child's place of birth with all relevant documentation. If there is any doubt regarding the child's lack of

⁷ Belgium had been a party to this Convention since 1960 and formally acceded to it by the Act of 10 June 2014 (M.B., 4 November 2014). For more details on the two reservations expressed by Belgium, see: European Network on Statelessness, *Index – Belgium*, online: <https://index.statelessness.eu/country/belgium>. Also see UNHCR’s guidelines on the implementation of this Convention: UNHCR, *Guidelines on Statelessness No. 4: Ensuring Every Child’s Right to Acquire a Nationality through Articles 1-4 of the 1961 Convention on the Reduction of Statelessness*, 21 December 2012, HCR/GS/12/04, online: <https://www.refworld.org/docid/50d460c72.html> and UNHCR’s *Good Practices Paper – Action 2: Ensuring that no child is born stateless*, 20 March 2017, online: <https://www.refworld.org/docid/58cfab014.html>.

⁸ UNHCR, *Introductory note to the Convention on the Reduction of Statelessness*, online: https://www.unhcr.org/ibelong/wp-content/uploads/1961-Convention-on-the-reduction-of-Statelessness_ENG.pdf.

nationality, the civil registrar will seek the opinion of the public prosecutor. In this case, the registrar will send the public prosecutor a copy of the file, who will then issue an opinion as soon as possible. (A. Cameron, Trans.)

On the basis of its overall remit, FPS Justice was competent, until recently, to issue a non-binding opinion on the nationality of children born in Belgium to parents of Palestinian origin. However, some civil registrars were already seeking the opinion of the public prosecutor. A law of 6 December 2022⁹ amended Article 10, §1 of the CBN on this point: if there is any doubt regarding the child's lack of nationality, the public prosecutor is now competent to issue non-binding opinions.

It should be noted that children – or their parents – have never been required to have been recognized as stateless by the family court for the application of Article 10 of the CBN.¹⁰ The circular of 25 May 2007 states that “(...) *the granting of Belgian nationality as referred to in the aforementioned provision does not require the **interested party to voluntarily approach the competent authorities: it is granted automatically, by virtue of the law, to all persons who meet the conditions specified therein.** Once the conditions laid down by the law have been met, the civil registrar will simply take official note of the granting of Belgian nationality by registering the person as Belgian in the population registers*”.¹¹

It is the civil registrar of the municipality of the child's birthplace and, in the event of disagreement over the decision, the courts who are the competent authorities under Article 10 of the CBN. This exclusive competence of the civil registrar to grant nationality, and of the public prosecutor to provide legal support to civil registrars, was reiterated by the Federal Ombudsman in a recommendation of January 2024.¹²

Statistics show that, in reality, the application of Article 10 of the CBN to grant Belgian nationality only accounts for a tiny fraction of the total grants of Belgian nationality (approximately 0.58% for 2022). This provision concerned 98 children in 2022, maintaining a similar trend to recent years (80 children in 2021, 109 in 2020 and 85 in 2019). Over a period of almost 10 years, the number of cases has more than doubled (39 cases in 2013), although this number remains insignificant in relation to all grants of nationality.¹³ These statistics concern all grants of Belgian nationality made under Article 10 of the CBN and are not limited to cases of children of Palestinian parents.

3. Guarantee against statelessness and loss of Belgian nationality (Article 10, §3 of the Code of Belgian Nationality)

Belgium has international obligations to prevent statelessness and prohibit arbitrary deprivation of nationality. Under the **1961 Convention**, with the exceptions provided for

⁹ Law aimed at making justice more humane, swift and firmer Ilbis, *M.B.*, 21.12.2022.

¹⁰ Bill of 27 July 2022 aimed at making justice more humane, swift and firm Ilbis, *Parl. doc.*, Chamber, 55 2824/001, p. 29: "The legislator never intended to require that a statelessness judgment be rendered against the child or his or her parents".

¹¹ Circular on the amendments to the Belgian Nationality Code introduced by the Law of 27 December 2006 containing various provisions I, *M.B.* 04.06.2007.

¹² Federal Ombudsman, *Recommendation 2023.06 to the Immigration Office*, January 2024, online: <https://www.federaalombudsman.be/en/respecting-the-legal-powers-relating-to-nationality>.

¹³ All the statistics are provided by MYRIA, "La migration en chiffres et en droits – Cahier Nationalité", 2023, https://www.myria.be/files/2023_MYRIA_Nationalite%CC%81.pdf, p. 10.

therein, withdrawal of nationality is prohibited if it would result in the person becoming stateless. Certain procedural guarantees must also be respected.

In its **Guidelines on Statelessness No. 5**, the Office of the United Nations High Commissioner for Refugees (hereafter UNHCR)¹⁴ specifies that this obligation of procedural guarantees entails, among other things:

- a thorough individual assessment: “*a thorough assessment of all evidence on which the Contracting State is relying before it can be determined that the individual concerned has met the relevant threshold for deprivation of nationality on this ground*”,¹⁵
- the possibility of an effective remedy: “*access to legal and/or administrative avenues through which they may challenge the withdrawal of nationality*”,¹⁶
- and a withdrawal decision in writing: “*State decisions involving the acquisition, retention or renunciation of nationality should be issued in writing and open to effective administrative and judicial review*”.¹⁷

In addition, the **Principles on Deprivation of Nationality as a National Security Measure** also provide details on the prohibition of arbitrary deprivation of nationality, the requirements of **legitimate aim, legality, necessity and proportionality**, and the procedural safeguards that must apply to any decision to deprive a person of nationality.¹⁸

This requirement for procedural guarantees was also reaffirmed by the **European Court of Human Rights** in a 2023 judgment. In this case, the Azerbaijani government's failure to comply with the requirements of the 1961 Convention was found to be a violation of the right to respect for private and family life (Article 8 of the European Convention on Human Rights). The Government had failed to take account of the fact that withdrawing the applicant's nationality would render them stateless. Moreover, the withdrawal of nationality was not accompanied by the necessary procedural safeguards and lacked, in particular, the possibility of challenging the decision before the domestic courts.¹⁹

¹⁴ UNHCR is an agency mandated by the United Nations General Assembly to ensure, in addition to its refugee mandate, the protection of stateless persons worldwide and to engage in the prevention and reduction of statelessness.

¹⁵ UNHCR, *Guidelines on Statelessness No 5: Loss and Deprivation of Nationality under Articles 5-9 of the 1961 Convention on the Reduction of Statelessness*, May 2020, online:

<https://www.refworld.org/docid/5ec5640c4.html>, §71.

¹⁶ UNHCR, *Guidelines on Statelessness No 5: Loss and Deprivation of Nationality under Articles 5-9 of the 1961 Convention on the Reduction of Statelessness*, *op. cit.*, §98.

¹⁷ UNHCR, *Guidelines on Statelessness No 5: Loss and Deprivation of Nationality under Articles 5-9 of the 1961 Convention on the Reduction of Statelessness*, *op. cit.*, §99.

¹⁸ Principles on Deprivation of Nationality as a National Security Measure, March 2020, online: <https://files.institutesi.org/PRINCIPLES.pdf>, point 7. These Principles were developed over a period of 30 months of research and consultation. More than 60 experts in the fields of human rights, nationality and statelessness, counter-terrorism, refugee protection, the rights of the child, migration and other similar areas contributed to the Principles. The Principles reaffirm or incorporate rules of international law and legal standards derived from the Charter of the United Nations, treaty law, customary international law, general principles of law, judicial decisions and doctrine, regional and national law, and practice. They set out each State's obligations under international law and apply to any situation where a State decides or considers depriving a person of his or her nationality for reasons of national security. For more information, click here: <https://www.ldh-france.org/principes-relatifs-a-la-privation-de-nationalite-pour-motif-de-securite-nationale/>.

¹⁹ ECHR, *Emin Huseynov v. Azerbaijan (No. 2)*, No. 59135/09, 13 July 2023, §50-66.

As a result, in order to comply with its international obligations, Belgium has a **guarantee against statelessness** in all the provisions allowing for the forfeiture of Belgian nationality (unless the nationality was acquired fraudulently).²⁰

This is also why **Article 10, §3 of the CBN** provides that a child retains his or her Belgian nationality as long as it has not been established that he or she possesses another nationality:

A child to whom Belgian nationality has been granted by virtue of this article retains that nationality as long as it has not been established, before he or she has reached the age of eighteen or has been emancipated before that age, that he or she possesses a foreign nationality. (A. Cameron, Trans.)

This provision should therefore be accompanied by procedural guarantees and should not be applied if it would result in the child becoming stateless. However, since August, the Immigration Office has been asking municipalities to withdraw (on the basis of this Article) the Belgian nationality of children born in Belgium to parents of Palestinian origin as they would have Palestinian nationality.²¹ This request is based in particular on certificates issued by the Palestinian Mission to the European Union, Belgium and Luxembourg (hereafter the Palestinian Mission) to the effect that "*any child born of a Palestinian father or mother is Palestinian*". However, such certificates cannot be considered as proof of the existence of Palestinian nationality within the meaning of Article 1, §1 of the 1954 Convention. The most recent certificates²² read in fact as follows: "*The Child (...) does not possess Palestinian nationality, and can only obtain it by going to the occupied territories to register in the Palestinian civil status register*". In this context, the withdrawal of nationality is therefore illegal, as it is carried out in violation of the procedural guarantees that must surround it and Belgium's international obligations relating to the prevention of statelessness.

Furthermore, the Immigration Office's instructions in this regard are illegal. The Federal Ombudsman provided the following clarification: "*With this recommendation, the Federal Ombudsman wishes to remind the Immigration Office that it cannot legally issue instructions or opinions to local authorities concerning the granting of nationality to children born in Belgium to parents of Palestinian origin. By issuing these instructions, the IO is exceeding its powers*".²³ In a very recent briefing note, the European Network on Statelessness also condemned this practice, which is likely to lead to an increase in statelessness: "*We have serious concerns that the position of the Immigration Office is an incorrect interpretation of the international customary law definition of a stateless person, is contrary to the letter and spirit of international law, and will risk increasing statelessness*

²⁰ For more details, see: European Network on Statelessness, *Index – Belgium*, online: <https://index.statelessness.eu/country/belgium>.

²¹ See: Agentschap Integratie & Inburgering, "Zijn in België geboren kinderen van Palestijnse origine Belg? Gemeenten en rechtbanken zijn bevoegd, niet DVZ", online: <https://www.agii.be/nieuws/zijn-in-belgie-geboren-kinderen-van-palestijnse-origine-belg-gemeenten-en-rechtbanken-zijn-bevoegd>; WOLSEY, J., "Palestine: nos autorités face à leurs responsabilités", *ADDE newsletter*, November 2023, online: <https://www.adde.be/publications/newsletter-juridique>.

²² See an example of a certificate dating from January 2024 on the website of Agentschap Integratie & Inburgering: https://www.agii.be/sites/default/files/bestanden/documenten/attest_palestijnse_missie_vanaf2024.pdf.

²³ Federal Ombudsman, *Recommendation 2023.06 to the Immigration Office*, January 2024, online: <https://www.federaalombudsman.be/en/respecting-the-legal-powers-relating-to-nationality>

in Belgium. This move **will unnecessarily leave more children in limbo**, unable to access their right to a nationality and exposed to the detrimental impacts of growing up stateless".²⁴

4. The concept of nationality

Since a stateless person has no nationality, it is important to understand the scope of the concept of nationality in the specific context of statelessness.

However, neither the 1954 nor the 1961 Conventions define the concept of nationality or nationals. Here are a few elements that outline the concept.

4.1. Nationality in international law

In the Nottebohm judgment, the International Court of Justice defined nationality as "**a legal bond having as its basis a social fact of attachment, a genuine connection of existence, interests and sentiments together with the existence of reciprocal rights and duties**".²⁵

The European Convention on Nationality, to which Belgium is not a party, states that nationality is a "*legal bond between a person and a State and does not indicate the person's ethnic origin*".

