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The Palestinian Refugees in Lebanon and  
the Mirage of Human Rights

A Minor Field Study

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# Summary

The right to work, as one of the most crosscutting and enabling socio-economic rights, as well as a basic requirement for social integration, is enshrined in a wide range of international human rights instruments. Equal access to the labour market is one important aspect of this right that challenges the underlying universality norm of the human rights regime by imposing on states the obligation to ensure the right to work for all individuals within their territory, regardless of their legal status. However, the ambiguities of this right reveal the inherent tensions in the human rights regime. Values of equality and non-discrimination are supposed to guide the legal application of human rights, yet reality provides a different view.

The case of Palestinian refugees in Lebanon and their exclusion from the Lebanese labour market actualizes questions concerning the relationship between citizenship and human rights protection and what role sovereignty plays on the universal arena of human rights.

This thesis seeks to challenge contemporary norms of the human rights discourse, and approaches the case of the Palestinian refugees in Lebanon from a critical perspective, shedding light on the links between immigration policy and human rights, and the ways in which states insist on reasserting their sovereign right to shape the membership of their respective communities. Using human rights as a tool to internalize migration policy, states are able to control the inclusion and exclusion processes in society, processes that are rooted in a discourse of hospitality. Interviews with Lebanese officials are used to illustrate how perceived risks and challenges to Lebanese sovereignty and host identity influence and dictate the Palestinian-Lebanese relationship.

# Sammanfattning

Rätten till arbete, som utgör en av de mest centrala mänskliga rättigheterna och även ses som en grundläggande förutsättning för samhällsintegrering, är införlivad i en rad olika MR-instrument. Lika tillgång till arbetsmarknaden är en mycket viktig aspekt av denna rättighet, som även utmanar den underliggande norm om universalitet som präglar det internationella ramverket för mänskliga rättigheter. Stater är förpliktigade att försäkra rätten till arbete för varje individ som befinner sig inom respektive stats territorium, oavsett dennes rättsliga status. Trots detta, tyder de oklarheter som råder kring rättighetens faktiska innehåll på en underliggande spänning i det internationella rättssystemet. Värderingar om jämlikhet och icke-diskriminering är tänkt att genomsyra implementeringen av mänskliga rättigheter, likväl ger verkligheten en annan bild.

Palestinska flyktingars situation i Libanon och den diskriminering de utsätts för på den libanesiska arbetsmarknaden aktualiserar frågor kring medborgarskapets betydelse för mänskliga rättigheter och statsuveränitetens roll inom ramen för den internationella rättighetsregimen.

Syftet med denna uppsats har varit att utmana de samtida normer som präglar diskursen om mänskliga rättigheter samt att angripa problemet kring de palestinska flyktingarna i Libanon utifrån ett kritiskt perspektiv. Detta perspektiv uppmärksammar sambanden mellan migrationspolicy och mänskliga rättigheter, samt hur stater utnyttjar sin suveräna rätt att forma samhällsmedlemskap. Genom att använda mänskliga rättigheter i ett led att internalisera migrationspolicy har stater en möjlighet att kontrollera de processer som styr inkludering respektive exkludering i samhället. Dessa processer är i sig förankrade i en så kallad 'hospitalitydiskurs'. I syfte att synliggöra hur uppfattade risker och prövningar av statsuveräniteten och 'värdidentiteten' påverkar de palestinska och libanesiska relationerna har intervjuer med libanesiska politiker utförts inom ramen för en fältstudie i Libanon under våren 2010.

## **A Lover From Palestine**

Her eyes are Palestinian  
Her name is Palestinian  
Her dress and sorrow Palestinian  
Her kerchief, her feet and body Palestinian  
Her words and silence Palestinian  
Her voice Palestinian  
Her birth and her death Palestinian

Mahmud Darwish

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Emily Diab

# Abbreviations

AUB	American University of Beirut
CEACR	Committee of Experts on the Application on Conventions and Recommendations
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CERD	International Convention on the Elimination of All Forms of Racial Discrimination
CRC	Convention on the Rights of the Child
ECtHR	European Court of Human Rights
HRC	Human Rights Committee
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICMW	International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
IDP's	Internally Displaced Persons
IFI	Issam Fares Institute for Public Policy and International Affairs
ILO	International Labour Organization
IRL	International Refugee Law
MFS	Minor Field Study
NGO	Non-Governmental Organization
NSSF	National Social Security Fund
PHRO	Palestinian Human Rights Organization
PLO	Palestinian Liberation Organization
PRCS	Palestinian Red Crescent Society
SIDA	Swedish International Development Cooperation Agency
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNGA	United Nations General Assembly
UNHCR	United Nations High Commissioner for Refugees
UNIFIL	United Nations Interim Forces in Lebanon
UNRWA	United Nations Relief and Works Agency for Palestine Refugees in the Near East

# 1 Introduction

The emergence of the international human rights regime and the recognition of the ‘human’ as the primary subject of right bearing was materialized with the Universal Declaration of Human Rights (UDHR). The Declaration, adopted in 1948 in the aftermath of the Second World War, as a response to the atrocities that took place at the hand of unlimited sovereign power, was intended to serve as the road map to guarantee every human being their inherent and inalienable rights.

The universal commitment to human dignity and equality coincided with the establishment of a new state with the purpose of resolving the insurmountable refugee problem after the war, and the creation of yet another diaspora and the world’s largest refugee community to come – the Palestinians.

Today, Palestinian refugees in Lebanon, without a state of their own, find themselves excluded from society, living in the absence of those rights that were intended to protect them, or in the words of Hannah Arendt, living in the “abstract nakedness of being human”. Denied the right to access the labour market, the situation of the Palestinian refugees is beyond what can be considered humanely acceptable. The Palestinian in Lebanon is nothing but human, but yet seemingly lacks the agency to claim those rights prescribed by international law. The right to work as a human right appears to have been reduced to a mere symbol of philanthropy – a gift offered to the “disadvantaged receiver by the superior giver”, in the words of Ignatieff.<sup>1</sup>

This begs the question of what role state sovereignty plays on the universal arena of human rights, and whether citizenship trumps humanity. The political reality of the UDHR is often forgotten. In contrast to the idea of universalism, the principle of national sovereignty was seen by the drafters, Lebanon being one of them, as a necessity for the protection of human rights.

For over 60 years, Lebanon as a host country has consistently rejected the integration and naturalization of Palestinian refugees, anticipating the return of the guest. This policy appears to have infiltrated the internal distribution of rights and benefits, taking advantage of the human rights regime albeit in the shape of immigration control and community membership determination. The perceptions in the Lebanese society arguably function as the framework for that internalization of membership decisions.

With this thesis, I intend to contribute to the discourse on Palestinian rights in Lebanon, by providing a so far unexplored perspective on the protection gap concerning this group. The theoretical underpinnings of my work continue to surface throughout the thesis, both in the descriptive

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<sup>1</sup> M. Ignatieff, ‘I. Human Rights as Politics, II. Human Rights as Idolatry – The Tanner Lectures on Human Values’, (Princeton University, April 4-7, 2000), p. 404-405.

sections and the legal analysis of the status of Palestinian refugees in the international human rights regime as well as in the national legal context.

Although my interest in a critical approach towards the human rights discourse motivated me to examine the case of Palestinian refugees in Lebanon, my work includes a comprehensive legal analysis of international labour standards and non-discrimination, particularly as it pertains to non-nationals, as well as the legal framework relating to Palestinian refugees, internationally and in Lebanon. I here hope to contribute to the vast academic writings on Palestinian refugees in Lebanon.

The structure of this thesis is as follows: Chapter 2 provides a historical account of the relationship between the Lebanese and the Palestinians, facilitating an understanding of the political and social context of this case study. It covers the main events that have shaped the Palestinian presence in Lebanon since their arrival in 1948. In chapter 3, I explore the theoretical framework on the ‘right to have rights’, which serves a baseline for the analysis on the right to work for Palestinian refugees in Lebanon. Chapter 4 and 5 lay out the relevant international legal instruments of the right to access work, and equality and non-discrimination, and their application to non-citizens. Chapter 4 considers the status of Palestinian refugees in international law with a focus on the regimes for refugees and stateless persons. Chapter 7 describes the contemporary conditions of Palestinian refugees residing in Lebanon, as well as presenting the field study interviews within the discourse of Lebanese-Palestinian hospitality. Chapter 8 details the Lebanese labour legislation and its application in relation to Palestinian refugees. It is in chapter 9 that the three parts of my thesis come together, and where I try to make sense of the meaning of citizenship for Palestinian refugees in Lebanon and their human rights claims.

## **1.1 Purpose and research question**

The purpose of this thesis is to explore critical ideas in the field of human rights focusing on the significance of citizenship for human rights protection and notions on hospitality in the maintenance of state sovereignty and essentially the discussion on ‘the right to have rights’.

With this theoretical framework as a point of departure I examine the case of Palestinian refugees in Lebanon and the protection gap between the human rights regime and Lebanese national practices and policies. The focus is on the right to work, as an enabling right that effectively creates a space for further rights agency, with the intention to demonstrate how Palestinian refugees as stateless persons are effectively stripped of rights protection within the sovereign state of Lebanon, through their exclusion from the Lebanese labour market. The content of the right to work in international law will be contrasted to the social and political realities of Palestinian refugees within the Lebanese legal context.

The inconsistencies between international labour law and the national practices by the Lebanese state will be illustrated by contrasting the right to work as set out in international human rights instruments and the position of

the human within the universal human rights regime with how this right has been implemented in the Lebanese legal framework and the position of the Palestinian refugee in the national legal context of Lebanon. The question that I pose is whether International Labour Law really is the solution for the Palestinian refugees.

Furthermore, my intention writing this thesis has not been to provide a solution to the situation for Palestinian refugees in Lebanon, but rather to contribute to the understanding of a topic that is highly controversial and where the legal aspects have strong political implications. I see part of the solution as identifying those underlying processes that continue to dictate the Lebanese-Palestinian discourse.

## **1.2 Scope and limitations**

The right to work is an ambiguous and rather underdeveloped concept in international law. It includes a whole range of provisions such as the right to dignified work, prohibition of forced labour, freedom of choice, equal access to work etc. For the purpose of this thesis it is the aspect of equal access to the labour market that will be examined, as it relates to the rights of non-nationals and the maintenance of the sovereignty of the state.

The topic of Palestinian refugees is of an exceptional character, and there is an array of possible approaches to take when studying this group in various contexts. It has therefore been necessary to limit the scope of research and leaving out certain aspects, although important and interesting. The issue of non-ID Palestinians in Lebanon is similar to that of undocumented migrants, and they are in many ways more vulnerable in the national context as they are considered to reside in Lebanon illegally. Furthermore, the right to return is a complex issue involving political considerations, legal aspects and questions of identity and belonging. These are both very critical questions, which however will not be the focus of this thesis.

## **1.3 Methodology**

This work is divided into three main parts, of which the first presents the theoretical foundations, the second provides a traditional doctrinal legal study of relevant international legal instruments and the third introduces the case study of Palestinian refugees in Lebanon, with the purpose of contextualizing the theoretical suggestions put forward in the first section. The data collection method used has mainly been a literature review of academic works written by scholars within different disciplines from both the Middle East and western countries, and has been complemented by qualitative empirical material supporting the foundations of my case study. The case study includes the presentation of qualitative interviews conducted within the framework of a Minor Field Study Scholarship in Lebanon during the spring of 2012.

The theoretical chapter draws on literature within the discipline of critical legal scholarship on questions concerning citizenship, immigration and the hospitality discourse, challenging the norm of universality in the traditional human rights discourse. The theory of Hannah Arendt regarding statelessness and the ‘right to have rights’ has been used as a starting point for my thesis and has been developed further by the application of research and theories on immigration, citizenship and hospitality. Adopting a ‘modern critical approach’, using natural law as a “springboard”<sup>2</sup>, I seek to build on those alternative critical perspectives on contemporary legal norms in international law. The intention has been to explore critical theories as a tool to challenge the mainstream scholarship on International Human Rights Law, making the underlying power relations that represent and generate law visible.<sup>3</sup> As opposed to the traditional formal approach to law, and the doctrinal methodology<sup>4</sup> in the study of law, which stays within the framework of a descriptive analysis of legal sources, the critical approach can be seen as a “call for knowledge”, interrogating the function and purpose of the law.<sup>5</sup> In the context of my thesis, I, in other words, intend to create a platform for new debates on Palestinian presence in Lebanon and the rights discourse for this particular group, by altering those previous assumptions that permeate the public discourse, politics and Lebanese law.

The legal assessment of the right to work in international law is based on the examination of relevant research on international labour standards and social and economic rights as well as the analysis of international legal instruments addressing the right to work.

The case study is based partly on literature studies and the legal assessment of the national legislation in Lebanon, as well as in-depth interviews with Lebanese politicians and state officials, representatives from the human rights field working with Palestinian rights, academics and media representatives. Relevant Lebanese legislation in English was obtained from SADER Legal Publishing<sup>6</sup>, one of the leading legal publishing houses in the Arab countries. I have also used information material and reports published by non-governmental and international organizations. When it comes to statistics and numbers on Palestinian refugees in Lebanon there are various resources available. Because of the controversial nature of the topic and statistics on this particular group, I have however chosen to use mainly one source, which is also the most recent one, the socio-economic survey on Palestinian refugees in Lebanon conducted by the American University of Beirut in cooperation with UNRWA in 2010.

The interviews were conducted as part of a *Minor Field Study Scholarship* (MFS), financed by SIDA (The Swedish International Development Cooperation Agency) and granted by the Raoul Wallenberg Institute of Human Rights and Humanitarian Law in Lund, Sweden. The

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<sup>2</sup> R. Cryer, T. Hervey et al., *Research Methodologies in EU and International Law*, (Hart Publishing Ltd, Oxford, UK, North America, 2011), p. 42.

<sup>3</sup> *Ibid.*, p. 61.

<sup>4</sup> R. Banakar and M. Travers (eds.), *Theory and Method in Socio-Legal Research*, (Hart Publishing, Portland, USA, 2005), p. 7.

<sup>5</sup> R. Cryer, T. Hervey *supra* note 2, p. 59.

<sup>6</sup> For more information see the web site of SADER Legal Publishing < [www.saderpublishers.com/main\\_en.asp](http://www.saderpublishers.com/main_en.asp) >, visited on August 9 2012.

purpose of the field study was to examine Lebanese attitudes on the issue of granting Palestinians rights and the character of the Lebanese discourse on this matter, contextualizing the hospitality discourse that forms a part of the theoretical foundations of the thesis. It is a qualitative study based on semi-structured interviews, with the purpose of obtaining an understanding of how the interviewee views the world and to interpret this content within the theoretical framework.<sup>7</sup> The selection of interviewees was made from the different religious communities and political parties with an effort to achieve equal representation.

Based on the assumption that there is coherence between the general opinions and perceptions of the citizenry on the one hand and political representatives on the other, which translates into legislation and policy, the interviews targeted mainly the political elite and media representatives, who have some sort of bearing on the public discourse. Law and society are deeply entrenched, giving rise to interdisciplinary aspects in both the field of Law and Sociology. Law does not exist in a vacuum, but is rather developed through and to some extent reflects the society in which it arises from and functions within.<sup>8</sup> As Sharyn Roach Anleu has put it, “[l]aw *is* a social phenomenon”.<sup>9</sup> (Emphasis added)

For the purpose of the field study, which was carried out during 10 weeks in the spring of 2012, the material was narrowed down by focusing on a limited number of representatives from the religious communities. It would not have been feasible during this short period of time to gather sufficient material from all layers of society.

A questionnaire was put together for each target group and served as a basic structure for the interviews. Follow-up questions were posed to facilitate a more open discussion. The interviews were recorded and transcribed and are on file with the author.

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<sup>7</sup> See for example S. Kvale, *Den Kvalitative Forskningsintervjuen*, (Studentlitteratur, Lund, Sweden, 2001), p. 13.

<sup>8</sup> R. Cryer, T. Hervev *supra* note 2, p. 86.

<sup>9</sup> See for example S. L. Roach Anleu, *Law and Social Change*, (SAGE Publications, London, Thousand Oaks, New Delhi, 2000), p. vii.

## 2 Palestinian Presence in Lebanon – a troublesome affair (1948-2012)

Lebanon, in its heydays, was often compared to Switzerland as a major international banking center, and its cosmopolitan seafront capital Beirut was commonly referred to as the Paris of the Middle East. But despite its rich history and the reputation of being a cultural and economic bridge between the Orient and the Occident, the sectarian differences in Lebanon are always present under the surface. Today, this small country on the Eastern Mediterranean has instead become notorious for its chronic instability and the extended civil war that plagued the Lebanese for 15 years.<sup>10</sup> Because of the disproportionate international as well as regional attention that this tiny piece of mountainous land in the Levant has attracted, Lebanon is maybe today most commonly thought of as the battleground of the Middle East. Most certainly, the civil war was not only a Lebanese affair, but also an affair in which Palestinians, Israelis, Syrians and western powers all played important roles, each and everyone respectively waging their own proxy wars.<sup>11</sup> The modern Lebanon with its political particularities is of course a reflection of the broader regional history and geopolitics shaped by centuries of colonial rule and international interests. However, Lebanon cannot be considered a victim solely of outside interference. Indeed the civil war must also be viewed through the internal lenses of Lebanese politics. As a multi-confessional country (17 confessions)<sup>12</sup> with a constitutional and political system that institutionalizes this diversity of religious communities, “Lebanon is the sectarian state par excellence”<sup>13</sup>. To fully understand the implications of the Palestinian refugees in the Lebanese internal dynamics it is crucial to look at the characteristics of modern day Lebanon and its unique internal composition. For the purpose of this thesis this historical account will shift the focus from Lebanon as an object and victim of the agendas of others to one in which Lebanon is an actor and agent.

The history of the Palestinian refugees in Lebanon is divided into five main periods; the first period (1947-1949) describes the arrival of the Palestinians in Lebanon and the socio-political context in which they were received, the second period (1950-1964) depicts the developing relationship between the Palestinians and the Lebanese and the treatment that the refugees were facing at the hands of the Lebanese authorities, the third period (1965-1981) gives a concise account of the events that lead to the

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<sup>10</sup> W. L. Cleveland and M. Bunton, *A History of the Modern Middle East, Fourth edition*, (Westview Press, United States 2009), p. 332-333.

<sup>11</sup> D. Hirst, *Beware of Small States; Lebanon, Battleground of the Middle East*, (Nation Books, United States 2010), p. 3.

<sup>12</sup> US Department of State website, International Religious Freedom Report 2008, Lebanon, < [www.state.gov/j/drl/rls/irf/2008/108487.htm](http://www.state.gov/j/drl/rls/irf/2008/108487.htm) >, visited on July 15 2012.

<sup>13</sup> D. Hirst, *supra* note 11, p. 2.

civil war and the mounting tensions between the different political factions in Lebanon, the fourth period (1981-1990) tells the story of a declining PLO and worsened conditions for Palestinians, and finally the fifth period (1990-2012) describes the contemporary conditions of the refugees in Lebanon and the deteriorating attitudes towards Palestinians in the Lebanese society.

This brief historical background is not sufficient to fully grasp Lebanon in all its complexities, but it serves to outline the major political currents and events that have shaped the presence of the Palestinian community in Lebanon. The somewhat artificial periodic division furthermore helps us to look at the Palestinian presence and the Lebanese-Palestinian relations from a more thematic perspective, in which both the international and national processes that have led to the current situation of the Palestinians in Lebanon are outlined.

### **Arrival (1947-1949)**

In the wake of the Second World War and the Holocaust, and as a solution to the Jewish refugee question, the non-binding General Assembly Resolution 181 (II) partitioned the British mandate of Palestine into a Jewish and an Arab state, on November 29, 1947.<sup>14</sup> The adopted partition plan provided for the termination of the British mandate and the creation of a Jewish state alongside an Arab state in accordance with newly drawn borders, no later than 1 October 1948.<sup>15</sup> The Arab states rejected the plan that to a large extent was the result of ardent American and Zionist lobbying efforts.<sup>16</sup> In the months following the adoption of the partition plan, Palestine descended into chaos of intercommunal violence, and when the British finally left in May 1948, the independence of the state of Israel was proclaimed followed by the eruption of full-scale war. The first Arab-Israeli war, in which the armies of Egypt, Syria, Lebanon, Transjordan and Iraq intervened, operating under the auspices of the Arab League, resulted in the defeat of the Arab forces, the expansion of Israeli territory and the collapse of the UN proposal for a Palestinian Arab state. Armistice agreements were concluded between all the belligerent Arab states and Israel, that served to stabilize the cease-fire borders while however not accepting them as final.<sup>17</sup>

In 1949 over 700 000<sup>18</sup> people had become refugees and the Palestinian exodus was a matter of fact. The Arab mass flight had already begun during the intercommunal war and was spurred by Israeli policies of systematic expulsion of Palestinian Arabs residing within or just outside the area allocated to the Jewish state. The creation of the state of Israel had ironically solved the European Jewish refugee problem by creating an equally if not more calamitous Middle Eastern refugee problem and giving rise to the world's largest refugee population of 5 million<sup>19</sup> Palestinians, and

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<sup>14</sup> *Ibid.*, p. 46-47.

<sup>15</sup> UN General Assembly Resolution 181 (II), Part 1 (A), paras. 1,2.

<sup>16</sup> W. L. Cleveland, *supra* note 10, p. 264-265.

<sup>17</sup> *Ibid.*, p, 268.

<sup>18</sup> The numbers of Palestinian refugees is a constant matter of contestation, however most sources estimate around 800 000. *See for example* W. L. Cleveland, *supra* note 1, p. 268 and D. Hirst, *supra* note 11, p. 50.

<sup>19</sup> UNRWA website, < [www.unrwa.org/etemplate.php?id=86](http://www.unrwa.org/etemplate.php?id=86) >, visited on May 9 2012.

yet another diaspora.<sup>20</sup> As political theorist Hanna Arendt, herself a Holocaust survivor, stated in *The Origins of Totalitarianism*:

“After the war it turned out that the Jewish question, which was considered the only insoluble one, was indeed solved – namely, by means of a colonized and then conquered territory – but this solved neither the problem of the minorities nor the stateless. On the contrary, like virtually all other events of our century, the solution of the Jewish question merely produced a new category of refugees, the Arabs, thereby increasing the number of the stateless and the rightless by another 700,000 to 800,000 people.”<sup>21</sup>

Out of the over 700 000 that fled or were expelled in the late 40’s, around 100 000 Palestinians came to Lebanon.<sup>22</sup> To be able to address the urgent refugee situation in the countries surrounding Israel, the UN established the ‘United Nations Relief and Works Agency for Palestine Refugees in the Near East’ (UNRWA) by adopting UN General Assembly Resolution 302 (IV) of 8<sup>th</sup> December 1949, as a subsidiary organ of the UN. The agency began its operations on 1<sup>st</sup> May 1950. UNRWA was established as a temporary solution, and its mandate included carrying out direct relief and works programs in collaboration with local governments, as well as consulting with the interested Near Eastern governments concerning preparatory measures for the time when international assistance would no longer be available.<sup>23</sup>

The Palestinian ‘Nakba’<sup>24</sup> and the establishment of the Israeli state resulted in quite a paradox in Lebanon. On the one hand Lebanon benefited economically as there was an Arab economic boycott of Israel, the port of Beirut took over Haifa’s role as the main port for trade and as the center for international communication between Europe, Asia and some parts of Africa, as well as from the 150 million Palestinian pounds that was brought into the country. On the other hand the Lebanese economy took a severe blow, as the value of the Lebanese industrial exports to Palestine was greater than its exports to France, Great Britain and the US combined. Furthermore this large influx of Palestinians had political and sectarian implications that overshadowed any financial advantages. The Lebanese government made many attempts to push the refugees over the Syrian border under the pretext that they constituted an economic burden the country could not deal with. However, these attempts were unsuccessful, resulting in the Palestinians ultimately being settled.<sup>25</sup> Palestinians had overnight come to represent 12 % of the local population, and they soon fell into two distinct categories. A minority, hailing from the Palestinian middle

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<sup>20</sup> W. L Cleveland, *supra* note 10, p. 268-270.

<sup>21</sup> H. Arendt, *The Origins of Totalitarianism*, (A Harvest Book, Harcourt Inc. United States, 1985), p. 290.

<sup>22</sup> S. El-Natour, *Les Palestiniens du Liban: La Situation Sociale, Economique et Juridique*, (Dar Al Taqqadom Al Arabi 1993) p. 15.

<sup>23</sup> UNRWA web site, <[www.unrwa.org/etemplate.php?id=87](http://www.unrwa.org/etemplate.php?id=87)>, visited on May 9 2012.

<sup>24</sup> The word ‘Nakba’, which means catastrophe in Arabic, refers to the displacement of Palestinians that followed the declaration of Israeli independence in 1948. The day is generally commemorated on the 15th of May, which coincides with the Israeli day of Independence.

<sup>25</sup> F. Traboulsi, *A History of Modern Lebanon*, (Pluto Press, London, 2007), p. 113-114.

class integrated successfully into the economic and social life of Lebanon, contributing significantly to the country's prosperity during the 1950's. Furthermore, as a result of Lebanese confessional politics and strong lobbying from Maronite groups, 28 000 Christian Palestinians were granted citizenship in 1949. The second category was mainly Palestine's peasantry that remained scattered in the many refugee camps around the country.<sup>26</sup> It was naturally in these spatially isolated camps that the idea of return acquired its most ardent supporters, backed up by the UN General Assembly Resolution 194, 11 December 1948<sup>27</sup>, which legally affirmed 'the right to return'. Separate from the Lebanese society, the refugee camps became the harbors of the Palestinian national identity, and remained as living evidence of the Catastrophe that had given rise to their plight. In the camps, return became an obsession.<sup>28</sup>

Although the idea of return was strong in itself it was reinforced by the conditions met by the Palestinian refugee community in Lebanese exile. While Palestinians were initially welcomed with sympathy and compassion by the majority of the Lebanese population and even the government at that time, the political dynamic of Lebanon soon revealed itself, as the risk of a permanent Palestinian presence became more and more imminent.<sup>29</sup> This risk became of course more menacing with the refusal by Israel to repatriate the close to a million Palestinians who were waiting to go home.<sup>30</sup> Any support expressed by the Lebanese government was rather an endorsement of the Palestinian cause i.e. the right to return than any loyalty to the Palestinian as an individual, neighbor and human being.<sup>31</sup>

The Lebanese political system was constructed along sectarian lines, dividing the political power between Christians, Sunni and Shia Muslims, a structure from which especially the Maronite Christians benefited greatly.<sup>32</sup> With the large influx of a predominantly Sunni Palestinian population, this delicate balance was expected to shift to the advantage of the Sunni Lebanese population and gradually increased the already existing tensions between the West-oriented Christians, amongst which some leaders strongly sympathized with the Zionist cause, and the East-oriented, mainly Muslim Arab nationalist community.<sup>33</sup> In this organized chaos of sectarian rivalry, Palestinian community was soon to become a bargain chip that, as we will see later, would prove to have disastrous consequences.

