



The American  
University in Cairo

School of Global Affairs  
and Public Policy

Center for Migration and Refugee  
Studies



**Issue:**

No. 8

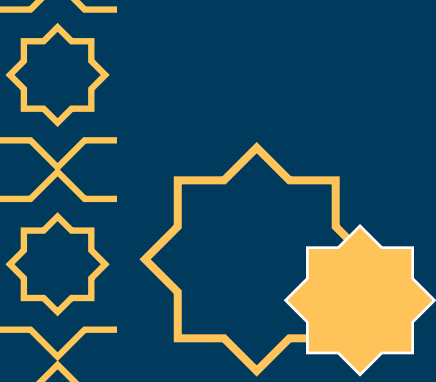
**Date:**

September 2014

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**DISPLACING THE DISPLACED:  
CHALLENGING THE INTERNATIONAL  
FRAMEWORK FOR PALESTINIAN  
REFUGEES IN LIGHT OF THE SYRIA CRISIS**

By Jasmin Fritzsche



## **The Center for Migration and Refugee Studies (CMRS)**

The Center for Migration and Refugee Studies (CMRS) is an interdisciplinary center of the American University in Cairo (AUC). Situated at the heart of the Middle East and North Africa, it aims at furthering the scientific knowledge of the large, long-standing recent refugee and migration movements witnessed in this region. But it also is concerned with questions of refugees and migration in the international system as a whole, both at the theoretical and practical levels. CMRS functions include instruction, research, training, and outreach. It offers a Master of Arts degree and a graduate diploma in Migration and Refugee studies, working with other AUC departments to offer diversified courses to its students. Its research bears on issues of interest to the region and beyond. In carrying its research out, CMRS collaborates with reputable regional and international academic institutions. The training activities that CMRS organizes are attended by researchers, policymakers, bureaucrats and civil society activists from a great number of countries. The center also provides tailor-made training programs on demand. CMRS outreach involves working with individuals and organizations in its environment, disseminating knowledge and sensitization to refugee and migration issues. It also provides services to the refugee community in Cairo and transfers its expertise in this respect to other international institutions.

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## Preface

Syria is one of the three Arab countries that hosted great numbers of refugees, fleeing Palestine in 1948 and then in 1967. The civil strife that broke out in Syria in March 2011 is estimated to have forced over three million Syrians to flee and take refuge in bordering and other neighboring countries. The flows of refugees from Syria also comprised an estimate of half-a-million Palestinians.

This is not the first instance of secondary Palestinian displacement. Palestinians had to leave Kuwait in 1991 and Iraq after 2003. The civil war in Lebanon also forced many Palestinians to leave that country.

Refugees out of Syria were not treated equally. The plight of Palestinians was compounded by discriminatory treatment. The present paper by Jasmin Fritzsche examines the conditions under which Palestinians were received in the two countries that host the greatest numbers of refugees from Syria, namely Jordan and Lebanon. The paper analyzes the interplay between the international framework for hosting Palestinian refugees and the policies of the two host countries. The author argues that Jordanian and Lebanese policies extend and build upon the internationally institutionalized exclusion of Palestinians from the general concept of refugee. She emphasizes the differential treatment of Syrians and Palestinians having fled Syria and argues that separate regimes for the two groups of refugees allow for discrimination against Palestinians.

After her insightful analysis, Fritzsche comes up with well thought out recommendations for the integration of Palestinians in the general protection regime put in place by the 1951 Convention relating to the Status of Refugees, without impairing their right of return.

In congratulating the author for her effort, CMRS considers that her paper is timely because it deals with a question that Palestinians currently face in their secondary displacement. But it also is of a more durable significance since it addresses and proposes a remedy to the gap in the protection of Palestinian refugees resulting from their apparent exclusion from the scope of the 1951 convention.



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## Abstract

In 1948 approximately 750,000 Palestinians were displaced for the first time. As of 2014, the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) counts over 5 million Palestine refugees. Many of those refugees no longer reside in their first country of asylum but have been repeatedly displaced following expulsions, political unrest and conflicts in host countries.

In 2011, fighting broke out in Syria, creating over three million refugees fleeing mainly to surrounding Arab countries such as Lebanon and Jordan. Alongside Syrian citizens affected by the conflict is a population of about half a million Palestinian refugees in Syria. While Syrians themselves often have a difficult time in countries of refuge, Palestinian refugees in Syria who are also fleeing from the same conflict face additional obstacles such as denied access to territory and forcible return.

The following paper aims to analyse the interplay between the international framework for Palestinians and the respective policies in place in Jordan and Lebanon, with a special focus on the refugee movement from Syria. I argue that the international measures adopted for Palestinian refugees are unsuitable and inadequate to manage their protracted and multiple displacements occurring since the 1940s.

**Keywords:** Palestinian Refugees, secondary displacement, Syria, Jordan, Lebanon



## **Acknowledgement**

First and foremost, I would like to thank the Center for Migration and Refugee Studies (CMRS), Dr. Ibrahim Awad, CMRS director, and Maysa Ayoub, CMRS Research and Outreach Manager, for giving me the opportunity to work on this research paper and the guidance throughout the entire project.

Special thanks go to Dr. Usha Natarajan for her valuable comments and edits and to Mohamed El-Shewy who provided me with guidance through in-depth discussions and feedback throughout the project.

I would also like to thank Prof. Susan Akram and Prof. Dawn Chatty, as well as all participants of the short course on “Palestine Refugees and International Law” organized by the Refugee Studies Centre at the University of Oxford, for providing me with valuable input and discussions on some of the points argued in the paper.