In principle, States have sovereignty over the granting and loss of nationality. However, international law (treaties or customary law) imposes certain limits on them:

- the prohibition of arbitrary deprivation of nationality,
- the prohibition of discrimination,
- the obligation to avoid statelessness as far as possible,
- respect for the rules on State succession.²⁶

Understanding statelessness requires an exploration of the concept of nationality, including the procedural and substantive aspects of the right to nationality and the minimum set of rights associated with it under international law. Hence, according to A. EDWARDS, the right to nationality contains two distinct aspects: a procedural aspect and a substantive aspect.²⁷ The procedural aspect covers the right to acquire a nationality and not to be arbitrarily deprived of it. The substantive aspect covers diplomatic protection and the duty of readmission and residence which, from the individual's point of view, correspond to the right to return from abroad to one's own country and the right to reside there.²⁸

However, although the above-mentioned rights are usually associated with the possession of a nationality, the lack of enjoyment of these rights has no direct impact on the existence of a person's nationality under national or international law.²⁹ With one possible exception according to A. EDWARDS: the fact that a State refuses a person the right to enter, re-enter and reside on its territory could be interpreted as a manifestation of that State's refusal to consider that person as its national.³⁰ According to C. MANZOTTI, this understanding is

²⁴ European Network on Statelessness, *Briefing on the right to a nationality of children born to Palestinian parents in Belgium*, February 2024, online: <https://www.statelessness.eu/updates/publications/briefing-right-nationality-children-born-palestinian-parents-belgium>.

²⁵ ICJ, Nottebohm (*Liechtenstein v. Guatemala*); second phase, 6 April 1955.

²⁶ EDWARDS, A., "The meaning of nationality in international law in an era of human rights. Procedural and substantive aspects", in EDWARDS, A., VAN WAAS, L. (eds), *Nationality and Statelessness under International Law*, Cambridge University Press, Cambridge, 2014, pp. 25-29.

²⁷ EDWARDS, A., *op. cit.*, p. 41.

²⁸ EDWARDS, A., *op. cit.*, p.30.

²⁹ EDWARDS, A., *op. cit.*, p. 41.

³⁰ *Ibidem*.

shared by a large number of authors of doctrine and State practices.³¹ However, this exception could only be applied on a case-by-case basis, after examining the circumstances of the case.

4.2. Within the framework of the 1954 Convention

The UNHCR **Handbook on Protection of Stateless Persons** (hereafter UNHCR Handbook)³² is a valuable resource for interpreting the concept of nationality. Its purpose is to "*guide government officials, judges and legal practitioners, as well as UNHCR staff and others involved in the fight against statelessness*".³³

In the Handbook, UNHCR states:

*(...) the definition of stateless person in Article 1(1) incorporates a **concept of national which reflects a formal link, of a political and legal character, between the individual and a particular State. This is distinct from the concept of nationality which is concerned with membership of a religious, linguistic or ethnic group. As such, the treaty's concept of national is consistent with the traditional understanding of this term under international law; that is persons over whom a State considers it has jurisdiction on the basis of nationality, including the right to bring claims against other States for their ill-treatment.***³⁴

Furthermore, according to UNHCR, the question of the effectiveness of nationality is not relevant in the context of the 1954 Convention:

Although the issue of diminished rights may raise issues regarding the effectiveness of the nationality and violations of international human rights obligations, this is not pertinent to the application of the stateless person definition in the 1954 Convention.³⁵

This is also reflected in the "Prato Conclusions" (conclusions of the Expert Meeting on the Concept of Statelessness under International Law organized by UNHCR in 2010)³⁶:

3. The issue under Article 1(1) is not whether or not the individual has a nationality that is effective, but whether or not the individual has a nationality at all. Although there may sometimes be a fine line between being recognized as a national but not being treated as such, and not being recognized as a national at all, the two problems are nevertheless conceptually distinct: the former problem is connected with the rights attached to nationality, whereas the latter problem is connected with the right to nationality itself.

However, this is not a unanimously held view. Some have pointed out that nationality is devoid of all content if it is not accompanied by at least the possibility of exercising rights, including

³¹ MANZOTTI, C., Nationality and the right to enter: assessing the impact of refusal of entry for the purpose of statelessness determination, University of Sussex - Journal contribution, February 2024, online:

https://sussex.figshare.com/articles/journal_contribution/Nationality_and_the_right_to_enter_assessing_the_impact_of_refusal_of_entry_for_the_purpose_of_statelessness_determination/25164365.

³² UNHCR, *Handbook on Protection of Stateless Persons*, 30 June 2014, online: <http://www.refworld.org/docid/53b676aa4.html>.

³³ UNHCR, *Handbook on Protection of Stateless Persons*, *op. cit.*, p.2.

³⁴ UNHCR, *Handbook on Protection of Stateless Persons*, *op. cit.*, §52.

³⁵ UNHCR, *Handbook on Protection of Stateless Persons*, *op. cit.*, §53.

³⁶ UNHCR, Expert Meeting – The Concept of Stateless Persons under International Law ("Prato Conclusions"), May 2010, <https://www.refworld.org/docid/4ca1ae002.html>.

the right to enter and reside in the country of nationality and to return to it from abroad, as well as diplomatic protection:

*9. For the purposes of the 1954 Convention, 'national' is to be understood by reference to whether the State in question regards holders of a particular status as persons over whom it has jurisdiction on the basis of a link of nationality. **Several participants were of the view that in practice it is difficult to differentiate between the possession of a nationality and its effects, including, at a minimum, the right to enter and reside in the State of nationality and to return to it from abroad, as well as the right of the State to exercise diplomatic protection. Otherwise, according to this view, nationality is emptied of any content.***³⁷

*I have argued that the denial of entry and refusal of consular assistance for arranging return, including the delivery of travel documents, **should be regarded as evidence that a State does not consider a person as its national for the purposes of statelessness determination.** I have based this argument on the wording of the international legal definition of a stateless person and the way in which nationality is conceived in international law.*³⁸

UNHCR also maintains that the status of "national" within the meaning of the 1954 Convention should "**at a minimum (...) be associated with the right of entry, re-entry and residence in the State's territory (...)**" (§53).

This definition of the term "national" could raise questions for people of Palestinian origin residing in Gaza, in relation to the possibility of their effective return. Many authors, however, unanimously affirm that these people cannot be considered as Palestinian "nationals" because of their inability to access a multitude of fundamental rights.³⁹

There can be no question of a "legal bond" between a State and its national when the State is unable to guarantee access to certain fundamental rights:

*In spite of the 2012 recognition by the UN General Assembly of Palestine as a non-member observer state and the exercise of state functions accrued over time, the PA – after 2012 formally referred to as the Government of Palestine (GOP) – continues to be unable to function as an independent, sovereign political entity, and to accomplish the basic tasks associated with statehood. The pervasiveness of Israeli occupation in the West Bank and Gaza strip undermines the PA's/GOP's ability to give meaning to the "legal bond" that makes a person citizen of a state. While some of the functions that give purpose to that bond exist in case of Palestine, **some essential ones, for example, granting entry of persons (both residents and foreigners) to the 'country', and the realization of most of the fundamental rights and freedoms, such as land and property rights, freedom of movement, right to fair trial and right to a remedy, are prevented or severely curtailed.***⁴⁰

³⁷ *Ibidem.*

³⁸ MANZOTTI, C., *op. cit.*, p. 164.

³⁹ CROKART, H., "Le statut d'apatride en Belgique: focus sur la situation des Palestiniens", *Rev. Dr. Étr.*, 2019, No. 204, pp. 473-493; CRAWFORD, J., "The creation of the State of Palestine: Too Much Too Soon?", *EJIL*, vol. 1, 1990, p. 307; FRANSSSEN, M., and MINY, X., "To be, and not to be" - La 'reconnaissance juridictionnelle' de la Palestine dans le contentieux de l'apatridie en Belgique, *Revue Belge de Droit International*, 2020 (1), pp. 287-322.

⁴⁰ ALBANESE, F., TAKKENBERG, L., *Palestinian Refugees in International Law*, Oxford, 2020, p. 164.

The possibility of returning to the Palestinian territories may also need to be reassessed in the light of current circumstances and geopolitical developments in Gaza since 7 October 2023.

5. Statelessness: elements of definition

In order to determine whether or not there is a "Palestinian nationality" within the meaning of the 1954 Convention, and consequently to verify whether the definition of statelessness does indeed apply to persons of Palestinian origin, it is important to analyse in greater depth certain elements of the definition of statelessness.

Article 1, §1 of the 1954 Convention sets out the definition of a stateless person as “a *person who is not considered as a national by any State under the operation of its law*”.

UNHCR provides further details on the interpretation of the terms of this definition in its Handbook:

- As regards the term “law”: “*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
- To determine whether a person is considered to be a national of a State, UNHCR provides a number of guidelines, including the following:
 - *it is helpful to establish whether an individual’s nationality status has been influenced, in the State in question, by automatic mechanisms or modes of acquisition of nationality (the change in nationality status takes place by operation of law) or non-automatic (an act of the individual or a State authority is required before the change in nationality takes place);*⁴²
 - *it is also necessary to identify the competent authority for conferring and/or withdrawing nationality, or for clarifying nationality matters;*⁴³
 - *a competent authority isn’t necessarily a central State body; it can also be a local or regional administrative body or a consular official.*⁴⁴

These clarifications give us a better understanding of the issues surrounding statelessness and nationality in the context of persons of Palestinian origin.

6. Application to Palestine: is there a Palestinian nationality?

In order to examine in greater depth the issue of whether or not there is such a thing as a Palestinian nationality, we shall begin by reviewing the historical context of Palestinian nationality (6.2.) before applying the elements of the definition of statelessness in Article 1, §1 of the 1954 Convention to persons of Palestinian origin (6.3). We shall also provide an

⁴¹ UNHCR, *Handbook on Protection of Stateless Persons*, op.cit., §22.

⁴² UNHCR, *Handbook on Protection of Stateless Persons*, op.cit., §25-26.

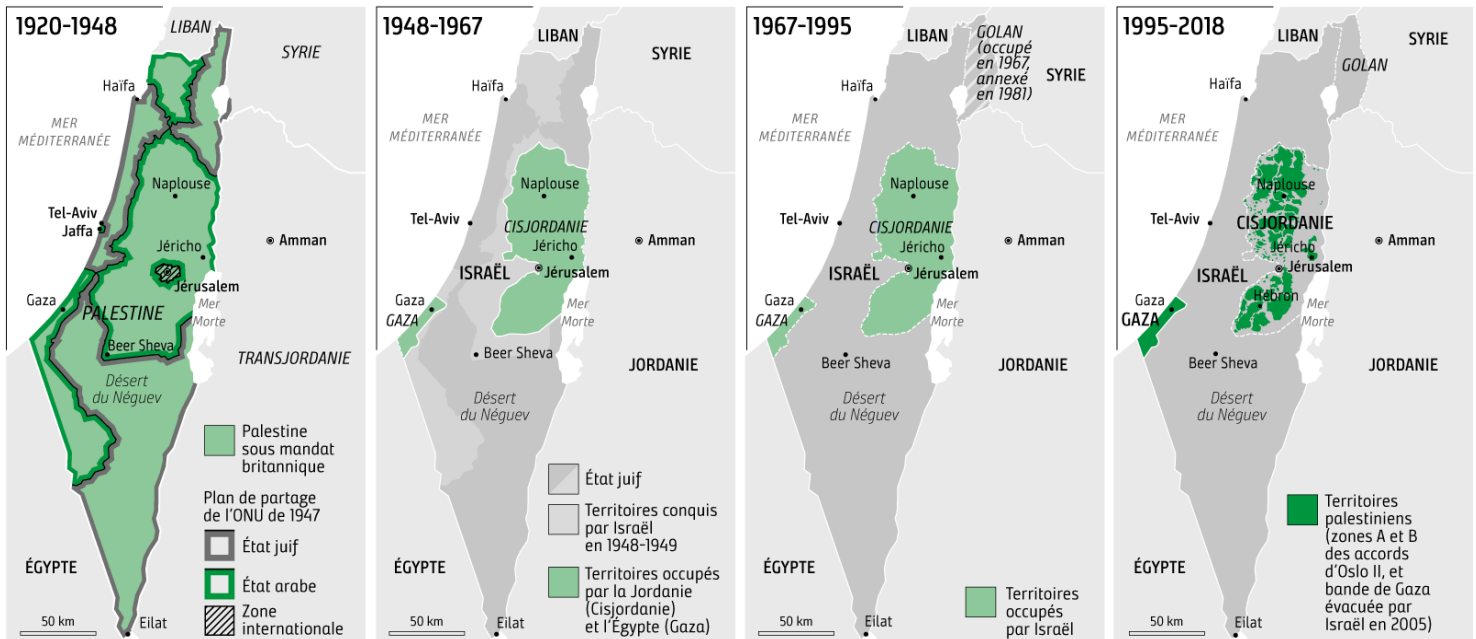
⁴³ UNHCR, *Handbook on Protection of Stateless Persons*, op.cit., §27-30.

⁴⁴ UNHCR, *Handbook on Protection of Stateless Persons*, op.cit., §28.

overview of the different legal statuses of persons of Palestinian origin in the main territories in which they reside, highlighting their stateless situation (6.4).