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<sup>26</sup> L. El-Malak, 'Betrayed and Forgotten: Palestinian Refugees in Lebanon', 9 *Yearbook of Islamic and Middle Eastern Law* (2002-2003) p. 133; D. Hirst, *supra* note 11, p. 75.

<sup>27</sup> UN General Assembly, (A/RES/194 (III)), 11 September 1948, Article 11.

<sup>28</sup> D. Hirst, *supra* note 11, p. 75.

<sup>29</sup> L. El-Malak, *supra* note 26, p. 133.

<sup>30</sup> A. Knudsen, 'Widening the Protection Gap: The 'Politics of Citizenship' for Palestinian Refugees in Lebanon, 1948-2008', Vol. 22, No 1 *Journal of Refugee Studies* (2009) p. 52; L. Takkenberg, *The Status of Palestinian Refugees in International Law*, (Clarendon Press, Oxford, 1998), p. 16.

<sup>31</sup> D. Hirst, *supra* note 11, p. 76.

<sup>32</sup> W. L Cleveland, *supra* note 10, p. 230.

<sup>33</sup> M. C Hudson, 'Palestinians and Lebanon: The Common Story', Vol. 10, No 3 *Journal of Refugee Studies* (1997) pp. 247, 250.

## Organizing despair (1950-1964)

The first period of Palestinian presence in Lebanon was characterized by polarization vis-à-vis the host population and political and social marginalization, effectively laying a solid ground for recruitment to the emerging resistance movement. Poor living conditions, restrictive policies and the growing pan-Arab sentiments that were sweeping over the region after Nasser's rise to power in Egypt, were all decisive factors that helped spur the Palestinian nationalism. From the Lebanese side the Palestinians were seen as a security issue because of the threat to the sectarian balance as well as their strong linkage to the growing Arab nationalist and socialist ideals.<sup>34</sup>

In the absence of any solution to the Palestinian refugee problem, the UN General Assembly had to continuously renew the mandate of UNRWA.<sup>35</sup> However, the UNRWA budget was extremely strained, and the standards of the camps were degrading. Over time the camps became permanent, and concrete block dwellings replaced tents. But, despite the more permanent features of the camps, they still remained isolated from Lebanese society and from each other. As Palestinians were denied repatriation, they became dependent on the opportunities that the host countries were willing to provide to their newly arrived guests. In Lebanon, restrictions on employment and freedom of movement were particularly harsh, as well as the right to assemble and to engage in political activity.<sup>36</sup> The strong limitations and strict control on the refugee community was exercised by the Lebanese army's security agency, the *Deuxième Bureau*, which main concern was surveillance and repression. The essence of their policy was to isolate the refugees in their camps and moving both in and between the camps was made very difficult. As opposed to Jordan where refugees were granted citizenship, the refugees were not nationalized in Lebanon leaving them as foreign residents. Deprived of citizenship, they were not allowed to work, to vote nor to benefit from health care nor higher education. In 1951 a work permit requirement was imposed virtually equating their status with that of other foreigners, and in 1960 Palestinians were officially deemed 'other foreigners' by Decree No. 319. The marginalization proceeded with the law 17561 in 1964, which barred Palestinians from joining professional syndicates, a precondition for employment in a range of high-status professions.<sup>37</sup>

In September 1965 the Palestinian community was dealt another blow in the field of employment and movement, when Lebanon made several reservations to the 'Casablanca Protocol', which called on the Arab states and members of the Arab league to grant Palestinians the right to work, travel and to residency on par with nationals. Lebanon's reservations made

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<sup>34</sup> A. Knudsen, *supra* note 30, p. 54; A. Shiblak, 'Palestinians in Lebanon and the PLO', Vol. 10, No. 3 *Journal of Refugee Studies* (1997), p. 262.

<sup>35</sup> UNRWA web site, < [www.unrwa.org/etemplate.php?id=85](http://www.unrwa.org/etemplate.php?id=85) >, visited on May 21 2012.

<sup>36</sup> W. L Cleveland, *supra* note 10, p. 356-357; L. El-Malak, *supra* note 26, p. 133.

<sup>37</sup> A. Knudsen, *supra* note 30, p. 55; L. El-Malak, *supra* note 26, p. 134.

it possible for them to grant conditional rights depending on the country's economic situation.<sup>38</sup>

### **The road to civil war (1965-1981)**

By the 60's the Lebanese conditions had stimulated the Palestinian resistance movement, and the discontented youthful masses from the refugee camps were now ready to be mobilized by a sophisticated middle-class and political elite.<sup>39</sup> The first Palestinian insurgency, crossing the Lebanese border into Israel, took place in 1965 and marked the beginning of the Palestinian resistance on Lebanese soil. The defeat of the Arab states in the June War of 1967, and the symbolic victory over Israeli forces at Karamah in the Jordan Valley in 1968, dramatically increased the popularity and power of the resistance movement and changed the political balance between the Palestinians and Lebanon.<sup>40</sup> The Palestinian raids against Israel, were launched from the south of Lebanon, triggering an Israeli policy of military retaliations. The southern parts of Lebanon were transformed into a battleground that western media and Israeli military suitably named 'Fatahland'.<sup>41</sup>

The intensified relationship between the Palestinians and Lebanon, and the inability of the Lebanese army to intervene, resulted in the signing of the 'Cairo Agreement' in 1969 between Yasser Arafat, head of the PLO and General Emile Bustani, commander of the Lebanese army. The Agreement effectively legitimized the Palestinian resistance and the armed presence of the PLO in Lebanon, as well as significantly improving the status of Palestinian refugees by invoking the right to residency and work and providing administrative autonomy to the camps.<sup>42</sup> The signing of the Cairo Agreement coincided with the clashes and ensuing expulsion of the PLO from Jordan during 'Black September' in 1970, after which the PLO transferred its organizational base to Beirut. This strengthened the Palestinian presence and infrastructure in Lebanon, and the PLO developed as a government in exile, providing a wide range of social services to the refugees in the camps as well as establishing institutions and creating employment opportunities. Supported by the Cairo Agreement and its growing capacity, the PLO effectively created a 'state within the state', further exacerbating the tensions between the Palestinians and Lebanon.<sup>43</sup>

The rise of the Palestinian resistance and the encroachment on Lebanese sovereignty was met with varied sentiments. The Palestinians had widespread support from Lebanese in the coastal cities, the Sunni community and to some degree from Greek Orthodox and Shi'ite communities, and the first Lebanese groups that reacted negatively were the Maronite

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<sup>38</sup> Ibid., A. Knudsen.

<sup>39</sup> M. C Hudson *supra* note 33, p. 249.

<sup>40</sup> Ibid., p. 251.

<sup>41</sup> F. Traboulsi, *supra* note 25, p. 152.

<sup>42</sup> L. El-Malak, *supra* note 26, p. 137; A. Knudsen *supra* note 30, p. 55.

<sup>43</sup> S. Hanafi, J. Chaaban and K. Seyfert, 'Social Exclusion of Palestinian Refugees in Lebanon: Reflections on the mechanisms that cement their persistent poverty', Vol. 31, No. 1, pp. 34-53, *Refugee Survey Quarterly* (2012), p. 37-38.

Christians.<sup>44</sup> These different sentiments were closely aligned with the position towards pan-Arabism but also reactions to the internal political and sectarian system; the mainly Muslim community saw an opportunity in the Palestinians to promote their own cause, whereas the mistrust for Arabism and the fear of losing political ground guided the position of the Maronites. A process of non-state militarization begun during the years following up to the eruption of the civil war, and there were recurrent attacks and counter-attacks between the different factions. In 1975 fighting erupted between the Phalangists, the leading Christian nationalist militia and the Palestinians, when in April, Phalangist militiamen attacked a busload of Palestinians and killed 27. This event sparked to Lebanese civil war that would consume the country for 15 years.<sup>45</sup>

By 1976 Lebanon had plunged deeper and deeper into the chaos of internal violence, and the PLO had become more entangled in the fighting between Muslim and Christian militias, effectively acting as the army of the Arab-nationalist Muslim left. This prompted the Syrian al-Asad regime to intervene in the war to aid the Christian militias against the PLO and the Muslim forces. The Syrian military presence in Lebanon was to become a protracted one. The next external force that was to invade Lebanon was Israel that crossed the Lebanese border in 1978 with the purpose of uprooting the PLO, a mission that failed. At the same time the United Nations Interim Forces in Lebanon (UNIFIL) was established in southern Lebanon to provide a buffer zone between Israel and the PLO.<sup>46</sup>

### **The end of the Palestinian era (1982-1990)**

After the failed attempts to destroy the Palestinian presence in Lebanon in 1978, Israel started to cooperate with Bashir Gemayel, commander of the Lebanese Forces, a military organization made up of various Christian militias. The cooperation between Gemayel and the Israeli government laid the ground for another Israeli invasion with the purpose of the final destruction of the PLO basis in Lebanon. The Israeli invasion of 1982 was a devastating one, reaching all the way to Beirut and with a high toll in civilian deaths.<sup>47</sup>

As a result of mounting domestic criticism within Israel and international mediation efforts, the PLO forces withdrew, following an agreement signed in August 1982. The evacuation of the fighters was supervised by France and the United States, and was sought to guarantee the safety of those Palestinian refugees that were left behind. In September the evacuation was carried through and US forces were withdrawn. Following the assassination of Bashir Gemayel, who had been elected President as a final step in the Israeli-Lebanese Forces cooperation scheme, Israel broke its obligations under the evacuation agreement by sending its army into West Beirut. Instead of providing protection for the Palestinian refugees, the

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<sup>44</sup> M. C Hudson, *supra* note 33, p. 253.

<sup>45</sup> D. Hirst, *supra* note 11, p. 88-89, 98-99.

<sup>46</sup> W. L Cleveland, *supra* note 10, p. 387.

<sup>47</sup> *Ibid.*, p. 387.

Israeli army lead by Defense Minister Sharon allowed the entrance of the Phalange into the Palestinian refugee camps of Sabra and Shatila, resulting in the brutal massacre of over 1000 men, women and children.<sup>48</sup>

During the decade following the Israeli invasion, and the expulsion of the PLO, armed PLO forces tried to reestablish their presence in the country. This was met by resistance by the pro-Syrian Shia militia, Amal that had emerged in the South as a reaction to the suffering that was brought upon the mainly Shia population in this area, caused by the Palestinian military presence. The Shia population of Lebanon was not committed to the pan-Arabist project to the same extent as the Sunnis, and they had paid a huge price for the Palestinian cause as victims of constant retaliation attacks from Israel in the south. This made the Shia turn against the Palestinians and eventually led to 'the war of the camps' between 1985-1987. The purpose of Amal was to subjugate the camps and remove them once and for all. The siege brought the inhabitants to the brink of starvation and has been described as "humanly appalling" for the Palestinian refugees. However, because of the military failure of Amal, the war of the camps was brought to an end in early 1987 when Syria intervened.<sup>49</sup>

After several failed attempts during the 80's, to reach a compromise between the different religious communities, Lebanese politicians were brought together by the Arab League in 1989. A national reconciliation pact, known as the Taif Accord, was signed in Saudi Arabia, which put an end to the civil war and altered the sectarian imbalance in the political system by granting Muslims a greater role. The accord also provided for the disarmament of the militias (with the exception of Hezbollah that was considered a legitimate resistance movement against Israel in the South). Furthermore, Syrian presence in Lebanon was recognized as a means to implement the Taif Accord. It should be noted that the peace agreement far from eliminated confessionalism in Lebanon, but rather entrenched religious identity as the core of Lebanese politics, something that would have extensive effects on the Palestinian refugee community.<sup>50</sup> Moreover, the peace agreement adjusted the Lebanese constitution in relation to the Palestinians, by banning their naturalization. Lebanese state authority was also extended to the refugee camps.<sup>51</sup>

### **Palestinians – The scapegoats of the war (1990-2012)**

The civil war between 1975 and 1990 had severe impacts on the lives of thousands of Lebanese and Palestinian civilians. During the war most of the Palestinian refugee camps were either partially or completely destroyed, thus leaving many Palestinians internally displaced in Lebanon.<sup>52</sup> This post-war situation was exacerbated by the Gulf crisis in Kuwait in 1990, in which the PLO showed support for Saddam Hussein. Suddenly, hundreds of thousands of Palestinians were expelled from Kuwait and other Gulf

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<sup>48</sup> *Ibid.*, p.388.

<sup>49</sup> D. Hirst, *supra* note 11, p. 128-130, 234.

<sup>50</sup> W. L Cleveland, *supra* note 10, p. 389-390, 546.

<sup>51</sup> M. C Hudson, *supra* note 33, p. 256.

<sup>52</sup> L. El-Malak, *supra* note 26, p. 139-140.

countries, effectively cutting the flow of remittances of Palestinian workers to their families in Lebanon, severely affecting their socio-economic situation. Furthermore, the Israeli-Palestinian peace process, or commonly known as the 'Oslo process', once again tilted the balance between the Palestinians and the Lebanese as the process promised little for the refugees, and sparked the fears within both the Palestinian and Lebanese community of permanent settlement in Lebanon. Facing the threats of forced integration or 'tawteen', Lebanon embarked on a tacit policy of encouraged emigration of Palestinian refugees out of Lebanon. This policy was materialized by a series of decrees and measures restricting civil rights of the Palestinians, making their lives intolerable, and indirectly compelling them to leave.<sup>53</sup>

Post-conflict Lebanon blamed the Palestinians for the civil war to a large extent, and one of the few matters that Lebanese politicians would and still agree on is that the Palestinians should leave. One government official during this period was quoted depicting Palestinians as "human garbage"<sup>54</sup>. The role of the PLO in the civil war must certainly not be ignored as an important factor to the deteriorating relations between the Palestinians and the Lebanese, however, the Lebanese policy of social exclusion dates back already to the arrival of the Palestinian refugees, long before the outbreak of the civil war. Furthermore, the PLO representative, Abbas Zaki on behalf of the Palestinians in Lebanon, extended an official apology in 2008 to the Lebanese for the wrongdoings of the PLO during the civil war. This was an attempt to initiate a Lebanese-Palestinian reconciliation process.<sup>55</sup> The fact that the rejection of the resettlement of Palestinians in Lebanon was included as a provision in the Taif Accord, thus rendering 'tawteen' unconstitutional, illustrates the political importance attached to this matter for Lebanon's national interests. The support for Palestinians in post-war Lebanon was definitely diminishing across sectarian lines and came to be replaced by legal and political discrimination that still continue to this day albeit in various shapes and forms.<sup>56</sup> The new slogan that unified the Lebanese became "Lebanon for the Lebanese"<sup>57</sup>.

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<sup>53</sup> *Ibid.*, p. 143.

<sup>54</sup> Quoted in M. C Hudson, *supra* note 33, p. 258.

<sup>55</sup> Breaking News; 'Zaki apologizes for burden posed by the Palestinians', *The Daily Star Lebanon*, January 8 2008, < [www.dailystar.com.lb/News/Politics/Jan/08/Zaki-apologizes-for-burden-posed-by-Palestinians.ashx#axzz23JaLDLC7](http://www.dailystar.com.lb/News/Politics/Jan/08/Zaki-apologizes-for-burden-posed-by-Palestinians.ashx#axzz23JaLDLC7) >, visited on August 12 2012.

<sup>56</sup> A. Knudsen, *supra* note 30, p. 56.

<sup>57</sup> Quoted in *Ibid.*

# 3 The Politics of Human Rights

This chapter will provide an outline of some critical perspectives on the human rights discourse and serve as a theoretical compass when examining the case of the Palestinian refugees in Lebanon and their right to work. It will address the gap between theory and practice and the distinction between philosophical and political approaches to human rights. Instead of focusing on the foundations and justifications of the human rights regime and its philosophical underpinnings, the political approach views the rights discourse from the perspective of practice. How can we translate the values of human rights into real tangible entitlements that can be guaranteed all human beings? From this political perspective, the universal validity of human rights is of little significance unless they are actually effective.<sup>58</sup> It is this perspective that is the theme of this thesis and that permeates the legal analysis when looking at the case of the Palestinian refugees. The intention is to explore further the comprehensive discourse on the tension between the concept of the *human* as the subject of rights and the *citizen* as the subject of rights? This section aims at outlining the challenges facing contemporary views on human rights and shed light on theories that have been elaborated in an effort to address the protection gaps that arise when human rights norms are implemented in the specific historical, cultural and political context of the nation state.

## 3.1 The Right to Have Rights

The case of the Palestinian refugees in Lebanon reveals a weakness in the international human rights regime, at times when it's application is the most warranted and in relation to those individuals most vulnerable to the violations it claims to combat. The plight and the dilemma suffered by the Palestinian refugee community residing on Lebanese soil for almost four generations now, brings to the fore questions on the actual efficiency of international human rights law, and what has been recognized as the 'politics of human rights'<sup>59</sup>.

As a marginalized group of non-nationals in Lebanon, Palestinians have a strong rights claim on the state and community in which they are not formally included. How are we to apprehend these voids in the international protection system, where certain groups of individuals seem to have been abandoned and left at the mercy of philanthropy and charity? The social and political exclusion of Palestinians in Lebanon begs the question of whether *nationality* forms a prerequisite for the inclusion in the international framework of human rights protection. Would the naturalization and thus

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<sup>58</sup> J. D. Ingram, 'What Is a "Right to Have Rights" Three Images of the Politics of Human Rights', Vol. 102, No. 4, *American Political Science Review* (2008), p. 402.

<sup>59</sup> A. Kesby, *The Right to Have Rights – Citizenship, Humanity and International Law*, (Oxford University Press Inc., New York, United States 2012), p. 1.

formalization of the legal status of the Palestinians challenge status quo and reinstate their 'right to have rights'?

With reference to international human rights law and according to the natural law tradition it is insisted again and again that we as human beings enjoy rights by virtue of our humanity, irrespective of our membership in a political community.<sup>60</sup> Appealing to the dignity and the equal and inalienable right of the 'human',<sup>61</sup> international human rights law is claimed to have displaced the legal status of citizenship as the basis of right-bearing within a state. Humanity is said to transcend statehood, and the entitlements of individuals are recognized directly under international law. As such, international human rights law is alleged to have "denationalized protection".<sup>62</sup> This view, rooted in the natural law tradition, is sometimes deemed, within the human rights discourse, as an orthodox conception of human rights. The natural law school of thought, which considers human rights as rights one possesses by virtue of being a human being, and embraces the inscription of these natural rights in positive law, represents the "heart of human rights orthodoxy" according to Dembour, Professor of Law and Anthropology.<sup>63</sup> The human rights regime emerged as a response to the catastrophic events of the Second World War and the consequences that followed from a world system in which the national state was accorded unlimited sovereignty and citizens were unable to appeal to an international legal order. The Universal Declaration of Human Rights (UDHR) was a return to the natural law heritage with the purpose of restoring the agency of individuals to stand up against the establishment of the Westphalian nation state. Regardless of race, gender, creed, language, political opinion, national or social origin, birth, property or other status, individuals would now be able to question state authority and challenge unjust law or oppressive practices.<sup>64</sup>

Today, most modern states have acceded to the various international human rights conventions, and the values expressed in the UDHR have been incorporated in many constitutions around the world. Regional legal orders with separate enforcement mechanisms have grown out of this cosmopolitan project, and the bulk of international and local human rights instruments are increasing rapidly. Even oppressive states are embracing the human rights rhetoric in an effort to avoid being publically named and shamed in the international playing field.<sup>65</sup> Professor of History, Micheal Ignatieff, quoting Elie Weisel, Professor of the Humanities, author and political activist, describes the UDHR as the sacred text of a "world-wide secular religion", and contends that human rights "[h]as become the major article of faith of a secular culture that fears it believes in nothing else. It has become the lingua franca of global moral thought, as English has become the lingua

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<sup>60</sup> A. Schaap, 'Enacting the right to have rights: Jacques Rancière's critique of Hannah Arendt', 10:22 *European Journal of Political Theory* (2011), p. 25.

<sup>61</sup> Universal Declaration on Human Rights (UDHR), Preamble.

<sup>62</sup> A. Kesby, *supra* note 59 p. 93.

<sup>63</sup> M. Dembour, 'What Are Human Rights? Four Schools of Thought', Vol. 32, pp. 1-20, *Human Rights Quarterly* (2010), pp. 2-3.

<sup>64</sup> M. Ignatieff, *supra* note 1, pp. 288-289.

<sup>65</sup> *Ibid.*, pp. 289-290.

franca of the global economy.”<sup>66</sup> Ignatieff’s views are seconded by Douzinas, Professor of Law, who ascribes human rights the status of an ideology, the defeat of ideologies, the final ideology at “the end of history”.<sup>67</sup>

Despite this explosive proliferation of human rights during the past decades, the violations against and the oppression of the ‘human’ who plays the lead role on the international scene of human rights have never been more occurring. Our age has endured more human rights violations than any of the previous, and, as Douzinas puts it, “less enlightened epochs”. “The twentieth century is the century of massacre, genocide, ethnic cleansing, the age of the Holocaust”.<sup>68</sup> Douzinas poses the question whether this immense gap between theory and practice of human rights gives us reason enough to question the ideology and its promise of emancipation.<sup>69</sup> Genocides and massacres, the utmost egregious human rights violations, serve as a reminder of the shortcomings from which the human rights regime suffers. However, less “acute” violations may sometimes provide us with just as convincing evidence of an incurable human rights deficit. For this reason, much human rights scholarship has been dedicated to the yet persisting link between state protection and human rights and the importance of citizenship for the recognition of the human being identified in the human rights regime.<sup>70</sup> What of those individuals, who frequently fall outside the scope of protection as a result of their ‘non-status’, such as refugees, stateless, irregular migrants etc.? Is there a ‘right to have rights’, and how does it relate to citizenship as a political tool for right-bearing?

The concern here is with the subject of rights and how this subject is defined. Human rights law presumes the ‘human’ and not the citizen as the subject of rights. Within the limits of certain exceptions, states are obliged to apply human rights law irrespective of a person’s citizenship, nationality or migration status. The fundamental principles of equality and non-discrimination, which will be examined in depth below, permeates the whole human rights regime, both in terms of civil and political rights and economic and social rights.<sup>71</sup>

Yet, focus still remains to a large extent on the state as the location for human rights entitlements. It is the state that implements international law, and the definition of the ‘human’ is formulated within the boundaries of national state. Kesby, legal scholar in the field of international human rights

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<sup>66</sup> *Ibid.*, p. 320.

<sup>67</sup> C. Douzinas, *The End of Human Rights: Critical Legal Thought at the Turn of the Century*, (Hart Publishing, Oregon, 2000), p. 2.

<sup>68</sup> *Ibid.*, p. 2.

<sup>69</sup> *Ibid.*

<sup>70</sup> See for example A. Kesby, *The Right to Have Rights – Citizenship, Humanity and International Law*, (Oxford University Press Inc., New York, United States 2012), L. Bosniak, *The Citizen and the Alien – Dilemmas of Contemporary Membership*, (Princeton University Press, Princeton, 2006), C. Dauvergne, *Making People Illegal – What Globalization Means for Migration and Law*, (Cambridge University Press, New York, USA, 2008).

<sup>71</sup> See for example Human Rights Committee, *General Comment No. 15, The Position of Aliens under the Covenant*, 11/04/86, para. 1; CESCR, *General Comment No. 20, non-discrimination in economic, social and cultural rights (art.2, para. 2 of the International Covenant on Economic, Social and Cultural Rights)*, (E/C.12/GC/20, 2 July 2009), para. 30.

law, notes that, “[t]he human rights system is premised on the state, the domestic sphere, being the primary site of enforcement of human rights. The state remains the primary sphere of right-bearing.”<sup>72</sup> Ignatieff furthermore observes that still 50 years after the human rights revolution; most human beings depend on their respective state for rights protection, and those who do not have a state of their own aspire to one or fight for this purpose. “The state remains the chief source of rights protection”.<sup>73</sup> Furthering the argument that there is a tendency of preference for national rights rather than human rights, Ignatieff gives the example of the state of Israel;

“[t]he Universal Declaration was, in large measure, a response to the torment of the Jewish people. Yet the survivors’ overwhelming desire to create a Jewish state, capable of defending Jews everywhere against oppression, reveals that they trusted more to the creation of a state of their own than to the uncertain benefits of universal human rights protection within other people’s national states.”<sup>74</sup>

Political theorist Hannah Arendt also highlights the paradox of the establishment of the state of Israel, which in her opinion manifests her argument that the restoration of human rights is achieved only through the restoration or establishment of national rights.<sup>75</sup> Those who are the most in need of human rights protection such as stateless people and minority groups tend to seek collective self-determination often in the form of a state of their own.<sup>76</sup> Thus, in the consciousness of people, the state continues to be the ideal solution in the aspirations of emancipation. Looking beyond issues of enforcement of human rights, the crucial question concerns the scope of human rights norms. Who is the ‘human’ of international human rights law and how do human rights norms relate to excluded groups such as the stateless within the state? Has the human rights regime outplayed the legal status of citizenship as the basis for right-bearing?

### **3.1.1 Arendt and Citizenship as The Right to Have Rights**

The starting point of my theoretical exploration of who is the subject of rights, is the theories of political theorist Hannah Arendt, who in the wake of the Second World War first advanced the idea of the existence of a ‘right to have rights’, an essential right which purportedly forms the basis of any further right-bearing. Political Scientist, Ingram, credits Arendt for what he considers the most celebrated statement of a political perspective on human rights.<sup>77</sup> With self-lived experience of statelessness, she argued that at the moment of their greatest need, human rights had proven themselves insufficient. In *The Origins of Totalitarianism*, Arendt provides a critique

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<sup>72</sup> A. Kesby, *supra* note, 59, p. 97.

<sup>73</sup> M. Ignatieff, *supra* note 1, p. 297.

<sup>74</sup> *Ibid.*, p. 296

<sup>75</sup> H. Arendt, *supra* note 21, p. 299.

