POLICY BRIEF | REFUGEES

A Bold Proposal: Palestine Should Give Its Refugees Citizenship

By: Fateh Azzam · May, 2015

Overview

Now that Palestine is recognized as a state, the next bold step for Palestine is to confer citizenship on its stateless refugees and enter into bilateral agreements with other states regarding the status of Palestinian citizens in each country. In making the case for such a move, Al-Shabaka Policy Advisor Fateh Azzam is well aware of the treacherous political waters that this proposal entails. However, he argues that it is worth considering from all its aspects, including the potential problems, as it could be a long over-due move to strengthen the legal status of Palestinian refugees – in particular the stateless refugees – and to improve their situation in their countries of current residence. It would also create facts on the ground, which may become the building blocks for national liberation.

Palestine's Present Status and Authorities

Reports continue to circulate about a new effort to secure a UN Security Council resolution that would accord Palestine full UN membership and set out yet another road map for ending the Israeli occupation. While full membership of the

UN is useful, it is not the only avenue open to Palestine to achieve the long-term aim of national liberation, freedom from occupation and a just and rights-based life of dignity for all Palestinians.

Palestine now enjoys a sufficient degree of recognition in the international community of states that it can take further steps towards strengthening its *de facto* and *de jure* existence and create new facts on the ground to enable solutions beyond the trap of the Oslo Accords. In fact, Mahmoud Abbas – acting on behalf of the Palestine Liberation Organization (PLO) – began to go in this direction soon after the 2012 General Assembly vote to recognize Palestine as a non-member observer state, first by joining the UN Educational, Scientific, and Cultural Organization (UNESCO), then by signing on to international human rights and other treaties, and, in the wake of the failed UN Security Council vote in December, by signing on to the Rome Statute of the International Criminal Court.

It is important not to conflate the State of Palestine with the Palestinian Authority (PA), a mistake made possible by the Palestinian leadership's own conflation of the two. In legal terms, the State of Palestine is a creation of the Palestine Liberation Organization, which the UN has recognized as the sole legitimate representative of the Palestinian People. The PA is merely a construct of the Oslo Accords and has varying degrees of authority in parts of the West Bank and Gaza *not* including Arab Jerusalem.

In fact, Palestine is already a state, under both the declarative and constitutive approaches to state recognition in international practice. The PLO's Declaration of Independence on November 15, 1988 in Algiers, as deposited with the UN, implied, *ipso facto*, acceptance of the pre-1967 armistice lines as borders, specifically encompassing Arab Jerusalem. As such, the entire territory of Palestine as declared in 1988 remains under Israeli occupation.

The Algiers Declaration further notes "The State of Palestine shall be for all

Palestinians," which is a straightforward designation, and it contains clear provisions for equality and non-discrimination on any basis. The Palestine National Council and the PLO's Executive Committee are the Government of Palestine, which has been conducting relations with other states on an ongoing basis, including joining international organizations and acceding to treaties, as mentioned above.

The fact that Palestine gained overwhelming official recognition by a vote of the General Assembly in 2012 (138 votes in favor, 41 abstentions, 9 negative votes out of 193 member states) further supports is statehood status. Currently 135 countries formally recognize Palestine, mostly outside North America and the European Union (with the exception of Sweden and Iceland which do). Nevertheless, 17 European states actually voted *for* the General Assembly resolution. Many of them may soon recognize Palestine officially, as indicated by recent votes at the European Parliament, the French Parliament, and the UK Parliament, among others. This demonstrates that global support for an independent Palestine is reaching a critical mass that may be enough to get forward movement on other fronts as well.

What is proposed here is that the State of Palestine can begin conferring citizenship, in accordance with the Declaration of Independence, and in exercise of its sovereign right to do so as a state, albeit still under occupation and even though its citizens are unable yet to exercise their right to return to their homeland. Importantly, this would be the first act by the State of Palestine to give priority to its hitherto almost-forgotten constituency, the stateless refugees. There are of course benefits and risks.

The Palestinians' Mosaic Legal Status

Palestinians live under diverse legal regimes depending on where they currently reside. In the territories of Palestine (West Bank, Gaza and Jerusalem), they are

considered "permanent residents" by the Israeli occupation, which claims for itself the right to withdraw such residency at will – and does so on a regular basis. Palestinians have Israeli-issued identity documents on the basis of which, by virtue of the Oslo Accords, the PA provides them with "passports". These are simply travel documents that replace Israeli-issued *Laissez Passers*; moreover, PA passports may not be issued to Jerusalem's Arab residents. Jerusalemites and West Bankers may travel under Jordanian passports that have no Jordanian "national number"; these are similarly treated as travel documents.