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## 1. Introduction

In 2011, fighting broke out in Syria, creating over three million refugees fleeing mainly to surrounding Arab countries such as Lebanon and Jordan. Alongside Syrian citizens affected by the conflict is a population of about half a million Palestinian refugees in Syria (UNHCR, 2014a; UNRWA, 2014a). As former Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), Filippo Grandi, put it in a January 2014 lecture at the American University of Beirut:


In some cases, Palestinians (and indeed other civilians) have left en masse, either fleeing from fighting or forced away at gunpoint. The dynamics shift along with the geography of the conflict, each camp experiencing it in different but equally devastating ways. Even Palestinian camps that have been relatively safe and are housing many displaced refugees, like in Homs, or in Jaramaneh near Damascus, sit precariously adjacent to battle zones. In the space of a few months, between the end of 2012 and the first months of 2013, life suddenly became very precarious for thousands of Palestinians in Syria. Just a week ago - in one more example of the blatant disregard for the laws of war that has characterized this conflict - an explosion close to an UNRWA school near Dera'a left 18 dead, including five UNRWA school children and one staff member. (Filippo Grandi, 25 January 2014)

While Syrians themselves often have a difficult time in countries of refuge, Palestinian refugees in Syria who are also fleeing from the same conflict face additional obstacles such as denied access to territory and forcible return. The exclusion of Palestinians from protection is not only a phenomenon at national policy levels but can also be found in international law. The establishment of the UNRWA - and with this the separation of Palestinian refugees from the mandate of the United Nations High Commissioner for Refugees (UNHCR) - was intended to protect the identity and rights of the Palestinian people. However, it contributed to the construction of a separate and unique category of '*Palestine refugees*', and therewith created an environment in which discriminatory policies can flourish.

The following paper aims to analyse the interplay between the international framework for Palestinians and the respective policies in place in Jordan and Lebanon, with a special focus on the refugee movement from Syria. I argue that the international measures adopted for Palestinian refugees are unsuitable and inadequate to manage their protracted and multiple displacements occurring since the 1940s.

To conduct this analysis, the paper will outline the international legal framework in place for Palestinian refugees as well as the national policies adopted by Jordan and Lebanon. Giving an overview of the United Nations' (UN) approach to Palestinian refugees, I pay close attention to the clear institutional distinction applied between the scope of responsibility of the UNHCR and UNRWA. My analysis of the national policies will especially focus on the current treatment of Palestinian refugees from Syria. By doing so, I argue that current treatment in Jordan and Lebanon reflects and builds on the internationally institutionalised exclusion of Palestinian refugees from the general refugee concept.

With this analysis, the paper aims to contribute to an on-going legal debate on international protection of Palestinian refugees. By focusing on the effects a separate international protection regime has had on Palestinians' ability to receive protection in case of multiple displacements, this paper adds an additional component to the debate by pointing out the need to rethink the international approach to the Palestinian refugee situation in light of the Syrian crisis.



For the purposes of this paper, the phrase ‘Palestinian refugees’ shall be used to refer to all those displaced from Palestine, including those defined by UNRWA as ‘Palestine refugees’ and ‘displaced persons’. The term ‘Palestine refugee’ will only be used when referring to the sub-group of those displaced during the first Arab-Israeli war and who are defined as such by UNRWA.

## **2 The Concept of Palestinian Refugees: A Separate International Legal Regime**

An early reference on how to manage those who fled or were expelled from the former British mandated Palestine can be found in the UN General Assembly Resolution No. 194 (III) of 1948. Resolution 194 (III) does not give any specific definition of Palestinian refugees but it affirms the ‘right to return’ of those displaced as a result of the conflict. Furthermore, Resolution 194 (III) establishes the United Nations Conciliation Commission for Palestine (UNCCP). UNCCP’s main function was to mediate in the Arab-Israeli conflict and to facilitate a comprehensive peace. Part of its mandate was to ensure the above mentioned ‘right to return’ for those “refugees wishing to return to their homes and live at peace with their neighbours” and to “facilitate the repatriation, resettlement, and economic and social rehabilitation of refugees”.

UNCCP was therefore mandated with the protection of refugees from Palestine. Although, it never set out a comprehensive definition of Palestinian refugees, the Commission identified some general conclusions regarding the term ‘refugee’ within their mandate:

*(...) the term “refugees” applies to all persons, Arabs, Jews and others who have been displaced from their homes in Arab Palestine. This would include Arabs in Israel who have been shifted from their normal places of residence. It would also include Jews who had their homes in Arab Palestine, such as the inhabitants of the Jewish quarter of the Old City. It would not include Arabs who have lost their lands but not their houses, such as the inhabitants of Tulkarm (UNCCP, 1950).*

This understanding of the term within UNCCP’s mandate sets out a much wider scope compared to the definitions that followed. It approaches those refugees as a group of people that has been displaced as a result of the conflict, regardless of their nationality or place of asylum.

Strong objections from Israel over ensuring the right to return, as well as insufficient international political will to push for a full implementation of Resolution 194 (III), paralysed UNCCP’s efforts to carry out its mandate. Since the late 1950s, the Commission’s mandate and funding has been limited by a series of measurements by the General Assembly to a stage of ‘quasi’ deactivation. The UNCCP still publishes an annual report, although it is largely ineffective (Badil, 2005:43-49).


In 1949, the United Nation Relief and Work Agency for Palestine Refugees in the Near East (UNRWA) was established by UN General Assembly Resolution No 302 (IV), with a mandate to:

- (a) Carry out in collaboration with local governments the direct relief and works programmes recommended by the Economic Survey Mission.<sup>1</sup>

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<sup>1</sup> The Economic Survey Mission was established by UNCCP to “examine the economic situation of the countries” affected by the conflict and to give to recommendations feeding into a integrated program (Badil, 2005: 45).





(b) Consult with the interested Near Eastern Governments concerning measures to be taken by them preparatory to the time when international assistance for relief and works projects is no longer available.

Hence, the agency was established as a temporary relief and service provider, complementing UNCCP's mediation and protection mandate.

As its name indicates, UNRWA was set up with a geographical focus on the 'Near East'. Its five areas of operation are the Gaza strip, the West Bank, Syria, Lebanon, and Jordan. The Egyptian government did not permit UNRWA to operate within the country even though Egypt did experience a considerable influx of Palestinian refugees at the time. According to El-Abed, this policy was motivated by the Egyptian government's "desire, not to create suitable conditions for Palestinians to remain in the country" (El-Abed, 2004a).

Resolution 302 (IV) sets out UNRWA's role but does not offer any definition regarding who is eligible for assistance. However, the Agency developed an operational definition for what they call 'Palestine refugees', who are understood as:

[P]ersons whose normal place of residence was Palestine during the period 1 June 1946 to 15 May 1948, and who lost both home and means of livelihood as a result of the 1948 conflict. The descendants of Palestine refugee males, including legally adopted children, are also eligible for registration (UNRWA & UNCHR, 2007: 5).