6.1. Maps of Palestine

The maps of Palestine below situate the geographical regions mentioned in this document at key historical moments in Palestine's history.



Source: Le Monde diplomatique, 2018.

6.2. An historical Palestinian nationality?

The issue of the recognition of a Palestinian nationality is closely linked to many historical and political factors. To address this issue, we shall first provide an overview of the evolution of Palestinian nationality legislation over the centuries (6.2.1), before examining the link between this historical Palestinian nationality and statelessness (6.2.2).

6.2.1. Historical overview of legislation on Palestinian nationality

In order to determine whether there is a Palestinian nationality, it is essential to establish a chronology of the development of legislation relating to Palestinian nationality up to the present day.

- **Ottoman Nationality Law of 19 January 1869:** Palestine was part of the Ottoman Empire between 1516 and 1917. The Ottoman Nationality Law of 1869 provided for the acquisition of Ottoman citizenship in several ways. For instance, anyone with parents or a father of Ottoman nationality was considered an Ottoman citizen (*jus sanguinis*) (Article 1). Any foreigner born in the territory could also apply for Ottoman nationality within three years of coming of age (*jus soli*) (Article 2). Article 9 codified *jus soli* and the prevention of statelessness: the presumption of citizenship applied to all children born in the country of unknown parentage or stateless origin. The law also gave any foreigner the right to apply for Ottoman citizenship after having resided in the country for at least five years. The government had the discretionary power to waive the five-year requirement and naturalize any foreigner (*jus domicili*) (Articles 3 and 4).
- **Palestinian nationality during the British mandate as of 1917:** Palestinians had recognized Ottoman citizenship at the beginning of the British occupation and held

internationally recognized Ottoman passports.⁴⁵ When the British occupied Palestine in 1917, this nationality status did not change, or at least not immediately. Palestine was placed under military rule for the first three years and then under civilian rule for the remainder of the British Mandate period. The British government in Palestine began to regulate the issuing of Palestinian passports and travel documents that were issued by the British, but still according to the Ottoman Nationality Law. As of 1920, the first restrictions/regulations were introduced to distinguish between foreigners in Palestine and "Palestinian citizens and persons protected by the British".⁴⁶

- **Palestinian mandate – 1922:** The Palestinian Mandate was adopted (and internationally "legalized") by the League of Nations on 24 July 1922 under the Covenant of the League of Nations. The Palestinian Mandate contained a unique provision requiring the Palestinian (British) administration to pass a nationality law containing provisions "to facilitate the acquisition of Palestinian citizenship by Jews permanently settling in Palestine" (Article 7 of the Palestinian Mandate). This provision was due to the British inclusion of the Balfour Declaration in the Palestinian Mandate, which provided for "a home for the Jews in Palestine" (Article 2 of the Declaration).
- **Treaty of Lausanne – 1923:** this treaty ended the First World War and defined the borders of modern Turkey as the successor to the Ottoman Empire. Article 30 of this Treaty provides that Turkish nationals habitually resident in the territory of the former Ottoman Empire acquire the nationality of the State to which such territory is transferred. Hence, persons residing in the Palestinian territory became Palestinian citizens on 6 August 1924, when the Treaty was ratified. Palestinians outside the Palestinian territory could obtain Palestinian citizenship on the basis of the principle of *jus sanguinis* under Article 34. From the point of view of international law, it was on that day that Palestinian nationality was officially formed.⁴⁷
- **Palestine Citizenship Order – 1925:** the codification of Palestinian citizenship in British law through the Palestine Citizenship Order of 1925. This Order provided for the acquisition of Palestinian citizenship by birth in Palestine. All Turkish nationals and citizens at the time of the Treaty of Lausanne and all persons ordinarily resident in Palestine acquired Palestinian citizenship. Therefore, religion played no role. Palestinians could obtain passports. However, the opportunities available to Palestinians living abroad were considerably limited: there was a time limit during which this group could return and claim nationality. This right to return and claim nationality was also limited for Palestinians who were temporarily abroad. In addition, descendants of Ottoman nationals were denied the right to claim nationality on the basis of *jus sanguinis* if they were born abroad. The Palestine Citizenship Order discriminated against indigenous Palestinians in that it contained provisions to grant Palestinian citizenship to Jewish immigrants who were either resident aliens or illegal immigrants who would not have been eligible for Palestinian citizenship under the

⁴⁵ AKRAM, S., "Palestinian Nationality and "Jewish" Nationality. From the Lausanne Treaty to Today", in FARSAKH, L., *Rethinking Statehood in Palestine. Self-determination and Decolonization beyond Partition*, University of California Press, 2021, p. 195.

⁴⁶ ROUHANA, K. "Interview Susan Akram: Palestinians' Historic and Legal Rights to Palestinian Nationality", *Jerusalem Story*, 18 December 2023, online: <https://www.jerusalemstory.com/en/article/palestinians-historic-and-legal-rights-palestinian-nationality?search=1>.

⁴⁷ AKRAM, S., "Palestinian Nationality and "Jewish" Nationality. From the Lausanne Treaty to Today", *op. cit.*, p. 196.

Treaty of Lausanne.⁴⁸ Finally, this order also governed the cessation and loss of nationality: a person could lose Palestinian nationality by acquiring another nationality, as a punishment or in the case of marriage between a Palestinian woman and a foreigner. This led to many Palestinians losing their nationality.⁴⁹

- **United Nations General Assembly Resolution 181 (II) – 29 November 1947:** partition plan, call for the creation of a Jewish State and a Palestinian State. Chapter III, §1 of this resolution concerns citizenship and provides in particular for: “*Palestinian citizens residing in Palestine, outside the City of Jerusalem, as well as Arabs and Jews who, not holding Palestinian citizenship, reside in Palestine outside the City of Jerusalem shall, upon the recognition of independence, become citizens of the State in which they are resident and enjoy full civil and political rights. Persons over the age of eighteen years may opt, within one year from the date of recognition of independence of the State in which they reside, for citizenship of the other State, providing that no Arab residing in the area of the proposed Arab State shall have the right to opt for citizenship in the proposed Jewish State and no Jew residing in the proposed Jewish State shall have the right to opt for citizenship in the proposed Arab State. The exercise of this right of option will be taken to include the wives and children under eighteen years of age of persons so opting*”. In other words, Palestinian citizens residing in the Arab State were to be granted citizenship of that State, while Palestinian citizens residing in the Jewish State were to be granted Jewish citizenship. Religion and origin therefore played no part in the partition plan of Resolution 181.⁵⁰
- **Creation of the State of Israel – 1948:** the Declaration of the Establishment of the State of Israel provides for equal rights for all residents without discrimination. Nevertheless, Israel has subsequently enacted a series of laws that erode the legal ties of indigenous Palestinians to their territory, thereby depriving them of their nationality.
- **Israeli citizenship law – 1952:** adoption by Israel of the Nationality Law (Citizenship Law 5712-1952) and retroactive repeal of the Palestine Citizenship Order. Israeli law provides for four ways of acquiring Israeli nationality: return,⁵¹ residence in Israel, birth or naturalization. However, the acquisition of nationality through return is reserved for Jews and the criteria relating to the other three methods are in practice very difficult to meet for most Palestinians who are not granted Israeli nationality and consequently become stateless.⁵² This law is contrary to the rules relating to state succession (principle mentioned in Chapter 3, §1 of the aforementioned UN Resolution 181).
- **Creation of a national register – 1967:** following Israel's occupation of Gaza and the West Bank, a census was organized and a national register created (excluding people who were absent). Registered persons were granted the right to reside in the territory

⁴⁸ AKRAM, S., “Palestinian Nationality and “Jewish” Nationality. From the Lausanne Treaty to Today”, *op. cit.*, pp. 196-197.

⁴⁹ KHALIL, A. and ABU ALIA, N., “Palestinian Citizenship within the State of Palestine: the right answer for the wrong question”, Wolters Kluwer Italia, online: <https://fada.birzeit.edu/bitstream/20.500.11889/6334/1/Chapter%20NA%20%26%20AK%5B16183%5D.pdf>, p. 100.

⁵⁰ AKRAM, S., “Palestinian Nationality and “Jewish” Nationality. From the Lausanne Treaty to Today”, *op. cit.*, p. 198.

⁵¹ In application of the Law of Return of 1950, only for Jewish people, and without the requirement of a link with the territory.

⁵² AKRAM, S., “Palestinian Nationality and “Jewish” Nationality. From the Lausanne Treaty to Today”, *op. cit.*, p. 201; ALBANESE, F. and TAKKENBERG, L., *op. cit.*, p. 161.

under military occupation, without this right being accompanied by political rights. Non-registered persons could acquire the right to reside in the occupied territories, but through a complex family reunification procedure.

- **The PLO's Palestinian National Charter – 1968:** this charter was adopted in 1964 to define the missions of the PLO. It was then adopted after the occupation in 1968 in order to affirm and forge a Palestinian identity. It contains the following provisions: “*The Palestinian identity is a genuine, essential and inherent characteristic; it is transferred from parents to children. The Zionist occupation and the dispersal of the Palestinian Arab people, through the disasters which befell them, do not make them lose their Palestinian identity and their membership in the Palestinian community, nor do they negate them*” (Article 4). “*The Palestinians are those Arab nationals who, until 1947, normally resided in Palestine regardless of whether they were evicted from it or have stayed there. Anyone born after that date, of a Palestinian father – whether inside Palestine or outside it – is also Palestinian*” (Article 5) and “*The Jews who had normally resided in Palestine until the beginning of the Zionist invasion will be considered Palestinians*” (Article 6).
- **Oslo Accords – 1993 and 1995:** possibility for the Palestinian Authority to issue identity cards and passports to the inhabitants of Gaza and the West Bank, subject to Israeli authorisation.⁵³
- **Palestinian Basic Law – 1997:**⁵⁴ temporary constitution pending an independent State with a permanent constitution. Palestinian nationality/citizenship is only regulated to a limited extent. Palestine is defined in Article 1 as “*part of the larger Arab world, and the Palestinian people are part of the Arab nation. Arab unity is an objective that the Palestinian people shall work to achieve*”. Here, Palestinian identity is equated with Arab identity. Article 7 states that “*Palestinian citizenship shall be regulated by law*”. However, the constitution does not refer to a Palestinian nationality within the meaning of international law. It is therefore not clear whether Article 1 of the constitution refers only to Palestinians who have lived in the West Bank or Gaza since 1967, or to all Palestinians worldwide.⁵⁵
- **Initiatives to draft a law on Palestinian nationality:**
 - 1995 – draft law on nationality by the Palestinian Ministry of Interior: based on the Palestinian Citizenship Order of 1925 and on the Jordanian Citizenship Law of 1954, this draft law contained 25 articles on the definition of a Palestinian, and the different methods of acquisition, naturalization, revocation and restoration of Palestinian nationality/citizenship. It also contained provisions on various issues such as citizenship of spouses and children, and other provisions usually found in the

⁵³ Interim Agreement on the West Bank and the Gaza Strip (signed and entered into force 28 September 1995), also known as the Oslo II Accord (or Taba Agreement) and Article 28, §1 of Annex III Protocol Concerning Civil Affairs, online: <https://www.peaceagreements.org/viewmasterdocument/985>.

⁵⁴ The Palestinian Basic Law was adopted by the Palestinian Legislative Council in 1997 and ratified in 2002. It was subsequently amended twice (in 2003 and 2005) but the provisions cited here remain the same. More information on these amendments is available here: <https://www.palestinianbasiclaw.org/election-laws>.