<sup>76</sup> *Ibid.*

<sup>77</sup> J. D. Ingram, *supra* note 58, p. 402.

of human rights, by using the stateless of the inter-war period to exemplify the unfortunate link between political membership of the nation state and the protection that the human rights regime affords.<sup>78</sup> By questioning human rights, Arendt reveals its philosophical deficiencies and the importance of political considerations in the implementation of human rights.<sup>79</sup>

To Arendt, the situation of stateless people was evidence to what she calls the ‘perplexities of human rights’, in other words, that rights are not enjoyed by virtue of ones individual abstract humanity, but rather that they are inextricably linked to the membership of a political community. Arendt illustrates this perplexity in her famous comment: “The world found nothing sacred in the abstract nakedness of being human.”<sup>80</sup> Loosing their legal and political status and thus being reduced to the abstract status of the human, or “the human being in general”, meant loosing the one right from which all other human rights flow, namely the right to have rights – the membership of a political community - citizenship. Arendt considered that “[o]nly the loss of a polity itself expels [man] from humanity.”<sup>81</sup>

Arendt here draws from the ideas of Edmund Burke, critic of the French Revolution, who asserted that only *national* rights are real rights.<sup>82</sup> The problem with humanity as the true right to have rights, as assumed by international human rights law, was for Arendt that in a world consisting of sovereign states, it was not certain if it were possible to guarantee any rights outside the framework of the nation state. The solution she meant was to be found in a cosmopolitan project by which a sphere above nations would be established. She argued that international law is formulated through reciprocal agreements and treaties between sovereign states, a system that in itself contradicts those universal values it formulates.<sup>83</sup> In other words, international law cannot guarantee the right to have rights, because it enshrines the principle of state sovereignty.<sup>84</sup> Ingram argues that Arendt’s concept of a right to have rights meets the purpose of turning human rights into the political challenge of turning moral rights into positive rights.<sup>85</sup>

Arendt’s theory is claimed to be influenced by her republican conception of politics. Drawing on the philosophies of Aristotle, she conceives the human as a political animal, who derives her dignity from speech and action in the political community.<sup>86</sup> The community in this context is the ‘place in the world’ that makes “opinions significant and actions effective”, and the deprivation of human rights is the deprivation of such a place.<sup>87</sup> The polity is the source of agency and equality, and Arendt asserted that community membership gives the individual the political status necessary to participate in the formulation of laws, claiming their protection

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<sup>78</sup> H. Arendt, *supra* note 21, pp. 267-302.

<sup>79</sup> J. D. Ingram, *supra* note 58, p. 403.

<sup>80</sup> Arendt, *supra* note 21, p. 299.

<sup>81</sup> *Ibid.*, p. 297.

<sup>82</sup> J. Rancière, ‘Who Is the Subject of the Rights of Man’, Vol. 103, No. 2/3, pp. 297-310, *The South Atlantic Quarterly* (2004), p. 298.

<sup>83</sup> Arendt, *supra* note 21, p. 298.

<sup>84</sup> J. D. Ingram, *supra* note 58, p. 408.

<sup>85</sup> *Ibid.*, p. 403.

<sup>86</sup> Arendt, *supra* note 21, p. 297.

<sup>87</sup> *Ibid.*, p. 296.

and to shape a “common world”.<sup>88</sup> Arendt here makes a very strict distinction between the public and the private sphere. The public sphere is where individuals can act together and produce and shape equality, whereas the private sphere according to Arendt is inherently unequal. The private sphere is based on the “law of universal difference and differentiation”.<sup>89</sup>

To summarize, Arendt believed that human rights flow from citizenship and the membership in a political community, such that the right to have rights is the right to have citizenship. For Arendt human rights are the outcome of the politics of sovereign states. To be excluded from the polity is equal to being excluded from the sphere of rights, to be denied a voice and agency, without which one cannot claim protection for one’s positive rights inscribed in law.<sup>90</sup> As such, the stateless individuals reveal “the modern conception of human dignity to be a mere abstraction”.<sup>91</sup> The ideal of universal human rights in the end comes down to a situation where the nation state determines who is part of humanity. Van De Hemel has interpreted Arendt’s theory as a call for a critical review of the notion of human rights and their connection to national forms of power.<sup>92</sup>

Many scholars from a range of various disciplines have been inspired by Arendt’s concept of the right to have rights. Although many have recognized Arendt as a good starting point in analyzing the contemporary challenges to human rights,<sup>93</sup> there are also many critical voices that for instance note the somewhat simplified distinction of the private and the political as well as Arendt’s very republican approach to the political.<sup>94</sup> Going beyond Arendt, Jacques Rancière is one of those prominent philosophers that have indicated the limitations of her work.<sup>95</sup>

### 3.1.2 Community Membership and Internal Borders

One counter narrative that serves as a substantial critique of the celebrated ‘human’ in international human rights law, and that further underscores the persisting importance of citizenship, is one that takes into consideration the immigration context. Building on Arendt and her idea of the political community as the place in the world where rights can be enacted and enjoyed, and scholarship within the fields of immigration, citizenship and globalization theory as well as jurisprudence mainly from the UK and the European Court of Human Rights (ECtHR), Kesby challenges the norm of universality in the human rights discourse by providing a perspective that

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<sup>88</sup> *Ibid.*, p. 301.

<sup>89</sup> *Ibid.*

<sup>90</sup> A. Kesby, *supra* note 59, p. 5.

<sup>91</sup> A. Schaap, *supra* note 60, p. 23.

<sup>92</sup> E. Hemel, ‘Included But Not Belonging, Badiou and Rancière on Human Rights’, Issue 3, *Krisis, Journal for Contemporary Philosophy* (2008), p. 17-18.

< [www.krisis.eu/content/2008-3/2008-3-03-hemel.pdf](http://www.krisis.eu/content/2008-3/2008-3-03-hemel.pdf) >, visited on July 4 2012.

<sup>93</sup> See for example C. Douzinas, *supra* note 67, pp. 141-144.

<sup>94</sup> A. Kesby, *supra* note 59, p. 5.

<sup>95</sup> See J. Rancière, *supra* note 82.

views immigration policy and status as an emerging tool for the interpretation and reconstruction of human rights, in an effort to restrict or deny the rights of present non-nationals on state territory.<sup>96</sup> Kesby draws on theories of community membership determination and the internalization of the territorial border in the development of what she terms ‘internal borders’, meaning the state practice of shifting border control inwards in an attempt to bestow on the sovereign right to regulate the entry and residency of foreigners on their territory and ultimately the construction of what Catherine Dauvergne, Professor in Migration Law, calls the “community of insiders”<sup>97</sup>. Making reference to Professor of Political Science Soguk, Kesby here focuses on situations in which the border moves inward and takes the form of “a policy of the denial of rights to migrants and refugees”.<sup>98</sup>

### *The Border and Community Membership*

Kesby argues that the shift of immigration control from the externally oriented territorial border to the internal surface within the state is an indication that the regulation is not only targeting the entry into the territorial space but also the social space, in other words into the rights and resources of society. As such, the concern is social, rather than territorial – integration into society – and the aim is to ensure social absence although the persons concerned are physically present.<sup>99</sup> The focus is thus on the social exclusion and rightlessness of non-nationals who are residing within the community of nationals. The link between social exclusion and subsequently the welfare system and immigration control, has been highlighted by Cohen, immigration lawyer, who asserts that, “immigration control is almost synonymous with welfare control”.<sup>100</sup>

Scholars have elaborated a broader and more comprehensive understanding of the border as opposed to the somewhat simplistic and geographical interpretation often offered by states. With reference to the French philosopher Balibar, Kesby highlights the fact that the concept of the border “shifts in meaning, location and the manner in which it is experienced”<sup>101</sup>. Arguably various invisible borders that manifest policy decisions and distinctions between people accompany the geographical delimitation, thus making the border into a building block in the construction of the non-citizen, shaping the identity of the people it encloses and those who seek to be included. These ‘multiple borders’, are designed

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<sup>96</sup> See A. Kesby, *supra* note 59, Chapter. 3; A. Kesby, ‘Internal Borders and Immigration Control: New Prospects and Challenges’, E.H.R.L.R, 2, pp. 176-191, *European Human Rights Law Review* (2010).

<sup>97</sup> C. Dauvergne, *supra* note 70, p. 17.

<sup>98</sup> A. Kesby, *supra* note 59, p. 102.

<sup>99</sup> *Ibid.*

<sup>100</sup> S. Cohen, *Immigration Controls, the Family and the Welfare State: A Handbook of Law, Theory, Politics and Practice for Local Authority, Voluntary Sector and Welfare State Workers and Legal Advisors*, (Jessica Kingsley Publishers, London and Philadelphia, 2001), p. 18.

<sup>101</sup> A. Kesby, ‘The Shifting and Multiple Border and International Law’, *Oxford Journal of Legal Studies* (2007), p. 102.

differently in relation to different groups and have the function of for example giving people a particular experience of rights such as for example the right to work. The border thus has a “socially discriminatory function”.<sup>102</sup> The negotiation of identity at the border in this way becomes a way to allocate rights and, more specifically socio-economic rights. This coupling of social exclusion and territorial control prompts the question of who the welfare system is essentially for.<sup>103</sup> Social and economic rights and benefits imply integration, however the question is integration for whom? Kesby illustrates these circumstances in her informative interrogation of the border: “[f]or some, borders are being ‘thinned’ and their function as the threshold on which citizenship and nationality converge dissolved, whereas for others, the border is being redoubled and the link between citizenship and nationality reinforced.”<sup>104</sup>

Now, going back to the immigration context and the role of immigration policy it can be argued that this area of law actually materializes the state’s sovereignty and justifies distinctions between non-nationals and citizens. As purported by, Dauvergne, migration law has become “the last bastion of sovereignty”<sup>105</sup>, an assertion worth exploring, considering that the authority of the state to decide over who it will admit to its territory has been reaffirmed on several occasions in the jurisprudence of for example the ECtHR and the various UN bodies.<sup>106</sup> This has also been noted by Arendt who wrote that, “sovereignty is nowhere more absolute than in matters of emigration, naturalization, nationality and expulsion”.<sup>107</sup> This legally recognized right for states to regulate the entry into their territory has turned into the justification for the exclusion and control over resources and entitlements in society. In the human rights context this can be seen as the construction of human rights on the basis of immigration status. One could argue that this use of immigration policy as a tool for the manipulation of human rights is actually a means for the state to regain its sovereignty that has been curtailed with the entrance of international human rights law, and to further regain control of the process of membership determination in the community. It is a politicization of human rights. This brings to the fore the relation between immigration law and human rights law. “Human rights have become an internal site of immigration control – a context in which “entry” into societies are determined”.<sup>108</sup> The question thus becomes: where does immigration control begin and end? Or maybe more importantly, when is the state, through its formulation of immigration policy, guilty of an infringement of the human rights sphere and individuals’

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<sup>102</sup> A. Kesby, *supra* note 101, p. 113.

<sup>103</sup> S. Cohen, *supra* note 100, p. 18.

<sup>104</sup> A. Kesby, *supra* note 101, p. 113.

<sup>105</sup> C. Dauvergne, *supra* note 70, p. 2.

<sup>106</sup> See for example General Comment No. 15, *The Position of Aliens under the Covenant*, *supra* note, 163 para. 5.

<sup>107</sup> Quoted in L. Preuss, ‘La Dénationalisation imposée pour des motifs politiques’, Vol. IV, Nos. 1, 2, 5, *Revue Internationale Française du Droit des Gens* (1937), H. Arendt, *supra* note 21, p. 278.

<sup>108</sup> A. Kesby, *supra* note 101, p. 183.

rights and entitlements? According to Kesby this seriously puts assertions of humanity as the qualification for the right to have rights, into question.<sup>109</sup>

### *Bosniak on Internal Borders*

In her development of the concept of internal borders, Kesby has borrowed from the models and theory put forward by Professor of Law, Linda Bosniak in her examination of the significance of citizen status for the entitlements to rights and benefits.<sup>110</sup> Kesby points to the issue of the dividing lines that are drawn by and within the law itself, both national and international law. This means that there is a constant interplay between the territorial border and the limits of the legal order. These lines are drawn between those who can fully benefit from the legal order and those who are physically present but legally absent.<sup>111</sup> Bosniak has studied this notion in the case of the US legal order, and characterized alienage, i.e. non-citizenship, as a ‘hybrid legal status’, meaning that the alien is subject to two distinct regulatory spheres. The first sphere is the sphere of borders, sovereignty and community membership and the second refers to a social sphere of relationships between territorially present persons, citizens and non-citizens alike. In this social world, aliens appear indistinguishable from citizens and exactly the type of social group that requires the protection of the law.<sup>112</sup> Bosniak argues, that the non-citizen who has the ‘hybrid legal status’, embodies both of these two spheres by being subject to immigration control at the same time as the domain of what she calls territorial personhood.

This leads to the question of where the dividing line should be drawn, or which sphere that should prevail in each case.<sup>113</sup> Drawing on US case law and academic writings, Bosniak has identified two responses that she has labeled the ‘separationist model’ on the one hand and the ‘convergence model’ on the other. The former model views exclusionary membership norms as legitimate as long as they apply at the state’s border in the regulation of admission and community membership, whereas such norms are considered irrelevant for the internal regulation of territorially present persons, and the latter justifies the structuring of rights and benefits of aliens within the state territory as a tool for membership determination. In other words, the separationist model sees immigration control as mainly concerning admission, while the convergence model internalizes the membership policy and extends it to the enjoyment of rights and benefits within the state’s territory. Although the separationist approach is seemingly more liberal towards territorially present immigrant, the two models are both maintained on the same premises - that membership regulation is appropriate within a community. Both sides accept that societies are bounded so what sets the two approaches apart is rather the question of the

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<sup>109</sup> A. Kesby, *supra* note 209, p. 102.

<sup>110</sup> See, L. Bosniak, *The Citizen and The Alien, Dilemmas of Contemporary Membership*, (Princeton University Press, Princeton, 2006).

<sup>111</sup> A. Kesby, *supra* note 59, p. 103.

<sup>112</sup> L. Bosniak, *supra* note 70, p. 38.

<sup>113</sup> A. Kesby, *supra* note 59, p. 103.

jurisdiction of those boundaries. “For the convergence advocates, boundaries act legitimately on the inside as well as the border, whereas for the separationists, those boundaries must be confined (more or less) to the territorial frontier”.<sup>114</sup> The significance of citizenship as a defining factor in shaping the identity and structure of the community and as a justified tool in the process of membership selection is thus upheld by both these policies. Bosniak here points to the fact that the norms governing the border policy are designed to meet the interests of already existing members.<sup>115</sup> The system of sovereign states thus remains intact in both these approaches, and the separationist model does not erase the territorial border in any way, it merely restricts its jurisdictional scope.

The persistence of citizenship as a criterion for full societal integration, and the privileging of citizens over non-citizens when looking at long-term or permanent alienage, according to Bosniak, seems to “depend on, and to reinforce, caste-like stratification among societal groups”<sup>116</sup>. Such a system, of government policies that discriminate against non-citizens contravenes those values of equality that supposedly form the basis for universal human rights and liberal democratic societies.<sup>117</sup> However, this exclusionary norm is endorsed by many egalitarians that view citizenship preferences as an unavoidable and even desirable feature of national membership communities.<sup>118</sup>

Bosniak has developed her arguments with reference to political theorist Michael Walzer and his concept of membership in his renowned work *Spheres of Justice*. Walzer contributed to immigration debates across disciplines and his theories have mainly been supported by those scholars advocating an exclusive national community closed to strangers or “outsiders”. According to Walzer countries are membership communities, or as he puts it a “world of common meanings” and “shared ways of life”, which its members are allowed to preserve. Walzer further argues that because unregulated entry of foreigners would alter the composition of the community and as such render its preservation impossible, the members of the national community must have the right to decide their own admissions policy, on the basis of the members’ own understanding of what membership entails in their community and what sort of community they aspire for. Walzer sees admissions policy as a strictly political decision. While it is up to each community to decide over membership distribution, Walzer insists that it is undesirable to adopt an open admissions policy because communities “depend upon closure” in order to preserve their culture and to maintain the sites of mutual identification and connectedness that are so important for the protection of the membership communities.<sup>119</sup>

Although Bosniak rightly points out that Walzer’s analysis has been read as a justification for restrictive admissions policies by most immigration analysts, she has underscored the importance of another

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<sup>114</sup> L. Bosniak, *supra* note 70, p. 123.

<sup>115</sup> *Ibid.*, p. 126.

<sup>116</sup> *Ibid.*, p. 37.

<sup>117</sup> *Ibid.*

<sup>118</sup> *Ibid.*

<sup>119</sup> *Ibid.*, p. 40.

dimension to Walzer's work, a dimension that has not received as much attention, even though it forms an invaluable component of his theory. This regards the status of aliens already residing inside the national political community. Walzer argues that at the moment that immigrants reside and work in a national society, they must be treated as members of that community. In case they are not yet full members, they must have the opportunity to obtain citizenship promptly. The non-recognition of the immigrants as members in a community is compared to tyranny. Walzer here draws a parallel to the status of metics in the ancient Athenian polis, who lived and worked in the city but that could not aspire towards citizenship nor did they possess any political rights or socioeconomic rights. For Walzer, this equals a caste system that cannot be accepted in a democracy and he makes an analogy with the system of guest worker immigrants in Europe. These guest workers are brought into a country to perform the low-paid and undesirable jobs that citizens are not willing to take. They are denied political and social rights and there are no prospects of becoming members of the community by being naturalized. Walzer holds that this system stands in stark opposition to the "fundamental moral commitments of democratic community life", and maintains that once residing within the community, immigrants are no longer strangers. In sum, he views decisions regarding admission as politically justified, whereas any decision concerning the status of immigrants inside the community as "entirely constrained". Bosniak sees the two dimensions of Walzer's membership analysis as inextricably linked. There is interdependence between the idea of restricted admission and equal treatment of aliens within the community. Walzer sees external boundedness and internal inclusive equality as two sides of the same coin.<sup>120</sup>

One reason that may explain why this aspect of Walzer's work has been largely ignored could according to Bosniak be his European focus, which has made it difficult to translate the metics analogy to other dilemmas of non-citizens.<sup>121</sup> Bosniak sees Walzer's metic analysis as a criticism of the convergence model that often times prevail over the separationist approach. She also mentions a range of liberal intellectuals who have adopted the same type of strict separation of the hard outside and soft inside.<sup>122</sup> The strict separationist approach however remains a theoretical approach and is described by Bosniak as a general normative framework with the purpose of guiding democratic practice. Those theorists promoting a separationist approach also generally accept limitations to the recognition of membership for non-citizens. Political exclusion and the right of deportation by the government in some cases are measures taken for granted.<sup>123</sup>

Walzer's analysis is nonetheless important as it universalizes human rights to the extent that all individuals within the state jurisdiction are entitled to be treated equally regardless of their legal status. At the same time the protection still emanates from the sovereign national community and assumes that a membership determination has been carried through at a

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<sup>120</sup> *Ibid.*, 43.

<sup>121</sup> *Ibid.*

<sup>122</sup> *Ibid.*, p. 127.

<sup>123</sup> *Ibid.*, p. 129.

prior stage. The state remains the locus of state protection and the political decision of who fulfills the criteria for entering and integrating into the community lies with its members. Bosniak does not see the question of membership being resolved by an appeal to humanity, as formulated in international human rights law. Humanity is never a strict and pure concept of humanity, but rather a bounded concept; the human at the border.<sup>124</sup>

I will now turn to the underlying arguments that form the political decision of membership determination. On what grounds do the members of a national community decide upon who to include and who to exclude? What are the considerations that continue to follow and shape the status of the alien within the community?

### **3.1.3 Hospitality – The Refugee As the Guest**

In this section I intend to examine the discourse of hospitality in relation to membership regulation as formulated above or immigration policy in a community. Since it has been argued that the immigration context, and ultimately the decision over who to exclude or include in the membership community may continue to shape the lives and the rights and entitlements of aliens within the community, it is essential to try to discern what the elements are that essentially guide the political decisions at the border, and the scope of jurisdiction of the admissions policy in terms of how far-reaching it should be in each case.

The French philosopher, Derrida's notions of unconditional and conditional hospitality and host-guest relationship will serve as a starting point in an effort to make sense of the treatment of non-citizens within national communities. The political decisions of where the internal borders should be drawn will thus be viewed through the lenses of the hospitality discourse. Hospitality reaffirms the sovereignty of the national host. Sovereignty is to be found at the core of the hospitality concept at the same time as hospitality notions are inherent in the assertions of sovereignty, in the membership selection and the construction of the community and the other. The limitations of hospitality in terms of long-term relations between the host and the guest will also be considered. As Cathrine Brun, Professor of Geography, notes, Derrida helps us to "understand the relationship between the stranger – the other – and the host in the context of immigration, integration and cosmopolitanism"<sup>125</sup>.

The discourse of hospitality in the immigration context developed mainly as a result of the critiques toward the restrictive immigration policies adopted in France during the early 1990's. Derrida, one of the key scholars within this field, has drawn on the works of Kant and Levinas in his formulation of hospitality.<sup>126</sup> Although the concept has been developed mainly from a European perspective, it is applicable to all human hospitality

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<sup>124</sup> *Ibid.*, p. 9, 16.

<sup>125</sup> C. Brun, 'Hospitality: Becoming 'IDPs' and 'Hosts' in Protracted Displacement', Vol. 23, No. 3, *Journal of Refugee Studies* (2010), p. 340.

<sup>126</sup> A. Bell, 'Being 'at home' in the nation: Hospitality and sovereignty in talk about immigration', Vol. 10 (2), pp. 236-256, *Ethnicities*, (2010), p. 240.

encounters, and will serve as a baseline in the case study on Palestinian refugees in Lebanon.

There is not a single definition that will help us understand the notion of hospitality, since all cultures and communities have their own laws of hospitality. Rather one should understand the notion as a complex relationship between people and places. It concerns the foreigner whether this individual or group of individuals is “the immigrant, the exiled, the deported, the stateless or the displaced person” and how we relate to ourselves and to others. It refers to the act of welcoming someone, and the relationship that is constructed in this welcome between the host who is “at home” and the guest who arrives from elsewhere. What is the power relation between the host and the guest? What are the limitations to hospitality? What are the rights and obligations of the guests in relation to the host society? How long are guests welcome to stay?<sup>127</sup>

### *Derrida's Two Concepts of Hospitality*

In Derrida's understanding hospitality is essentially about ethics. In his efforts to establish cosmopolitan rights for asylum seekers, refugees and immigrants, by moving beyond the state, Derrida distinguishes between unconditional and conditional hospitality. The former indicates a “total welcome”<sup>128</sup>, by which the other is taken in without any demands and without the host knowing anything about the guest. This unconditional hospitality forms the ethical dimension of hospitality. To be truly hospitable implies a reception without invitation, to welcome without hesitating. The unconditional law of hospitality imposes no limits on the coming of the other, and is more universal than any other cosmopolitan law.<sup>129</sup> As such, it “exceeds juridical, political or economic calculation”.<sup>130</sup> Derrida recognizes the impracticalities of this understanding of hospitality, as it requires immense sacrifices on the part of the host. The host would have to relinquish her sovereignty over her home, which would be unrealistic since hospitality requires things to be hospitable with.<sup>131</sup> Without that sovereignty, there can be no hospitality, as there would be no place from which a new arrival might be welcomed.<sup>132</sup> In short, “an unconditional welcome annuls the home of hospitality.”<sup>133</sup>

Derrida has solved this dilemma by introducing the double law of hospitality. He purports that hospitality is a two dimensional concept, which is constructed of first unconditional hospitality and second conditional hospitality. He notes that even the word *hospitality* itself is haunted by its own contradiction; “a Latin word which allows itself to be parasitized by its

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<sup>127</sup> Ibid., p. 240, C. Brun, *supra* note 125, p. 341.

<sup>128</sup> Brun, *supra* note 125, p. 341.

<sup>129</sup> G. Baker, ‘The ‘Double Law’ of Hospitality: Rethinking Cosmopolitan Ethics in Humanitarian Intervention’, Vol. 24(1), pp. 87-103, *International Relations* (2010), p. 91

<sup>130</sup> Quoted in J. Derrida, ‘The World of the Enlightenment to Come (Exception, Calculation, Sovereignty)’, 33, *Research in Phenomenology* (2003), p. 40, *Ibid.*

<sup>131</sup> C. Brun, *supra* note 125, p. 341.

<sup>132</sup> A. Bell, *supra* note 126, p. 240.

<sup>133</sup> G. Baker, *supra* note 129, p. 88.

opposite, “hostility”.<sup>134</sup> Whereas conditional hospitality forms the ethics of hospitality, this unconditional hospitality constitutes the political dimension of hospitality; the right to welcome and the right to be welcomed. It is based on a distinction between hosts and guests, and implies judicial principles and institutional arrangements.<sup>135</sup> Conditional hospitality is in other words an unequal power relationship in which the host is the sovereign. Hospitality depends, according to Derrida upon this sovereignty, in other words, the power to extend an invitation, to select the guests as well as to exclude and limit the conditions of welcome.<sup>136</sup> As Brun puts it, “[t]he starting point for conditional hospitality is the rights and entitlements associated with the category”.<sup>137</sup> It is conditional hospitality that is extended to migrants, and Derrida exposes it as involving violence and injustice.<sup>138</sup> For hospitality to be possible and remain a right, the law of unconditional hospitality is crucial, as it depends on an authority that, as Derrida puts it:

“[a]ffirms the law of hospitality as the law of the household, oikonomia, the law of his household, the law of a place (house, hotel, hospital, hospice, family, city, nation, language, etc.), the law of identity which delimits the very place of proffered hospitality and maintains authority over it, maintains the truth of authority, remains the place of this maintaining, which is to say, of truth, thus limiting the gift proffered and making of this limitation, namely, the being-oneself in one’s own home, the condition of the gift and of hospitality.”<sup>139</sup>

The two concepts are used by Derrida to separate political from ethical constraints, and the two forms of hospitality must co-exist as it is in between the two notions that a decision must be taken. They are interdependent in the sense that unconditional hospitality needs the laws of conditional hospitality to make it effective, concrete and determined. Otherwise, Derrida writes, the true hospitality would risk being abstract, utopian, illusory. On the other hand, conditional hospitality requires the guidance and inspiration from the unconditional hospitality.<sup>140</sup> Thus, the notion of hospitality contains two extremes within itself, the exclusion and violence that is the consequence of conditional hospitality on the one hand and the unconditional welcome on the other. Sociologist, Avril Bell, argues that the point of this tension between the two forms of hospitality is that unconditional hospitality functions as a constant provocation to the limitations of conditional hospitality. It provides a challenge to broaden the scope of conditional hospitality further for it to become more welcoming.<sup>141</sup>

The fact that most of the focus of hospitality is on the initial welcome, indicates that there is an inherent temporality in the notion of hospitality. In

<sup>134</sup> J. Derrida, “Hostipitality”, Vol. 5, No. 3, Translated by Barry Stocker & Forbes Morlock, *Angelaki, Journal of the Theoretical Humanities* (2000), p. 3.

<sup>135</sup> C. Brun, *supra* note 125, p. 341.

<sup>136</sup> A. Bell, *supra* note 126, p. 240.

<sup>137</sup> C. Brun, *supra* note 125, p. 341.

<sup>138</sup> A. Bell, *supra* note 126, p. 240.