As a relief agency, UNRWA is first and foremost concerned with registering refugees in order to provide them with services. In this light, the definition above can be seen as a needs-based approach, focusing on individuals rather than a group of people. What is unique with this approach is the individual male inheritance of the 'Palestine refugee' status. As a working definition within UNRWA's mandate, the term 'Palestine refugee' is not only restricted to a defined period of time, but is also limited geographically to UNRWA's five areas of operations. UNRWA's definition of 'Palestine refugees' can therefore only be understood as defining a subset of refugees from Palestine.

During the 1967 war, about 177,500 'Palestine refugees' from the West Bank and Gaza Strip were displaced for a second time and some 240,000 Palestinian residents of East Jerusalem, the West Bank and Gaza Strip were displaced for the first time (Badil, 2005: 56). As they were not covered by its aforementioned working definition, those displaced for the first time were at first not registered by UNRWA. The UN General Assembly Resolution No. 2252 of 1967, however, endorsed:

[...] the efforts of the Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East to provide humanitarian assistance, as far as practicable, on an emergency basis and as a temporary measure, to other persons in the area who are at present displaced and are in serious need of immediate assistance as a result of the recent hostilities.

With this, the UN General Assembly expanded on the existing relief mandate, allowing UNRWA to include those who were displaced during the 1967 war for the first time. These refugees were not registered with UNRWA as 'Palestine refugees', but as 'displaced persons' and are eligible for services provided in its regions of operation.

## 2.1 International Refugee Law and the Exclusion of Palestinian Refugees


In 1950, UN General Assembly Resolution 428 (V) created the United Nations High Commissioner for Refugees (UNHCR) as a response to those displaced during World War II. UNHCR's core mandate, outlined in its Statute, is the international legal protection of refugees. The Commissioner's major tool to carry out its mandate is the 1951 Convention Relating to the Status of Refugees, in combination with the 1967 Protocol Relating to the Status of Refugees. As a key legal document, the 1951 Convention not only outlines the rights of refugees and the legal obligations of states, but it also embodies the most comprehensive and internationally accepted definition of the term refugee:

The term refugee shall apply to any person who [...] owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.

UNHCR's mandate in relation to the definition outlined in Art. 1A of the 1951 Convention, however, does not extend to the majority of Palestinian refugees. Art. 1D of the 1951 Convention is an exclusion clause intended specifically for Palestinian refugees. According to the first part of Art. 1D, the Convention "shall not apply to persons who are at present receiving from organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees protection or assistance".

By the time the 1951 Convention was drafted, the two UN Agencies in charge of Palestinian Refugees - namely UNCCP and UNRWA - already existed, and it was clear that this provision was drafted with Palestinian refugees in mind. The treaty's drafting history provides insight into understanding the circumstances surrounding the inclusion of this provision, and this history is central to its interpretation in the present context. According to the drafting history, the Arab states in particular strongly objected the inclusion of Palestinian refugees. The main argument expressed by those states was that Palestinian refugees differed from others. It was argued that, unlike most other refugee cases, Palestinians have not become refugees because of actions conflicting with international principles of the UN but rather as a "direct result of a decision taken by the United Nations" (Takkenberg, 1988: 62). Hence, the responsibility was placed on the international community and not the host countries. It was further argued that the inclusion of Palestinian refugees would lead to them merging with the general category of refugees. The Arab states were concerned, that such a merger with other categories of refugees would challenge the separate and unique status of Palestinian refugees, and hence, they would "be relegated to a position of minor importance" (Representatives of Saudi Arabia at the Third Committee of General Assembly, cited in Takkenberg, 1988: 62). The drafting history therefore shows that Palestinian refugees were excluded because their case was perceived as being unique and of such particular concern that a separate international protection regime had to be established to do them justice. This is especially important to keep in mind when looking at the second part of Art. 1D, as it reads:

When such protection or assistance has ceased for any reason, without the position of such person being definitely settled in accordance with relevant resolutions adopted by the General Assembly of the United Nations, these persons shall ipso facto be entitled to the benefits of this Convention.



This second sentence clearly outlines that Art. 1D provides a temporary exclusion only. The aim of this amendment, pushed by the Egyptian delegation, “was to make sure that Arab refugees from Palestine, who were still refugees when the organs or agencies of the United Nations at present providing them with protection or assistance cease to function, would automatically come within the scope of the Convention” (Takkenberg, 1988: 64).

A similar provision can be found in Para. 7(c) of the UNHCR Statute and Art. 1(2)(i) of the 1954 Convention Relating to the Status of Stateless Persons.

## **2.2 Art. 1D and the Protection Gap**


This exclusion and subsequent inclusion clause has been interpreted in different ways. According to UNHCR’s Revised Note on the Applicability of Article 1D of the 1951 Convention relating to the Status of Refugees to Palestinian Refugees, those excluded from its mandate through Art. 1D are:

(i) Palestinians who are “Palestine refugees” within the sense of UN General Assembly Resolution 194 (III) of 11 December 1948 and other UN General Assembly Resolutions, who were displaced from that part of Palestine which became Israel, and who have been unable to return there.

(ii) Palestinians who are “displaced persons” within the sense of UN General Assembly Resolution 2252 (ES-V) of 4 June 1967 and subsequent UN General Assembly Resolutions, and who have been unable to return to the Palestinian territories occupied by Israel since 1967 (UNHCR, 2009).

According to UNHCR’s interpretation of Art. 1D there are two types of Palestinians who qualify for its protection. The first group are defined as “[i]ndividuals who are neither “Palestine refugees” nor “displaced persons” but who, owing to a well-founded fear of being persecuted for one or more of the 1951 Convention grounds, are outside the Palestinian territories occupied by Israel since 1967 and are unable or, owing to such fear, unwilling to return there” (UNHCR, 2009). The second group are those who are ‘Palestine refugees’ or ‘displaced persons’ but are outside UNRWA’s area of operations (UNHCR, 2009). The first group can qualify as refugees under Article 1A(2) of the 1951 Convention, while the second triggers the inclusion clause of Art. 1D, since according to UNHCR, ‘protection or assistance has ceased’ when leaving UNRWA’s area of operations. According to UNHCR official Brenda Goddard, “this interpretation ensures the continuity of protection and assistance for Palestinian refugees while avoiding an overlap of competencies between UNRWA and UNHCR” (Goddard, 2009: 467).