⁵⁵ AKRAM, S., “Palestinian Nationality and “Jewish” Nationality. From the Lausanne Treaty to Today”, *op. cit.*, p. 208.

nationality laws of independent States. The draft law was not made public and was never considered by the Palestinian Legislative Council.⁵⁶

- 2012 – draft law on nationality drawn up by an eminent Palestinian professor (Mutaz M. Qafisheh) for the PLO: in this draft, the basic principle on nationality is that: *"Palestinian citizens are those persons who acquired or had the right to acquire Palestinian nationality as of 6 August 1924, the date on which the Treaty of Lausanne (...) came into force whereby Palestine ceased to be part of the Ottoman Empire. In addition, this Draft Law is based on factors that have emerged since the signing of the said treaty; such factors can be found in international law and comparative nationality law"*.⁵⁷ Citizenship is granted to three categories of people: residents of the West Bank and Gaza, Palestinian refugees who may or may not have been forced to leave their homes in Mandatory Palestine as a result of Israel's move into the region, and residents of Israel.⁵⁸ The aim of this ambitious draft was to remedy the situation of statelessness among Palestinians and to offer them protection: *"I would like to emphasize two points. First, a Nationality Law **would provide concrete assistance to Palestinians throughout the world by improving their legal status. Palestinians would no longer have to be stateless.** Now that Palestine's statehood is well-established as a matter of international law, the draft nationality legislation would help to resolve some of these ambiguities and **provide concrete legal protections to any Palestinian who needs it,** and not simply to those living under the PA. Second, I am aware that there is a debate over whether Palestine should confer its nationality on Palestinian refugees, and whether this would benefit or harm them. I should emphasize that the law is also designed to take into account the very different circumstances in which our people find ourselves. For Palestinians living outside the PA, **the law offers them citizenship, but it does not impose it.** We are aware that there are situations where people may not wish to take on a Palestinian passport because it could undermine their situation, such as countries that do not allow for dual nationality. At the same time, any Palestinian who finds himself or herself in the PA can enjoy all the rights and privileges of citizenship regardless of whether they formally apply for Palestine nationality."*⁵⁹

To date, these initiatives have not been successful owing to the complex and sensitive political and legal discussions surrounding these issues.⁶⁰

These historical developments lead us to conclude that there is currently no legislation governing Palestinian nationality, thereby directly influencing the definition of statelessness under the 1954 Convention.

⁵⁶ *Ibidem*.

⁵⁷ *Ibidem*; QAFISHEH, M., "Who Has the Right," citing PLO, Draft Palestinian Citizenship Law, January 2012; unpublished draft, on file with this author.

⁵⁸ QAFISHEH, M., "Who has the Right to Become a Palestinian Citizen? An International Law Analysis", *Yearbook of Islamic and Middle Eastern Law Online*, 2017, p.114.

⁵⁹ Interview with M. QAFISHEH in: The Nakba Files, *Can a Citizenship Law Address Palestinian Statelessness?*, August 2016, online: <https://nakbafiles.org/2016/08/17/can-a-citizenship-law-address-palestinian-statelessness/>.

⁶⁰ AKRAM, S., "Palestinian Nationality and "Jewish" Nationality. From the Lausanne Treaty to Today", *op. cit.*, p. 208.

Further reading:

- AKRAM, S., "Palestinian Nationality and "Jewish" Nationality. From the Lausanne Treaty to Today", in FARSAKH, L., *Rethinking Statehood in Palestine. Self-determination and Decolonization beyond Partition*, University of California Press, 2021
- AKRAM, S., "The Search for Protection for Stateless Refugees in the Middle East: Palestinians and Kurds in Lebanon and Jordan", *International Journal of Refugee Law*, 2018, Vol XX, No. 20, pp. 1-37.
- QAFISHEH, M., "Who has the Right to Become a Palestinian Citizen? An International Law Analysis", *Yearbook of Islamic and Middle Eastern Law Online*, 2017, pp. 112-149.
- ALBANESE, F., TAKKENBERG, L., *Palestinian Refugees in International Law*, Oxford, 2020, pp. 157-165.
- ENS & BADIL, *Palestinians and the Search for Protection as Refugees and Stateless Persons*, June 2022, pp. 11-16.
- CROKART, H., "Le statut d'apatride en Belgique: focus sur la situation des Palestiniens", *Rev. Dr. Étr.*, 2019, No. 204, pp. 473-493.

6.2.2. Historical nationality and statelessness

As previously mentioned, the question of the existence of a Palestinian nationality is closely linked to historical and political considerations, leading to different points of view.

According to the Palestine Liberation Organization (PLO) and the States of the Arab League, the Israeli law of 1952 is illegal and Palestinian nationality therefore remains intact. They consider people whose Palestinian origins date back to the 1925 legislation on Palestinian nationality to be nationals of Palestine. As is the third generation of people of Palestinian origin, even if some of these people have never lived in Palestine.⁶¹ It is from this same perspective that, as early as 1965, the States of the Arab League pursued an explicit policy of not granting Palestinians their respective nationalities. The Arab League effectively recommended excluding Palestinians from obtaining the nationality of the Arab countries in which they resided, in order to insist on the existence of their Palestinian nationality and their right of return.⁶²

However, this stance does not prevent persons of Palestinian origin from being recognized as stateless by the States Parties to the 1954 Convention.

On the one hand, this is a historical and political stance, linked to the recognition of a Palestinian state, the Palestinians' right to self-determination and their right of return. On the other hand, the reference in this context to the term "nationality" refers to origin, identity or citizenship rather than to the legal concept within the meaning of the 1954 Convention. The

⁶¹ AKRAM, S., "The Search for Protection for Stateless Refugees in the Middle East: Palestinians and Kurds in Lebanon and Jordan", *op. cit.*, p. 14.

⁶² League of Arab States, Protocol for the Treatment of Palestinians in Arab States ("Casablanca Protocol") of 11 September 1965, 1965, online: <https://www.refworld.org/docid/460a2b252.html>. In Egypt, despite an amendment to the Egyptian nationality law in 2004 allowing Egyptian mothers to confer their nationality on their children, the children of Palestinian fathers were excluded from this measure until 2011. This measure was justified by the importance of preserving a Palestinian identity and the right of return, emphasized by the Casablanca Protocol. See MALEK, D., *Report on citizenship law: Egypt - country report 2021/16*, EUI, July 2021, online: https://cadmus.eui.eu/bitstream/handle/1814/71906/RSCAS_GLOBALCIT_CR_2021_16.pdf?sequence=1&isAllowed=y, p.11.

word "nationality" has two semantic meanings: it has either a political-legal meaning, referring to belonging to a State, or a historical-biological meaning, referring to belonging to a nation.⁶³ In this context, Palestinian "nationality" must be understood in a historical-biological sense.

This understanding of the word as referring to a nation rather than a State is widespread in the Arab world:

*(...) while the term 'nationality' is generally used interchangeably with the term 'citizenship', in the Arab world in general and in the Palestinian context in particular, **citizenship relates to the concept of 'state'**, while **nationality is commonly understood as relating to the concept of 'nation'**. In this sense, nationality refers to the ensemble of shared tradition, culture and identity. As common identity and common bond, Palestinian nationality has survived Palestinians' exile, through the diaspora and the enduring attachment to the concept of (lost) historical homeland.⁶⁴*

Moreover, from the point of view of international law, no State considers persons of Palestinian origin who have been unable to acquire Israeli nationality (or any other nationality) to be its nationals by application of its legislation within the meaning of Article 1, §1 of the 1954 Convention.

According to S. AKRAM, Palestinians must therefore be considered *de jure* stateless persons:

*The international legal definition of 'nationality' refers to an intimate connection between an individual and a territory that goes beyond whatever domestic legislation on citizenship applies to the territory, as elucidated by the International Court of Justice (ICJ) in the *Nottebohm* decision. This **international definition of nationality contrasts with the definition of 'citizenship', which refers exclusively to the definition of citizen under a State's domestic law**. The distinction between nationality and citizenship has become almost meaningless with the rise of human rights law and the *jus cogens* prohibition against discrimination in depriving nationality or granting citizenship status. However, in certain longstanding cases of stateless refugees, such as the Kurds and Palestinians, **the distinction remains relevant and is at the heart of the tension between de facto and de jure statelessness**.⁶⁵*

*(...) regardless of the legality of the provisions of the Nationality Law of 1952 that denationalized the majority of Palestinians, from the international law perspective, a Palestinian 'is not considered as a national by any State under the operation of its law' and, accordingly, Palestinians who have not acquired Israeli (or another) nationality **are considered to fall squarely under the de jure stateless definition**.⁶⁶*

In the same sense, the recognition of a Palestinian "nationality" in the historical-biological sense is not incompatible with the recognition of the statelessness of persons of Palestinian origin:

*Many Palestinians consider themselves to be Palestinian nationals **in view of their long-standing ties to the areas** currently known as Israel, Gaza, the West Bank, and Palestine, as well as their ethnicity, shared political and cultural affinity. It is important to acknowledge and respect Palestinians' connection to Palestine and right to self-*

⁶³ WEISS, P., *Nationality and Statelessness in International Law*, Sijthoff and Noordhoff, 1979, p. 3.

⁶⁴ ALBANESE, F., TAKKENBERG, L., *op. cit.*, p. 162.

⁶⁵ AKRAM, S., "The Search for Protection for Stateless Refugees in the Middle East: Palestinians and Kurds in Lebanon and Jordan", *op. cit.*, p.9.

⁶⁶ AKRAM, S., "The Search for Protection for Stateless Refugees in the Middle East: Palestinians and Kurds in Lebanon and Jordan", *International Journal of Refugee Law*, 2018, Vol XX, No. 20, p. 15.

identify **as Palestinian nationals**. In addition, Palestinian nationality – in the legal sense – was established by an international treaty in 1923 and continues to be protected by international law.⁶⁷

F.P. ALBANESE and L. TAKKENBERG reach the same conclusion in their book *Palestinian Refugees in International Law*:

*The vast majority of Palestinian refugees remain stateless in the meaning of Article 1 of the 1954 Convention as long as they are not considered ‘citizens’ of any state under the operation of its law.*⁶⁸

To conclude, the recognition of a historical Palestinian nationality does not prevent persons of Palestinian origin, even if they define themselves as having a Palestinian nationality, from being stateless within the meaning of the 1954 Convention.

6.3. Can persons of Palestinian origin be considered today as nationals of Palestine within the meaning of Article 1, §1 of the 1954 Convention?

In the following section, we shall determine whether persons of Palestinian origin can be considered as "nationals" of Palestine by focusing on certain aspects of the 1954 Convention's definition of statelessness. We shall first analyse whether a person can have Palestinian nationality "by application of its legislation" (6.3.1), before examining whether there is a competent authority to draw up and apply such legislation (6.3.2). Finally, we shall consider whether certain civil status documents issued to persons of Palestinian origin constitute proof of Palestinian nationality (6.3.3).

For information, a stateless person is "a person who is not considered as a by any State under the operation of its law" (1954 Convention, Art. 1, §1).

6.3.1. "By application of its legislation", which legislation?

At present, there is no legislation relating to Palestinian nationality (see point 6.2.1 above), a fact which is not generally contested by the Belgian courts.⁶⁹

Although the notion of "legislation" should be understood in a broad sense,⁷⁰ there is no rule or practice establishing how Palestinian nationality is acquired or lost. There is nothing to determine who has Palestinian nationality or what conditions must be met in order to claim to have it. Moreover, the situation of the different categories of Palestinians and the complexity of each of these situations makes it very difficult to draw up legislation on Palestinian nationality. The failure of initiatives aimed at drafting a law on Palestinian nationality at the request of the Interior Minister and the PLO clearly proves this.

This conclusion is shared by the European Network on Statelessness and BADIL (the Resource Center for Palestinian Residency and Refugee Rights) in their report on the protection of Palestinians as refugees and stateless persons:

Thus, in summary, efforts to enact a Palestinian nationality law have failed; and Palestine currently does not have an independent, sovereign ability to issue identity and travel documents, allow persons to enter its territory, or offer full diplomatic protection to

⁶⁷ European Network on Statelessness and BADIL, *Palestinians and the Search for Protection as Refugees and Stateless Persons*, *op. cit.*, p. 12.

⁶⁸ ALBANESE, F., TAKKENBERG, L., *op. cit.*, p. 162.

⁶⁹ For an overview of the case law, see: VAN DOREN, W., LEJEUNE, J., CLAES, M., KLEIN, V., "The broadening protection gap for stateless Palestinian refugees in Belgium", *op. cit.*, pp. 307-308.

⁷⁰ UNHCR, *Handbook on Protection of Stateless Persons*, *op. cit.*, §22.

*Palestinians. In these circumstances, **Palestinians cannot be considered nationals of Palestine for the purposes of statelessness determination under the 1954 Convention**, which defines a person as stateless if they are “not considered as a national by any State **under the operation of its law**” (emphasis added). “Therefore, Palestinians should be considered stateless for the purposes of the 1954 Convention unless and/or until they can be considered nationals of an independent, sovereign state which has a nationality law. If Palestine does adopt a nationality law, then persons who are considered nationals under the new law might no longer be stateless. However, it will be important to consider other circumstances, including Palestine’s sovereignty and ability to independently issue documentary proof of nationality and/or passports to all persons considered nationals under its laws, to offer them an unrestricted right to enter and reside in the territory, and to provide them diplomatic protection when abroad, as well as other criteria that commonly adhere to nationality.”⁷¹*

It is therefore impossible to legally establish that a person has Palestinian nationality "by application of its legislation".