<sup>139</sup> J. Derrida, ‘Hostipitality’, *supra* note 134, p. 4.

<sup>140</sup> J. Derrida & A. Dufourmantelle, *Of Hospitality; Anne Dufourmantelle invites Jacques Derrida to respond*, translated by R. Bowlby, (Stanford University Press, Stanford, California, 2000), p. 79.

<sup>141</sup> A. Bell, *supra* note 126, p. 241.

other words, guests are expected to leave at some point and there are expectations of reciprocity, that the guest vs. host roles will be reversed.<sup>142</sup> Since hospitality implies a temporary relationship, the hosts' attitudes towards the guests will change when the guests do not leave and their stay becomes protracted.<sup>143</sup> These protracted host-guest relationships become increasingly problematic as time passes. This aspect of temporality is linked to the inherent challenge to the sovereignty of the host, and the way that the host and guest identities respectively are shaped and maintained. When uncertainty of how long the guests will stay emerges as it would in for example protracted refugeehood, the language of unconditional hospitality switches to a language of conditional hospitality that relates to the political context.<sup>144</sup> The fears of some sort of permanent settlement, challenges the sovereignty of the host. Brun describes this situation as hospitality transforming itself into being only conditional, in her examination of hospitality in the context of internally displaced persons (IDP's) in Sri Lanka. When hospitality is only conditional, the guests become an isolated category separated from the host society and whose rights can be more easily denied. Brun writes, "[w]hen relations of hospitality are no longer operating between unconditional and conditional hospitality, [the guests] are stripped of agency and basic rights".<sup>145</sup> Bell also addresses the issue of long-term relationships and the limits of the hospitality discourse. She argues that hospitality in the long run has to be replaced by another discourse that includes the guests into the national family and that makes them at home. In his study of Lebanese-Palestinian hospitality, Ramadan gives the example of how Palestinian refugees during Israel's 2006 war on Lebanon, challenged the contemporary hospitality discourse and identities and reversing the host-guest roles, by offering shelter and support to displaced Lebanese in the South. According to Ramadan, this had the potential to significantly reshape Palestinian-Lebanese relations. The conditions of hospitality were changed, and Palestinian refugees showed themselves to be "good neighbors" and an asset to Lebanese citizens.<sup>146</sup> Rosello, Professor of French and Comparative Literary Studies, asserts that when the guest and host roles become fixed, hospitality develops into "parasitism or charity".<sup>147</sup> Here it is interesting to draw a parallel to the discussions on welfare benefits in relation to immigrants or non-nationals.

Drawing on interviews with young white New Zealanders on the topic of long-term immigration, Bell points to the "riskiness" that is involved in the act of welcome and the hospitality relationship. This risk relates to the expected behavior of the guest and their willingness to assimilate into the host society. Hospitality furthermore always involves a risk of violence - the guest usurping sovereignty and taking over the home and the role of the

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<sup>142</sup> *Ibid.*, p. 245.

<sup>143</sup> C. Brun, *supra* note 125, p. 349.

<sup>144</sup> *Ibid.*, p. 348.

<sup>145</sup> *Ibid.*, p. 350.

<sup>146</sup> A. Ramadan, 'The Guests' Guests: Palestinian Refugees, Lebanese Civilians, and the War of 2006', Vol. 40 No. 4, *Antipode* (2008), p. 672.

<sup>147</sup> M. Rosello, *Postcolonial Hospitality, The Immigrant as Guest*, (Stanford University Press, Stanford, California, 2001), p. 167.

host.<sup>148</sup> Rosello has also underscored the centrality of risk in all hospitable encounters. She identifies hostility as “part and parcel of the contract between the host and the guest, and accepting the possibility of violence endangers both the guest and the host”.<sup>149</sup> Ramadan has noted the impact that war has on the balance between unconditional and conditional hospitality, and how it reveals the limitations of unconditional hospitality.<sup>150</sup> “Unconditional hospitality comes under pressure in the relationship with the enemy as the other.”<sup>151</sup>

To sum up, Derrida’s contribution on hospitality sheds light on the paradox inherent in the concept of hospitality; that in the act of generosity and risk-taking in welcoming someone, there is also an expression of power and violence manifesting itself in the exclusion and selection of the other, and the imposition of conditions and obligations upon the guest – the conditions of the unconditional and genuine hospitality.<sup>152</sup>

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<sup>148</sup> A. Bell, *supra* note 126, p. 242

<sup>149</sup> M. Rosello, *supra* note 147, p. 173.

<sup>150</sup> A. Ramadan, *supra* note 146, p. 665.

<sup>151</sup> C. Brun, *supra* note 125, p. 342.

<sup>152</sup> A. Bell, *supra* note 126, p. 251.

## 4 'The Right to Work' in International Law

The following two chapters will examine the right to work and non-discrimination in international law. The division of these two fields is somewhat artificial, since non-discrimination is an integral part of the human rights regime and a basic precondition for the enjoyment of any right established in international human rights law.<sup>153</sup> Furthermore, the labour market might be the primary field in which individuals are faced with widespread discrimination. This separation is nonetheless useful when distinguishing and clarifying the different legal obligations arising from the various human rights instruments. At times, the legal assessment of these two fields may overlap, which illustrates the conjunction between the right to employment and equality. The main conventions concerning the right to work will be covered below, with special attention to those provisions pertaining to non-nationals, considering the ambiguous status of Palestinian refugees in Lebanon. The legal research on the right to work is very limited, and the meaning and scope of this right rather ambiguous. I have relied primarily on the most recent contribution to this subject, the doctoral thesis of Legal Scholar Haina Lu. Her analysis of the right to work in China contains a comprehensive outline of the general legal framework of the right to work.<sup>154</sup>

### 4.1 'Work' as a Human Right?

Before examining the various human rights instruments relating to the right to work, it is necessary to clarify the concept of work in international law, as well as highlighting some of the uncertainties that figure in the debate on work related rights. What does the right to work actually entail, and why is the implementation on the national level in general so weak?

When studying the academic legal discourse and international documents relevant to this right, it becomes clear that the right to work is one of the more ambiguous rights provided for by international law. The terminology itself creates considerable confusion about what the right to work actually includes, and there is not much consensus within the international community on what the legally binding obligations arising from this right are. Are we talking about 'work-related rights', 'employment-related rights', 'rights at work', 'workers rights', or 'labour rights' etc.?<sup>155</sup> Moreover, there has been a lack of attention to the right to

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<sup>153</sup> CESCR Committee, General Comment No. 20, *supra* note 71, para. 2.

<sup>154</sup> See H. Lu, *The Right to Work in China – Chinese Labour Legislation in the Light of the International Covenant on Economic, Social and Cultural Rights*, (Intersentia Ltd, Cambridge, 2011).

<sup>155</sup> *Ibid.*, pp.41-42.

work in itself and there are few international instruments specifically targeting the topic.

Although the right to work figures in various international human rights instruments, such as the Universal Declaration of Human Rights (UDHR), the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), in several articles of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMW), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the 1951 Convention Relating to the Status of Refugees, as well as in many regional agreements, such as the European Social Charter, the right to work still derives its main legitimacy from the International Covenant on Economic, Social and Cultural Rights (ICESCR), an instrument that suffers from ambiguity and weak implementation, leaving many of the rights therein rather toothless.<sup>156</sup>

The reasons for the lack of a clearly defined formulation and clear consensus of the right to work as well as the scarcity in academic research on this topic<sup>157</sup> may be associated with the reluctance to recognize work as an actual human right that individuals are entitled to enjoy by virtue of law.<sup>158</sup> This reluctance partly has its roots in the historical division between civil and political rights on the one hand and economic, social and cultural rights on the other, and the political tensions between capitalist and socialist nations that formed the context in which social and economic rights were developed and written into international law.<sup>159</sup> One of the underlying reasons for this rights division was the idea that civil and political rights were justiciable in the sense that they could easily be applied by courts and similar judicial bodies, whereas social and economic rights were considered to be of a more political nature. Social and economic rights, also known in the human rights context as ‘second generation rights’, were also viewed as different compared to civil and political rights, ‘first generation rights’, in terms of the character of the states’ obligations. Whereas the first generation rights essentially demanded ‘negative obligations’, the duty to respect i.e. abstaining from conduct that violates these rights, the second generation rights demand ‘positive obligations’ for a satisfactory implementation of at least the minimum core obligations, in other words requiring action on the part of the state.<sup>160</sup> Furthermore, civil and political rights were viewed as “free”, meaning that they are more cost efficient for states. In contrast economic and social rights confer a welfare obligation on states towards

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<sup>156</sup> C. Tomuschat, *Human Rights, Between Idealism and Realism, Second Edition*, (Oxford University Press, Oxford, 2008), p. 54.

<sup>157</sup> J. Sarkin, M. Koenig, ‘Developing the Right to Work: Intersecting and Dialoguing Human Rights and Economic Policy’, Vol. 33, No. 1, pp. 1-42, *Human Rights Quarterly* (February 2011), pp. 1, 4.

<sup>158</sup> *Circle of Rights, Economic, Social & Cultural Rights Activism, A Training Resource*, Module 10, The Right to Work and Rights at Work, < [www1.umn.edu/humanrts/edumat/IHRIP/circle/modules/module10.htm](http://www1.umn.edu/humanrts/edumat/IHRIP/circle/modules/module10.htm) >, visited on June 18 2012.

<sup>159</sup> J. Sarkin, *supra* note 157, p. 5.

<sup>160</sup> C. Tomuschat, *supra* note 156, p. 52-54.

individuals within their jurisdiction.<sup>161</sup> Economic, social and cultural rights imply a serious commitment to social integration, solidarity, and equality, including tackling the question of income distribution.<sup>162</sup> One might as such see social and economic rights as a larger threat to the sovereignty of the state than civil and political rights as they have a claim on the actual resources of a country. The weakness of social and economic rights compared to civil and political rights in terms of for example enforceability, is reflected on a national level, where in many countries these rights amount to mere declarations.<sup>163</sup>

Furthermore, the tendencies to separate employment issues from human rights, which as a result has watered down the content of the right to work within the human rights regime, is linked to the different contexts in which the international labour and human rights regimes respectively developed. The international labor legislation emerged well before any other comprehensive human rights legislation, and much of the human rights discourse has been defined through the development of labor rights. The International Labour Organization (ILO) laid the groundwork for much of the contemporary law on the right to work, and ILO regulations predates general human rights standards on labour.<sup>164</sup> The Constitution of the ILO for example underscores the interdependence between labor conditions, social justice and world peace. The preamble states; “universal and lasting peace can be established only if it is based on social justice”<sup>165</sup>. This principle was further reinforced by the adoption of the Declaration of Philadelphia from 1944, in which labor was considered in the context of individual freedom and dignity. The declaration sets out that “All human beings, irrespective of race, creed or sex, have the right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity”<sup>166</sup>. These statements show that there is indeed a clear interdependence between labour policies and human rights. While ILO instruments are indeed important, one should however be aware of the fact that they provide more extensively for rights *at* work, and less so for the right *to* work.<sup>167</sup> This situation relates to the division of the right to work into different components, regardless of their interdependence. Sarkin, Professor of Law and Koenig, development professional, have argued that the main reason for the underdevelopment of the right to work is the segmentation of the right, which according to them has resulted in “a

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<sup>161</sup> A. Eide, ‘Economic, Social and Cultural Rights as Human Rights’ in A. Eide., C. Krause, *et al.*, (eds.), *Economic, Social and Cultural Rights: A Textbook*, (Kluwer Law International and Martinus Nijhoff Publishers, Dordrecht, 2001), p. 10; *see also* G. Mundlak, ‘The right to work: Linking human rights and employment policy’, Vol. 146 2007, No. 3-4, *International Labour Review*, p. 194.

<sup>162</sup> *Ibid.*, p. 7.

<sup>163</sup> W. Osiatynski, ‘On Social and Economic Rights: A Needs-Based Approach’, *Paper written in connection to the Salzburg Seminar on Social and Economic Dimensions of Human Rights held in Salzburg August 6-13*,

< [www.tcds.newschool.edu/on%20social%20and%20econ.pdf](http://www.tcds.newschool.edu/on%20social%20and%20econ.pdf) >, visited on June 18 2012.

<sup>164</sup> J. Sarkin, M. Koenig, *supra* note 157, p. 14.

<sup>165</sup> ILO Constitution, Preamble, can be found at < [www.ilo.org](http://www.ilo.org) >, visited on June 21 2012.

<sup>166</sup> Philadelphia Declaration, 1944, can be found at < [www.ilo.org](http://www.ilo.org) >, visited on June 21 2012.

<sup>167</sup> J. Sarkin, M. Koenig, *supra* note 157, p. 14.

hierarchy of rights within the divided right”. The division has facilitated different approaches of interpretation based on specific political goals or agendas. Because of this, they argue, no consensus has been built on what the core elements of the right to work are.<sup>168</sup>

Finally, another reason for the ambiguous legal framework on the right to work is the very understanding of work in the first place. How do we define the term ‘work’? Does it include only wage earners or also self-employed persons and participation in the liberal professions for example? The CESCR does not offer a definition of the concept of work. What is the essence of work that makes it so important for the individual human being as to be elevated to a human right?

To be able to clarify what the right to work, as defined in international human rights instruments, actually constitutes, it is crucial to give a brief outline of the underlying values that together form the basis for an individual human rights claim.

The right to work is one of the most basic and enabling human rights, as it creates the opportunity to access other fundamental human rights. Work is seen as interrelated, interdependent with, and indivisible from the rights to life, equality, the highest attainable standard of physical and mental health, an adequate standard of living, the right to social security and/or social assistance, freedom of movement, freedom of association, and the rights to privacy and family life, among others.<sup>169</sup> More importantly, work is considered a means of economic survival, an important factor in the pursuit of “social justice and world peace” as well as a means for self-realization and development of human personality.<sup>170</sup> Quoting Sieghart, Lu describes work as “an essential part of the human condition”.<sup>171</sup> Work, furthermore serves important social purposes, as the workplace is a place of human interaction that facilitates a social life. The type of work one has also confers a certain social status upon the worker and his or her family. The Committee on Economic, Social and Cultural Rights has emphasized the social importance of work in its general comment on the right to work, where “the importance of work for personal development as well as for social and economic inclusion”<sup>172</sup> is noted, as well as the UN General Assembly in its Declaration from 1969 on social progress and development.<sup>173</sup> The significance of work for the individual is further highlighted in the preamble of the ILO Convention No. 168 concerning employment promotion and protection against unemployment, which

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<sup>168</sup> *Ibid.*, p. 5-6.

<sup>169</sup> J. Sarkin, M. Koenig, *supra* note 157, p. 3; The Michigan Guidelines on the Right to Work, Fifth Michigan Colloquium on Challenges in International Refugee Law, (Michigan, USA, 2009),

< [www.refugee.org.nz/Michigan/Work.html](http://www.refugee.org.nz/Michigan/Work.html) >, visited on August 6; CESCR Committee, General Comment No. 18, *The Right to Work, Article 6 of the ICESCR*, (E/C.12/GC/18, 6 February 2006), para. 1.

<sup>170</sup> K. Drzewicki, ‘The right to Work and Rights in Work’, in A. Eide., C. Krause, *et al.*, (eds.), *Economic, Social and Cultural Rights: A Textbook*, (Kluwer Law International and Martinus Nijhoff Publishers, Dordrecht, 2001), p. 223.

<sup>171</sup> H. Lu, *supra* note 154, p. 48.

<sup>172</sup> CESCR Committee, General Comment No. 18, *supra* note 169, para. 4.

<sup>173</sup> UN General Assembly Resolution 2542 (XXIV), *Declaration of Social Progress and Development*, article 6.

underscores the importance of work “not only because of the resources which they create for the community, but also because of the income which they bring to workers, the social role which they confer and the feeling of self-esteem which workers derive from them.”<sup>174</sup> Work has both economic and social functions, as noted by the CESCR Committee; “The right to work contributes at the same time to the survival of the individual and to that of his/her family, and insofar as work is freely chosen or accepted, to his/her development and recognition within the community.”<sup>175</sup> To sum up, the notion of work as a human rights norm targets the centrality of work in the individual and collective experience of people. It encompasses values related to income, individual fulfillment, identity and social inclusion.<sup>176</sup>

For non-nationals, the right to work is arguably of crucial importance as it is closely linked to the degree of his or her integration in the host state. In fact, Lu argues, “[f]ull enjoyment of the right to work may be the best way to facilitate economic integration and the social and political integration of non-nationals.”<sup>177</sup> Furthermore, Lu makes a distinction between non-nationals that are temporary residents and permanent residents. Citing Alfredsson and Eide, Lu asserts that long-term residents should in general have the same right of access to work as citizens have, since this distinct category normally has the right to live permanently in the host State, as nationals do. This makes the right to work essential not only for living a decent life, but also for integration, at least economically, in the local society.<sup>178</sup>

The right to work as it has been elaborated in international human rights law contains a whole range of employment related components. For the purpose of this thesis the focus will mainly be on the aspects of access to employment and non-discrimination, issues that are underdeveloped in academia and interpretations by international human rights agencies such as the ILO. The application of the various conventions to non-citizens will also be discussed in each sub-section.

## 4.2 The Universal Declaration of Human Rights

Article 23 of the Universal Declaration of Human Rights (UDHR) sets out the right to work. The article encompasses four principles: a) the right to work, b) the right to equal pay, c) the right to just remuneration and d) the right to freedom of association. This section will only cover the principle of right to work.

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<sup>174</sup> ILO Convention 168, can be found at < [www.ilo.org](http://www.ilo.org) >, visited on June 21 2012.

<sup>175</sup> CESCR Committee, General Comment No. 18, *supra* note 169, para. 1.

<sup>176</sup> G. Mundlak, *supra* note 159, p. 189.

<sup>177</sup> H. Lu, ‘The Personal Application of the Right to Work in the Age of Migration’, Vol. 26/1, 43-77, *Netherlands Quarterly of Human Rights*, (2008), p. 77

<sup>178</sup> *Ibid.*, p. 51.

Article 23 (1) states more specifically that “Everyone has the right to work, to free choice of employment, to just and favorable conditions of work and to protection against unemployment.”

Källstrom and Eide confirm, in their comprehensive work on the UDHR and article 23 of the declaration, that access to the labour market should be granted to all resident, including non-citizens.<sup>179</sup> According to the authors, the state is allowed to restrict access to the labour market for individuals who are residing in the country on a temporary basis. Thus this restriction is considered a legitimate condition upon temporary entry. Normally this applies to tourists or students who are studying temporarily in the country. Persons, who have obtained a non-temporary right of residence, however have the same right to a work permit and equal treatment at work as citizens.<sup>180</sup>

The provisions in article 23 of the UDHR were included in the ICESCR, although more detailed and elaborate.<sup>181</sup> According to Lu, the right to work in the UDHR is a rather narrow concept compared to the ICESCR that seems to cover only access to work.<sup>182</sup>

The UDHR does not create any binding legal obligations. It has the legal status of a declaration, which means that it is regarded merely as recommendations to states. The provisions of the UDHR can only create binding legal obligations for states when the principle at hand becomes part of customary international law. The legal components of customary law were outlined in the *North Sea Continental Shelf Case*<sup>183</sup>, in which the International Court of Justice demonstrated that two elements form the basis for customary international law. First the objective element of general practice by states must be fulfilled, and second the subjective element of the intent to be bound by this general practice, also called *opinio juris*.<sup>184</sup> It would be difficult to argue that the right to work constitutes a part of customary law based on those requisites. Arguably, the only principles in the UDHR that have reached the level of customary international law are the prohibitions of slavery and torture.

### 4.3 International Covenant on Economic, Social and Cultural Rights

The International Covenant on Economic, Social and Cultural Rights (ICESCR) form part of the International Bill of Human Rights and has 160 state parties. As state party to the Covenant since 1972, Lebanon is legally

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<sup>179</sup> K. Källström and A. Eide, ‘Article 23’ in G. Alfredsson and A. Eide (eds.), *The Universal Declaration of Human Rights: A common Standard of Achievement*, (Kluwer Law International and Martinus Nijhoff Publishers, Hague, 1999), p. 489.

<sup>180</sup> *Ibid.*, p. 505.

<sup>181</sup> *Ibid.*, p. 495.

<sup>182</sup> H. Lu, *supra* note 154, p. 44.

<sup>183</sup> See, *North Sea Continental Shelf Judgement*, (*The Federal Republic of Germany v. Denmark*), 20 February, 1969, ICJ, para 77, < [www.icj-cij.org/docket/files/52/5561.pdf](http://www.icj-cij.org/docket/files/52/5561.pdf) >, visited on July 14, 2012.

<sup>184</sup> M. D. Evans (edt), *International Law*, (Oxford University Press, Oxford, 2006), p. 122.

bound by the provisions of the ICESCR. Lebanon has however not yet acceded to the Optional Protocol, which in 2008 established a procedure for individual complaints. Thus, individuals on Lebanese territory do not have access to a direct legal remedy on an international level in case of a violation of the Covenant. In this regard, Lebanon is in good company as the Protocol has until today only been ratified by 8 states, and has yet to enter into force.<sup>185</sup>

The ICESCR contains provisions for the protection of basic human rights such as the right to work, the right to health, food and education etc. The ICESCR has historically been neglected in comparison to civil and political rights and its sister covenant, the International Covenant on Civil and Political Rights (ICCPR). The rather artificial separation of these two fields within the human rights regime captures some of the essential dilemmas related to the human rights discourse, in particular concerning the issue of non-citizens and the unwillingness of states to implement social and economic rights in relation to those individuals who are not politically recognized within the state's jurisdiction.

The weak status of the ICESCR unfortunately has implications for the interpretation and implementation of the right to work on a national level.

### 4.3.1 The Right to Work in the ICESCR

The right to work is the first of the specific rights recognized in the ICESCR, starting with article 6 in part III of the covenant. The article reads as follows:

1. The States Parties to the present Covenant recognize the right to work, which includes *the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts*, and will take appropriate steps to safeguard this right. (Emphasis added)

2. The steps to be taken by a State Party to the present Covenant to achieve the full realization of this right shall include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.

Article 6 defines the right to work in a general and non-exhaustive manner, while articles 7 and 8 respectively elaborates more profoundly on the individual and collective dimensions of the right to work. The right to work as set out in the covenant is both an

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<sup>185</sup> See *ratification status* on UN Treaty Collection web site; < [treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-3-a&chapter=4&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-3-a&chapter=4&lang=en) >, visited on July 14 2012.

individual right belonging to each person and a collective right. The first paragraph of the article contains a definition of the right and the second paragraph formulates examples of state obligations for the full realization of the right to work. Lu has identified five main aspects to the right of work in article 6; full employment, equal access, employment service and vocational training, free choice in employment and employment security. It should be noted that equality and non-discrimination is a crosscutting element related to all of these four aspects.<sup>186</sup>

The core of the right to work that is accentuated in article 6, concerns *access* to work, thus targeting mainly those individuals who lack such access.<sup>187</sup> Discrimination in access is moreover considered by the CESCR Committee to lie at the heart of what constitutes a violation of the convention. Equal protection of employment and non-discrimination are regarded a “core obligation”, setting a minimum standard of obligations for the state.<sup>188</sup>

When reading article 6 it can be concluded that the essential element lies with the wording *to earn one’s living*. This indicates that work is closely linked to peoples’ relation and participation in the activities of the human society for the purpose of guaranteeing an adequate standard of living. The right to work is supposed to protect individuals from being excluded from the economic sphere. However, it is not only a means to realize an adequate standard of living, but also a tool to avoid social exclusion and disintegration of personality.<sup>189</sup> Moreover, what is meant by work in the context of article 6 as well as other human rights instruments is *decent work*, which signifies work that respects fundamental human rights and that lives up to a certain standard in terms of working conditions, safety and remuneration (see articles 7 and 8).<sup>190</sup>

Lu has broken down the normative content of right to work in article 6 (1) into three core elements that she has categorized under the titles ‘entitlements’, ‘opportunity’ and ‘freedoms’. These three pillars are prerequisites for an individual to actually have work, i.e. finding and keeping the work. Entitlement refers to the application of the right in relation to all individuals within the state party’s jurisdiction, which is clearly indicated by the usage of the word *everyone*. Thus everyone should have an equal opportunity to access employment without discrimination, paying specific attention to disadvantaged and marginalized individuals and groups. As proclaimed in the General Comment No. 18, “the labour market must be open to everyone under the jurisdiction of state parties”<sup>191</sup>. Nonetheless, the question whether non-nationals are included in the definition of everyone is a

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<sup>186</sup> *Ibid.*, p. 55.

<sup>187</sup> CESCR Committee, General Comment No. 18, *supra* note 169, para. 31.

<sup>188</sup> *Ibid.*, para. 33.

<sup>189</sup> *Circle of Rights, Economic, Social & Cultural Rights Activism, A Training Resource*, (International Human Rights Internship Program and Asian Forum for Human Rights and Development 2000), pp. 182, 183.

<sup>190</sup> CESCR Committee, General Comment No. 18, *supra* note 169, paras. 6-7.

<sup>191</sup> *Ibid.*, para. 12.

controversial one, and Craven, Professor of International Law, points to the cautious stance traditionally taken by the ILO on this matter as well as the various reservations made by States in regards to article 6. He furthermore underscores the universally accepted right for states to impose special authorization requirements on foreign workers.<sup>192</sup> Lu defines the element of opportunity based on a quantity requirement, meaning that job seekers should have the possibility of finding a job when there are sufficient jobs available. In addition it also implies that the job seeker should have the opportunity to obtain job information and to have the ability or skills necessary to perform a job. The element of freedom pertains to a quality benchmark for work that is based on certain freedoms, in particular freedom of choice and the freedom from exploitative working conditions.<sup>193</sup> The General Comment No. 18 defines this element as ‘acceptability and quality’, which includes ensuring “just and favorable conditions of work, in particular to safe working conditions, the right to trade unions and the right to freely choose and accept work”<sup>194</sup> for the worker. What constitutes acceptable working conditions should according to the CESCR Committee be decided with reference to article 7 of the ICESCR. An important aspect of the freedom of choice is that an individual is not obliged to accept any type of work available under coercive economic pressure. Freedom of choice is not the same as the voluntary acceptance of work when the working conditions are inhumane. The freedom of choice and hence the enjoyment of the right to work is only obtained when wages and working conditions meet certain standards. This idea is linked to the notion of ‘decent work’, promoted within the ILO framework.<sup>195</sup> Finally the element of freedom of choice also includes positive aspects, which may include the choice of occupation and even the option of choosing a job that is suitable for one’s skills.<sup>196</sup> The state is not obliged to fulfill this positive aspect of the right to work immediately, but has the duty to take steps to move towards its realization.<sup>197</sup> As all other human rights, the right to work contains three types of obligations on the state parties; the obligations to respect, protect and fulfill. The responsibility to protect, which requires the state to take measures to prevent third parties from interfering with the right to work, and more specifically to adopt legislation that ensures equal access to employment, is of special value when addressing equal access to employment for certain marginalized groups or individuals. The Committee on Social, Economic and Cultural Rights has stated in its General Comment that the omission to regulate activities of third

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<sup>192</sup> M. Craven, *The International Covenant on Economic, Social and Cultural Rights, A Perspective on its Development*, (Oxford University Press, New York, USA, 1998), p. 213-214.