A different interpretation of Art. 1D has been offered by Susan Akram. According to her, based on the drafting history, Art. 1D must not be understood as an exclusion clause but as a ‘contingent inclusion clause’. She argues that the collapse of UNCCP, with its protection mandate for Palestinian refugees, triggered the inclusion clause through the second sentence of Art. 1D. Akram focuses on the wording “when such protection or assistance has ceased”, arguing that UNRWA does not have an explicit protection mandate. Hence, protection ceased when UNCCP stopped exercising its mandate. Subsequently, Palestinian refugees, irrespectively of their UNRWA status, are ipso facto covered by the 1951 Convention and UNHCR’s protection mandate. Akram therefore concludes that UNHCR is to take on the protection mandate of Palestinian refugees, inside and outside of UNRWA’s area of operations, in order to fill the ‘protection gap’ left by the collapse of UNCCP (Akram, 2002). A similar conclusion



regarding the existing gap in the protection of Palestinian refugees is drawn by Jaber Suleiman (2006: 11) as he argues, “the collapse of UNCCP protection, limited protection provided by UNRWA, and inadequate and limited protection afforded by UNHCR resulted in serious protection gaps for Palestinian refugees with respect to systematic protection of day-to-day rights and the search for durable solutions.”

This approach has been challenged by scholars and practitioners from the UN, such as B. Scott Custer Jr., a former Head of International Law in UNRWA’s Department of Legal Affairs. He argues that the above identified protection gap is outdated as UNRWA’s protection has grown since the early 1980s and, while established without one, it now has an explicit protection mandate (Kagan, 2009: 514). Although in general agreement with Custer and disagreement with Akram, Kagan (2009: 529) concludes that “there is a significant protection gap at the level of individual protection, evident most vividly by the presence of unrecognised Palestinian refugees in countries like Lebanon. Addressing the individual protection gap requires re-thinking several longstanding practices of UNRWA and UNHCR, a problem that is within the capacity of these UN agencies to solve”.


While UNRWA clearly identified the need for protection, they are not able to implement such a mandate on all levels. Out of necessity, UNRWA began discussing Palestinian refugee protection. For the same reasons, UNRWA does officially advocate on behalf of Palestinian refugees, going beyond their relief mandate. However, UNRWA is unable to practice what it preaches when it comes to protection. This is especially evident in cases of individual protection of secondarily displaced Palestinian refugees. As I will demonstrate below in greater detail, the current discrimination of Palestinian refugees from Syria is enabled by the separate protection systems in place for Palestinians.

The international measures in place for Palestinian refugees have not only failed to resolve or cope with the existing protracted refugee situation, but have rather contributed to its perpetuation. Thus these measures’ legitimacy and foundations must be questioned and re-thought.

### **2.3 UNHCR, UNRWA, and the multiple displacement of Palestinian Refugees**

Palestinian refugees have been affected by multiple displacements in their host countries, such as Kuwait, Lebanon, Libya, Iraq, and most recently Syria throughout recent decades. History has shown that, while on paper they may be clearly distinct entities, UNRWA and UNHCR have closely collaborated with each other in coping with the re-displaced Palestinian population.

Following the Iraqi invasion of Kuwait and the first Gulf War in 1990-1991, UNHCR and UNRWA joined forces to assist and protect the Palestinians expelled from Kuwait. Although both agencies could do little to intervene and stop the deportations, it was an important affirmation of UNRWA having an obligation towards Palestinians outside of its operational area. As then Commissioner- General, Ilter Turkmen expressed, Palestinians who were being “persecuted, hounded, and expelled by the Kuwaiti government for supposed support of the Iraqi occupation [...] I consider that the responsibility of UNRWA extends to Palestinians in all parts of the Middle East [including Kuwait] (in Takkenberg, 1988: 300-301).” During the Lebanese civil war in the 1970s, UNHCR and UNRWA closely coordinated their work to renew travel documents for those who were living outside the country (Takkenberg, 1988: 282-284). In 1995, Libya’s then President Muammar al-Gaddafi expelled all Palestinians residing in Libya, arguing that “the Zionists plan is to create a Palestine without Palestinians” and that “other Arab countries are taking part in this Zionist plan by allowing the Palestinians



to stay in their land” (NY, Times 1995). Subsequently about 200 Palestinians were left stranded on the Libyan and Egyptian border between 1995 and 1997, as Egypt only permitted those Palestinians with residency in Jordan and the occupied Palestinian territories to enter Egypt. Again, UNHCR and UNRWA joined forces providing food and shelter for those forced to live in desert camps (UN, 1995).

The repeated close collaboration between UNHCR and UNRWA shows how difficult it is for both agencies to separate their work in practice. However, most of those joint efforts took place in countries outside of UNRWA’s area of operations and they therefore fell, according to the UN interpretation of Art. 1D, under UNHCR’s mandate. UNRWA’s involvement on those occasions rather expressed its understanding of having a responsibility towards Palestinians that is not limited to its operational areas.

However, it does not have an explicit mandate to operate in these areas and can therefore only function in cooperation with UNHCR. The situation becomes much more complex when the re-displacement takes place within UNRWA’s mandate area, as is the case currently in Lebanon and Jordan. Those fleeing the conflict in Syria are not targeted or expelled as was the case in Kuwait and Libya. Instead, they can be considered a ‘minority group’ within the larger group of Syrians.

With Lebanon and Jordan being two of the largest hosts for refugees from Syria, Palestinians fleeing the conflict therefore move from one UNRWA area to another. UNHCR’s and UNRWA’s positions in this context become very apparent in the way they approach the issue. Those displaced by the Syrian conflict, excluding Palestinians, are considered Syrian refugees, and thus are covered by UNHCR’s protection and assistance mandate. Palestinian refugees from Syria, however, are recognised as ‘Palestine refugees’ or ‘displaced persons’ and therefore only covered by UNRWA in Lebanon and Jordan.

This clear institutional and linguistic separation has led to a marginalisation of Palestinian refugees from Syria. When the international community speaks of Syrian refugees, it refers to a particular set of refugees, while excluding the minority group of Palestinians, due to the fact that they are not covered by UNHCR. This lack of consideration is not only limited to the actual on the ground assistance but also extends to issues of information, documentation and advocacy. The following section discusses the situation of Palestinian refugees in the Arab states with a focus on Palestinian refugees from Syria in Jordan and Lebanon. First there is a brief summary of the Palestinian refugee situation in Syria, followed by more detailed discussions on Jordan and Lebanon’s domestic legal approaches and their policy responses to the Syria crisis.