None of these documents are representative of any citizenship anywhere, and Palestinians under Israeli occupation continue to be stateless persons under international law. This of course does not apply to the more than 1.5 million Palestinians that are citizens of the State of Israel and thus are not legally considered stateless or refugees. Interestingly, the PA has also issued their "passports" to some Palestinians in the Diaspora who use them for international travel *except* to occupied Palestine, where they are not recognized.

Most Palestinians in Jordan hold Jordanian citizenship, but are also refugees registered with the UN Relief and Works Agency for Palestine Refugees (UNRWA), except for approximately 100,000 stateless Palestinians from Gaza who are not. As such they are subject to subtle and not-so-subtle tests of "loyalty" and the scrutiny they live under sometimes results in the withdrawal of that citizenship, rendering them stateless.

The most vulnerable refugees are in Syria and Lebanon, where they are registered with UNRWA, and are considered both refugees and stateless persons. They live under a mixed-bag set of rights and restrictions that are different in each of those countries. In Egypt, the Palestinian refugees also remain stateless, but they are registered with the government rather than UNRWA and are subject to many restrictions in terms of the right to work, residence, education and other rights.[1] Syria, Lebanon and Egypt may issue their stateless Palestinians travel documents

subject to a variety of restrictions. The vulnerability of stateless Palestinian refugees in those countries and across the region, including Libya, Iraq, and the Gulf, has been abundantly discussed elsewhere and needs no repetition here. They should be accorded first priority for Palestinian citizenship.

Some Steps Toward Implementing Citizenship

Many legal, political and logistical complications arise in implementing the granting of citizenship in each of the countries where Palestinians live. These complications intersect and overlap and need to be thoroughly thought through before action is contemplated. Some starting points are suggested below that require more serious in-depth consideration.

A first step would be to establish a comprehensive registry of all individuals and their families who may lay claim to Palestinian citizenship, as Sam Bahour has suggested. This would be collated from UNRWA and governmental records throughout the region and internationally, and include such data as whether they are stateless, registered as refugees, or citizens of any country. It would be a mammoth project, but it is necessary given that no such comprehensive roster exists in one place at this time, and it would help to prioritize applications by stateless Palestinians in the implementation of a citizenship process.

However, before implementing a process of conferral of citizenship, Palestine must enter into specific bilateral agreements with each of the countries that have already recognized it as a state, on the assumption that they are willing to take their bilateral relations forward. To date, these relations have been little more than cosmetic, such as elevating PLO offices to embassies, flying flags and entering into some limited diplomatic relations.

Such bilateral agreements could establish reciprocal arrangements on very specific terms based on the recognition of Palestinians as nationals of a friendly

state. They would be designed to mutually accord preferential treatment to citizens of both states. Countries such as Lebanon and Egypt, for example, do not allow Palestinian professionals to work because of a lack of reciprocal arrangements for their own syndicated and other professionals. A bilateral agreement could remove this restriction by including a commitment by Palestine to ensure such reciprocal treatment once it is liberated from occupation.

Such agreements could also open the way to the exercise of other rights, such as ownership of property or business, access to health care and a number of other rights and privileges that Palestinian refugee-citizens may enjoy as a result of their own state negotiating on their behalf. In other words, the full gamut of mutual benefits and obligations can be put into play in such bilateral agreements, including taxation and social insurance schemes for refugee-citizens that may be underwritten or made a joint venture by both states for the benefit of Palestinian citizens and the host states as well. The arrangements may also include consular protection and legal representation.

In its bilateral agreements with Jordan and other countries where Palestinians are citizens Palestine may include the provision of dual citizenship, which is a common practice across the globe. Hundreds of thousands of registered refugees have acquired citizenship in many countries, although exact numbers are not available. Palestine can enter into bilateral agreements with those countries to allow for dual citizenship and define mutual benefits and obligations as per standard international practice.

Dual citizenship within the Arab world is more problematic. Preliminary information shows that nearly all Arab states do not recognize dual citizenship, although many tacitly accept it. Interestingly, the three countries with the largest stateless Palestinian refugee populations do recognize dual citizenship: Jordan, Syria and Lebanon. For Jordan, the only country where most Palestinians are citizens, this facilitates the discussion on duality of citizenship with Palestine,

provided there is political agreement to do so and the current status and rights of Jordanian citizens of Palestinian origin are not jeopardized. Notwithstanding the bilateral agreements, however, the choice to apply for Palestinian citizenship should be an individual choice.