<sup>193</sup> Lu, *supra* note 154, p. 54.

<sup>194</sup> CESCR Committee, General Comment No. 18, *supra* note 169, para. 12 (c).

<sup>195</sup> ILO web site, < [www.ilo.org/global/topics/decent-work/lang--en/index.htm](http://www.ilo.org/global/topics/decent-work/lang--en/index.htm) >, visited on June 20 2012.

<sup>196</sup> H. Lu, *supra* note 154, p. 54.

<sup>197</sup> *Ibid.*, p. 195.

parties regarding for example denial of access to employment for certain groups or individuals, constitutes a violation of article 6.<sup>198</sup> This regards horizontal relationships between for example the worker and employer or professional associations/trade unions and workers.

Sarkin and Koenig have highlighted the ambiguity of the Committee's General Comment on the right to work itself, in their recent examination of this right. In their opinion, the comment lacks clarity in terms of what constitutes general legal requirements and specific legal requirements. The comment can also be considered ambivalent in terms of whether the right is to be interpreted as a progressive right or one that creates immediate and significant obligations. Sarkin and Koenig argue that the comment actually reinforces the right as a progressive one.<sup>199</sup>

The application of the ICESCR to non-nationals will be examined in the following chapter on discrimination as it is closely related to the general principles of equality in the Covenant and fits more accurately in the discussion on non-discrimination.

## 4.4 The 1951 Refugee Convention

The 1951 Refugee Convention is the main instrument of international refugee law, not only establishing a refugee definition, but that also setting out basic legal obligations of the state party in relation to refugees within their jurisdiction. Article 17 of the convention concerns the right to work. The first paragraph obliges the state party to “accord to refugees lawfully staying in their country the most favourable treatment accorded to nationals of a foreign country in the same circumstances.”<sup>200</sup> The second section of article 17 allows for some restrictions to be imposed on access to employment for refugees for the purpose of protecting the national market. However, the legitimacy of those restrictions depends on the non-fulfillment of certain specified requirements:

2. In any case, restrictive measures imposed on aliens or the employment of aliens for the protection of the national labour market shall not be applied to a refugee who was already exempt from them at the date of entry into force of this Convention for the Contracting State concerned, *or* who fulfils one of the following conditions:

- (a) *He has completed three years' residence in the country;*
- (b) He has a spouse possessing the nationality of the country of residence. A refugee may not invoke the benefit of this provision if he has abandoned his spouse;

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<sup>198</sup> CESCR Committee, General Comment No. 18, *supra* note 169, paras. 22, 25, 32, 35.

<sup>199</sup> J. Sarkin, M. Koenig, *supra* note 157, p. 14.

<sup>200</sup> 1951 Convention Relating to the Status of Refugees, article 1.

(c) He has one or more children possessing the nationality of the country of residence.  
(Emphasis added)

Thus, refugees who have been residing for three years in the territory of the state party (protracted refugees) must be granted the same rights to work as nationals, according to the 1951 Convention. As will be discussed below, the Convention does however not apply to Palestinian refugees living in Lebanon, Syria or Jordan since none of these countries have signed the convention.

## 4.5 The Migrant Workers' Convention

The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Family (ICMW)<sup>201</sup> was adopted by the General Assembly in 1990 and entered into force in 2003. It currently has 46 parties, however Lebanon is not a party.<sup>202</sup> Cholewinski, Migration Policy Specialist and ILO Official, has criticized scholars for overemphasizing the importance of the convention in the development of protection for non-nationals and the view that it represents the culmination of the universalization process of human rights. In his opinion the Convention falls short of protection for migrant workers and their families and rather entrenches the principle of state sovereignty and the protection of national interests.<sup>203</sup>

The rights of migrant workers are given special attention because of “their vulnerability owing, among other things, to their absence from their home country and to the difficulties they may encounter in the receiving State”.<sup>204</sup> Notice should be taken to the fact that the state parties are migrant source countries, rather than receiving countries. None of the industrialized countries have ratified the Convention.<sup>205</sup>

Although the Convention specifically excludes refugees from its scope of protection (Art. 3 (d)), some parts of the normative content deserve attention for the purpose of a comparison to the Palestinian refugees who in many ways find themselves in a similar situation. Refugees and stateless persons were excluded from the application of the convention because they were assumed to be protected under other international instruments, and that they possess a specific international status.<sup>206</sup>

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<sup>201</sup> International Convention on the Protection of the Rights of all Migrant Workers and Members of Their Families, (res. 45/158, 18 December 1990).

<sup>202</sup> UN Treaty Collection web site, < [treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-13&chapter=4&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-13&chapter=4&lang=en) >, visited on June 21 2012.

<sup>203</sup> R. Cholewinski, *Migrant Workers in International Human Rights Law*, (Oxford University Press, New York, USA, 1997), p. 137-138.

<sup>204</sup> See Preamble of the Migrant Workers' Convention.

<sup>205</sup> H. Lu, 'The Personal Application of the Right to Work in the Age of Migration', *supra* note 177, p. 71.

<sup>206</sup> R. Cholewinski, *supra* note 203, p. 153.

Article 7 provides for non-discrimination similar to the principles found in the ICCPR and the ICESCR. The provision prohibits discrimination of migrant workers because of for example national origin and nationality. The sovereignty of the state in granting access to the labour market is affirmed in article 52 of the ICMW, which allows for the restriction of access to certain categories of employment. However under paragraph 3 (b) of the same article such restriction shall not be applied to those migrant workers who have been residing in the country for a period of time prescribed by law, which should not exceed five years. This has been confirmed by human rights monitoring bodies.<sup>207</sup> The European Human Rights Court has furthermore in the case of *Abdulaziz, Cabales and Balkandali v UK* considered immigration control used as a means to protect the national labour market as a valid method.<sup>208</sup> The principle of state sovereignty in the immigration context is more explicitly underlined in article 79 in Part VIII of the ICMW, which states that: “Nothing in the present Convention shall affect the right of each State Party to establish the criteria governing admission of migrant workers and members of their families.”

## 4.6 The Casablanca Protocol (1965)

The Casablanca Protocol<sup>209</sup> from 1965 although a regional multilateral agreement has importance for the examination of right to work, as it has been ratified by nine Arab states under the Arab league, including Lebanon.<sup>210</sup> It is binding on the ratifying states, however no enforcement mechanisms were ever established in cases of violations. The Protocol concerns the treatment of Palestinian refugees in member states, and the first article demands equal rights to work and employment for Palestinians in Arab countries. Lebanon is one of the ratifying states, with reservations against its first three articles. According to the reservations, the right to employment will depend on Lebanon’s social and economic conditions. The Protocol has not been fully implemented by Lebanon, as many constraints on Palestinians right to work have been imposed throughout the years, irrespective of the economic situation in the country. Lebanon is in breach of the Casablanca Protocol, Article 1, which calls for equal treatment of

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<sup>207</sup> *Ibid.*, p. 72-73.

<sup>208</sup> *Abdulaziz, Cabales and Balkandali vs UK*, 25 April 1985, ECHR no. 9214/80; 9473/81; 9474/81, para. 78,

< [cmiskp.echr.coe.int/tkp197/search.asp?sessionId=66796767&skin=hudoc-en](http://cmiskp.echr.coe.int/tkp197/search.asp?sessionId=66796767&skin=hudoc-en) >, visited on June 21 2012.

<sup>209</sup> Casablanca Protocol can be found at REFWORLD, < [www.unhcr.org/refworld/country,,LAS,,SDN,456d621e2,460a2b252,0.html](http://www.unhcr.org/refworld/country,,LAS,,SDN,456d621e2,460a2b252,0.html) >, visited on July 14 2012.

<sup>210</sup> For more information on the Casablanca Protocol, see BADIL Resource Center for Palestinian Residency & Refugee Rights, Survey of Palestinian Refugees and Internally Displaced Persons (2008-2009), p. 109, downloaded at < [www.badil.org/index.php?page=shop.product\\_details&flypage=garden\\_flypage.tpl&product\\_id=119&category\\_id=2&vmcchk=1&option=com\\_virtuemart&Itemid=4](http://www.badil.org/index.php?page=shop.product_details&flypage=garden_flypage.tpl&product_id=119&category_id=2&vmcchk=1&option=com_virtuemart&Itemid=4) > visited on August 8 2012.

Palestinians and nationals in the labour market.<sup>211</sup> Nonetheless, this breach does not actualize any legal consequences for the Lebanese government, as legal enforcement mechanisms are absent.

## 4.7 The Conventions of the International Labour Organization

The main task of the ILO is to create international labour standards. The ILO established labour related rights before the adoption of the UDHR. A number of conventions touching upon the right to work, non-discrimination and foreign labour have been adopted, of which the most important will be examined in this section.

### 4.7.1 C111 Discrimination (Employment and Occupation) Convention, 1958

The Discrimination Convention is the main ILO instrument on non-discrimination and has been ratified by 170 states, including Lebanon that ratified it in 1977.<sup>212</sup>

This fundamental convention defines discrimination as any distinction, exclusion or preference made on the basis of race, color, sex, religion, political opinion, *national extraction* or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation (Art. 1, emphasis added). The focus of the convention is on national policies with the purpose of eliminating discrimination in employment and occupation. This includes discrimination in relation to access to vocational training, access to employment and to particular occupations, and terms and conditions of employment.<sup>213</sup>

The definition of ‘national extraction’ suffers from deficiencies when it comes to the application of the convention to non-nationals. This category refers to naturalized foreigners or citizens from different national or cultural communities within the same country. Thus it does not concern nationality, as other ILO instruments relating to the protection of migrant workers cover foreigners.<sup>214</sup> This means that refugees who are either citizens of another country or stateless as the Palestinian refugees in Lebanon fall outside the scope of protection by Convention 111.

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<sup>211</sup> L. El-Malak, *supra* note 26, p. 154-155.

<sup>212</sup> Ratification data available at: [www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:1912026168537429::NO:11300:P11300\\_INSTRUMENT\\_ID:312256:NO](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:1912026168537429::NO:11300:P11300_INSTRUMENT_ID:312256:NO), visited on June 21 2012.

<sup>213</sup> ILO web site, Equality of opportunity and treatment, [www.ilo.org/global/standards/subjects-covered-by-international-labour-standards/equality-of-opportunity-and-treatment/lang--en/index.htm](http://www.ilo.org/global/standards/subjects-covered-by-international-labour-standards/equality-of-opportunity-and-treatment/lang--en/index.htm), visited on June 21 2012.

<sup>214</sup> J. Servais, *International Employment and Labour Law* (Wolters Kluwer, ILO, Geneva, 2011), p. 388.

One may question the exclusion of protracted refugees from the Convention. What is actually the purpose of the non-discrimination provision, and how should the different categories be interpreted? Arguably, long-term non-nationals such as the Palestinian refugees cannot be equated to other non-naturalized foreigners, since they have been present on Lebanese soil for over 60 years. Considering the precarious situation of Palestinians, it might be possible to consider that discrimination against this group in the labour market falls within either the category of race/ethnicity or national extraction. As Professor of Law and former ILO Official, Jean-Michel Servais, has stated “It is not so much the race, color or ethnic origin of the person targeted that gives rise to discrimination as the negative values the discriminator considers the victim to embody.”<sup>215</sup> It should in relation to this question be noted that the CEACR (Committee of Experts on the Application on Conventions and Recommendations), in its Direct Request adopted in 2011, criticized Lebanon for its discrimination of Palestinian refugees in the Lebanese labour market in particular regarding access to employment. This section of the request was titled “non-citizens”, in my opinion giving reason to assume a progressive stance taken by the ILO concerning non-nationals under the Convention.<sup>216</sup>

#### **4.7.2 C122 Employment Policy Convention, 1964**

Convention 122 of 1964 is the ILO’s principle instrument on employment policy, also ratified by Lebanon in 1977. It has a total of 106 ratifications.<sup>217</sup> The Convention aims to promote full and freely chosen employment by obliging its member parties to pursue an active policy designed to meet those goals (Art. 1.1). Article 1 (2) further establishes that:

2. The said policy shall aim at ensuring that:
  - (a) there is work for all who are available for and seeking work;
  - (b) such work is as productive as possible;
  - (c) there is freedom of choice of employment and the fullest possible opportunity for each worker to qualify for, and to use his skills and endowments in, a job for which he is well suited, irrespective of race, colour, sex, religion, political opinion, national extraction or social origin.

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<sup>215</sup> *Ibid.*, p. 383.

<sup>216</sup> International Labour Organization, *Direct Request CEACR, Discrimination (Employment and Occupation) Convention*, 2011, <[www.ilo.org/dyn/normlex/en/f?p=1000:13100:2448071299824394::NO:13100:P13100\\_COMMENT\\_ID:2699471:NO](http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:2448071299824394::NO:13100:P13100_COMMENT_ID:2699471:NO)>, visited on June 21 2012.

<sup>217</sup> Ratification data available at: <[www.ilo.org/dyn/normlex/en/f?p=1000:11300:3199771650879662::NO:11300:P11300\\_INSTRUMENT\\_ID:312267](http://www.ilo.org/dyn/normlex/en/f?p=1000:11300:3199771650879662::NO:11300:P11300_INSTRUMENT_ID:312267)>, visited on June 21 2012.

The same grounds for discrimination are reiterated here, giving rise to the same discussion as above in regards to the applicability of the Convention to non-nationals such as the Palestinian refugees. One could therefore argue that also this convention should apply to Palestinian refugees in Lebanon on the grounds of discrimination because of national extraction.

### 4.7.3 C168 Employment Promotion and Protection against Unemployment Convention, 1988

Only eight countries have ratified the Convention 168 that came into force in 1991. Lebanon is not one of the ratifying parties.<sup>218</sup>

The purpose of the Convention is to combat unemployment and to promote various measurements taken by the states to reduce the effects of unemployment, by providing for example social security. Article 2 obliges state parties to:

“Take appropriate steps to co-ordinate its system of protection against underemployment and its employment policy. To this end, it shall seek to ensure that its system of protection against unemployment[...]contribute to the promotion of full, productive and *freely chosen employment*, and are *not such as to discourage* employers from offering and workers from seeking productive employment.” (Emphasis added)

What sets this convention apart from previous ILO instruments is the definition of discrimination in article 6. Article 6 reads:

1. Each Member shall ensure equality of treatment for all persons protected, without discrimination on the basis of race, colour, sex, religion, political opinion, national extraction, *nationality*, ethnic or social origin, disability or age. (Emphasis added)

Thus, contrary to previous convention, the C168 prohibits discrimination on the basis of nationality, and not only national extraction, including refugees in the scope of protection. This is most likely one reason for why so few states have ratified this instrument, and why Lebanon has not done so.

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<sup>218</sup> Ratification data available at: [www.ilo.org/dyn/normlex/en/f?p=1000:11300:781223370329990::NO:11300:P11300\\_INSTRUMENT\\_ID:312313](http://www.ilo.org/dyn/normlex/en/f?p=1000:11300:781223370329990::NO:11300:P11300_INSTRUMENT_ID:312313) > visited on June 21 2012.

#### **4.7.4 C97 Migration for Employment Convention (Revised), 1949**

The Migration for Employment Convention entered into force in 1952 and has 47 ratifications, however Lebanon is not a state party.<sup>219</sup>

The Convention, just as the Migrant Workers' Convention, protects migrants who enter another country for the purpose of employment. Article 11 provides a definition of migrant worker, which excludes refugees from its protection, as their migration was not carried out with the intention of being employed. The C97 also contains a non-discrimination clause in its article 6 that prohibits states from treating migrants less favorable than nationals.

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<sup>219</sup> Ratification data available at: [www.ilo.org/dyn/normlex/en/f?p=1000:11300:1761998020698367::NO:11300:P11300\\_INSTRUMENT\\_ID:312242](http://www.ilo.org/dyn/normlex/en/f?p=1000:11300:1761998020698367::NO:11300:P11300_INSTRUMENT_ID:312242) > visited on June 21 2012.

# 5 Non-Discrimination in International Law

The right to equality and non-discrimination is a crucial element of the right to work, and the equality principle applies to every aspect of this right. This chapter focuses on the equality aspects influencing the equal opportunity to work, i.e. equal access to employment.

In addition to ILO's non-discrimination instrument and the ICESCR, Lebanon is also a party to the Convention on the Elimination of All Forms of Racial Discrimination (CERD) and the International Covenant of Civil and Political Rights (ICCPR), that both establish the principle of non-discrimination in international human rights law.

## 5.1 Non-Discrimination and the Right to Work in International Law

The elimination of discrimination is fundamental to the enjoyment of economic, social and cultural rights and the principle of equality permeates international human rights law and can be found in the preamble, articles 1 (3), 13 (1) (b) 55 (c), of the Charter of the United Nations, article 2, (1), of the UDHR as well as in various international treaties that deal with the protection of specific groups in society such as the CERD or the CEDAW.<sup>220</sup> Non-discrimination is dealt with in a range of ILO-instruments. The CESCR Committee acknowledges that “[e]conomic growth has not, in itself, led to sustainable development, and individuals and groups of individuals continue to face socio-economic inequality, often because of entrenched historical and contemporary forms of discrimination.”<sup>221</sup>

The principle of non-discrimination materializes the notion of equality. With regard to the right to work, the most relevant definition of discrimination is to be found in the ILO Convention 111, which defines the term as “any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation”.<sup>222</sup>

The notion of equality includes both formal and substantive equality. Formal equality refers to law or policy that treats individuals in a neutral manner, whereas the more radical notion of substantive equality refers to those effects those laws and policies might have on certain groups, hence focusing on the actual outcome.<sup>223</sup> The General comment No. 20 underscores that “[e]liminating discrimination in practice requires paying

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<sup>220</sup> CESCR Committee, General Comment No. 20, *supra* note 71, paras. 5 and 2.

<sup>221</sup> *Ibid.*, para. 1.

<sup>222</sup> See Article 1(1) of ILO Convention No. 111.

<sup>223</sup> H. Lu, *supra* note 154, p. 61.

sufficient attention to groups of individuals, which suffer historical or persistent prejudice instead of merely comparing the formal treatment of individuals in similar situations”.<sup>224</sup>

As mentioned, citizenship is a factor that poses specific problems in relation to the right to work and discrimination in particular. In general the right to work applies also to non-nationals.<sup>225</sup> However, in international law, the state still retains its sovereignty over its own borders and is entitled to limit foreigners right to work upon entry into the country. This principle has been accounted for by, for example, the European Court of Human Rights, which on numerous occasions has recalled that states have the right to control the entry, residence and expulsion of aliens within its territory.<sup>226</sup> Persons, who have obtained a *non-temporary right of residence*, however have the same right of access to work as citizens have. And once a non-citizen has entered into employment he or she must be given equal treatment to citizens with regard to work-related rights.<sup>227</sup>

## 5.2 Non-Discrimination in the Universal Declaration of Human Rights

The non-discrimination provision in the UDHR in article 2, establishes that “[e]veryone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.” Article 7 of the UDHR furthermore contains an equality clause: “[a]ll are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination”. The Declaration does not contain any specific provisions on non-nationals, but the general universal language and the specific usage of the word *everyone* in Article 2 indicates that no distinction should be made between citizens and non-nationals. Although *nationality* is not included as a prohibited ground for discrimination, Professor of International Law, Richard Lillich claims that the article is merely intended to be illustrative and that other elements of the Declaration clearly illustrate the universal character of the instrument. He notes that Article 1, which sets the tone for the whole Declaration affirms that “[a]ll human beings are born free and equal in dignity and rights”, clearly comprehends both aliens and nationals. Lillich further concludes that

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<sup>224</sup> CESCR Committee, General Comment No. 20, *supra* note 71, para. 8(b).

<sup>225</sup> H. Lu, ‘The Personal Application of the Right to Work in the Age of Migration’ *supra* note 177, p. 46.

<sup>226</sup> See for example *Case of Boultif v. Switzerland*, 2 August 2001, ECHR no. 54273/00, para. 39; *Case of N v. Sweden*, 20 July 2010, ECHR no. 23505/09, para. 51; *Uner v. The Netherlands*, 18 October 2006 ECHR, no. 46410/99, para. 54.

<sup>227</sup> H. Lu, *supra* note 154, p. 60.

non-nationals are excluded only from those rights formulated as to apply only to nationals.<sup>228</sup>

### 5.3 Non-Discrimination in the International Covenant on Civil and Political Rights

Lebanon is a state party to the ICCPR since 1972, and is legally bound by its provisions. The Optional Protocol from 1976, establishing the individual complaint mechanism, has nonetheless not been ratified by Lebanon, leaving individuals on Lebanese territory without access to an international legal remedy.<sup>229</sup>

The ICCPR follows the structure of the UDHR in granting *everyone* protection in relation to the various rights enshrined in the Convention. The principle of non-discrimination is found in article 2(1) of the ICCPR, a provision that is very similar to the corresponding article in the UDHR, ensuring the enjoyment of the rights set forth in the Covenant, to all individuals within the jurisdiction of the state party and on its territory, without any distinction. The Human Rights Committee (HRC) affirms in its General Comment No. 15 that the rights in the Covenant must be guaranteed without discrimination between citizens and aliens, irrespective of reciprocity and irrespective of his or her nationality or statelessness. This applies across the border only with the exception of those rights in the covenant that are expressly applicable only to citizens.<sup>230</sup>

The right to work is not included as one of the protected rights in the Covenant as it is considered a social and economic right that falls under the ICESCR, and so the non-discrimination principle in article 2(1) does not protect a foreigner from being discriminated in this field.

The ICCPR contains another more general non-discrimination provision in article 26, which provides for equality before the law as well as equal protection of the law. The right to equal protection of the law has been interpreted by Nowak, Professor of Constitutional Law, to mean that legislation should be equal, comprehending both the negative obligation to refraining from enacting discriminatory laws as well as the positive obligation to enact special legislation that prohibits discrimination and affords effective protection against discrimination.<sup>231</sup> In accordance with the obligation to protect, article 26 also obliges the state to enact legislation that prohibits discrimination by third parties.<sup>232</sup>

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<sup>228</sup> R. Lillich, *The Human Rights of Aliens in Contemporary International Law*, (Manchester University Press, Manchester, 1984), pp. 42-43.

<sup>229</sup> Ratification status can be found at UN Treaty Collection, < [treaties.un.org/Pages/Treaties.aspx?id=4&subid=A&lang=en](http://treaties.un.org/Pages/Treaties.aspx?id=4&subid=A&lang=en) >, visited on July 14 2012.

<sup>230</sup> Human Rights Committee, *General Comment No. 15*, *supra* note 71, para. 1 and 2.

<sup>231</sup> M. Nowak, *U.N. Covenant on Civil and Political Rights, CCPR Commentary*, second revised edition, (N.P. Engel, Kehl, Germany, 2005), p. 607.

<sup>232</sup> H. Lu, *supra* note 154, p. 65-66.

What is specific to this article is its character as an independent non-discrimination clause that not only applies to the rights envisaged in the covenant but also refers to discrimination practices in general. The HRC has interpreted article 26 as an autonomous right that may apply to those rights guaranteed by the ICESCR.<sup>233</sup> According to the Committee, the article “prohibits discrimination in law or in fact in any field regulated and protected by public authorities. Article 26 is therefore concerned with the obligations imposed on States parties in regard to their legislation and the application thereof. Thus, when legislation is adopted by a State party, it must comply with the requirement of article 26 that its content should not be discriminatory.”<sup>234</sup> Discriminatory laws violating the right to work could be considered a violation of the ICCPR with reference to the non-discrimination clause in article 26.

When it comes to the application of the covenant to non-nationals, Nowak has in his comprehensive commentary on the ICCPR, outlined the debates that were provoked by article 26. Many western governments feared that the article might prevent acceptable distinctions between nationals and aliens.<sup>235</sup> The Committee has however concluded in its General Comment on the status of aliens, that the covenant applies equally to aliens and that non-citizens have the right to equal protection by the law. “These rights of aliens may be qualified only by such limitations as may be lawfully imposed under the Covenant.”<sup>236</sup>

In the case of *Gueye et al v. France*, a communication reviewed by the Human Rights Committee, the Committee decided that nationality as a ground for discrimination fell under the category of other status. The Committee further noted that all difference in treatment is not to be considered discriminatory, but that such differential treatment must be based on reasonable and objective criteria.<sup>237</sup>

It can be concluded that the general non-discrimination clause in article 26 should apply to non-nationals, and that discriminatory practices in relation to access to the labour market can only be accepted if based on reasonable and objective criteria.

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<sup>233</sup> A. Rosas and M. Scheinin, ‘Implementation Mechanisms and Remedies’ in A. Eide., C. Krause., and A. Rosas (eds.), *Economic, Social and Cultural Rights: A Textbook*, (Kluwer Law International and Martinus Nijhoff Publishers, Dordrecht, 2001), p. 440.

<sup>234</sup> Human Rights Committee, General Comment No. 18, Non-discrimination, 11/10/1989, para. 12.

<sup>235</sup> M. Nowak, *supra* note 229, p. 619.

<sup>236</sup> Human Rights Committee, *General Comment No. 15*, *supra* note 71, para. 7.

<sup>237</sup> Human Rights Committee, *Gueye et al v. France*, Communication No. 196/1983, 3 April, 1989, para 9.4, < [www.bayefsky.com/pdf/105\\_francevws196.pdf](http://www.bayefsky.com/pdf/105_francevws196.pdf) >, visited on July 14 2012.