### **3 Palestinian refugees and the Arab States**

The need to preserve the Palestinian identity and a sense of solidarity has determined the Arab League’s policy towards Palestinian refugees. The central tool outlining the Arab League’s approach to the issue is the 1965 Casablanca Protocol. The two main principles guiding the treatment of Palestinian refugees in the Arab host countries as outlined in the Protocol are, (1) to grant Palestinian refugees citizenship-like rights, whilst (2) retaining their Palestinian nationality, hence denying them naturalization. In practice these recommendations put forth by the Arab League were and still are in many countries applied hierarchically; allowing the imposition of restrictions on Palestinian access to socio-economic rights in the name of the preservation of the Palestinian identity and their right to return. As Khalil (2009, 3) puts it, “[p]olicies of host countries and of the international community prove that the basic rights and

freedoms of individuals took second place to their right to return to their country of origin.”

Today the treatment of Palestinian refugees in the Arab World ranges from citizen-like treatment in Syria (before the unrest since March 2011) to virtually no rights in Lebanon.

### **3.1 Palestinian refugees in Syria**

Until the unrest in Syria began in March 2011, the country was host to more than 500,000 Palestinian refugees (UNRWA, 2014a). According to the 1957 Syrian Arab Republic Law No. 260, Palestinians living in Syria have the same rights and duties as nationals, excluding the right to citizenship and political rights, such as the right to vote. Since 1963, Palestinians residing in Syria are issued renewable travel documents allowing its holders to return to Syria without a visa. Those travel documents are valid for six years, like Syrian passports. With this, Syria closely followed the guidelines set out in the Casablanca Protocol, guaranteeing Palestinian refugees social and economic rights whilst retaining their Palestinian identity and not granting them citizenship. Syria’s commitment to these guidelines contributed to Syria being the country where Palestinians could live the most dignified life in the Middle East. However, it has to be added that the Palestinian population in Syria never exceeded 3 to 4 per cent of the general population. Hence the demographic pressure was never as high as it was in countries like Jordan with 30 to 50 per cent<sup>2</sup> or Lebanon with about 10 per cent<sup>3</sup> (Shafie, 2003:3-5; Al Hussein & Bocco, 2009: 265).

The situation for Palestinians in Syria has drastically changed since 2011. While trying to remain politically neutral, Palestinians became – along with the Syrian population – victims of the conflict, resulting in internal as well as cross-border displacement. Since early 2013, the Yarmouk refugee camp in Damascus, one of the twelve Palestinian refugee camps in Syria, has become the scene of heavy fighting between the Syrian military and rebel groups, leading to increased displacement and a humanitarian crisis amongst the Palestinian refugee population (Hall, 2014). Palestinian refugees in Syria have therefore gone from residing in one of the most welcoming host countries in the region to being displaced yet again.

### **3.2 Palestinian refugees in Jordan**


As of 2014, Jordan is host to more than two million ‘Palestine refugees’ (UNRWA, 2014b). Unlike most Arab countries, Jordan granted citizenship to most refugees from Palestine, while still upholding their status as refugees registered with UNRWA.

Following the first Arab-Israeli War in 1948, King Abdullah of Jordan declared sovereignty over the West Bank, and started conferring citizenship to those Palestinians residing in the areas under his putative control. However, in order to ensure the continuation of their right to return, Jordan established a new category of citizenship as a means to deal with the predicament. Having its legal basis in the 1954 Jordanian Citizenship Law, so called ‘temporary-citizens’ are equipped with certain rights and duties until the day when they would have the right to choose to return to Palestine or stay in Jordan as permanent citizens. Equipping Palestinian refugees from the West Bank

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<sup>2</sup> There is no official source for the total number of Palestinians in Jordan. The number of ‘Palestine refugees’ registered with UNRWA amounts to 2,070,973 in 2014 (UNRWA 2014c), which makes up 30% of the population, while a number of reports speak of over 50% (Minority Rights 2014).

<sup>3</sup> There is no official source for the total number of Palestinians in Lebanon. The number of ‘Palestine refugees’ registered with UNRWA amounts to 455,000 in 2014 (UNRWA 2014c), which makes up 10% of the overall population of 4,822,000 (UNDESA 2013)



with citizenship rights on a temporary basis, Jordan enabled them to fully participate in the local economy while upholding their right to return and entitlement to receive UNRWA's assistance (Al Hussein & Bocco, 2009: 263). In 1967, the second Arab-Israeli War created a new movement of Palestinian refugees from West Bank and Gaza: those considered 'displaced persons' as well as those registered as 'Palestine refugees'. Jordan initially did not register those fleeing from the West Bank as refugees due to the government's understanding that those displaced simply moved from one part of the Hashemite Kingdom of Jordan to another. Unlike those from the West Bank, Palestinians fleeing Gaza were not given Jordanian citizenship but only temporary residency. Hence it is still the case today that Palestinians originating from Gaza are denied access to many public services, such as public schooling, in Jordan and therefore highly rely on UNRWA's services (Al-Abed, 2004b: 3-5).

Following the two Arab Israeli Wars, UNRWA established ten refugee camps in Jordan. Four camps (Zarqa, Jabal el-Husseini, Irbid, Amman New Camp) were established during the 1948 war and six 'emergency' camps (Talbieh, Marka, Souf, Jerash, Baqa'a, Husn) during the 1967 war. According to UNRWA, in 2014, these camps accommodate 18 per cent of the two million registered as 'Palestine Refugees' with UNRWA in Jordan (UNRWA, 2014d).

Although the Jordanian government's naturalization policy aimed to prevent Palestinian nationalist sentiment, it was unable to prevent the emergence of freedom-fighters and nationalist movements, including the Palestine Liberation Organization (PLO). By 1970, those movements and freedom-fighters effectively created a state within a state. This was perceived as a major threat to Jordanian sovereignty and, as a reaction, the government moved to disarm Palestinian refugee camps in September 1970. It came to a major stand-off between the government and the PLO. What followed was the civil war in Jordan known as Black September. Heavy fighting between the two parties broke out in five cities, including Amman, following the formation of a military government to enforce the martial law declared by the Jordanian King on 16 September 1970. By the end of September a ceasefire was signed in Cairo, but small scale fighting continued until the PLO was driven out of their last strongholds in January 1971 (Al-Abed, 2004b: 5-9).