The Arab League's Resolution 1547 (9 March 1959) exhorts Arab states to support Palestinians' "nationality" by not granting them citizenship. Palestine's granting of Palestinian citizenship would actually be consistent with this resolution because it would strengthen and formalize Palestinian nationality. Another resolution, the 1965 Casablanca Protocol of the League of Arab States calls on member states to provide Palestinians with the right of employment, travel, and entry and exit "whilst retaining their Palestinian nationality." It accords Palestinians "the same treatment as all other LAS state citizens, regarding visa, and residency applications." Palestine – a full member of the League – could seek the Arab League's recognition of Palestinian legal nationality after gaining the support of a sufficient number of member states.

Citizenship, Refugee Law and the Right to Return

One becomes a refugee as a result of being "unable or unwilling" to return to where they may face a "well-founded fear" of persecution or serious harm, as defined by the 1951 Refugees' Convention. The Palestinian refugees are more than willing but are "unable" to return because of Israel's refusal to allow them to do so. In international refugee law, however, the status and rights of Palestinian refugees differ from other refugees in several ways.

Also according to the Convention, a refugee who acquires the nationality of a host state upon resettlement loses refugee status. This is not the case for UNRWA-registered Palestinian refugees, who are in any event excluded from the application of the 1951 convention. Notwithstanding, what is being proposed here is actually the reverse. Stateless Palestinians would be acquiring the nationality of

their home country, Palestine, not of any host or foreign state. They remain refugees because of being unable to return to Palestine, and their home state – under occupation – can advocate on their behalf with the host countries for the gamut of rights and privileges agreed upon bilaterally.

In fact, refugee status does not negate the nationality of the refugee: One does not lose one's nationality or citizenship due to being a refugee. One remains a national of one's home state – unless their legal status of "citizen" is actively withdrawn, which is a practice seriously frowned upon by international law as it creates statelessness. They may lose what is called "effective" nationality or citizenship, i.e., the active link of the citizen to his/her own state and the ability to rely on its protection or access its services, such as renewing passports. This, however, is a matter of functionality and practice not affecting the refugee's *right* to that nationality.

Indeed, the demand for exercising the right to return becomes even stronger when return is to a homeland of which one is a citizen. The acquisition of Palestinian citizenship can only strengthen this demand, as it legally establishes the already clear historical and geographic links of Palestinians to Palestine.

Without prejudice to the collective political claim based on the right to self-determination, it is important to note that the right to return is an individual right. It is tied intricately to each individual and family's claim to return to a homeland and to specific homes and properties that were lost due to conflict and ethnic cleansing. It would not be up to the State of Palestine to compromise or negotiate the right to return away on their behalf without their express agreement. Each individual refugee has the right to decide whether to return or to accept compensation, or both.

Article 11 of the UN General Assembly Resolution 194 referred to "the refugees wishing to return to their homes…" confirming it as an individual decision. It should

be noted, however, that the right to return was not established by Resolution 194, as is often claimed. Rather, it only confirmed customary law, reaffirmed by Article 13 of the Universal Declaration of Human Rights as a right to leave one's country and return to it, and by consequent treaties and state practice, most recently in the Balkans.

One effect of granting citizenship is that it would take away the "bargaining chip" aspect of the right to return – whether to the refugees' original homes or to the State of Palestine defined by the PLO Declaration of Independence as the West Bank, Gaza and Arab Jerusalem. Palestinian citizens certainly should be able to go to any part of Palestine that is liberated from occupation as a matter of a right of citizenship, not as part of a "concession" by Israel in the context of any future peace treaty.

Furthermore, this should in no way diminish the struggle for a right to return to "original lands and homes" which would continue to be a point of contention between Palestine and Israel and between Israel and individual Palestinians. Any negotiated proposals should be referred back to Palestinian citizens through referenda or other formats should they affect any aspect of their individual claims to return to their original homes or to compensation or both.

Other Obstacles and Questions

As discussed above, there is sufficient legal basis to support the granting of Palestinian citizenship, but the political implications of a move by Palestine in this direction could be daunting in terms of Israeli, Palestinian and Arab reactions and willingness to consider the options. Israel and the U.S. would certainly react negatively and even take some measures in retaliation, but there would be nothing new in that. Threats of increasing settlements or cutting off of financial support are made – and often implemented – every time Palestine makes a move outside of the Oslo framework.