6.3.2. Which authority is competent under Article 1, §1 of the 1954 Convention?

As previously mentioned (see point 5 above), it is therefore necessary to check whether there is an authority which grants nationality (non-automatic modes) or which clarifies status with regard to nationality (automatic modes). UNHCR also states: “*It follows from the above that **the views of a State body that is not competent to pronounce on nationality status are irrelevant***”.⁷²

The following bodies could be identified as competent to draw up and apply legislation on Palestinian nationality:

- **Palestine Liberation Organization (PLO)**. This is the body that represents the Palestinians (including the diaspora) in international organizations.⁷³ Following the adoption of resolution 3237 by the United Nations General Assembly on 21 November 1974, the PLO was accepted as an observer State of the United Nations. The function of the PLO is therefore limited to political representation at international level.
- **Palestinian Authority (PA)**. This is a “*sort of governing body empowered to administer part of the inhabitants of the West Bank and Gaza*”.⁷⁴ Since the Oslo II Accord of 1995, it has been able to issue identity cards and passports to the inhabitants of Gaza and the West Bank on the basis of residence and the population register, but only with Israel's permission.⁷⁵

⁷¹ European Network on Statelessness and BADIL, *Palestinians and the Search for Protection as Refugees and Stateless Persons*, June 2022, online: <https://www.statelessness.eu/sites/default/files/2022-07/LP-RefugeeProtection-eng7.pdf>, p.15.

⁷² UNHCR, *Handbook on Protection of Stateless Persons*, *op. cit.*, p. 16, footnote 19.

⁷³ CROKART, H., “Le statut d’apatride en Belgique: focus sur la situation des Palestiniens”, *op. cit.*, p. 486.

⁷⁴ *Ibidem*.

⁷⁵ Interim Agreement on the West Bank and the Gaza Strip (signed and entered into force 28 September 1995), also known as the Oslo II Accord (or Taba Agreement) and Article 28, §1 of Annex III Protocol Concerning Civil Affairs, online: <https://www.peaceagreements.org/viewmasterdocument/985>.

The autonomy and legitimacy of the Palestinian Authority are geographically limited, even within Palestinian territory.⁷⁶ The Palestinian Authority "(...) *does not exercise any authority in East Jerusalem, in Area C, or with regard to the Palestinian population in exile, and the exercise of authority is very partial in Area B. The situation in the Gaza Strip is different, since the Palestinian Authority has not exercised effective control there since Hamas took power in 2007*".⁷⁷ Moreover, the Palestinian Authority "(...) *has legitimacy to govern only approximately 30 percent of the global Palestinian population that voted for it – and even this is questionable, as it has long exceeded its term of office and has been replaced in Gaza by the Hamas government*".⁷⁸ It is therefore difficult to identify with certainty the Palestinian Authority as the competent authority in matters of nationality.

- **The Palestinian Mission to the European Union, Belgium and Luxembourg.** Responsible for issuing identity documents to people of Palestinian origin, it has been considered a diplomatic mission in Belgium since 2013 "*without, however, being able to enjoy all the advantages and facilities granted by customary international law to a diplomatic mission*".⁷⁹ It officially represents the PLO in Belgium. However, it is neither an embassy nor a consulate. Moreover, while it is the PLO which, in accordance with the resolutions of the United Nations General Assembly, has the power to represent the Palestinian people, including the diaspora, it has no legislative or executive powers (see the Oslo Accords).

Consequently, if there is currently no legislation on Palestinian nationality, it is also impossible to clearly identify which authority would be competent to draft and apply such legislation.

6.3.3. What constitutes proof of Palestinian nationality?

In a number of cases, certain courts of appeal concluded that the claimants had Palestinian nationality on the basis of the mention of Palestinian origin in documents issued by a third State or by UNWRA.⁸⁰ Following the same line of reasoning, several municipalities, sometimes after seeking the opinion of the public prosecutor's office, have deduced the Palestinian nationality of children born in Belgium to parents of Palestinian origin on the basis of certificates issued by the Palestinian Mission (see points 2 and 3 below). However, the mention of a Palestinian origin in this type of document in no way constitutes a legal presumption of Palestinian nationality, since not only is there no legislation governing

⁷⁶ Agreement on the Gaza Strip and the Jericho Area (signed and entered into force on 4 May 1994), also known as the Oslo I Accord (or Gaza-Jericho Agreement), online:

<https://www.peaceagreements.org/viewmasterdocument/281>, Article IV. Interim Agreement on the West Bank and the Gaza Strip (signed and entered into force 28 September 1995), also known as the Oslo II Accord (or Taba Agreement), online:

<https://www.peaceagreements.org/viewmasterdocument/410>, Article XVII.

⁷⁷ CROKART, H., "Le statut d'apatride en Belgique: focus sur la situation des Palestiniens", *op. cit.*, p. 486.

⁷⁸ AKRAM, S., "Palestinian Nationality and "Jewish" Nationality. From the Lausanne Treaty to Today", *op. cit.*, p. 208.

⁷⁹ Letter from the Minister of Foreign Affairs Didier Reynders to Mahmoud Abbas reprinted in: La Libre, "Leila Shahid devient 'ambassadeur'", 30 November 2012, <https://www.lalibre.be/international/2012/11/30/leila-shahid-devient-ambassadeur-MGKDTNW5R5FFFNIQMAVK2IHVXQ/>.

⁸⁰ Among others: Brussels, 5 June 2018, 2017/FA/707; Antwerp, 3 October 2018, 2018/EV/6. For a more detailed overview of the case law, see: VAN DOREN, W., LEJEUNE, J., CLAES, M., KLEIN, V., "The broadening protection gap for stateless Palestinian refugees in Belgium", *op. cit.*, pp. 307-308.

questions of Palestinian nationality, but the issuers of these documents are not the competent authorities in matters of Palestinian nationality.

Certificates issued by the Palestinian Mission

It follows from the above that the certificates issued by the Palestinian Mission do not in any way constitute proof of Palestinian nationality for the persons to whom they are issued. There is no legal basis for these certificates and their wording does not even contain the word "nationality",⁸¹ which supports the analysis that the Mission is at most testifying to a "historical" nationality and not to a legal nationality.

Documents issued by UNRWA or by third countries

Nor is it correct to deduce Palestinian nationality from an UNRWA card or civil status documents issued by third countries (e.g. Syria or Jordan) in which people of Palestinian origin have lived:

*At first instance, it seems obvious that the mere mention of Palestinian origin, or even nationality, on documents issued by another State or international organization (such as the UNRWA) **cannot create a legal presumption of Palestinian nationality.** Clearly the issuing institutions are not competent authorities for Palestinian nationality matters.⁸²*

This is also what Advocate General Th. WERQUIN of the Court of Cassation argued in his opinion preceding the Court of Cassation's ruling of 19 November 2021:

*It follows that a travel document or **any identity document issued by U.N.R.W.A. or by the country of residence** of which the holder is not a national, on which the holder's Palestinian nationality is indicated in application of the recommendations of the Arab League to the neighbouring countries not to attempt to integrate these refugees into their territory and to have them retain their 'Palestinian nationality', **cannot constitute proof of the holder's Palestinian nationality.**⁸³ (A. Cameron, Trans.)*

Palestinian passports and identity cards issued by the Palestinian Authority

Passports or identity cards issued to Palestinians are not proof of Palestinian nationality either.⁸⁴

This is what the CGRA's Country of Origin Information (COI) research department (Cedoca) states in its COI Focus "Palestinian territory – Gaza: returning to the Gaza Strip":

⁸¹ See an example of a certificate dating from January 2024 on the website of Agentschap Integratie & Inburgering: https://www.agii.be/sites/default/files/bestanden/documenten/attest_palestijnse_missie_vanaf2024.pdf.

⁸² VAN DOREN, W., LEJEUNE, J., CLAES, M., KLEIN, V., "The broadening protection gap for stateless Palestinian refugees in Belgium", *Statelessness and Citizenship Review*, 2020, 2(2), pp. 300-316.

⁸³ Gen. op. Th. WERQUIN, prev. concl. Cass. (1st ch.), 19 November 2021, RG C.21.0095.F, available at www.juportal.be, point 4. According to NANSEN, the Advocate General then erroneously argued that "Only a travel document issued by the Palestinian Authority on which the holder's Palestinian nationality is indicated constitutes proof of Palestinian nationality".

⁸⁴ For a detailed overview (with photos) of the different types of identity documents held by Palestinians in Gaza: Norwegian Refugee Council (NRC), "Undocumented and Stateless: The Palestinian Population Registry and Access to Residency and Identity Documents in the Gaza Strip", January 2012, online: <https://www.nrc.no/globalassets/pdf/reports/undocumented-and-stateless.pdf>, pp. 40-50.

According to diplomatic and academic sources consulted by Cedoca, Palestinians authorized to reside in the Occupied Palestinian Territories (Gaza and the West Bank) and therefore to return there after a stay abroad were (themselves, their father or their grandfather) registered by the Israeli administration in 1967 and given an Israeli identity number. They are considered by Israel to be foreign residents. **They have Palestinian identity cards and travel documents, but neither Israeli nor Palestinian nationality.**⁸⁵ (A. Cameron, Trans.)

The Palestinian '00' or 'external use only' passport, which does not have a unique identity number and is issued by the PA without Israeli approval **for the sole purpose of allowing Palestinians who were not registered in 1967 to travel**, does not give access to the Gaza Strip via Egypt or Israel because it is not recognized by Israel, Egypt or Jordan. The blue identity card, issued by the Hamas authorities in Gaza to people who reside there illegally in the eyes of the Israeli authorities, does not allow them to enter Gaza legally or to leave this territory either.⁸⁶ (A. Cameron, Trans.)

F.P. ALBANESE and L. TAKKENBERG affirm that these are merely administrative documents whose practical value is determined by Israel:

*(...) the emergence of Palestinian statehood is of great significance for the Palestinians, even though, because of the occupation, it does not carry the full benefit of state protection (and Palestinians in the oPt remain stateless for the purpose of international law) (508). As a result, the identity cards and passports/travel documents issued by the PA since 1995 are **administrative documents** whose practical value is determined by the Israeli Civil Administration in the oPt. (509).*⁸⁷

Moreover, part of the case law concurs. The above-mentioned opinion of Advocate General Th. WERQUIN has been used as a basis for subsequent rulings by appeal courts in the country, ruling on the absence of a presumption of Palestinian nationality following the issue of identity cards or passports by the Palestinian Authority.

Hence, Mons Court of Appeal ruled that:

Advocate General WERQUIN acknowledged in his above-mentioned opinion that 'there is no legislation regulating issues relating to nationality in Palestine' (...)

*A fortiori, **there is no Palestinian authority competent to deal with nationality issues** (...)*

*Consequently, the mere fact that Palestinian Authority public servants issued X **with an identity card stating that he was of Palestinian nationality is not sufficient to show that he would be recognized as such under Palestinian law.***⁸⁸

(...) these presumptions only make it possible to establish that the authors of the documents concerned (identity card and marriage certificate) appear to have

⁸⁵ COI Focus, "Palestinian territory - Gaza: returning to the Gaza Strip", 3 September 2020, https://www.cgrs.be/sites/default/files/rapporten/coif_territoire_palestinien_gaza_retour_dans_la_bande_de_gaza_20200903.pdf, p.6.

⁸⁶ COI Focus, "Palestinian territory - Gaza: returning to the Gaza Strip", 21 October 2022, https://www.cgra.be/sites/default/files/rapporten/coif_territoire_palestinien_gaza_retour_des_palestiniens_21_10_2022_2.pdf, p.6.

⁸⁷ ALBANESE, F., TAKKENBERG, L., *op. cit.*, p. 238.

⁸⁸ Mons, 16 June 2022, 2021/FQ/5, §22.

considered X as a Palestinian national, **without however demonstrating that this status would be recognized under Palestinian law.**⁸⁹ (A. Cameron, Trans.)

In a judgment of 2022, the German-speaking chamber of Liège Court of Appeal ruled that:

*The public prosecutor indicated (...) that the appellant X was in possession of **identity documents issued by the Palestinian Authority**, which led to the conclusion that the Palestinian authorities considered the appellant to be one of their nationals.*

*However, the issue of identity documents or passports by the Palestinian authorities **cannot be considered as proof of Palestinian nationality.***⁹⁰ (A. Cameron, Trans.)