Jordan was trying to find ways to maintain the West Bank as a federal state, while at the same time keeping the Palestinian resistance movements under control. The Arab States, however, moved to recognize the PLO as "the sole legitimate representative of the Palestinian people"; as expressed in the Arab League Resolution on Palestine during the Seventh Arab League Summit in Rabat, 1974. The changing political climate in the Arab world towards the PLO left Jordan with no choice but to accept the Arab consensus. In his famous speech of 31 July 1988, King Hussein announced:

Lately, it has transpired that there is a general Palestinian and Arab orientation which believes in the need to highlight the Palestinian identity in full in all efforts and activities that are related to the Palestine question and its developments. It has also become clear that there is a general conviction that maintaining the legal and administrative links with the West Bank, and the ensuing Jordanian interaction with our Palestinian brothers under occupation through Jordanian institutions in the occupied territories, contradicts this orientation. It is also viewed that these links hamper the Palestinian struggle to gain international support for the Palestinian cause of a people struggling against foreign occupation.<sup>4</sup>

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<sup>4</sup> See [http://www.kinghussein.gov.jo/88\\_july31.html](http://www.kinghussein.gov.jo/88_july31.html) for the full speech

What followed was the execution of the full administrative severance between Jordan and the West Bank. Subsequently, about 1.5 million Palestinians formally endowed with Jordan's 'temporary-citizenship', were now considered 'nationals to be' of a Palestinian state.

### 3.2.1 Legal Status in Jordan

In the 1980s, the Jordanian government established a card system to track the movement of Palestinians living in its territories. Jordan's main concern was that Israel was attempting to push the Palestinian population out of the West Bank and therefore it worked to ensure that those living in the West Bank would return there so as to counter this Israeli move. The Jordanian Government introduced three different cards. Green cards were given to Palestinians habitually living in the West Bank, yellow cards to those habitually living in Jordan and with material and/or family connections in the West Bank, and blue cards were granted to Palestinians habitually living in Jordan but who originally came from Gaza (Badil, 2010).

Although introduced primarily for statistical reasons, those categories were crucial in determining the citizenship status when Jordan handed over the administrative powers over the West Bank to the PLO in 1988. Holders of green cards were considered to be habitually living outside Jordanian territory and subsequently lost their temporary citizenship. As Kassim puts it in an interview with Badil (2010): "over one-and-a-half million Palestinians went to bed on 31 July 1988 as Jordanian citizens, and woke up on 1 August 1988 as stateless persons."

Currently there are the following legal categories of Palestinian refugees residing in Jordan:

**Table 1: Palestinians living in Jordan**

Origin	Jordanian Citizenship	Type of Passport in Jordan	Residency in Jordan	National ID Number	"Card of crossing"	UNRWA
<b>Palestinian Refugees from the West Bank (1948) no material and or family connections to the West Bank</b>	Yes	Five year passport	Permanent residency	Yes. Full access to public services	-	'Palestine refugees'
<b>Palestinian Refugees from West Bank (1967) material and/or family connections in the West Bank</b>	Yes	Five year passport	Permanent residency	Yes. Full access to public services	Yellow card	'displaced persons'
<b>Palestinians refugees from the occupied Gaza Strip. ('67)</b>	No	Two year temporary passport	Two year temporary residency	No. Restricted access to public services	Blue card	'displaced persons'

Source adapted from Badil, 2010



Additionally, there are the following two categories of Palestinian citizens or former Palestinian citizens residing in Jordan’s former territories in the West Bank.

**Table 2: Palestinians living in the former Jordanian territories**

Origin	Jordanian Citizenship	Type of Passport in Jordan	Residency in Jordan	National ID Number	“Card of crossing”	UNRWA
<b>Palestinians residing in the West Bank</b>	Revoked after 1988 stateless, Palestinians to be	N/A	N/A	N/A	Green card	Not registered, ‘Palestine refugees’, ‘displaced persons’
<b>Jerusalem residents</b>	Yes <sup>5</sup>	Five year passport	N/A	No	Green card	Not registered, ‘Palestine refugees’, ‘displaced persons’

### 3.2.2 The Syria crisis and Jordan


As of October 2014, over 600,000 ‘Syrian refugees’ are registered with UNHCR in Jordan (UNHCR, 2014a). The vast majority of refugees from Syria live in non-camp settings mainly in the North of Jordan, while only about 120,000 are hosted in the UNHCR operated refugee camps in Zaatari and Azraq (UNHCR, 2014b). As outlined above, the UN interpretation of Art. 1D of the 1951 Convention and Para. 7(c) of the UNHCR Statute leads to the exclusion of Palestinian refugees from UNHCR’s mandate. Hence, Palestinian refugees are not covered by the assistance provided by UNHCR inside and outside of the camps, and therefore not displayed in UNHCR’s official numbers of the Syria crisis. According to UNRWA, by April 2014 over 13,000 ‘Palestine refugees’ from Syria have fled to Jordan (UNRWA, 2014e).

### 3.2.3 Jordan’s non-entry policy for Palestinian Refugees from Syria

In January 2013, the Jordanian government officially announced a non-entry policy for Palestinian refugees from Syria. Subsequently Palestinian refugees fleeing the conflict in Syria have been blocked from entering the country through official ways. With this policy, the Jordanian Government is clearly in breach of the international principle of non-refoulement<sup>6</sup>. In an interview with the pan-Arab newspaper Al-Hayat on 9 January 2013, Jordan’s Prime Minister Abdallah Ensour reaffirmed the country’s commitment to finding a solution for the Syrian people and emphasized that the country was fulfilling its obligations by accepting large numbers of Syrian refugees, by stating: “Jordan has accepted tens of thousands of Syrian refugees. We hope the bloodshed ends as soon as possible, and we emphasize the need to resolve the Syrian conflict politically (Al-Monitor, 2013).” Referring to Jordan’s official non-entry policy for Palestinian refugees fleeing from Syria on Syrian travel documents, Ensour stated:

<sup>5</sup> However, from Israel point of view, those residing in Jerusalem are permanent residents of Israel without any citizenship rights. The Jordanian government, in contrast, considers them as citizens whose status was not affected by the disengagement.