Each of the countries with which Palestine has relations would present significant complications in the political negotiations towards implementation of this proposal, especially in the Arab region. Jordan and Lebanon have particular sensitivities regarding the Palestinians in their midst, and Palestinian negotiators will have to work with those countries to arrive at mutually acceptable terms and recognitions. These would not be easy negotiations. For example, Egypt's current, irrational sensitivities to Gaza Palestinians and to Hamas would have to be addressed and surmounted, and the current crisis in Syria will block any movement for some time to come. Ironically, it may be useful to start negotiating with supportive non-Arab countries to slowly build the international consensus necessary to create acceptance closer to home.

There are also political landmines on the internal Palestinian front, particularly given the weakening national consensus on the broader issues facing Palestinians: Whether nominal sovereignty without control of the land is meaningful; the efficacy of international recognition of any sort given continued Israeli colonization; the very legitimacy of the Palestinian leadership, and the periodic calls for a retreat from Oslo, resignation of the Palestinian Authority and the handing over of occupied Palestine back to the Israeli occupation. The idea of granting citizenship is not intended to serve as a resolution of Palestinian political malaise, but only as a step to build on what now exists to achieve some limited progress in refugees' lives.

In fact, it may very well be a helpful step as it might facilitate reform of the PLO through a reorganization of its capacity to represent all Palestinians, within and outside the recognized territories of the State. One may dare to imagine popular (not organizational or factional) elections to membership of the Palestine National Council, and a review of the selection/election of its Executive Committee, as well as a re-consideration of the relations between the PLO and the PA, all based on the right of each individual Palestinian citizen to choose his or her representatives.

The debates around Palestinians' right to return also encompass many complications, and, to be clear, the granting of Palestinian citizenship to refugees does not resolve the issue and might even complicate its understanding. For example, would the demand for return be limited to the territories of Palestine accepted by the PLO only? As mentioned above, citizenship should not affect the individual claims that each Palestinian family has for its rights in 1948 Palestine, and it may even strengthen those claims. However, Israel may very well take the position that it has no obligation to accept a right of return to nationals of a "foreign" state. Yet this has been Israel's position since 1948, and particularly since 1952 when it enacted its own citizenship law. This Israeli position has not diminished the Palestinian claim to the right of return, nor should it in future. One may even envision – in the wildest of possible dreams – dual citizenship with the State of Israel, provided that Israelis are willing to live at peace with their neighbors.

Additionally, there are logistical complications to enable the granting of citizenship. How would the process be organized and where would it be housed, centrally or within Palestinian embassies? Can the Palestinian Bureau of Statistics in Ramallah handle the initial population registry suggested above or would it have to be established elsewhere (and would it be safe from the next Israeli bombardment?) What are the modalities? Individual Palestinians and families would probably be expected to apply for citizenship, depositing papers and documents as proof of "belonging" to Palestine, but what level of scrutiny would be required? Where and how would documents, including identity cards and passports, be received and issued and by whom? How would it be overseen given the geographic spread? What about the financial requirements? These and many other questions arise.

Time to Create Palestinian Facts

The current political stalemate can only be broken by facts on the ground. Israel continues to create its own facts in settlements, house demolitions, land confiscation and many other policies that violate human rights. Palestine should also create facts, as it has been doing in the international arena – facts that may soon become part of the political and legal landscape of the struggle for national liberation.

State practice and inter-state relations form the backbone of international law, at the customary, treaty-based and UN Charter levels. New realities can be created through bilateral and multilateral arrangements that are taken within the parameters of established international norms. Palestine can create a new reality by granting citizenship depending on its success in negotiating its bilateral agreements with the countries that recognize it. Such a move may also strengthen the Palestinian position vis-à-vis the current political impasse. It does not necessarily create an alternative, but may help in consolidating international support and the critical mass necessary to support solutions beyond the Oslo quagmire.

The major and most important challenge is how to navigate the treacherous political waters within the region, and this requires full assessments of the advantages and risks of granting Palestinian citizenship. Regional and country studies and discussions are needed to unpack the detailed implications of granting citizenship by Palestine to the stateless refugees, eventually going beyond to all Palestinians.

Given the failures of Oslo, Palestinians now face a fundamental political question: Do we continue to struggle until we achieve national liberation, then put in place institutional structures and systems including citizenship rosters and the like? Or do we create facts on the ground, which then become the building blocks for national liberation? In the clear absence of political consensus on the first option, we may still be able to achieve something on the second, which is what this

proposal suggests. It is hoped that it would at least merit careful and studied consideration and discussion.

The opinion of individual members of Al-Shabaka's policy network do not necessarily reflect the views of the organization as a whole.

1. *In 2004 and 2011, the Egyptian government amended nationality legislation to give citizenship to the children of Egyptian women married to Palestinians.*

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