## 5.4 Non-Discrimination in the International Covenant on Social, Economic and Cultural Rights

The non-discrimination clause in article 2 (2) of the ICESCR is similar to the corresponding articles found in ICCPR and UDHR. Although the ICESCR does not clearly indicate the status of non-nationals under the covenant, the CESCR Committee has clearly stated in its general comment No. 20 on non-discrimination that “[t]he Covenant rights apply to everyone including non-nationals, such as refugees, asylum-seekers, stateless persons, migrant workers and victims of international trafficking, regardless of legal status and documentation.”<sup>238</sup> Moreover shall the non-discrimination clause apply in relation to all the rights envisaged in the Covenant.<sup>239</sup>

What sets the ICESCR apart is its articles 2(1) and 2(3). The first paragraph establishes the obligation to progressively realize the rights in the covenant to the maximum of its available resource, whereas the latter limits the economic and social obligations of developing countries in relation to non-nationals within their territory. Article 2(3) establishes that “developing countries, with due regard to human rights and their national economy may determine to what extent they would guarantee the economic rights recognized in the present Covenant to *non-nationals*.” (Emphasis added) Read together these two articles create a ‘justification clause’ with regard to the national economy of the state party that limits the state’s obligations in relation to economic rights. The right to work in article 6 is considered such an economic right.<sup>240</sup> I would argue that in the case of Palestinian refugees in Lebanon, the Lebanese economy could actually benefit from Palestinian access to the labour market. It has been noted by several scholars and human rights activists that Palestinian refugees serve the Lebanese economy well as they spend their money inside the country as opposed to the many migrant workers present in the Lebanese labour market.<sup>241</sup> More importantly, the minimum core obligations, such as non-discrimination apply irrespectively of the available resources in the country concerned.<sup>242</sup> The prohibition of discrimination is to be implemented immediately and is “neither subject to progressive implementation nor dependent

<sup>238</sup> CESCR Committee, General Comment No. 20, *supra* note 71, para. 30.

<sup>239</sup> *Ibid.*, para. 7; see also H. Lu, ‘The Personal Application of the Right to Work in the Age of Migration’ *supra* note 177, p. 46.

<sup>240</sup> H. Lu, ‘The Personal Application of the Right to Work in the Age of Migration’ *supra* note 177, p. 47-58.

<sup>241</sup> L. El-Malak, *supra* note 26, p. 158; interview with Sawsan Masri, ILO representative, (Beirut, Lebanon, February 29 2012), on file with author; interview with Rola Badran, Programs Director at the Palestinian Human Rights Organization (PHRO), (Beirut, Lebanon, February 27 2012), on file with author.

<sup>242</sup> John Hopkins University Press, ‘The Maastricht Guidelines on Violations of Economic, Social and Cultural Rights Reviewed work(s)’, Vol. 20, No. 3, *Human Rights Quarterly* (1998), pp. 691-704, p. 695.

on available resources.”<sup>243</sup> The function of these minimum core obligations is to establish a minimum level of obligations that the states must live up to satisfy the essential components of each of the rights in the covenant. The CESCR Committee stated in its General Comment on the nature of state parties obligations that, “if the Covenant were to be read in such a way as not to establish such a minimum core obligation, it would be largely deprived of its raison d’être.”<sup>244</sup> The fact that non-discrimination is considered to be included among those minimum standards that the state is obliged to fulfill, devaluates the content of article 2 (3) and the argument of scarce resources. According to Lu, article 2 (3) is in any case very limited in its scope of application, and might even lack current relevancy as no developing country so far has invoked this limitation clause. Lu consequently argues that, “in a logical understanding, and in the light of the object and purpose of the ICESCR and the universality of human rights in general, individuals who are not explicitly excluded from protection, should enjoy the rights granted by the covenant.”<sup>245</sup> If the covenant applies in general to non-nationals, the non-discrimination principle consequently applies, which means that any type of differential treatment of non-citizens regardless of their legal status needs to be justified.<sup>246</sup> Craven, Professor of International Law, affirms that the failure of many states to fully implement economic and social rights can most often be attributed to the lack of political will, rather than a lack of resources.<sup>247</sup>

## 5.5 Non-Discrimination in the International Convention on the Elimination of All Forms of Racial Discrimination

Lebanon is a party to The International Convention on the Elimination of All Forms of Racial Discrimination (CERD) since 1971. The Convention recognizes in its Article 14, the competence of the Committee to receive and consider individual complaints of violations of the rights enshrined in the Convention. This competence must be declared by the State party, and no communication can be considered if it concerns a State party that has not made such a declaration. Lebanon has so far not recognized the competence of the Committee to review individual cases.<sup>248</sup>

<sup>243</sup> CESCR Committee, General Comment No. 18, *supra* note 169, para. 33.

<sup>244</sup> CESCR Committee, General Comment No. 3, *The nature of State parties obligations, Article 2, para. 1 of the Covenant*, (12/14/1990), para. 10.

<sup>245</sup> H. Lu, ‘The Personal Application of the Right to Work in the Age of Migration’ *supra* note 177, p. 47-58.

<sup>246</sup> *Ibid.*, p. 47-48.

<sup>247</sup> M. Craven, *supra* note 192, p. 107.

<sup>248</sup> Ratification status, reservations and declarations can be found at UN Treaty Collection web site, < [treaties.un.org](http://treaties.un.org) >, visited on July 15 2012.

The CERD prohibits racial discrimination, that is defined as: “any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.” (CERD, Article 1(1)). The Convention deals with racial discrimination in relation to a wide range of rights found in the various human rights instruments as well as obliging the state parties to eliminate any form of racial discrimination.

Non-citizens are excluded to some extent from CERD’s scope of protection, by the insertion of article 1(2) that states that the “convention shall not apply to distinctions, exclusions, restrictions or preferences made by a State Party to this Convention between citizens and non-citizens.” Although article 1(3), does prohibit discrimination concerning nationality, citizens and naturalization, this refers to such discrimination against a *particular* nationality. The CERD Committee explicitly made the exclusion of non-nationals clear in its General Recommendation No. 11, while also clarifying that “article 1, paragraph 2, must not be interpreted to detract in any way from the rights and freedoms recognized and enunciated in other instruments, especially the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights.”<sup>249</sup> In its recent General Observation from 2004, No. 30, the Committee however gives a more comprehensive and in-depth view on the status of non-nationals in the Convention. The Committee here offers, in my opinion, a more progressive interpretation of the rights of non-citizens by explicitly stating that human rights in principle are to be enjoyed by all persons, “although some of these rights, such as the right to participate in elections, to vote and to stand for election, may be confined to citizens”<sup>250</sup>. According to the CERD Committee, State parties are obliged to prohibit and eliminate racial discrimination in the enjoyment of civil, political, economic, social and cultural rights, in accordance with article 5 of the Convention, which enumerates several rights that must be enjoyed without discrimination, including the right to work. Any differential treatment based on citizenship or immigration status is to be considered unlawful discrimination if the criteria for such discrimination, “judged in the light of the objectives and purposes of the Convention, are not applied pursuant to a legitimate aim, and are not proportional to the achievement of this aim”.<sup>251</sup> Furthermore, the Committee underlines the importance of ensuring that particular groups of non-citizens are not discriminated against with regard to access to citizenship or naturalization. Attention is paid to the difficulties those non-nationals that are long-term or permanent residents, may encounter in terms of access to employment and social benefits, in violation of the

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<sup>249</sup> CERD Committee, *General Recommendation No. 11 (XI), Non-citizens (art.1)*, 1993, para. 3.

<sup>250</sup> CERD Committee, *General Recommendation No. 30: Discrimination Against Non-Citizens*, (10/01/2004), para. 3.

<sup>251</sup> *Ibid.*, para. 4.

Convention's anti-discrimination principles.<sup>252</sup> A specific section of this General Comment deals with economic, social and cultural rights. Although not directly referring to access to employment in itself, the Committee highlights the importance of labour and employment rights for non-nationals.<sup>253</sup>

The CERD Committee has in its concluding observations in 2004, the same year as the General Comment was issued, voiced its concern with the situation for Palestinian refugees in Lebanon and the impediments to their enjoyment of the rights in the Convention. The Committee recommended the Lebanese government to remove legislation or policy that have a discriminatory effect on Palestinian refugees in comparison to other non-citizens.<sup>254</sup>

Lebanon might therefore be in breach of the CERD when it comes to the treatment of Palestinians as non-nationals compared to other non-citizens, but since the competence of the Committee has not yet been recognized there is no mechanism in place to enforce the obligations of Lebanon.

## 5.6 Concluding Remarks on The Right to Work for Non-Nationals in International Law

When examining the various international instruments concerning the right to work together with the provisions on equality and non-discrimination, it seems at first sight as a clear-cut case. Non-nationals should be afforded equal access to the labour market according to international law. The UDHR establishes rights for *everyone*, which is the case also with article 23 and the right to work. Non-discrimination is at the core of article 6 of the ICESCR in particular as it pertains to employment access. Moreover, the principle of equality before the law in article 26 of the ICCPR affirms the protection of aliens and the CERD protects non-nationals from being discriminated at least in comparison to other non-nationals. On top of that, the CERD Committee appears to have adopted a more radical approach, affirming that human rights are to be enjoyed by *all* individuals, and also paying special attention to the situation of the Palestinian refugees in its recent Concluding Observations on Lebanon in 2004. With reference to the Direct Request issued by the CEACR in 2011, one may also question the traditional position of the ILO on the issue of access to the labour market for non-nationals. It appears as if non-nationals have now come under the radar of the ILO.

Yet, when taking a closer look, the ambivalence that arguably permeates the entire human rights regime shines through. The international

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<sup>252</sup> *Ibid.*, para. 13, 15.

<sup>253</sup> *Ibid.*, paras. 29-39.

<sup>254</sup> CERD Committee, *Concluding Observations Lebanon*, (CERD/C/64/CO/3, 28 April, 2004), paragraph. 12.

instruments on the right to work and equality all seem to be plagued by the sovereignty dilemma. The principle of national sovereignty can be seen as an underlying assumption in the majority of the labour related human rights instruments covered above. Labour market restrictions are taken for granted and generally accepted when it comes to temporary residents, effectively reinforcing the borders of the membership community. The inclusion of labour related rights in the Refugee Convention is also an indication of the necessity to ensure labour rights and progressive integration of non-nationals. As for the Migrant Workers' Convention, this instrument also reflects the national interests of states to control their borders. It appears as if there is an inherent tension within the human rights regime between the principle of universality on the one hand and state sovereignty on the other.

One may wonder what non-temporary residence refers to, who has the authority to make the distinction between temporary and non-temporary, and when does one transfer from the temporary category to the long-term one. As noted by Källström and Eide, persons who have obtained a non-temporary right of residence should have the same right to a work permit as citizens, however reality tells us differently.

# 6 The Status of Palestinian Refugees in International Law

This chapter will examine the legal status of Palestinian refugees in international law. For the purpose of this thesis, and because of the precarious status of this group and the complexity of this subject it is not possible to give a fully satisfying analysis. However, to obtain an understanding of the exceptional protection gap that Palestinian refugees face both on an international and national level it is important to provide a basic outline of the legal frameworks that normally apply in relation to refugees and the position of Palestinian refugees within these frameworks.

## 6.1 Palestinian Refugees

As mentioned, the Palestinian refugee status is indeed a precarious one, and it is striking that this subject is more or less absent in the vast literature on international refugee law (IRL). One might find it somewhat ironic that we continue to study this highly relevant field, while effectively excluding the legal implications and human experiences of the world's today largest refugee population, the Palestinians. The international refugee regime was developed largely as a response to the refugee tragedy in Europe following the Second World War, yet it neglects the equally burdensome struggle of the Palestinian refugees.<sup>255</sup> Some scholars talk about 'Palestinian exceptionalism', referring to the exclusion of Palestinians from the global refugee protection regime and the maintenance of a separate system addressing the situation of the Palestinian refugees collectively.<sup>256</sup> The Palestinian refugee problem coincided with the emerging international refugee regime, and we will see in this chapter how this refugee community has been explicitly excluded from its application in various legal instruments.

The essential feature of the Palestinian refugee is that she is virtually unable to return to her place of origin, contrary to what is normally the case for refugees. In general refugees are able to return to their country of origin, but unwilling out of for example fear of persecution. Palestinian refugees on the other hand, have rather insisted on their exclusive 'right to return', in the face of Israeli rejection. Weighill notes that the historical context, in which the refugee regime and the 1951 Convention developed, must not be forgotten here. In the wake of the Second World War, the main concern for the refugees was protection and the opportunity to build new lives in the countries of asylum, which naturally has influenced the formulation of the

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<sup>255</sup> H. Arendt, *supra* note 21, p. 290, see also A. Ramadan, *supra* note 146, p. 658.

<sup>256</sup> A. Khalil, 'Socioeconomic Rights of Palestinian Refugees in Arab Countries', Vol. 23, Issue 4, pp. 680-719, *International Journal of Refugee Law* (2011), p. 5.

Refugee Convention and the notion of protection.<sup>257</sup> Nonetheless, Palestinian refugees have acquired one of the basic characteristics of refugees, namely that of lacking any form of governmental protection in the country of origin. Palestinians are as such unprotected persons in the classical sense of ‘refugeehood’. In his comprehensive work on the status of Palestinian refugees, Takkenberg, academic and Senior Ethics Officer at UNRWA, further concludes that the descendants of the original refugees that fled in 1948, ought to be considered refugees on the basis of the two characteristics above; in other words the inability to return and the lack of protection in combination with the principle of family unit, according to which members of the immediate family of a refugee also should be considered a refugee.<sup>258</sup>

Admitted to the neighboring Arab countries on what was expected to be a temporary basis, Palestinian refugees were not granted citizenship, effectively leaving them stateless in addition to being refugees.<sup>259</sup> Under the British mandate, Palestinians were not considered British subjects, although they benefited from diplomatic protection. Palestinian citizenship thus terminated with the end of the mandate and the proclamation of the state of Israel. At the same time as Israel denied citizenship to the majority of Palestinian Arabs, the neighboring Arab countries rejected local integration and naturalization as the solution to the refugee problem that in their mind only can be remedied by repatriation and self-determination.<sup>260</sup>

The main international instruments dealing with refugees and stateless persons are the 1951 Convention Relating to the Status of Refugees (1951 Convention), the protocol Relating to the Status of Refugees (1967 Protocol) and the 1954 Convention Relating to the Status of Stateless Persons (1954 Convention). The status of Palestinians in relation to these instruments and refugee law and the law on statelessness in general will be elaborated on shortly in the following two sections.

## 6.2 The 1951 Refugee Convention

The 1951 Convention relating to the status of refugees together with its protocols is the main instrument of international refugee law. The Convention not only provides a universal definition of the term refugee, but also establishes a range of basic legal obligations such as the important provision of ‘non-refoulement’ (art. 33) as well as specific rights for refugees and minimum standards in treatment by the host country. It should be noted that article 34 specifically provides for the facilitation of naturalization.<sup>261</sup>

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<sup>257</sup> M. Weighill, ‘Palestinians in Lebanon: The Politics of Assistance’, Vol. 10, No. 3, *Journal of Refugee Studies* (1997), p. 306.

<sup>258</sup> Takkenberg, *supra* note 30, pp. 52-53.

<sup>259</sup> *Ibid.*

<sup>260</sup> G. S Goodwin-Gill, *The Refugee in International Law*, (Clarendon Paperbacks, Oxford, Second Edition, 1996), p. 243.

<sup>261</sup> Takkenberg, *supra* note 30, pp. 86-87.

The 1951 Convention, and the Protocol of 1967 has become the standard for refugee policy and law in 145 countries. However, the majority of those countries in the Middle East that, as a result of their geographical proximity to the conflict, are hosting large concentrations of Palestinian refugees, are not signatories to neither the Convention nor the Protocol. Jordan, Lebanon and Syria are all neighboring countries that until this day have not ratified the Refugee Convention. Israel and Egypt are state parties, but have both made reservations to the Convention.<sup>262</sup>

In all cases the inclusion of the Palestinian refugees in the Refugee Convention was a controversial matter, and as it turned out, this particular group of refugees were to be explicitly excluded from its scope of application by the insertion of article 1D (Section 2). The article provides that:

“[the] Convention shall not apply to persons who are at present receiving from organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees protection or assistance. When such protection or assistance has ceased for any reason, without the position of such persons being definitively settled in accordance with the relevant resolutions adopted by the General Assembly of the United Nations, these persons shall *ipso facto* be entitled to the benefits of this Convention.”<sup>263</sup>

Although generally formulated, this article was specifically drafted with the Palestinians in mind, with the intention of the Arab and Western states to deny Palestinians the access to the convention-based refugee regime and as such relieve the Arab states from any direct responsibility for the refugees arising from the Convention and redirect this burden to the UN, and more specifically UNRWA. Even though several Arab states took an active part in the drafting of the convention and article 1D was successfully incorporated for their benefit, they nevertheless failed to ratify the Convention and have not acceded it since.<sup>264</sup> The interpretation of Article 1D and the exclusion of Palestinian refugees is a matter of contention, and the United Nations High Commissioner for Refugees (UNHCR) recently adopted a position on the applicability of the Convention to this group. According to this position, that is intended to serve as guidance in refugee status determination, the protection provided by UNRWA and that afforded by the 1951 Convention are complementary in the sense that when Palestinian refugees are outside the scope of UNRWA assistance they automatically qualify for refugee protection under the Refugee Convention.<sup>265</sup>

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<sup>262</sup> Web site of UN Treaty Collection, [treaties.un.org/pages/ViewDetailsII.aspx?&src=UNTSOnline&mtmsg\\_no=V~2&chapter=5&Temp=mtmsg2&lang=en](http://treaties.un.org/pages/ViewDetailsII.aspx?&src=UNTSOnline&mtmsg_no=V~2&chapter=5&Temp=mtmsg2&lang=en) >, visited on June 12 2012.

<sup>263</sup> Article 1 D of the 1951 Convention Relating to the Status of Refugees.

<sup>264</sup> Takkenberg, *supra* note 30, pp. 86-93.

<sup>265</sup> UNHCR, *Revised Note on the Applicability of Article 1D of the 1951 Convention relating to the Status of Refugees to Palestinian Refugees*, < [www.unhcr.org/refworld/pdfid/4add77d42.pdf](http://www.unhcr.org/refworld/pdfid/4add77d42.pdf) >, visited on June 13 2012.

## 6.3 Statelessness in International Law

Palestinian refugees residing in those neighboring Arab countries that continue to deny citizenship are still today stateless. The legal definition in international law of 'statelessness' is people who are not considered nationals by any state. The existence of statelessness stands out as a deficit in the human rights regime that provides for the right to a nationality (UDHR art. 15)<sup>266</sup>, and further indicates the role of contemporary politics for human rights.<sup>267</sup> This human right not to be stateless is crucial as many states only allow their nationals to enjoy full civil, political, economic and social rights within their territory. Special Rapporteur Weissbrodt noted in his final report on the rights of non-citizens that "there is a large gap between the rights that international human rights law guarantee to non-citizens and the realities they must face."<sup>268</sup> For this reason the right to a nationality has been called a man's basic right as it essentially can be considered the right to have rights.<sup>269</sup> The right to a nationality has furthermore been established in the 1954 Convention relating to the Status of Stateless Persons and in the 1961 Convention on the Reduction of Statelessness. The 1954 Convention aims at improving and regulating the status of stateless persons, while the 1961 Convention was introduced to avoid statelessness at birth. In the 1954 Convention a range of rights for stateless persons are established relating to employment, welfare, personal status etc. More importantly it contains a provision on the exemption from reciprocity (art. 7). The rights of non-nationals have furthermore been enunciated in the Declaration on the Human Rights of Individuals Who are not Nationals of the Country in which They Live from 1984. There are a number of human rights conventions that also address the anomaly of statelessness, such as the Convention on the Rights of the Child (CRC). Article 7 together with Article 2 stipulate that children have a right to acquire a nationality without discrimination of any kind and regardless of the legal status of their parents and that states are required to ensure the implementation of these rights where the child would otherwise be stateless.<sup>270</sup>

So where do Palestinian stateless refugees fit in the international law on statelessness? In article 1(2)(i) of the 1954 Convention the same type of exclusion provision as in the Refugee Convention has been added, stating that the Convention does not apply to persons who are receiving assistance from other UN Agencies than the UNHCR.<sup>271</sup> Thus, the same dilemma surfaces here, whereby Palestinians are effectively excluded from the scope

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<sup>266</sup> Takkenberg, *supra* note 30, p. 175; B. K. Blitz and M. Lynch (eds.), *Statelessness and Citizenship, A Comparative Studie on the Benefits of Nationality*, (Edward Elgar Publishing Limited, Cheltenham, UK, Nothhampton, USA, 2011), p. 2.

<sup>267</sup> H. Arendt, *supra* note 21, p. 277.

<sup>268</sup> UN Economic and Social Council, *Prevention of Discrimination, The Rights of Non-Citizens*, (E/CN.4/Sub.2/2003/23), p. x.

<sup>269</sup> D. Weissbrodt, *The Human Rights of Non-Citizens*, (Oxford University Press, Oxford, 2008), p. 81.

<sup>270</sup> The Convention on the Rights of the Child, Article 2 and 7.

<sup>271</sup> Convention relating to the Status of Stateless Persons.

of applications. Furthermore, very few states have ratified the conventions on statelessness; 74 states have ratified the 1954 Convention and the 1961 Convention has been ratified by 45 states. None of the Arab neighboring countries hosting Palestinian stateless refugees have acceded to the conventions, with the exception of Israel.<sup>272</sup> Nonetheless, Lebanon is a party to the Convention on the Rights of the Child, and has not made any reservations that would cancel their legal obligation to grant citizenship to Palestinian children born on Lebanese territory, leading to the conclusion that Lebanon is in breach of the CRC.<sup>273</sup>

## 6.4 The UNRWA Framework

There is no general legal definition of the term Palestinian refugee. The definition, developed by the international community was mainly created for the purpose of international assistance.<sup>274</sup> The definition was developed to meet a necessity and lacks theoretical underpinnings. It has its origins in the definitions that were used initially by the non-governmental organizations that were providing relief to the refugees between 1948 and 1949. Takkenberg stresses that the UNRWA definition only covers part of the Palestinian refugees who are entitled to the right to return as formulated in the UNGA resolution 194 (III). It furthermore does not necessarily correspond to the general refugee definition employed in international refugee law.<sup>275</sup> The definition has since the start of UNRWA's operations been revised several times. The present definition reads:

“Palestine refugee shall mean any person 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.”<sup>276</sup>

Contrary to what is the case with the Refugee Convention, Palestinian refugees, according to UNRWA regulations, do not lose their refugee status in the event of obtaining citizenship, which means that they in theory retain their right to return. This is the case with many Palestinian refugees in Jordan that have obtained Jordanian citizenship.<sup>277</sup> Takkenberg, has also addressed the issue of right to return and its application. General Assembly Resolution 194 (III), which establishes the right to return for Palestinian refugees in its article 11, does not offer a clear definition of Palestinian

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<sup>272</sup> Web site of the United Nations Treaty Collection, < [www.unhcr.org/pages/4a2535c3d.html](http://www.unhcr.org/pages/4a2535c3d.html) >, visited on June 14 2012.

<sup>273</sup> Web site of the United Nations Treaty Collection, < [treaties.un.org](http://treaties.un.org) >, visited on August, 6 2012.

<sup>274</sup> Takkenberg, *supra* note 30, p. 68.

<sup>275</sup> *Ibid.*, p. 83

<sup>276</sup> The operational definition can be found at UNRWA's web site, < [www.unrwa.org](http://www.unrwa.org) >, visited, July 17 2012.

<sup>277</sup> A. Khalil, *supra* note 256, p. 8; *see also* UNRWA Regulations, D, Removal From UNRWA Registration System, p. 16, < [www.unrwa.org/userfiles/2010011995652.pdf](http://www.unrwa.org/userfiles/2010011995652.pdf) >, visited on July 17 2012.

refugee. Since it has been impossible to implement the resolution so far, the question of whom it would apply to has not yet been raised. This is a question that would have to be solved to be able to decide who can claim this right in practice, taking into consideration the vast numbers of Palestinian refugees today.<sup>278</sup> Although Palestinians in theory would have the right to return regardless of whether they are no longer receiving assistance from UNRWA or they have obtained citizenship in another country, it is doubtful whether they would be able to actually claim that right in practice. Takkenberg has indicated that registration with UNRWA may be helpful in terms of possibly creating a clearer claim to potential peace settlement rights, in comparison to those Palestinians whose refugee status is not recognized by the United Nations.<sup>279</sup> One might however remain skeptical toward this statement, considering that the UNRWA registry today contains almost five million registered refugees.<sup>280</sup>

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<sup>278</sup> Takkenberg, *supra* note 30, p. 83-85.

<sup>279</sup> *Ibid.*, p. 68

<sup>280</sup> UNRWA web site, statistics, < [www.unrwa.org/etemplate.php?id=253](http://www.unrwa.org/etemplate.php?id=253) >, visited on August 7 2012.

# 7 The Contemporary Conditions of the Palestinian Refugees in Lebanon

In this chapter, the current situation of the Palestinian refugees will be discussed, to facilitate the understanding of the impact that the Lebanese labour legislation has on the livelihoods and prospects of the Palestinians. It is very difficult to separate the different fields in which Palestinians face discrimination as they are intertwined and mutually reinforcing in terms of shaping the general situation, which is why a short description will be laid out to provide a basic understanding of the conditions met by Palestinian refugees residing in Lebanon. A legal examination of Palestinian employment regulations will be presented in chapter 8 below. Furthermore, the situation of Palestinian refugees in Lebanon has been studied and scrutinized by scholars, NGO's and research centers, Lebanese and non-Lebanese alike, in abundance. As there is no lack of scientific evidence of the socio-economic realities of this particular group, this chapter will provide a general description.

## 7.1 Who are the Palestinians in Lebanon Today?

The presence of the Palestinians in Lebanon is to this day an incredibly politicized matter, and ironically enough, may be the only issue that actually unites the Lebanese across political factions and sectarian allegiances. This unusual consensus concerns the rejection of 'tawteen', or permanent settlement of the Palestinians on Lebanese soil. What is more contentious is the issue of numbers. How many Palestinian refugees are actually residing in Lebanon today? These figures are constantly subject to political manipulation, and no official census was ever carried out of the Palestinian refugees.<sup>281</sup> It is however noteworthy that no general official census has been undertaken in the country since 1932 with the purpose of avoiding the sensitive issue of demographics and the possibilities of a renegotiation of the confessional representation.<sup>282</sup> The politics of demographics is of course one reason to why the statistics concerning Palestinians are so controversial, but it is also and economic question. The Lebanese authorities tend to inflate

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<sup>281</sup> J. Chaaban, H. Ghattas, R. Habib, S. Hanafi, N. Sahyoun, N. Salti, K. Seyfert, and N. Naamani, *Socio-Economic Survey of Palestinian Refugees in Lebanon*, Report published by the American University of Beirut (AUB) and the United Nations Relief and Works Agency for Palestinian Refugees in the Near East (UNRWA), (2010), p. x.

<sup>282</sup> R. Maktabi, 'State Formation and Citizenship in Lebanon – The Politics of Membership and Exclusion in a Sectarian State' in N. A. Buttenschon, U. Davis *et al.*, (edt.), *Citizenship and the state in the Middle East – Approaches and Applications*, (Syracuse University Press 2000), p. 146.

the numbers as to further point to the inability of the Lebanese state to absorb the refugees.