<sup>6</sup> According to Art. 33 of the 1951 Refugee Convention the principle of non-refoulement is the “Prohibition of expulsion or return (“refoulement”)”. The Art 33 reads: No Contracting State shall expel or return (‘refouler’) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion”



There are those who want to exempt Israel from the repercussions of displacing the Palestinians from their homes. Jordan is not a place to solve Israel's problems. Jordan has made a clear and explicit sovereign decision not to allow the crossing to Jordan by our Palestinian brothers who hold Syrian documents. Receiving those brothers is a red line because that would be a prelude to another wave of displacement, which is what the Israeli government wants. Our Palestinian brothers have the right to go back to their country of origin. They should stay in Syria until the end of the crisis (Al-Monitor, 2013).


This statement is the strongest example of how Jordanian policy-makers view the situation of Palestinians coming from Syria and it deserves closer examination. The argument is rooted in the original Arab rhetoric prevalent during the drafting of the 1951 Convention with regard to Art. 1(D) and its 'exclusion clause'. Referring to their right of return and Palestinians' status as Jordan's 'brothers', Ensour places emphasis on his country's role as the protector of the Palestinian cause. He argues that, should Jordan allow Palestinians from Syria into Jordan, it would weaken the Palestinian cause by removing the responsibility of first displacement from Israel. This type of thinking has been a constant feature of populist reasoning related to Palestinian refugees. An extreme example was the aforementioned expulsion of Palestinian refugees from Libya in 1995. However, this disregards the fact that Palestinians have already been subjected to multiple displacements and have not lost their status as Palestinian refugees. Contrasting this Jordanian statement with the previous one on Syrian refugees, it becomes evident that there is a clear compartmentalization between Syrians and Palestinians. In doing this, Jordan places different burdens on these two peoples, resulting in discriminatory policies towards Palestinians coming from Syria.

In order to safeguard their right of return, Palestinian refugees have been compartmentalised. This has shaped the international legal regime with regards to the codification of a separate Palestinian refugee status, separate institutions, and separate understandings of responsibility. As outlined previously, the international community, at the behest of the Arab states, institutionally excluded Palestinians from the 1951 Refugee Convention and its 1967 Protocol. This separation in international laws and institutions allows some states to discriminate against Palestinians under the guise of safeguarding their right to return and claim such policy distinctions are justified by international laws and practice.

### **3.3 Palestinian refugees in Lebanon**

As of 2014, Lebanon is officially hosting nearly half a million refugees from Palestine (UNRWA, 2014b). In contrast to Jordan, the Lebanese government did not grant any sort of citizenship and, unlike in Syria, Palestinian refugees face many restrictions regarding social and economical rights. Hence, Palestinian refugees in Lebanon are often referred to as "the most unfortunate and destitute grouping of Palestinian refugees" in any Arab host country (Suleiman, 2006: 3). As with most of the surrounding countries, Lebanon experienced two large scale influxes of Palestinian refugees: the first as a result of the first Arab Israeli War in 1948, and the second in 1967. Additionally, due to the expulsion of the PLO from Jordan during Black September in 1970, Lebanon experienced a third movement of Palestinian refugees seeking safety in the country (Al-Abed, 2004b: 5-9). With Lebanon's complex history, fragmented population, and consequentially fragile state structure, the large influx of Palestinians - predominately Sunni - was perceived as adding to already existing sectarian tensions.

In 1969, the Lebanese Government and the PLO signed the Cairo Accords, which granted residency as well as social and economic rights to Palestinian refugees.



However, those rights are not enforceable as they were never translated into domestic law (Suleiman, 2006: 17). Furthermore, the Cairo Agreement facilitated the handing over of jurisdiction and administration of refugee camps to the PLO and the establishment of its headquarters in Beirut.

When the civil war broke out in Lebanon in the mid-1970s, Palestinian refugees and the politics surrounding them were perceived as an additional threat to Lebanese security. As a result, the fight against the Palestinian presence in the country was soon absorbed into the civil war. By the end of the civil war, the Palestinian position in Lebanon was extremely weakened, resulting in the still prevalent spatial and economic marginalization of Palestinian refugees in Lebanon (Peteeet, 1996).

### **3.3.1 Legal Status in Lebanon**

Palestinian refugees in Lebanon are considered foreigners. According to Art.1 of Ordinance No. 319 of 2 August 1962, Palestinian refugees are considered, “[f]oreigners who do not carry documentation from their countries of origin, and reside in Lebanon on the basis of resident cards issued by the Directorate of Public Security, or identity cards issued by the General Directorate of the Department of Affairs of the Palestinian Refugees in Lebanon (DAPR).”

Three legal categories can be identified in Lebanon, giving Palestinian refugees different residency status and travel documents, and each is influenced by their international legal status. The first category is for those who fled their homes in the 1940s as a result of the first Arab-Israeli War, and are registered with UNRWA, hence those internationally considered ‘Palestine refugees’. Those ‘Palestine refugees’ are ‘legal residents’, equipped with permanent residency cards and renewable travel documents, valid for five years. The second category is for those Palestinians who in theory fall under the definition of ‘Palestine refugees’ but did not register with UNRWA, as well as those displaced during the 1967 war, are registered with the DAPR as legal residents and hold the same residency cards as the first group. However, they are issued one year renewable travel documents instead of five years. The last category consists of those who are neither registered with UNRWA in Lebanon nor with the DAPR. Those non-ID refugees are mainly those who fled to Lebanon from Jordan during the Black September in the 1970s or were internally displaced during the civil war in Lebanon. Due to the lack of official papers, non-ID refugees reside in Lebanon ‘illegally’ and therefore cannot access any kind of public service (Shafie 2007: 2; Suleiman, 2006: 14).

As legal residents, those who fall under categories one and two are equipped with some rights as foreigners, such as the right to work and access to education. However, those rights are in many areas very restricted and subject to arbitrary implementation. In order to exercise the right to work, ‘foreigners’ have to hold a work permit, which is often very difficult for Palestinian refugees to obtain. Subsequently, many Palestinian refugees living in Lebanon are denied the right to work. With respect to the right to education, Palestinians are entitled to benefit from the quota that reserves ten percent of school places for foreigners. In practice however, this right can be denied under the national preference principle. As foreigners, Palestinians are generally denied access to government hospitals and therefore fully rely on UNRWA’s medical assistance (Suleiman, 2006: 15-20).