The Court then referred to Dr. A. Khalil⁹¹ on this subject⁹² and emphasized that:

*These are Palestinians who are currently the subject of the Oslo peace process. They are entitled to a **PA passport**, which is nothing more **than a travel document or a 'slightly enhanced Israeli identity card'** (Hammami and Johnson 1999, 317). Consequently, the granting of a PA passport is **not the expression of a Palestinian nationality** (even if it may be considered a rudimentary form). The existence of citizenship is not determined by a passport or a law governing citizenship, but by the existence of a State. The Oslo Accords did not address the question of nationality, and the interim agreements did not lead to the creation of a State. (Addajani 2004) [underlined by the Court] (A. Cameron, Trans.)*

In general, UNHCR points out that possession of an authentic and valid passport does not indicate an irrefutable legal presumption of nationality:

*Authentic, unexpired passports raise a presumption that the passport holder is a national of the country issuing the passport. **However, this presumption may be rebutted where there is evidence showing that an individual is not actually considered to be a national of a State**, for example where the document is a passport of convenience or the passport has been issued in error by an authority that is not competent to determine nationality issues. In such cases the passport is not a manifestation of a State's position that the individual is one of its nationals.*⁹³

In summary

The granting of Palestinian nationality to children born in Belgium to parents of Palestinian origin, on the basis of certificates issued by the Palestinian Mission or civil status documents issued by the Palestinian Authority, UNRWA or third countries, does not have a solid legal basis. This practice raises important questions as to the legal validity of decisions to withdraw

⁸⁹ Mons, 28 April 2022, 2020/F/9, §22. See also the case law compiled by Agentschap Integratie & Inburgering, "Zijn in België geboren kinderen van Palestijnse origine Belg? Gemeenten en rechtbanken zijn bevoegd, niet DVZ", online: <https://www.agii.be/nieuws/zijn-in-belgie-geboren-kinderen-van-palestijnse-origine-belg-gemeenten-en-rechtbanken-zijn-bevoegd>.

⁹⁰ Liège (German-speaking ch.), 2021/FU/13, 14 July 2022.

⁹¹ Asem Khalil is Professor of Public Law, H.H. Shaikh Hamad Bin Khalifa Al-Thani Chair in Constitutional and International Law, Birzeit University, <https://www.birzeit.edu/en/faculty-staff/asem-khalil>

⁹² The Court is referring in particular to this source: KHALIL, A., "Palestinian nationality and citizenship: current challenges and future perspectives", CARIM Research Report; 2007/08, 2007, European University Institute Florence.

⁹³ UNHCR, *Handbook on Protection of Stateless Persons*, *op. cit.*, §95.

or refuse nationality on the basis of Article 10 of the CBN, given the absence of legislation governing Palestinian nationality and the fact that the authorities issuing these documents are not competent authorities in matters of Palestinian nationality.

6.4. Application to persons of Palestinian origin according to their legal status

This section provides an overview of the different legal statuses of people of Palestinian origin in the main territories in which they reside. It examines the situation of people of Palestinian origin in the Occupied Palestinian Territories (West Bank and Gaza), Jordan, Lebanon, Syria and the Gulf States.⁹⁴ This overview will help to shed light on the statelessness of these people.

6.4.1. The Occupied Palestinian Territories

The Occupied Palestinian Territories are the West Bank (including East Jerusalem) and the Gaza Strip.

Different statuses are applied to people of Palestinian origin within these territories.⁹⁵

West Bank (excluding refugees, cf. below):

Following its annexation by Jordan in 1950, many West Bank residents acquired Jordanian nationality. After the 1967 war and the occupation of the West Bank by Israel, Jordan continued to treat the inhabitants of this territory as Jordanian nationals. This situation continued until 1988, when the Jordanian authorities gave instructions to strip the inhabitants of the West Bank of their Jordanian nationality. Although Jordan still issues temporary passports, these are travel documents only (with no national number).⁹⁶

In East Jerusalem, Palestinians who were counted in the Israeli census of 19 June 1967 are considered to be permanent residents of Israel. As such, they possess identity documents and can obtain an Israeli travel document valid for three years (*laissez-passer*). They also enjoy certain rights in Israel, including the right to vote in municipal elections and the right to certain social security benefits. However, their residency may be revoked for a number of reasons

⁹⁴ Owing to the sheer number and complexity of situations, it is not possible to cover them all in detail here.

⁹⁵ For an overview of the different statuses, see: ALBANESE, F., TAKKENBERG, L., *op. cit.*, pp. 236-244; The Danish Immigration Service, *Country Report; Palestinians, Access and Residency for Palestinians in the West Bank, the Gaza Strip and East Jerusalem*, May 2019, online: https://www.ecoi.net/en/file/local/2011580/palestinians_access_and_residency_g_wb_ej_may_2019.pdf. For precise, up-to-date information on freedom of movement, official travel and identity documents and the humanitarian and security situation in these territories: UK Home Office, *Report of a Home Office Fact-Finding Mission; Occupied Palestinian Territories: freedom of movement, security and human rights situation; Conducted 23 September 2019 to 27 September 2019*, March 2020, online: <https://www.ecoi.net/en/document/2026262.html>. For an analysis of restrictions on Palestinians' rights to residence and nationality in the occupied territories, also see: Human Rights Watch, *A Threshold Crossed – Israeli Authorities and the Crimes of Apartheid and Persecution*, April 2021, online: https://www.ecoi.net/en/file/local/2050343/israel_palestine0421_web_0.pdf; US Department of State, *2022 Country Report on Human Rights Practices: Israel, West Bank and Gaza - West Bank and Gaza*, March 2023, online: <https://www.ecoi.net/en/document/2089124.html>.

⁹⁶ QAFISHEH, M., *op. cit.*, pp. 115-121 ; AKRAM, S., "The Search for Protection for Stateless Refugees in the Middle East: Palestinians and Kurds in Lebanon and Jordan", *op. cit.*, pp. 23-24.

(residence outside Israel for several years, acquisition of another nationality, failure to swear allegiance to the State of Israel, etc.) which means these people then become stateless.⁹⁷

Gaza (excluding refugees, cf. below)

Unlike Jordan, Egypt occupied Gaza (under military rule) until 1967 but never annexed it. The inhabitants of Gaza did not obtain Egyptian nationality. Between 1967 and the Oslo I Accord of 1994,⁹⁸ the inhabitants of Gaza were considered by Israel to be permanent residents. Since the Oslo Accords, which conferred certain powers on the Palestinian Authority, the latter has been authorized to issue identity documents and passports, subject to Israel's agreement.⁹⁹

The status of Palestinians in the Gaza Strip is similar to that of permanent residents (linked to a right of permanent residence) and is evidenced inside Gaza by an identity card and outside by a passport.¹⁰⁰ The Palestinian Ministry of Interior in Gaza estimates that there are currently thousands of people without Palestinian identity cards, mainly because they are not on the Palestinian population register under Israeli control.¹⁰¹ The absence of identity documents entails a series of violations of fundamental rights such as the right to family reunification, the right to freedom of movement, etc.¹⁰²

The European Network on Statelessness and BADIL (the Resource Center for Palestinian Residency and Refugee Rights) also distinguish between right of residence and nationality:

Pursuant to the Oslo Accords, the Palestinian Authority (PA) can grant permanent resident status to existing residents and certain persons of Palestinian origin returning from abroad, and it can issue identity cards and passports for residents of the West Bank and Gaza. However, these acts require permission from the Israeli authorities;⁸⁷ and, of course, permanent residence is not nationality. As noted above, nationality entails a right to reside in one's own country, and to return to

⁹⁷ A more detailed description of the status of Palestinians of East Jerusalem can be found here: QAFISHEH, M., "Who has the Right to Become a Palestinian Citizen? An International Law Analysis", *op. cit.*, pp. 136-141; ALBANESE, F., TAKKENBERG, L., *op. cit.*, p. 239; The Danish Immigration Service, *Country report; Palestinians, Access and Residency for Palestinians in the West Bank, the Gaza Strip and East Jerusalem*, *op. cit.*, pp. 29-33.

⁹⁸ Agreement on the Gaza Strip and the Jericho Area (signed and entered into force on 4 May 1994), also known as the Oslo I Accord (or Gaza-Jericho Agreement), online: <https://www.peaceagreements.org/viewmasterdocument/281>.

⁹⁹ Interim Agreement on the West Bank and the Gaza Strip (signed and entered into force 28 September 1995), also known as the Oslo II Accord (or Taba Agreement) and Article 28, §1 of Annex III Protocol Concerning Civil Affairs, online: <https://www.peaceagreements.org/viewmasterdocument/985>.

¹⁰⁰ QAFISHEH, M., *op. cit.*, pp. 121-136. For a detailed overview (with photos) of the different types of identity documents held by Palestinians in Gaza: Norwegian Refugee Council (NRC), "Undocumented and Stateless: The Palestinian Population Registry and Access to Residency and Identity Documents in the Gaza Strip", January 2012, online: <https://www.nrc.no/globalassets/pdf/reports/undocumented-and-stateless.pdf>, pp. 40-50.

¹⁰¹ Gisha, *The population registry*, 14 November 2011, online: <https://gisha.org/en/the-population-registry/>.

¹⁰² The Euro-Mediterranean Human Rights Monitor, *The Gaza Strip: Undocumented Citizens*, March 2021, online: <https://euromedmonitor.org/uploads/reports/undocumentedcitizensingazaENG.pdf> ; Amnesty International, *Israel's Apartheid Against Palestinians: Cruel System of Domination and Crime Against Humanity*, February 2022, online: <https://www.ecoi.net/en/file/local/2067402/MDE1551412022ENGLISH.pdf>, pp. 82 and seq.

it if abroad. Many Palestinians are in fact unable to exercise their right of return to any part of Palestine (or Israel).¹⁰³

Refugees in Gaza and the West Bank

Some people living in Gaza and the West Bank are registered with UNRWA. They have the same legal status as other inhabitants of Gaza and the West Bank¹⁰⁴ but, as UNRWA refugees, they can benefit from aid from UNRWA¹⁰⁵.

Palestinian refugees in Gaza and the West Bank must be considered not only as refugees but also as stateless persons:

*While de facto citizenship may have a meaning within the perimeters of the State of Palestine's jurisdiction, until the Palestinian people are allowed to enjoy self-determination and the State of Palestine exerts sovereignty jurisdiction over a given territory and citizens, as also manifested by a Citizenship Law, it is premature to argue that Palestinians (including refugees) can be considered 'citizens of the State of Palestine' (hence no longer stateless persons) in the meaning of international law. Furthermore, citizenship cannot be presumed for Palestinian refugees resident in the West Bank and Gaza. Only once a Palestinian nationality law has been enacted will refugees have the option to choose whether or not to become citizens of the State of Palestine. In conclusion, unless they enjoy citizenship of a fully sovereign state in accordance with its law, **Palestinian refugees in the oPt remain eligible to receive international protection as both refugees and stateless persons.**¹⁰⁶*

Opinion of Advocate General Th. WERQUIN

In his opinion preceding the Court of Cassation's judgment of 19 November 2021, the Advocate General of the Court of Cassation largely repeats the arguments put forward by H. CROKART in her article published in the *Revue du droit des étrangers* in 2019,¹⁰⁷ and then draws the following conclusions:

It follows from the above that:

¹⁰³ European Network on Statelessness and BADIL, *Palestinians and the Search for Protection as Refugees and Stateless Persons*, June 2022, online: <https://www.statelessness.eu/sites/default/files/2022-07/LP-RefugeeProtection-eng7.pdf>, p.14.

¹⁰⁴ QAFISHEH, M., *op. cit.*, pp. 115-121

¹⁰⁵ In addition to the right to return and the right to compensation. See UNHCR analysis: UNHCR, *Assessment of the international protection needs of asylum-seekers of Palestinian origin in Belgium: Analysis of selected aspects and recommendations*, June 2023, online: [4](#). This analysis examines a selection of decisions handed down in Belgium during the period 2018-2021 concerning applications for international protection lodged by persons of Palestinian origin. For a presentation of the origin and raison d'être of the specific protection system for Palestinian refugees, also see: KLEIN, V., "La réception par le Conseil du Contentieux des Étrangers de la jurisprudence de la Cour de justice de l'Union européenne relative à l'article 1,D de la Convention de Genève", *Rev. Dr. Étr.*, 2022, No. 216, pp. 21-37.

¹⁰⁶ ALBANESE, F., TAKKENBERG, L., *op. cit.*, p. 164.

¹⁰⁷ CROKART, H., "Le statut d'apatride en Belgique: focus sur la situation des Palestiniens", *Rev. Dr. Étr.*, 2019, No. 204, pp. 473-493.