It is noteworthy that the Palestinian refugee population has been living as refugees for over 60 years, and should accordingly be defined more accurately as ‘protracted refugees’.<sup>283</sup> UNRWA statistics from January 2012 indicate that there are 465, 798 registered refugees in Lebanon.<sup>284</sup> These official figures should however be used with discretion as they do not take into account the massive emigration of Palestinians throughout the years.<sup>285</sup> There are of course several unofficial estimations, one of which was done for the AUB (American University of Beirut) Survey in 2010. This survey estimates the total number of refugees currently living in Lebanon to 260, 000-280, 000. More than half (62%) of the refugee population lives in camps, as opposed to 38% living in gatherings. Furthermore, the survey results show that 53% of the refugees are women and that half of the Palestinian refugee population is younger than 25 years old.<sup>286</sup> This recent data has not been officially endorsed, and it is not likely that any such estimation will be accepted as final in the near future either. I would argue that the various surveys and reports conducted on Palestinians in Lebanon provide convincing evidence that the total of Palestinians today, significantly falls below the number provided by the UNRWA registry.<sup>287</sup>

Palestinian refugees can be categorized into three distinct groups. The first group, which includes the majority of the Palestinian refugees, consists of ‘registered refugees’ by both UNRWA and Lebanese authorities who benefit from the services provided by UNRWA. The second category consists of ‘non-registered refugees’ who fall outside of the UNRWA mandate as they left Palestine after 1948. This group is also registered by Lebanese authorities and started to benefit from UNRWA services in January 2004. The third category consists of ‘non-identified refugees’, who are neither registered with any Lebanese agency nor internationally and thus lack valid documents. Although this group benefits from some UNRWA services, it is excluded from accessing health care and other forms of humanitarian assistance, and suffers from the restrictions on their freedom of movement and their inability to obtain marriage certificate or birth certificate for their children.<sup>288</sup>

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<sup>283</sup> AUB Survey, *supra* note 281, p. 7.

<sup>284</sup> *Statistics from UNRWA* web site, < [www.unrwa.org/etemplate.php?id=253](http://www.unrwa.org/etemplate.php?id=253) >, visited on May 30 2012.

<sup>285</sup> AUB Survey, *supra* note 281, p. x.

<sup>286</sup> *Ibid.*

<sup>287</sup> See for example Å. Tiltnes, FAFO-Report, *Falling Behind, A Brief on the Living Conditions of Palestinian Refugees in Lebanon* (No. 464, 2005), p. 10-11.

<sup>288</sup> AUB Survey, *supra* note 281, p. 4.

## 7.2 The Legal Status of Palestinians in Lebanon

This section will briefly examine the legal status of Palestinians in Lebanon, as this is an important element for the understanding of the tension between Palestinian individual human rights and the political position of the Palestinian refugees as a collective in Lebanon. As we will see, the legal status of Palestinians is very much associated with the issue of ‘tawteen’, or re-settlement, both on a legal and political level. The practical implications of the legal status of Palestinians in relation to employment and labour law will be further discussed in chapter 7.

The status of Palestinians has since their arrival in Lebanon been a matter of ambiguity, most likely as a result of the fears of formalization of this group in Lebanon. While residing legally in the country, Palestinians do not enjoy any special refugee or resident status that would allow them to circumvent some of those restrictions that are put on temporary foreigners, such as the work permit.<sup>289</sup> It is this lack of a specific legal definition and the refusal to recognize this group as refugees, despite the fact that they have lived in Lebanon for over 60 years, that continues to govern the Palestinian presence in the country and that serves as a pretext for discrimination.

The first step towards formalizing the status of Palestinians was taken in 1959, with the establishment of the Department of Palestinian Refugee Affairs in Lebanon with the purpose of overseeing all matters related to Palestinian refugees. In the following year, in 1960, The Higher Authority for Palestinian Affairs was created to deal with the Palestinian presence in Lebanon. None of these agencies however dealt with the special status of the Palestinians and in 1962 they were officially categorized as foreigners in the Aliens Legislation, viewed as no different from other foreigners residing in Lebanon. With the Cairo Agreement in 1969 (see chapter 2), the rights and obligations of the Palestinians were for the first time defined and their status regarded as a “special kind of foreigner”. The Cairo Agreement was however abrogated unilaterally in 1987 by the Lebanese Parliament, and Palestinians were once again considered as foreigners.<sup>290</sup> The hopes of formalization were further shattered with the Taif Accord and its incorporation in the Lebanese Constitution. The principle of non-settlement of the Palestinians is affirmed in paragraph IH of the Taif Accord, which states that there shall be “[n]o repatriation [of Palestinians in Lebanon]”<sup>291</sup>. This principle was further pronounced in the preamble of the Constitution, which states “[t]here shall be no segregation of the people on the basis of

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<sup>289</sup> W. Said, ‘The Palestinians in Lebanon: the Rights of the Victims of the Palestinian-Israeli Peace Process’, 30:315, *Columbia Human Rights Law Review*, (1998-1999), p. 316.

<sup>290</sup> S. Al-Natour, ‘The Legal Status of Palestinians in Lebanon’, Vol. 10, No. 3, *Journal of Refugee Studies*, Oxford University Press (1997), p. 361-363; L. El-Malak, *supra* note 15, p. 134.

<sup>291</sup> Taif Accord, Paragraph IH, < [www.al-bab.com/arab/docs/lebanon/taif.htm&title=Document:%20The%20Taif%20Accord,%201989](http://www.al-bab.com/arab/docs/lebanon/taif.htm&title=Document:%20The%20Taif%20Accord,%201989) >, visited on July 22 2012.

belonging, and no fragmentation, partition or settlement of non-Lebanese in Lebanon.”<sup>292</sup> This provision hence has constitutional authority, and stands on an equal footing to any provisions on non-discrimination or references to international law enshrined in the Constitution. Thus, Palestinian refugees in Lebanon, despite living in the country for over 60 years, do not possess citizenship or any other type of formalized status.

Today, any step taken towards formalization of Palestinians in any field, which can be seen as a means of integration, is often accused of being unconstitutional on the basis of the principle of non-settlement. It is essential to understand the importance of the ‘non-status’ of Palestinians in the Lebanese context, as it is at the core of any rights claim made on behalf of Palestinian refugees in Lebanon.<sup>293</sup> As Professor in sociology, Sari Hanafi puts it; “*Tawtīn* is the scarecrow which has been used to generate a public phobia against the basic rights of the Palestinians. Any debate about civil and economic rights starts by affirming that the objective should not be *tawtīn* and ends with the same melody”.<sup>294</sup> This scarecrow is so much entrenched in the Lebanese mentality that it forms the premises of any legal debate on human rights for this group. According to Ghassan Moukheiber, lawyer, Member of Parliament representing the Change and Reform Bloc also known as the March 8 Alliance (officially secular, traditionally Christian) and more specifically the party Free Patriotic Movement, as well as member of the Parliamentary Human Rights Committee; “Settlement is broader than nationality, it is not about granting citizenship but is interpreted as any action that would lead to permanent settlement of Palestinians in Lebanon. The difficulty with the Palestinians has always been this. How can you provide for human rights without those rights granted leading to permanent settlement? It is the vicious circle. It is a legal vicious circle.”<sup>295</sup> One practical example of this catch-22 is the landmark judgment given by the Constitutional Council, in which property rights were revoked on the grounds that Palestinian ownership of land is equal to settlement and as such must be considered unconstitutional.<sup>296</sup>

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<sup>292</sup> The Lebanese Constitution, Preamble, para. I, < [www.presidency.gov.lb/English/LebaneseSystem/Pages/LebaneseConstitution.aspx](http://www.presidency.gov.lb/English/LebaneseSystem/Pages/LebaneseConstitution.aspx) >, visited on May 31.

<sup>293</sup> S. Hanafi, ‘Palestinian Refugee Camps in Lebanon - Laboratory of Indocile Identity Formation’, in M. Al Khalid (edt), *The Lived Reality of Palestinian Refugees in Lebanon*, (Institute of Palestinian Studies 2010), section 2.

<sup>294</sup> *Ibid.*

<sup>295</sup> Interview with Ghassan Moukheiber, Member of Parliament and member of the Parliamentary Human Rights Committee, representing the Change and reform Bloc (Beit Mary, Lebanon, April 6 2012), on file with author.

<sup>296</sup> Le Conseil Constitutionnel, Décision No. 2, 21 May, 2001, < [www.conseilconstitutionnelliban.com/pdf/2-2001-fr.pdf](http://www.conseilconstitutionnelliban.com/pdf/2-2001-fr.pdf) >, visited on July 28 2012.

## 7.3 The Living Conditions of Palestinians in Lebanon

In this section a short description of the general living conditions of the Palestinian refugees in Lebanon will be given. The AUB Survey conducted in 2010 will be used as the main source to describe the general conditions, as it is a fairly recent and comprehensive study. It furthermore looks at poverty from a holistic approach, including factors such as education, health, economic status, housing and food security, which are all mutually reinforcing elements in continuing the social exclusion of the Palestinian refugees. This subsection provides an understanding of the crosscutting character of the right to work and how the restriction of this right affects the overall situation for Palestinian refugees in Lebanon. The general living conditions and the poverty of the Palestinians must be seen as direct consequences of the restrictions on employment. The exclusion from the labour market and the deplorable living situation are of course also mutually reinforcing in terms of reducing the overall rights agency of the Palestinian community.

The experience of Palestinian refugees in Lebanon is unique in comparison to the situation in neighboring Arab host countries. Palestinians in Lebanon find themselves in an extremely hostile environment, where second- and third-generation Lebanese-born Palestinians are denied basic civil rights, as opposed to those residing in Jordan or Syria for example. In Lebanon, Palestinians remain economically and spatially segregated from the host country.<sup>297</sup> The Palestinians in Lebanon receive the main financial support from UNRWA, and the AUB Survey shows that only 13% are provided financial aid or other kinds of support outside the UNRWA framework. Thus, Palestinian refugees do not impose a direct burden on the host country, a fact that is disputed by the majority of the Lebanese population. It is UNRWA, and not the Lebanese state that is the main provider for health care and education. If UNRWA was not present in Lebanon, the AUB Survey asserts that overall poverty among Palestinians would increase by 14 % and extreme poverty would be multiplied by three.<sup>298</sup>

### 7.3.1 Poverty

Using a poverty line set at US\$ 6 a day, an amount that covers basic food and non-food requirements of an adult Palestinian refugee, the AUB Survey concludes that two thirds of Palestinian refugees are poor, which is equated to an estimated 160, 000 individuals. A threshold for extreme poverty set at US\$ 2. 17 is also presented, which allows for an adult Palestinian refugee to buy enough food to satisfy the daily basic food needs. 6.6% of Palestinian

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<sup>297</sup> S. Abdulrahim, M. Khawaja, 'The Cost of Being Palestinian in Lebanon', Vol. 37, No. 1, pp. 151-166, *Journal of Ethnic and Migration Studies* (2011), p. 153-154.

<sup>298</sup> AUB Survey, *supra* note 281, p. xiv.

refugees fall under the extreme poverty line, amounting to 16, 000 individuals.<sup>299</sup> The high poverty rate is a reflection of low income among the Palestinian refugee population, and the survey indicates that poverty rate among Palestinian refugees is 89 % higher than that of the Lebanese population. Extreme poverty is also much higher among refugees, who are four times more likely to be extremely poor than the Lebanese. Noteworthy is that the survey shows that employment is not a main factor in reducing overall poverty, but that it has a significant impact on reducing extreme poverty, which decreases from 9.3 % to 5.1 % when the breadwinner of the household's status changes from unemployed to employed. This is a consequence of the type of jobs that Palestinian refugees in Lebanon typically hold, which are normally low-paid. These are jobs that are not enough to reduce overall poverty, but it can play an important role in decreasing the occurrence of extreme poverty.<sup>300</sup>

### 7.3.2 Health

Health, an individual human right, is an important factor when assessing poverty, as it enables people to work, providing both individual needs and financial and social stability.<sup>301</sup> The health crisis is one of the most pressing issues facing Palestinian refugees in Lebanon. The refugees receive health services from a wide range of health care providers, however, mainly from UNRWA, Palestinian Red Crescent Society (PRCS), NGOs and private clinics. Palestinians do not have access to state hospitals, thus their only option for medical aid are with either private hospitals or the organizations mentioned above. The private hospitals are inaccessible for the majority of Palestinians because of the high costs.<sup>302</sup> UNRWA has been identified as the main provider of health services to Palestinian refugees in Lebanon. The majority, 95 % of the refugees do not have any insurance in addition to UNRWA coverage. As for the Lebanese, the majority relies on Public Insurance, the army or cooperatives, which Palestinians do not have access to. Those who do not have insurance rely on the Ministry of Public Health for coverage.<sup>303</sup>

The main health problems that are identified among Palestinians include chronic illness, which one third are estimated to suffer from. Hypertension is particularly prevalent, and 4 % have a functional disability. What is noteworthy is that when comparing the prevalence of hypertension among Palestinians to the number of Lebanese suffering from this illness, the number is significantly higher among Palestinians with 32 % compared to 14 %. 21 % reported that they suffered from depression, anxiety or distress.<sup>304</sup>

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<sup>299</sup> *Ibid.*, pp. xi-xii, 39.

<sup>300</sup> *Ibid.*

<sup>301</sup> *Ibid.*, pp. xiii-xiv, 62.

<sup>302</sup> L. El-Malak, *supra* note 26, p. 148-149.

<sup>303</sup> AUB Survey, *supra* note 281, pp. 70-71.

<sup>304</sup> *Ibid.*, pp. Xiii-xiv.

It is important to highlight the dangers related to acute illness. Considering that the majority of the Palestinians are without insurance and that most of them do not have stable employment, acute illness can have disastrous consequences as the high expenses and the lack of indemnities or sick leaves might push a household into poverty. A third of patients with an acute illness visit an UNRWA clinic; whereas a quarter consults with a private doctor and 10 % visit the PRCS.<sup>305</sup>

### 7.3.3 Education

The educational system in Lebanon took a strong toll from the civil war. Palestinians in Lebanon used to be among the most educated in the Arab world, which changed with the war.<sup>306</sup> Palestinian children and youth in Lebanon have restricted access to the public school system. Moreover, the private educational system is very costly in Lebanon; in fact it is one of the most expensive in the region, making it financially difficult for families to enroll their children in private institutions. For this reason, the UNRWA office in Lebanon provides not only primary education but also secondary and to a lesser extent support for accessing university education.<sup>307</sup> Education is an important factor in reducing poverty, and the AUB Survey shows that the poverty incidence drops to 60.5 % when the household head has attained an education above primary level, and extreme poverty is almost divided by two. There is a strong link between education and employment, and statistics tells us that those with better education are more likely to get employed. Two thirds of those 23 and 65 years old with a vocational or university degree are employed.<sup>308</sup>

Two thirds of Palestinians above the age of 15 have not attained the Brevet, which is the state certificate that grants access to secondary school, compared to 50 % of the Lebanese in the same age group. 9 % of Lebanese have a University degree compared to 5 % of Palestinians. There is a preference among Palestinian students for university courses over vocational courses, which increases the chances of employment. However, the syndicates and orders of the liberal professions bar many of the high status professions an academic education leads to for Palestinians.<sup>309</sup> Rola Badran with the Palestinian Human Rights Organization expressed her fears about the decline of educated Palestinians; “Now youth are not going to university because it is useless to study, as there is no future in terms of finding a job within the right field. And if we don’t have an educated community with for example lawyers we will not be able to advocate for our rights and to accomplish a change. It impacts dreams and hopes.”<sup>310</sup> A study of UNRWA school dropouts in the refugee camps from 2011 shows that there is a link

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<sup>305</sup> *Ibid.*, pp. xiii-xiv, 63-71.

<sup>306</sup> L. El-Malak, *supra* note 26, p. 144.

<sup>307</sup> *Better Schools, Brighter Future*, Education, UNRWA Lebanon 2011, < [www.unrwa.org/userfiles/2011100225829.pdf](http://www.unrwa.org/userfiles/2011100225829.pdf) >, visited on Jun 4 2012.

<sup>308</sup> AUB Survey, *supra* note 278, pp. 11-12, 36-38.

<sup>309</sup> *Ibid.*

<sup>310</sup> Interview with Rola Badran, *supra* note 239.

between the Lebanese labour laws and the lack of motivation and high rate of drop outs among Palestinian youth.<sup>311</sup>

### 7.3.4 Housing

Adequate housing facilities that provide a healthy and safe environment have a direct impact on the health and wellbeing of communities. The Palestinian refugee community in Lebanon continues to suffer from poor quality housing. As a result of restrictions on the living space, almost 8% of households are living in overcrowded conditions. 40% of the households have water leaking through their roofs or walls and 8% live in shelters where roofs and walls are made from corrugated iron, wood or asbestos. The AUB Survey indicates that housing characteristics are related to increased prevalence of specific health problems. For example, homes with walls built of stone, as opposed to wood, asbestos or eternite etc., were least likely to house individuals suffering from chronic illness. Furthermore, those with roofs made of building stone report lower rates of psychological problems.<sup>312</sup>

### 7.3.5 Palestinian Employment

The official unemployment rate among Palestinian refugees, calculated by using the ILO definition of unemployment, is estimated to 8%. This rate is not far from that of the Lebanese population in recent years. This definition of unemployment is however not a correct reflection of Palestinian employment, as it overlooks individuals who are discouraged workers, i.e. those who are not actively seeking a job. The ILO measures unemployment based on a definition of the labour force that distinguishes between economically active and non-active members. The category of economically active members comprises individuals with or without a job who are actively seeking employment. Those outside the labour force are subsequently defined as individuals not available for work for various reasons, among which discouragement is one. The labour force is in other words the sum of the unemployed and the employed population according to the standards of the ILO. This effectively results in an inaccurate estimation of the Palestinian refugee population. The AUB Survey estimates the joblessness of those persons who are not studying, pregnant or ill to 56% among refugees and only 37% of the working age population is employed. Those who have a job are often in low status, casual and precarious employment. The survey further indicates that 21% of employed refugees work in seasonal employment and that only 7% of those employed have a contract. These numbers indicate a very high level of discouraged workers among the Palestinian refugees, a direct cause of discriminatory

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<sup>311</sup> A. Al-Hroub, *UNRWA School Dropouts in Palestinian Refugee Camps in Lebanon: A Qualitative Study*, Policy and Governance in Palestinian Refugee Camps, AUB, Issam Fares Institute for Public Policy and International Affairs, p. 15.

<sup>312</sup> *Ibid.*, pp. xiv, 74-77.

employment regulations and lack of access to the local labour market.<sup>313</sup> In a study conducted by Abdulrahim and Khawaja, Assistant Professor of Health Behavior and Education and Professor of Population Health at the American University of Beirut (AUB) from 2011, Palestinian refugees are compared to Lebanese citizens who live in geographic proximity and under similar conditions with the purpose of exploring the socio-economic consequences of the exclusion of Palestinians from the Lebanese labour market. According to this study, which is based on data collected during 2002 and 2003, Palestinians more frequently reported discouragement than Lebanese as a reason for their lack of participation in the labour force. Furthermore, the data acquired in the study shows that Palestinian men and women earn lower wages than their Lebanese counterparts in a majority of labour fields. In general, this study reveals that while exclusionary and discriminatory labour policies have not succeeded in completely barring Palestinians from working in Lebanon, Palestinians pay a cost in wages. Palestinians are segregated into the less-desirable segment of the mainstream economy as the study shows that they are overrepresented in crafts-related occupations and construction. The fact that Palestinians earn lower wages than Lebanese is an indication that there are Lebanese employers who take the risk and hire Palestinians, despite prohibitive regulations. This risk is however compensated for by lower wages.<sup>314</sup>

## 7.4 Other Foreign Groups Residing in Lebanon

To fully understand the labour conditions of the Palestinian refugees and how this group is different from other non-Lebanese workers in the country, it is crucial to look at the large influx of foreign labour in Lebanon. This is important as it shows clearly how other foreign groups are treated in terms of gaining access to the Lebanese labour market. It illustrates the categorical approach taken towards the Palestinians, and further serves to deconstruct the argument of Palestinian economic competition and socio-economic instability.

There are great numbers of foreign workers residing in Lebanon. These numbers, however, vary widely in different sources and should therefore be used with caution. The Lebanese Central Administration for Statistics regularly publishes figures on the number of work permits issued to foreign workers. According to the Ministry of Labour, 145,684 valid work permits were delivered in 2009 for non-Lebanese to perform economic activity in the country. That number of permits accounts for 11% of the total Lebanese labour force. Foreign labour immigration in Lebanon consists of mainly low skilled Asiatic or African female workers that work in limited fields of occupation, primarily as domestic help. In the same year, 100, 065

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<sup>313</sup> *Ibid.*, p. 7; see also ILO website for a definition of labour force, < [www.ilo.org/global/statistics-and-databases/statistics-overview-and-topics/employment-and-unemployment/lang--en/index.htm](http://www.ilo.org/global/statistics-and-databases/statistics-overview-and-topics/employment-and-unemployment/lang--en/index.htm) >, visited on July 3 2012.

<sup>314</sup> S. Abdulrahim, M. Khawaja, *supra* note 297, pp. 157, 160-162.

work permits to foreigners were renewed.<sup>315</sup> These figures are most likely not completely accurate as they do not include those foreigners working without work permits in Lebanon, nor Syrian workers who are allowed to enter the country without visa and who constitute the large majority of foreign workers in Lebanon.<sup>316</sup> Other sources put the estimates significantly higher, at closer to 1 million.<sup>317</sup>

The important distinction that has to be made between Palestinian refugees and other foreign workers is the fact that Palestinians spend their salaries in Lebanon, whereas other foreign workers send remittances to their families in their home countries. This point was stressed by Rola Badran at the Palestinian Human Rights Organization; “A country that receives migrant workers, there are more than 1 million in Lebanon, should be able to open the market for less than 50 000 Palestinians who are actual labour force. Palestinians are good actors in the country because we spend our money here and we do not send it out.”<sup>318</sup> Thus, arguably, Palestinians are actually contributing to the Lebanese economy, contrary to the firm belief of many Lebanese.

## 7.5 Lebanese-Palestinian Hospitality Discourse and the Fears of Integration

The general official policy towards the Palestinian refugees in Lebanon throughout the years has been one characterized by exclusion and discrimination. Arguably the dire conditions of the Palestinian are the result of a strategy to discourage Palestinians from remaining in Lebanon.<sup>319</sup> The famous quote from 1998 by the late Prime Minister Rafiq Hariri still lingers; “Lebanon will never, ever integrate Palestinians. They will not receive civic or economic rights or even work permits”<sup>320</sup>.

Because of the political consensus on the non-settlement of the Palestinians on Lebanese territory it is crucial to examine the underlying attitudes and the mentality in the Lebanese society, which are directly translated into government policy and national legislation. The common understandings of the membership community in this case the Lebanese citizens, form the political and cultural context within which international

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<sup>315</sup> Central Administration of Statistics, *Statistical Yearbook 2009*, pp. 3-4, < [www.cas.gov.lb/Excel/SYB/yearbook2009/Chapter%201%20-%20Residents%20in%20Lebanon%202009.pdf](http://www.cas.gov.lb/Excel/SYB/yearbook2009/Chapter%201%20-%20Residents%20in%20Lebanon%202009.pdf) >, visited on June 6 2012.

<sup>316</sup> United Nation Development Agency, *A Profile of Sustainable Human Development in Lebanon*, 1997, chapter D (1), < [hdr.undp.org/en/reports/nationalreports/arabstates/lebanon/nhdr\\_1997\\_lebanon-en.pdf](http://hdr.undp.org/en/reports/nationalreports/arabstates/lebanon/nhdr_1997_lebanon-en.pdf) >, visited on June 6 2012.

<sup>317</sup> Interview with Rola Badran, *supra* note 239.

<sup>318</sup> *Ibid.*

<sup>319</sup> S. Haddad, ‘The Palestinian Predicament in Lebanon’, Vol. VII, pp. 29-40, *Middle East Quarterly*, (2000), para. 13.

<sup>320</sup> See J. K. Cooley, Lebanon ‘Will Be Throwing Its Own Concerns Onto The Table’, *International Herald Tribune*, (December 21, 1999), para. 13, < [www.nytimes.com/1999/12/21/opinion/21iht-edcooley.t.html](http://www.nytimes.com/1999/12/21/opinion/21iht-edcooley.t.html) >, visited on August 7 2012.

human rights norms are going to be defined, negotiated and finally implemented. They illustrate the social realities in Lebanon that serve as a legitimization for the distinction between Palestinians and other foreigners residing and working on Lebanese territory.

Previous studies and academic research have addressed the general attitudes of Lebanese citizens towards integrating Palestinian refugees in the Lebanese society (tawteen) and granting them human rights.<sup>321</sup> These studies have intended to map out the attitudes across sectarian lines and to show how the various religious groups perceive the risks associated with the integration of Palestinians and how these perceptions translate into a clear political stance towards this group. Haddad presents in his study from 1999 and early 2000 that Christian Maronite and Shiite groups are generally more hostile towards Palestinian presence than their Sunni and Druze counterparts. Although the Sunni and Druze Communities seemed more inclined to grant rights to the Palestinian population, the rejection of permanent settlement appeared to transcend the religious affiliations of the participants in Haddad's survey. This rejection was furthermore the declared position of all political and religious authorities in the country at the time of the study, and it arguably still is.<sup>322</sup>

Arguably the extent of those rights afforded to foreigners will depend on national attitudes and the risks that are perceived to be associated with the gradual integration that the right to work and other enabling and crosscutting rights imply. Derrida sees risk as inherent in the concept of hospitality, as pure unconditional hospitality is nothing but an acceptance of risk.<sup>323</sup> The term sovereignty is furthermore linked to Derrida's concept of 'hostipitality', the inherent paradox in hospitality, the symbiosis of hostility on the one hand and hospitality on the other. The risks and the different fears are all related to the protection of the sovereignty of the national home. Conditional rights or hospitality can be extended to guests such as for example refugees to the extent that it does not pose a real and imminent threat to the host's authority as sovereign. Ramadan, has described the hospitality offered to Palestinians by the Lebanese government as "highly conditional and circumscribed, in his work on the effects of the 2006 War between Israel and Lebanon for the Lebanese-Palestinian hospitality discourse.<sup>324</sup> In interviews with Palestinian refugees, it is shown that extending hospitality to the Lebanese was a conscious effort to alter negative perceptions of Palestinians.<sup>325</sup> According to Ramadan, the events had an effect on the Lebanese perceptions, and the Palestinian hospitality was acknowledged in Lebanese media. Unfortunately, the events in Nahr-el

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<sup>321</sup> See for example S. Haddad and D. Jamali, 'The Politics of Refugees' Non-Integration: The Dilemma of Palestinians in Lebanon', Vol. 4, Issue 1, pp. 1-22, *Journal of International Migration & Integration* (2003); D. Meier, "'Al-Tawteen": The Implantation Problem as an Idiom of the Palestinian Presence in Post-Civil War Lebanon (1989-2005)', Vol. 32, Issue 3, pp. 145-162, *Arab Studies Quarterly*, (2010).