### 3.3.2 The Syria crisis and Lebanon

Due to the crisis in Syria, Lebanon has been experiencing one of the biggest influxes of displacement in its modern history. In May 2014, the number of Syrian refugees who fled to Lebanon exceeded one million. As of October 2014, Lebanon hosts over 1,1 million Syrian refugees (UNHCR, 2014c). With a local population of about 6 million and nearly half a million Palestinian refugees, the new movements of refugees from Syria challenges the fragile state system and peace in the country. With violence spilling over, refugees from Syria are perceived a threat to Lebanon's fragile peace. Indeed, the new influx of refugees from Syria puts enormous pressure on already existing refugee communities and infrastructure in the country.

Overcrowded and underfunded refugee camps, and rising rental fees, paired with a lack of income due to the restrictive employment policies for Palestinians, have lead to Palestinian refugees from Syria being hosted by the poorest host communities in Lebanon, posing a serious worry to existing structures. Economic survival seems to be the main concern of the community, as a needs-assessment conducted by ANERA (2013) indicates. With households exceeding 15 persons, there is a high risk for communicable diseases and stress in certain areas. Since August 2013, Lebanon has repeatedly deported and turned away Palestinian refugees at its border.

Lebanon's official response to incoming refugees is governed by the Memorandum of Understanding between its government and UNHCR from 2003. However, this MoU does not apply to the current Syrian crisis, as it mainly deals with individual cases and does not recognise large-scale refugee influxes. As of the beginning of 2014, there has not been any new MoU to deal with the influx from Syria. Until the Lebanese government and UNHCR reach a new agreement, its response to the situation is reliant on its respective ministries' policies. The Ministry of Education grants access to public schooling at a reduced rate for registered refugees and the Ministry of Health provides access to primary healthcare (SNAP, 2013). With UNHCR as the point of registration for refugees, and Palestinians being excluded from its mandate, they are not qualified for such basic public services. Palestinians from Syria are registered with UNRWA and, through this, only qualify for its pre-existing benefit structures for Palestinian refugees. As mentioned previously, Palestinian refugees in Lebanon are denied access to public education and healthcare and are treated differently from those considered to be 'Syrian refugees'.

Current Lebanese policies are shaped by extreme marginalisation of Palestinians within the country. Treating the Palestinian population from Syria as Palestinian refugees - rather than being part of a group of refugees from Syria - is discriminatory as it places them into an already marginalised group. A better approach would be to view the populations coming from Syria as one refugee influx in need of special protection mechanisms. This could, in the eyes of the Palestinian population already present in Lebanon, be viewed as discrimination against them. However, it is necessary to acknowledge the temporary and pressing protection needs of an entire group fleeing the Syrian conflict, irrespective of their territory of origin. Under the current system, the UN pushes an extremely vulnerable group into a pre-existing system of marginalisation.

## 4 Conclusion

This paper analyses the interplay between the international framework in place for Palestinians and the respective policies in Jordan and Lebanon focusing on the most recent refugee movement from Syria. My argument has been that the international measures adopted for Palestinian refugees are unsuitable and inadequate to manage the protracted and multiple displacements they have faced since the 1940s. I have outlined and assessed the international legal framework, as well as the policy responses in Jordan and Lebanon. In doing so, I have concluded that the internationally established separate regime for Palestinian refugees allows for discriminatory policy responses in Jordan and Lebanon. This is not a one-way street as these countries, along with their fellow Arab states, played and continue to play an active role in establishing and shaping the separate international legal regime for Palestinian refugees.


In summary, the existing international legal framework is based on the understanding that Palestinian refugees are distinct from other refugees, due to the nature of their first displacement. At the time of drafting the 1951 Convention, Arab states had argued that, unlike most other refugees, Palestinians had not become refugees because of actions conflicting with international principles of the UN but rather as a direct result of a decision taken by the UN. The common understanding therefore has been that the UN should be obligated to protect those refugees and find durable solutions rather than the host states. As a result, historically, Palestinian refugees as such are institutionally as well as linguistically separate from the refugee concept outlined in the 1951 Convention. Over the past 60 years, this exclusion has contributed to the marginalisation of Palestinian refugees on the international and domestic level, and resulted in a gap with regard to their individual protection due to the early collapse of UNCCP.

By looking at the most recent policy approaches of Jordan and Lebanon to Palestinians displaced from Syria, the practical implications of the protection gap become apparent. Both countries distinguish between Syrian nationals and Palestinians, even though both are fleeing the identical conflict, resulting in discriminatory policies towards the latter in terms of entry and access to basic services.

Linking their discriminatory policy responses with the greater struggle of Palestinians against Israel and their right to return, the Jordanian government postulates itself as safeguarding the Palestinian cause. Jordan argues that its policies are 'positive' discrimination. This logic imitates the earlier rhetoric used by Arab states after the initial displacement of 1948, which led to the exclusion of Palestinian refugees from the 1951 Convention.

The scenario in Lebanon, though different to Jordan, also has its roots in the compartmentalization of refugees from Palestine and the internationally institutionalised separation of Palestinians. The end result remains discriminatory treatment towards Palestinian refugees. The rights of Palestinian living in Lebanon are restricted in terms of education and employment, leading to extreme socio-economic marginalisation of long-standing as well as more recently arriving Palestinian refugee populations.

Syrian refugees are registered with UNHCR and covered by its protection mandate. The ad-hoc protection system set up by UNHCR in co-operation with the Lebanese government equips them with a broader set of rights. Palestinian refugees fleeing



from Syria however, are unable to register with UNHCR but with UNRWA, due to the former's interpretation of Art. 1D as an exclusion clause. They are therefore not covered by the ad-hoc system but by the restrictive pre-existing framework for Palestinian refugees. The UN's policy therefore directly allows for the discrimination against this newly arriving refugee group.

As long as international laws maintain separate treatment for Palestinian refugees, they create a space for a legally sanctioned type of discrimination that is extremely detrimental to displaced Palestinians. The focus should be to integrate Palestinians into the international protection system in place under the 1951 Convention, while simultaneously upholding their future rights such as the right to return. This does not require any radical developments. For example, one option could be to actively implement the aforementioned contingent inclusion clause in Art. 1D of the 1951 Convention. The implementation of the contingent inclusion clause would lead to Palestinian refugees being covered by the protection set out in the 1951 Convention. Subsequently, secondarily displaced Palestinian refugees, inside and outside UNRWA's areas of operation, would fall under UNHCR's protection mandate. This would challenge discriminatory policies put in place by receiving states, such as Jordan and Lebanon. To consider this and other options, there is a need for inter-governmental and interagency debate towards a reconfiguration of how Palestinian refugees are placed within the international system.

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