-Palestine meets the criteria for asserting its existence as a State, entitled to determine its nationals;

-Palestinian refugees registered with UNRWA who no longer reside in the organization's area of operation and therefore no longer benefit from its aid and protection are, as a rule, stateless;

-Palestinian refugees who are not registered with UNRWA, who do not reside in this organization's area of operation or in the Occupied Territory, and who therefore do not benefit from its aid and protection, are, as a rule, stateless;

-Palestinians who have not been registered with UNRWA but with the Palestinian Authority, who reside in the Occupied Territory and have been issued a passport or identity documents by that Authority, must be considered as nationals of the State of Palestine and not as stateless persons;

-Palestinians who have been registered with UNRWA and, where applicable, with the Palestinian Authority, who reside in the Occupied Territory and have been issued passports or identity documents by that Authority, must be considered as nationals of the State of Palestine and not as stateless persons.¹⁰⁸ (A. Cameron, Trans.)

However, the absence of legislation on Palestinian nationality and the Palestinian Authority's lack of competence to draft such legislation are obstacles to the last two scenarios analysed by the Advocate General and to the conclusion he draws from his analysis.

Moreover, the Advocate General only refers to part of the argument developed by H el ene CROKART, omitting to mention the argument that calls into question the concept of "national" within the meaning of Article 1( 1) of the 1954 Convention:

*Furthermore, many Palestinians, whether registered in the population registers of the Occupied Territory or not, regret that the Palestinian Authority offers no real protection and that, due to its hybrid status, **it remains unable to remedy internationally illegal acts.***

*The Final Act of the 1961 Convention, which introduces this concept, is not binding, so this category of persons does not benefit from a specific treaty regime. **Nevertheless, given that some Palestinians have no concrete political, legal or even land ties with Palestine, can it really be said that they enjoy an effective nationality?** (A. Cameron, Trans.)*

6.4.2. Jordan

Jordan granted nationality to the first wave of Palestinian refugees in 1948, in the West Bank and East Jerusalem, and to those in Jordan. However, only the latter received passports with national numbers.¹⁰⁹

6.4.3. Lebanon

Few Palestinian refugees in Lebanon have been able to acquire Lebanese nationality. In 1994, Lebanon passed a law allowing certain Palestinians to apply for Lebanese nationality, but few

¹⁰⁸ Gen. Adv. Th. WERQUIN, prev. concl. Cass. (1st ch.), 19 November 2021, RG C.21.0095.F, available at www.juportal.be, point 10.

¹⁰⁹ AKRAM, S., "The Search for Protection for Stateless Refugees in the Middle East: Palestinians and Kurds in Lebanon and Jordan", *op. cit.*, pp. 22-23. Also see: FROST, L., *Report on citizenship law: Jordan*, EUI, 2022, online: https://cadmus.eui.eu/bitstream/handle/1814/74189/RSC_GLOBALCI_T_CR_2022_2.pdf?sequence=1.

have benefited from this. Depending on whether or not they are registered with UNRWA and whether or not they are registered with the Directorate of Palestinian Refugee Affairs, Palestinians in Lebanon can obtain a travel document for a period of three months, or one, three or five years.¹¹⁰

6.4.4. Syria

The legal status of Palestinians in Syria depends on their date of arrival in Syria and their registration status (with UNWRA and/or with GAPAR¹¹¹).

Palestinians registered with GAPAR (i.e. those who arrived in Syria in 1948 or before 1956 and their descendants) enjoy the same rights as Syrians and are issued with a travel document and a six-year renewable temporary residence card. Those who are only registered with UNWRA have far fewer rights but are entitled to a 10-year renewable temporary residence permit.¹¹²

6.4.5. Gulf States

Despite being long-term residents of the Gulf States, Palestinians do not have the right to reside permanently in these countries, are subject to local immigration regulations and are treated like any other foreigner.

In the Gulf States, Palestinians' right of residence is linked to employment and the presence of a local sponsor. Their residency status is therefore precarious and in many cases (e.g. if they lose their job or the support of their sponsor, or if they stay abroad for more than six months, etc.), they can no longer legally reside in these countries and risk detention and expulsion.¹¹³

6.5. Conclusion

The elements of the definition of statelessness that have been explored here do indeed apply to the situation of persons originating from Palestine. It would therefore be wrong to speak of a Palestinian "nationality" and of a Palestinian "national" within the meaning of Article 1, §1 of the 1954 Convention.

¹¹⁰ ASYLOS, Lebanon: Stateless Palestinians, March 2023, online: <https://www.asylos.eu/Handlers/Download.ashx?IDMF=8b037676-765d-4906-80a6-563ad17faa2a> ; AKRAM, S., "The Search for Protection for Stateless Refugees in the Middle East: Palestinians and Kurds in Lebanon and Jordan", *op. cit.*, pp. 22-23; ALBANESE, F., TAKKENBERG, L., *op. cit.*, pp. 212-219.

¹¹¹ General Authority for Palestine Arab Refugees, founded in 1949.

¹¹² ALBANESE, F., TAKKENBERG, L., *op. cit.*, pp. 219-226; Norwegian Refugee Council (NRC), "Undocumented and Stateless: The Palestinian Population Registry and Access to Residency and Identity Documents in the Gaza Strip", January 2012, online: <https://www.nrc.no/globalassets/pdf/reports/undocumented-and-stateless.pdf> , pp. 40-50; European Network on Statelessness & Institute on Statelessness and Inclusion, "Country position paper: Statelessness in Syria", August 2019, online: <https://www.statelessness.eu/updates/publications/country-position-paper-statelessness-syria>, pp. 18-20.

¹¹³ ALBANESE, F., TAKKENBERG, L., *op. cit.*, pp. 258 and seq.; NANSEN, "NANSEN PROFIEL 1-21 - De beschermingsnood van Palestijnen uit de Golfstaten", 2021, <https://nansen-refugee.be/wp-content/uploads/2021/02/NANSEN-Profiel-1-21-De-beschermingsnood-van-Palestijnen-uit-de-Golfstaten.pdf>.

It is in fact legally impossible to determine the Palestinian nationality of a person "*by operation of law*" given the absence of Palestinian legal provisions on nationality. It is likewise impossible to identify a Palestinian authority competent to deal with questions of nationality, since neither the Palestine Liberation Organization, the Palestinian Authority nor the Palestinian Mission have the competence or legitimacy to grant or clarify the nationality of persons of Palestinian origin. Furthermore, the value of a Palestinian passport, an UNRWA card or a civil status document issued by the Palestinian Authority or by third countries is relative and cannot be used to deduce Palestinian nationality. At most, these are documents that can be used to prove a person's identity and, in some cases, can be used as a travel document. Finally, the different legal statuses of persons of Palestinian origin in the main territories in which they reside do not contradict their classification as stateless persons.

7. Issues associated with refusing or withdrawing Belgian nationality from minors

Any measure to refuse or withdraw nationality based on Article 10 of the CBN, and/or an application for the recognition of statelessness submitted by a family with minors, must be carefully examined by civil registrars and the courts. They must pay particular attention to the best interests of the children concerned (7.1), to the right to be registered at birth and to acquire a nationality (7.2) and to the specific consequences of statelessness linked to the age of the minors (7.3). It must also be verified that the decision to withdraw Belgian nationality complies with the requirements of European law, including the proportionality of the measure (7.4).

7.1. Best interests of the child

Belgium is obliged to ensure that the best interests of children are respected in all decisions affecting them. This obligation derives from several international instruments to which Belgium is party, and is also incorporated into domestic law:

- Article 3 of the **Convention on the Rights of the Child (CRC)** states that: "*In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, **the best interests of the child shall be a primary consideration***". According to the Committee on the Rights of the Child, this "*principle **applies to all actions concerning children and requires active measures to protect their rights and promote their survival, growth and well-being***".¹¹⁴
- Article 24, §2 of the **Charter of Fundamental Rights** of the European Union provides that: "*In all actions relating to children, whether taken by public authorities or private institutions, **the child's best interests must be a primary consideration***."
- Article 22bis, §4 of the **Belgian Constitution** states that: "*In any decision concerning a child, the **child's interests shall be taken into consideration as a matter of primary importance***." (A. Cameron, Trans.)

In 2013, in its **General comment No. 14**, the Committee on the Rights of the Child set out the various legal obligations that this principle of the best interests of the child implies: it aims to ensure not only the full and effective enjoyment of all the rights recognized in the CRC, but also the physical, mental, spiritual, moral, psychological and social development, and the integrity and human dignity of the child. According to the Committee, the best interests of the

¹¹⁴ Committee on the Rights of the Child, [CRC/C/GC/7/Rev.1](#), 20 September 2006.

child is a threefold concept corresponding to three levels of State obligations: a substantive right, a fundamental interpretative legal principle and a procedural rule.¹¹⁵

The best interests of the child as a substantive right, mentioned in **General comment No. 14**, implies that the child has the right to have his or her interests assessed and taken into account when different interests are being considered in order to reach a decision. In addition, it includes the guarantee that this right will be implemented whenever a decision has to be taken about a child. Article 3, §1 of the CRC creates an intrinsic obligation for States. It is therefore directly applicable and can be invoked before the courts.

The best interests of the child as a fundamental interpretative legal principle means that, if a legal provision can be interpreted in more than one way, the interpretation that best serves the best interests of the child should be chosen. By the best interests of the child as a procedural rule, §6 of General comment No. 14 means that whenever a decision affecting a child is to be taken, the decision-making process should include an assessment of the possible consequences (positive or negative) of the decision for the child in question. Assessing and determining the best interests of the child requires procedural guarantees. In addition, the reasons given for a decision must show that the best interests of the child have been explicitly taken into account. In this respect, States Parties must explain how the right has been respected in the decision, i.e. what has been considered to be in the best interests of the child, on what criteria this has been based and how the best interests of the child have been weighed against other considerations.

In 2023, the Belgian Constitutional Court ruled on the loss of Belgian nationality. It ruled that the authorities must:

(...) assess the minor's individual situation, and more specifically the impact of the loss of Belgian nationality and the rights deriving therefrom on his or her private and family life and on his or her personal development, especially in light of the possibilities for legal residence available to the minor in his or her capacity as a foreigner. In this respect, particular account should be taken of Article 22bis, §4, of the Constitution, which provides that, in any decision affecting the child, the child's interests shall be given primary consideration.

*Such an assessment also requires verification that the minor concerned is not in danger of becoming stateless as a result of losing Belgian nationality, particularly if he or she was born abroad.*¹¹⁶

MYRIA, the Federal Migration Centre, also recommends “including a provision in the Code of Belgian Nationality requiring all players (civil registrars, administrative authorities, judges) to **take into account the interests of the child as a primary consideration in all procedures for granting, acquiring and losing nationality**”.¹¹⁷ (A. Cameron, Trans.)

The Belgian authorities are therefore obliged to apply the principle of the best interests of the child in any decision concerning a child. They must also show that they have taken this principle into account when giving reasons for their decisions. This is all the more important

¹¹⁵ Committee on the Rights of the Child, [CRC/C/GC/14](#), 29 May 2013, §6.

¹¹⁶ Constitutional Court, judgment No. 12/2023 of 19 January 2023, point B.8.1.

¹¹⁷ MYRIA, *press release*, 21 December 2023, online:

https://www.myria.be/files/2023_12_21_Myria_CP_Cahier_Nationalit%C3%A9.pdf and the associated publication on nationality: MYRIA, “La migration en chiffres et en droits – Cahier Nationalité”, *op.cit.*

when they decide to refuse or withdraw a child's nationality, thus risking making the child stateless.

7.2. Registration at birth and the right to acquire a nationality

Article 7 of the **CRC** enshrines the right of every child to be registered at birth and to acquire a nationality:

1. *The child shall be registered immediately after birth and shall have the right from birth to a name, the **right to acquire a nationality** and, as far as possible, the right to know and be cared for by his or her parents.*
2. *States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, **in particular where the child would otherwise be stateless.***

According to **UNHCR**, the right to acquire a nationality is essential for the protection of every child.¹¹⁸

The scope of this right has been clarified by the **Committee on the Rights of the Child**¹¹⁹:

25. (...) *The Committee notes that provision for registration of all children at birth is still a major challenge for many countries and regions. **This can impact negatively on a child's sense of personal identity, and children may be denied entitlements to basic health, education and social welfare** (...).*¹²⁰

Article 24 of the International Covenant on Civil and Political Rights (**ICCPR**) provides for the same right to acquire a nationality and to be registered:

1. *Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his or her status as a minor, on the part of his or her family, society and the State.*
2. *Every child **shall be registered immediately** after birth and have a name.*
3. *Every child has the **right to acquire a nationality.***

In its communication *Denny Zhao v. The Netherlands*, the Human Rights Committee concluded that the Dutch government had been guilty of placing a child in a situation where he was unable to **effectively enjoy his right to acquire a nationality as a minor, and had therefore violated** Article 24, §3 of the ICCPR.¹²¹ In this case, the government denied the child access to Dutch nationality and prevented him from being recognized as stateless, leaving him in a legal limbo for years.

¹¹⁸ UNHCR, *Ensuring the right of all children to acquire a nationality: Connecting the Dots between the Convention of the Rights of the Child and the Convention on the Reduction of Statelessness*, online: <https://www.refworld.org/docid/52206aa54.html>.

¹¹⁹ Committee on the Rights of the Child, [CRC/C/GC/7/Rev.1](https://caselaw.statelessness.eu/caselaw/human-rights-committee-zhao-v-netherlands), 20 September 2006; summary and explanations available at <https://caselaw.statelessness.eu/caselaw/human-rights-committee-zhao-v-netherlands>.

¹²⁰ Committee on the Rights of the Child, [CRC/C/GC/7/Rev.1](https://caselaw.statelessness.eu/caselaw/human-rights-committee-zhao-v-netherlands), 20 September 2006; summary and explanations available at <https://caselaw.statelessness.eu/caselaw/human-rights-committee-zhao-v-netherlands>.

¹²¹ Human Rights Committee, *Denny Zhao v. The Netherlands*, CCPR/C/130/D/2918/2016, 19 December 2020.

With regard to a measure to withdraw nationality, Article 8 of the **CRC** should also be taken into account, which provides that:

1. *States Parties undertake to **respect the right of the child to preserve his or her identity, including his or her nationality**, name and family relations as recognized by law without unlawful interference.*

2. *Where a child is **illegally deprived of some or all of the elements of his or her identity**, States Parties shall provide **appropriate assistance and protection**, with a view to re-establishing speedily his or her identity.*

This provision is quite unique among international human rights treaties.

7.3. Particular impact of statelessness on children

In the event of non-recognition of Belgian nationality or its withdrawal from a minor born to parents of Palestinian origin in Belgium, this child would be left without a nationality even though it is known that statelessness has a negative impact on children.

According to UNHCR, statelessness can have psychological, medical, educational and professional consequences:

*(...) not being recognized as a national of any country can create **insurmountable barriers to education and adequate health care and stifle job prospects**. It reveals the **devastating psychological toll of statelessness** and its serious ramifications not only for young people, whose whole futures are before them, but also for their families, communities and countries.*¹²²

Furthermore, the fact that a child is deprived of his or her nationality is often closely linked to serious human rights violations and profound suffering:

*Though nationality does not, on its own, guarantee wellbeing or enjoyment of the constituent elements of a safe and rights endowed life, its absence is strongly correlated with **serious rights violations and profound human suffering**.*¹²³

UNICEF also describes the severe consequences of statelessness for children:

*Stateless children are not recognized as nationals by any State's domestic law. Children who are stateless feel the impact in their daily lives in profound ways. **Discrimination based on statelessness, including limited access to critical services such as education and health care, can expose children to protection risks including violence, abuse, trafficking and other forms of exploitation**. As they lack civil documentation, stateless children and their families face the **risk of arrest and detention**. Living in limbo and constant uncertainty, in the absence of a legal status, also bears a **detrimental psychological impact** for stateless children and their families.*¹²⁴

This is also what the European Network on Statelessness condemns in its "Ending Childhood Statelessness" campaign:

¹²² UNHCR, *I am here, I belong. The urgent need to end childhood statelessness*, November 2015, https://www.unhcr.org/ibelong/wp-content/uploads/EN_2015_IBELONGReport_ePub17.pdf

¹²³ BHABHA, Jacqueline, "The importance of nationality for children", in *ISI, The World's Stateless*, January 2017, online: <http://children.worldsstateless.org/assets/files/worlds-stateless-full-report.pdf>, p.118.

¹²⁴ UNICEF, *Ending Childhood Statelessness in Europe*, 2018, online: <https://www.unicef.org/eca/media/5941/file/Ending%20childhood%20statelessness%20in%20Europe%20UNICEF-UNHCR.pdf>, p.1.

Not having a nationality can make it **difficult for children to access some of the most fundamental rights**, such as birth registration, education, healthcare, social security and housing. When they are older, many struggle to access employment and livelihood opportunities. Stateless children in migration may also be at particular risk of immigration detention. It is harder to protect children from abuse and exploitation such as trafficking, child labour, and child and early marriage if they are stateless and lack identity documents.¹²⁵

Consequently, authorities must take account of these various known harmful consequences for children when taking decisions that could render them stateless.

7.4. Withdrawal of Belgian or a European nationality and the obligation to carry out a proportionality assessment

Decisions by which the authorities withdraw Belgian nationality from children must be analysed in the light of the case law of the European Courts. The case law presented here shows that it is particularly important to examine whether the decision is provided for by law, pursues a legitimate aim and is proportionate.

Case law of the European Court of Human Rights

Nationality is part of a person's identity. As such, it is protected by the right to respect for private and family life (Article 8 ECHR).

For instance, the Court held that a measure withdrawing nationality could have an impact on the social identity of the person concerned and could therefore violate Article 8 ECHR:

*However, as the Court has observed above, even in the absence of family life, the denial of citizenship may raise an issue under Article 8 **because of its impact on the private life of an individual, which concept is wide enough to embrace aspects of a person's social identity**. While the right to citizenship is not as such a Convention right and while its denial in the present case was not such as to give rise to a violation of Article 8, the Court considers that its **impact on the applicant's social identity was such as to bring it within the general scope and ambit of that Article**.*¹²⁶

This protection conferred by Article 8 was reiterated by the Court in 2023 with regard to stateless persons:

*The Court notes that the decision terminating the applicant's citizenship left him without any valid identity document, **creating general uncertainty as regards his legal status as an individual and directly affecting his social identity**. In these circumstances, the Court cannot but conclude that the impugned measure **had a significant impact on the applicant's enjoyment of his rights and directly affected his personal and social identity**. The Court therefore finds that the impugned measure amounted to an interference with the applicant's right to respect for private life **under Article 8**.*¹²⁷

¹²⁵ European Network On Statelessness, *Ending Childhood Statelessness*, online: <https://www.statelessness.eu/issues/ending-childhood-statelessness#:~:text=Birth%20registration%20is%20key%20to,persisting%20barriers%20to%20birth%20registration>. This web page contains numerous useful resources and claims concerning child statelessness.

¹²⁶ ECHR, *Genovese v. Malte*, No. 53124/09, 11 October 2011, §33.

¹²⁷ ECHR, *Emin Huseynov v. Azerbaijan (No. 2)*, No. 59135/09, 13 July 2023, §52.

In addition, the Court found that interference with the right to privacy was even more likely to occur when minors were concerned by the measure in question:

*Whilst Article 8 of the Convention does not guarantee a right to acquire a particular nationality, the fact remains that nationality is an element of a person's identity (see *Genovese v. Malta*, no. 53124/09, § 33, 11 October 2011). (...) the third and fourth applicants face a **worrying uncertainty as to the possibility of obtaining recognition of French nationality** under Article 18 of the Civil Code (paragraph 29 above). **That uncertainty is liable to have negative repercussions on the definition of their personal identity.**¹²⁸*

Case law of the Court of Justice of the European Union

The case law of the Court of Justice of the European Union affirms that any decision to withdraw nationality from a Union citizen must be subject to a proportionality assessment.

In its *Rottmann* judgment in 2010, the Court ruled that a decision whereby the nationality of a Member State was withdrawn, had to be proportionate:

55. (...) it is, however, for the national court to **ascertain whether the withdrawal decision at issue in the main proceedings observes the principle of proportionality** as regards the **consequences it entails for the situation of the person concerned in the light of European Union law**, in addition, where appropriate, to examine the proportionality of the decision in the light of national law.

56. Having regard to the importance which primary law attaches to the status of citizen of the Union, when examining a decision withdrawing naturalisation it is necessary, therefore, to take into account the **consequences that the decision entails for the person concerned and, if relevant, for the members of his family with regard to the loss of rights enjoyed by every citizen of the Union**. In this respect, it is important to establish, in particular, whether that loss is justified in relation to the gravity of the offence committed by that person, to the lapse of time between the naturalisation decision and the withdrawal decision and to whether it is possible for that person to recover his original nationality.¹²⁹

This need for a proportionate and individual assessment, particularly for minors, is mentioned in the *Tjebbes* judgment:

44. That examination requires an **individual assessment of the situation of the person concerned and that of his or her family** in order to determine whether the **consequences** of losing the nationality of the Member State concerned, when it entails the loss of his or her citizenship of the Union, might, with regard to the objective pursued by national legislature, **disproportionately affect** the normal development of his or her family and professional life from the point of view of EU law. Those consequences cannot be hypothetical or merely a possibility.

45. As part of that examination of proportionality, it is, in particular, for the competent national authorities and, where appropriate, for the national courts to ensure that the loss of nationality **is consistent with the fundamental rights guaranteed by the Charter** the observance of which the Court ensures, **and specifically the right to respect for family life**, as stated in Article 7 of the Charter, that article requiring to be

¹²⁸ ECHR, *Mennesson v. France*, No. 65192/11, 26 June 2014, §97.

¹²⁹ CJEU, 2 March 2010, *Rottmann*, C-135/08, EU:C:2010:104, points 55 and 56.

*read in conjunction with the obligation to take into consideration the **best interests of the child**, recognized in Article 24(2) of the Charter (judgment of 10 May 2017, Chavez-Vilchez and Others, C-133/15, EU:C:2017:354, paragraph 70).*¹³⁰

In 2023, the Court stated that national authorities are obliged to provide an effective remedy in the event of loss of nationality in order to carry out this proportionality assessment:

*Accordingly, in a situation such as that at issue, where national legislation has the effect of causing the person concerned to lose, by operation of law, the nationality of the Member State concerned and, consequently, citizenship of the Union on the date on which he or she reaches the age of 22, **that person must have a reasonable period in which to make a request to the competent authorities for an assessment of the proportionality of the consequences of that loss and, where appropriate, the retention or recovery ex tunc of that nationality. That period must then extend, for a reasonable length of time, beyond the date on which that person reaches that age.***¹³¹

Conclusion

These developments lead to the conclusion that in the case of the withdrawal of Belgian nationality from a child born in Belgium, in accordance with Article 10 of the CBN, the Belgian authorities must carry out a proportionality assessment. **A decision that simply states that the conditions of Article 10 of the CBN have been met, would therefore not appear to be compatible with the requirements of European law.** In fact, the latter requires that the European citizen concerned must be able to lodge an effective appeal with a court against the decision to withdraw nationality.

8. General conclusion

The elements presented and analysed here show that it is legally impossible to determine the Palestinian nationality of a person "by operation of law", under the terms of the 1954 New York Convention, given the absence of Palestinian legal provisions on nationality. Similarly, these elements demonstrate that it is impossible to identify a competent Palestinian authority with regard to questions of nationality, since neither the Palestine Liberation Organization, nor the Palestinian Authority, nor the Palestinian Mission have the competence or legitimacy to grant or clarify the nationality of persons of Palestinian origin. Furthermore, the value of a Palestinian passport, an UNRWA registration card or a civil status document issued by the Palestinian Authority or by third countries, is relative and cannot be used to deduce Palestinian nationality. At most, these are documents that can be used to prove a person's identity and can, in some cases, be used as a travel document.

The criteria for the definition of statelessness as defined in the 1954 Convention are thus fulfilled, and it is therefore incorrect to speak of Palestinian "nationality" and of a Palestinian "national" within the meaning of this Convention.

Moreover, the recognition of an historical Palestinian nationality does not prevent persons of Palestinian origin, even if they define themselves as having Palestinian nationality, from being stateless within the meaning of the 1954 Convention. Nor do the various legal statuses of

¹³⁰ CJEU, judgment *Tjebbes and Others* (C-221/17), 12 March 2019, §§ 44 and 45.

¹³¹ CJEU, 5 September 2023, *X v. Udlændinge- og Integrationsministeriet*, case C-689/21, point 50.

these persons in the main territories in which they reside prevent them from being classified as stateless persons.

This conclusion underlines the importance for the Belgian authorities to proceed with the utmost caution with regard to applications for Belgian nationality submitted on the basis of Article 10 of the CBN, as well as with regard to applications for recognition of the status of stateless person for minors born to parents of Palestinian origin. Civil registrars and the courts must take into account the statelessness of persons of Palestinian origin and ensure that their fundamental rights are respected. At the very least, this means demonstrating, in the relevant decisions, how the best interests of the children have been explicitly taken into account. This also means taking into account the right to be registered at birth and the right to acquire a nationality, as well as all the specific consequences of statelessness linked to the specific situation of minors. Lastly, it is also essential to ensure that any decision to withdraw Belgian nationality complies with the requirements of European law, including the obligation to carry out a proportionality assessment.