<sup>322</sup> S. Haddad, *supra* note 319, section. 9.

<sup>323</sup> M. Rosello, *supra* note 147, p. 11-12.

<sup>324</sup> A. Ramadan, *supra* note 146, p. 663.

<sup>325</sup> *Ibid.*, p. 670.

Bared<sup>326</sup>, managed to reassert the traditional discourse of Palestinian refugees as a security threat.<sup>327</sup> Hospitality is furthermore linked to identity in the sense that before hospitality is extended, the host must ascertain to which category the guest belongs. These categories are mostly identified by the state, which imposes the state identity politics on a public level and in the consciousness of its citizens as individual hosts.<sup>328</sup> The identity of the host and the guest are also automatically reinforced in the act of hospitality and continue to shape the relationship.<sup>329</sup>

Arguably, the sovereignty of the national home is not only upheld by circumventing risks, but also by maintaining the link between citizenship and the enjoyment of rights. The welfare state and the enjoyment of benefits and the membership claim are hereby connected. This phenomenon will be seen in what I have termed the competition over rights that is present in the Lebanese discourse on Palestinian rights and is based on the idea that Lebanese citizens have a priority to rights over non-citizens. Dalia Mikdashi is currently working as a research coordinator on a survey conducted by the Issam Fares Institute for Public Policy and International Affairs at AUB, on the perceptions of Lebanese towards granting socio-economic rights to Palestinian refugees. The survey is a large mixed method study of which the first stage was the qualitative study. Focus group discussions were carried out with Lebanese and Palestinians of diverse religious, socio-economic, and political backgrounds and the results were based on the perceptions of the participants. Mikdashi concluded that from their preliminary reading of the results it is clear that “when Lebanese think of Palestinians rights they think about themselves as local citizens who are not receiving rights, so why should non-Lebanese receive? It is an issue of competition over rights”.<sup>330</sup> When confronted with the realities of Palestinian refugees, many Lebanese politicians counter by focusing on the lack of resources for Lebanese citizens. Deputy Abbas Hachem expressed this view in the following statement: “In a family, if the father is sick and your neighbors are sick, who do you prioritize? The state is the father of the whole community, and the priority must be to provide for the own home and not the neighbors’. In the end, the guest has to go back. In many areas in Lebanon, people are very poor. Should I provide for Palestinians when Lebanese are suffering?”<sup>331</sup> Elias Moukheiber, lawyer and former legal advisor for the Lebanese Palestinian Dialogue Committee (LPDC) acknowledged that there are many deficiencies in granting Palestinians their rights, however he also stressed the fact that there are many deficiencies in providing rights to Lebanese citizens. “The concern of Lebanon is that we have no social security for

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<sup>326</sup> The Nahr-el Bared conflict refers to the fighting that erupted in 2007 between the Lebanese Armed Forces and Fatah-al Islam in the Palestinian camp of Nahr el-Bared, in an attempt by the army to oust the militant Islamist organization from the camp.

<sup>327</sup> A. Ramadan, *supra* note 146, p. 674.

<sup>328</sup> M. Rosello, *supra* note 147, p. 37.

<sup>329</sup> *Ibid.*, p. 12.

<sup>330</sup> Interview with Dalia Mikdashi, , research coordinator at the Issam Fares Institute for Public Policy and International Affairs (AUB), (Beirut, Lebanon, March 20, 2012), on file with author.

<sup>331</sup> Interview Abbas Hachem, , Member of Parliament (Shiite), representing Change and Reform Bloc, (Beirut, Lebanon, February 24 2012), on file with author.

more than half of the population. So how can I convince the Lebanese that we should give these rights to Palestinians when they do not have rights themselves? We have the problem of public health; most Lebanese cannot go to the hospital because the state does not provide for the Lebanese. The same thing goes with property. We have to take this into consideration if we want progress.”<sup>332</sup> This line of argument actualizes the idea that rights are ambiguous in the sense that they do not exist in and of themselves. Citizenship is once again posed as a requirement for full enjoyment of basic and “universal” rights. This conundrum can also be adduced from a comment made by Rola Badran; “One main problem is that the Lebanese do not differentiate between rights and opportunities. For Lebanese the argument is always that Palestinians will take the opportunities from them. Why should Palestinians work if we don’t have the possibilities to work?”.<sup>333</sup>

Through interviews with politicians across the confessional board, as representatives for the state hospitality politics and also the hospitality politics of each religious community in Lebanon, I have intended to understand the hospitality discourse that dictates the policy on Palestinian rights. Interviews with representatives of NGO’s and international organizations as well as Palestinian rights activists are helpful in further mapping the general political discourse and the attitudes in the Lebanese society. In my reading of the interviews I have tried to categorize the various statements and arguments in accordance with the theoretical underpinnings of the hospitality discourse. These four categories are the sectarian argument, the socio-economic argument, the security argument and lastly the morals of identity argument. They are somewhat overlapping at times and the elements of sovereignty and identity permeates the different arguments.

The political system in Lebanon is strongly influenced by the sectarian division upon which it is organized. Although the political parties may be officially secular, they are in general affiliated with the various religious communities. Therefore, the political position regarding Palestinians of the various politicians will in most cases depend on which religious community that the party in question traditionally represents.<sup>334</sup>

## 7.5.1 The Secterian Argument

In the meeting with Lebanese politicians and in the familiarization with Lebanese politics and the public discourse in Lebanon it becomes clear that one of the main risks that are present in the host-guest relationship between

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<sup>332</sup> Interview with Elias Moukheiber, , lawyer and previous legal adviser to the Lebanese Palestinian Dialogue Committee (LPDC), (Beirut, Lebanon, March 22, 2012), on file with author.

<sup>333</sup> Interview with Rola Badran, *supra* 239.

<sup>334</sup> For more information on Lebanese politics and confessionalism see M. Obeid, ‘A Lebanese Confession: Why Religious Politics Is Bad for Lebanon’, Vol. 10, pp. 104-108, Kennedy School Review (2010); A. Ward, J. Hackett (eds), ‘Post-War Lebanese Politics, Strategic Comments’, Vol. 12, Issue 7, *The International Institute for Strategic Studies* (IISS).

the Lebanese and the Palestinians is related to the demographic balance in Lebanon. The Lebanese political system is calculated on the basis of religious confessions, and the sectarian division in the country was also at the heart of the 15 year old civil war. What is at risk is a shift in the demographic balance between Christians and Muslims, which consequently would alter the political set up. This explains why naturalization of the Palestinians is out of the question, but also the fear that some sort of permanent settlement might lead to citizenship for this group.

Politicians with the exception of those groups who do not feel threatened themselves mostly avoid the sectarian arguments. Journalist Edmond Saab affirmed that “every single matter in Lebanon is confessional. As soon as social issues are put on the table, every confession sees it from their own interest. The Christians today fear the permanent settlement of Palestinians in Lebanon because it will disturb the demographic balance.”<sup>335</sup> Rola Badran, also acknowledges that “the issue of naturalization is calculated from a confessional perspective”, but noted that Palestinians are not calling for naturalization, only a life in dignity.<sup>336</sup> Human rights lawyer Nizar Sayegh points to the instinctive sectarian feelings and fears that are guiding the policy towards the Palestinian refugees; “they created the idea that the granting of additional rights for Palestinians will mean the destruction of Lebanon or at least the marginalization of Christians. With this you can go very far – what is really irrational becomes normal and natural.” Sayegh further underscores that the issue of naturalization is a non-issue and the fact that the war oftentimes is used as a pretext for the demographic argument.<sup>337</sup>

## 7.5.2 The Socio-Economic Argument

The socio-economic argument is constantly reoccurring among politicians and in the Lebanese public discourse. The discourse is similar to that of the immigration debates in Europe in terms of a competition over welfare. This discourse however becomes more assertive in the context of a developing country with restricted resources and dysfunctional welfare system, such as Lebanon. It is clear from the interviews that the lack of a functioning state and the disability of the government to provide even for Lebanese citizens becomes a key factor in the hospitality discourse relating to the Palestinian refugees.

Abbas Hachem, Member of Parliament and representative of the Free Patriotic Movement in the Change and Reform Bloc, stressed the fact that Lebanon is a small country in terms of territory. “The Lebanese state cannot afford its own citizens. We are not able to provide Palestinians with the facilities they need.” When confronted with the large group of migrant workers in Lebanon, Hachem continues “these Palestinians cost us double

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<sup>335</sup> Interview with Edmond Saab, journalist and political writer, (Beirut, Lebanon, March 27, 2012), on file with author.

<sup>336</sup> Interview with Rola Badran, *supra* note 239.

<sup>337</sup> Interview with Nizar Sayegh, human rights lawyer, academic, journalist and activist, (Beirut, Lebanon, February 21, 2012), on file with author.

than any contribution that they make. Syrians and Egyptians for example cost us nothing.”<sup>338</sup> The socio-economic pressure is further illustrated by references to the emigrating young Lebanese who go abroad to find jobs. Melkar Khoury, Human Rights Advisor to Sami Gemayel, member of the Phalange/Katayeb Party and Member of Parliament, insisted that the integration of Palestinian refugees into the Lebanese labour market and social security system would add to the existing problem of emigrating Lebanese youth instead of improving the opportunities to find work. “If we open the market to everyone what will we do with the Lebanese people who are not able to start their lives here in Lebanon?”<sup>339</sup> Michel Moussa, Member of Parliament and Head of the Parliamentary Human Rights Committee in Lebanon, argued that the Lebanese state lacks financial means to facilitate work for the Palestinians. “Many Lebanese don’t work, and the state deficit amounts to 60 million dollars in a small country like Lebanon.”<sup>340</sup>

Dalia Mikdashi, explained that the perceptions study has focused on the fears related to granting rights to the Palestinian refugees in Lebanon. When it comes to the social and economic threat, the participants mention the fear that the unemployment rate would increase, that emigration would increase, that wages would drop and that Lebanese employers would prefer hiring Palestinians because of lower salaries.<sup>341</sup>

There are of course those who approach this argument from a somewhat more rational perspective, looking at the actual facts and numbers related to the Palestinian refugees in the country and in the labour force. Souheil al Natour, Director General of the Human Development Center in Mar Elias refugee camp, jurist and human rights activist, stresses the economic contributions of the Palestinians in Lebanon. He underscores the fact that no resources are provided for Palestinians except for the physical place of camps. Furthermore he notes that, “Palestinians are contributing to the Lebanese government through remittances from Palestinians working abroad, through money from UNRWA which is internationally funded, and from the money that Palestinians spend in the country accumulated to a large extent from UNRWA salaries that are paid by the international community. “The Lebanese want money to come from outside. It is a conscious tool to avoid allocating resources while at the same time preventing tawteen”. Natour asserts that there is a policy of pushing young Palestinians out of the country so that the government will benefit from the remittances flowing into the country while the number of Palestinians in Lebanon diminishes. “The financial burden on the Lebanese government is thus alleviated and the poverty of the Palestinian community kept in check, not dropping below an acceptable standard.”<sup>342</sup>

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<sup>338</sup> Interview with Abbas Hachem, *supra* note 331.

<sup>339</sup> Interview with Melkar El Khoury, Head of staff and human rights advisor, Katayeb Party, (Beirut, Lebanon, April 17, 2012), on file with author.

<sup>340</sup> Interview with Michel Moussa, Member of Parliament and Head of the Parliamentary Human Rights Committee in Lebanon, representing the Amal Party, (Beirut, Lebanon, April 3, 2012), on file with author.

<sup>341</sup> Interview with Dalia Mikdashi, *supra* note 330.

<sup>342</sup> Interview with Souheil Al Natour, Director General of the Human Development Center, jurist and human rights activist, (Beirut, Lebanon, March 3, 2012), on file with author.

### 7.5.3 The Security Argument

The security argument shows how the Lebanese discourse towards the Palestinians is influenced by the actual hostilities between the two communities during the civil war, which in many ways have transformed the Palestinians from friends to enemies. Furthermore it sheds light on the perceived threat to the Lebanese sovereignty and thus identity that has emerged as a result of the long-term host-guest relationship. Under this category, security becomes an extremely important factor in the hospitality discourse.

In the eyes of many Lebanese, the continued presence of armed Palestinian groups in the camps represents a threat to the fragile stability and a risk of taking Lebanon back to the days of the civil war.<sup>343</sup>

The security issue was a factor that was brought up consistently, and that is clearly related to the maintenance of sovereignty and the relationship between the host and the guest. It is clear that the attitude towards the Palestinians has been affected by their involvement in the civil war and continues to be influenced by those stereotypes from the war that still exist to some extent. Dalia Mikdashi mentioned that the perception study had shown that the perceived security threat is one condition that affects the willingness to grant rights to Palestinians. “This is where old war-time narratives are brought up. Participants thought that once the Palestinians came to Lebanon in 1948, and once the PLO was established, the economic status of Palestinians was much better than the Lebanese. This economic development led to their political empowerment. They were competing with the Lebanese state, and because they were armed their presence was threatening to the Lebanese. The participants thought of this as a factor that instigated the civil war. So now they thought that if we grant social and economic right they will be economically empowered and so there is a high possibility that we will go back to the situation that started the civil war.” Much of the rights discourse has become a matter of trading in the sense that rights may be extended on the condition that Palestinians give up their weapons. “The weapons of Palestinians are a problem that is obstructing any development or achievement related to their minimum rights”.<sup>344</sup> Elias Moukheiber also referred to the security situation and the arms of the Palestinians. “There is a clear link between the situation of these refugees and human security for everybody, meaning everybody living in Lebanon whether Lebanese or non-national. The situation did explode, and it probably will explode again.”<sup>345</sup> Rola Badran however stresses that the marginalization of people only risks deteriorating the situation and increase the security risks. “When the law does not protect people, networks of fundamentalists will easily absorb them.”<sup>346</sup>

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<sup>343</sup> S. Haddad, *supra* note 319, para. 2.

<sup>344</sup> Interview with Melkar El Khoury, *supra* note 339.

<sup>345</sup> Interview with Elias Moukheiber, *supra* note 332.

<sup>346</sup> Interview with Rola Badran, *supra* note 239.

## 7.5.4 The Morals of Identity Argument

Lastly, we have the morals of identity argument, which one could argue is related to the construction of the other, the guest in relation to one's own membership community, and the maintenance of the identity of the guest. In the long-term guest-host relationship, the identity of the guest becomes essential, for if the roles are reversed that would mean a threat to the sovereignty of the host. Inherent in the concept of hospitality is temporality. To be able to uphold this temporality the host has to reinforce and sustain the identity of the guest as the guest, which means increased isolation as opposed to integration. This reinforcement can take various shapes, some of which I have identified in my interviews. In the context of Palestinian refugees in Lebanon, they mostly appear as moral beliefs and opinions.

Identity is an element that permeates all of the arguments used in the Lebanese-Palestinian discourse, and it is closely linked to the maintenance of the national border and the creation of the membership community. In the construction of the identity of the Lebanese people, there is also the construction of the other, in this case the Palestinian people. In many of the interviews, the issue of identity was present. Deputy Abbas Hachem identified the problem with the Palestinian refugees in Lebanon as being the loss of identity. "You have to be related to a certain country, this is the misery of the Palestinians. You cannot be human without identity. There is no way to approach the Palestinian case if they do not possess an identity." According to Hachem identity was equal to retaining dignity.<sup>347</sup> Dalia Mikdashi also mentioned this aspect. In the study, many participants raised the issue of property ownership and identity. "Basically people thought that if Palestinians were allowed to own property, the identity of Lebanon would change. So the identity of the land was very much related to ownership."<sup>348</sup> The Palestinian identity has become almost synonymous with the right to return, which is further reinforced by the Lebanese. The large majority of politicians mentioned their moral support for the Palestinians return to their homeland. The idea is that avoiding integration will keep the relationship with the homeland and as such also the identity as the guest. Bahah Abou Karroum, Member of Parliament and representative from the Progressive Socialist Party (Jumblat Party, Druze), Member of the Leadership Council) and responsible for the Palestinian file, affirmed that "the Christian parties consider that if you give Palestinian refugees the right to work and the right to property etc., they will loose the ability or will to go back to Palestine".<sup>349</sup> Charbel Nahass, former Labour Minister and academic described the situation of the Palestinians in Lebanon as a "clearly accepted and explicit policy or organized apartheid to let the Palestinians live with their rights, but separated not for them to dilute." This system according to Nahass serves the purpose of keeping the sense of Palestinian national feeling alive.<sup>350</sup> The

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<sup>347</sup> Interview with Abbas Hachem, *supra* note 331.

<sup>348</sup> Interview with Dalia Mikdashi, *supra* note 330.

<sup>349</sup> Interview with Bahaa Abou Karroum, representative from the Progressive Socialist Party (Jumblat), (Member of the Leadership Council) and responsible for the Palestinian file, (Beirut, Lebanon, March 27, 2012), on file with author.

<sup>350</sup> Interview with Charbel Nahhas, previous Labour Minister, representing the Change and Reform Bloc, (Beirut, Lebanon, March 14, 2012), on file with author.

struggle for identity was further expressed by Ghassan Moukheiber, who addressed the international approach on this matter: “The west looks at all Arabs as the same. They call the Arab-Israeli conflict an *Arab-Israeli* conflict rather than a Palestinian-Israeli one. Thus the temptation is great in much of the political pressure on Lebanon to end the refugee issue by settlement. This is the stated policy of Israel and many western governments. It is bitterly resisted by the Lebanese government. The constitutional rejection of settlement is a very strong one, and would lead to always consider the Palestinians as foreigners. Lebanon does not want to consider them equal to Lebanese because then people will say “look guys, they look like you, eat like you, talk like you, make them Lebanese, or keep them”. This is the threshold that Lebanon does not want to step over.”<sup>351</sup>

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<sup>351</sup> Interview with Ghassan Moukheiber, *supra* note 295.

## 8 Palestinians and The Right To Work in Lebanon

This chapter will describe the national legal context and the Lebanese labour laws regulating access to work for Palestinians. A traditional doctrinal study<sup>352</sup> of the national laws and regulations in place will be provided, as well as the practical implications they have on Palestinian employment. Firstly the relationship between international law and Lebanese legislation will be addressed. Secondly, the recent amendment in the Lebanese labour law considering Palestinian refugees in 2010 will be discussed briefly. Lastly a thorough analysis of the bulk of labour related legislation as it pertains to Palestinian refugees is presented, with consideration to the practical implications that those laws have on the Palestinian community in Lebanon. The access to the labour market and employment status is closely linked to the general economic and social situation in a society. How does the Lebanese Labour Law affect the access to the labour market for Palestinian refugees and subsequently their social situation in the country?

The materials used in this section include translated versions of Lebanese laws, interviews with Lebanese officials and representatives from various NGO's, reports on the situation of Palestinians in Lebanon news articles and scholarly articles.

Before outlining the Lebanese legal framework a brief presentation of the status of international law in Lebanon will be given. This is essential to the understanding of the legal gap that persists on the issue of Palestinian rights in Lebanon.

Crucial to this thesis is the understanding of the protection gap with regard to the Palestinian refugees in the international human rights and refugee regime and how this relates to the national legal sphere. Palestinians are dependent on the domestic legal system of the states at hand, and their legal status becomes a matter of rights realization. In other words, the legal status within the national context is directly related to the 'right to have rights'.<sup>353</sup>

It is important to be aware of the highly political implications of the 'Palestinian file' and the role that politics play in Lebanon. The line between the political and the legal sphere are oftentimes blurry and difficult to distinguish. These are all factors that continue to decide the future for Palestinians in Lebanon and the legal development concerning this group.

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<sup>352</sup> R. Banakar, *supra* note 4, p. 7.

<sup>353</sup> A. Khalil, *supra* note 256, p. 14.

## 8.1 The Standing of International Human Rights Law in Lebanon

Lebanon was a founding member of the United Nations, and one of the drafters of the UDHR in 1948. This important role in the history and development of international human rights law has been embodied in the Lebanese Constitution, which in its preamble states “Lebanon is [...] a founding and active member of the United Nations Organization and abides by its covenants and by the Universal Declaration of Human Rights. The Government shall embody these principles in all fields and areas without exception.”<sup>354</sup> Furthermore, Article 2 of the Lebanese Code of Civil Proceedings states “in case of contradiction between the stipulations of international treaties and those of domestic law, the implementation of the first takes precedence over the second.”<sup>355</sup> According to Ghassan Moukheiber, lawyer, Member of Parliament, and representative of the Change and Reform Bloc the UDHR is considered to have constitutional authority in Lebanon. The rights enshrined in the Declaration apply to Lebanese and non-Lebanese alike.<sup>356</sup> What causes some confusion in regards to the legal status of human rights law within the Lebanese legal context and in particular in relation to Palestinian refugees is the equally authoritative provision of non-settlement, also incorporated into the Lebanese Constitution. As mentioned (chapter 3) this principle is embodied in the Preamble under paragraph I, which reads: “[t]here shall be no segregation of the people on the basis of any type of belonging, and no fragmentation, partition, or settlement of non-Lebanese in Lebanon.” It is of Moukheiber’s view that there are two standards of equal value that have to be weighed against each other. The principle of special and general law will decide which provision will prevail. The rights of the UDHR embodied in the constitution are always limited by whatever can or cannot be considered equal to settlement.<sup>357</sup>

It should also be noted that the Lebanese Constitution embodies the principle of non-discrimination in its preamble. Paragraph C reads: “Lebanon is a parliamentary democratic republic based on respect for public liberties, especially the freedom of opinion and belief, and respect for social justice and equality of rights and duties *among all citizens* without discrimination” (Emphasis added). However, as indicated, this only refers to discrimination of Lebanese citizens and thus excludes non-nationals from its protection scope. The exclusion of non-citizens from the application of the discrimination prohibition gives rise to concern in regards to the relationship between on the one hand the UDHR and international human rights law that supposedly have constitutional authority and on the other hand national law.

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<sup>354</sup> Lebanese Constitution, Preamble, paragraph. B,  
< [www.presidency.gov.lb/English/LebaneseSystem/Pages/LebaneseConstitution.aspx](http://www.presidency.gov.lb/English/LebaneseSystem/Pages/LebaneseConstitution.aspx) >,  
visited on June 25 2012.

<sup>355</sup> Official translation of the Civil Procedure Code, Article 2.

<sup>356</sup> Interview with Ghassan Moukheiber, *supra* note 295.

<sup>357</sup> *Ibid.*

## 8.2 Lebanese Labour Law

### 8.2.1 Recent Amendments

Amendments to the Lebanese labor law passed in August 2010, supposedly granting extended employment rights and greater access to the right to work, gave new momentum to the debate on the unique predicament of Palestinian refugees in Lebanon. Although announced throughout the world press<sup>358</sup> as significant progress in terms of social and economical rights for the largely marginalized Palestinian population residing in Lebanon, criticism has been voiced concerning the actual content and efficiency of the new regulations. Rola Badran (PHRO) expressed her concern that the content of the amendments is very weak. “The syndicated professions are not included and rights were partitioned. You can benefit from one thing but not another; end of service compensation is now included but you cannot benefit from injury compensation or parental leave. Palestinian pay but they cannot benefit. They cannot work without a work permit and in order to have a work permit you must have an employer, and without a work permit they will not employ you. It is a vicious circle. All syndicates have their internal regulations and none of them allow Palestinians because of the nationality and reciprocity principles.”<sup>359</sup>

The amendments were a sign of development in the Palestinian-Lebanese discourse, which has been characterized by stalemate and neglect. While this was the first time Palestinians were openly discussed in the Parliament and expressly included in a legal text<sup>360</sup>, the new law to a large extent continues to institutionalize discrimination. The amended text partially lifted the principle of reciprocity, one of the basic tenets of Lebanese labor and social security law as well as making the work permits free of charge for Palestinian refugees. However, those professional fields regulated by the syndicates, such as law, medicine, engineering, nursing etc. are still not accessible for Palestinians, barring them from exercising more than 30 liberal professions. The legal amendments are yet to be implemented as the Labour Ministry has postponed this procedure. The previous Labour Minister Charbel Nahhas, representative of the Free Patriotic Movement signed a resolution just before his resignation in February 2012 that would facilitate the work permit process for the Palestinians.<sup>361</sup> Nahhas’s decision was however frozen by his predecessor,

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<sup>358</sup> See for example articles: J. Muir, ‘Lebanon grants Palestinian refugees right to work’, BBC, August 17 2010; N. Bakri, ‘Lebanon Gives Palestinians New Work Rights’, International Herald Tribune, August 17 2010, < [www.bbc.co.uk/news/world-middle-east-11004945](http://www.bbc.co.uk/news/world-middle-east-11004945) >, < [www.nytimes.com/2010/08/18/world/middleeast/18lebanon.html](http://www.nytimes.com/2010/08/18/world/middleeast/18lebanon.html) >, visited on June 27 2012.

<sup>359</sup> Interview with Rola Badran, *supra* note 239.

<sup>360</sup> Palestinian Human Rights Organization (PHRO), *Position Paper on: Law adopted by Lebanese Parliament on 17 August 2010 regarding Palestinian Refugees’ Right to Work and Social Security*, (October, 20120), p. 1.

<sup>361</sup> S. Hanafi, ‘Stop humiliating Palestinian refugees’, *The Daily Star*, March 16, 2012, para. 4.

Salim Jreissati, also representing the Free Patriotic Movement, who has made clear that he does not intend to implement the legal amendments or facilitate the work permit procedure according to Nahhas's resolution. Jreissati was quoted in an article in the daily Lebanese newspaper *Alakhbar* in June 2012, expressing his view that implementing the legal amendments in the labour and social security laws would not benefit the Palestinians in any way and that he feels that UNRWA already provides refugees with the medical care and treatment that they need. According to the newly appointed Minister of Labour, Jreissati, the status quo is thus better for the Palestinian refugees.<sup>362</sup>

## 8.2.2 The Right to Work for Foreigners

Palestinian refugees have the same legal status as foreigners in Lebanon, falling into the same legal framework as foreigners when it comes to labour regulation and limitations on foreign work in the country. It is essentially this lack of an accurate legal definition and refusal to view the Palestinian refugees as a special category, protracted refugees<sup>363</sup> if you wish, that creates the legal complexities relating to this group. The previous Labour Minister, Charbel Nahhas, affirmed this point; "the specific point is that due to their status as refugees they are permanent residents in a sense. This makes a significant difference to all other foreigners who are only entitled to live in Lebanon if they have a formal job, whether as wage earners, representatives of foreign companies or private investors in companies etc."<sup>364</sup>

The right for foreigners to work in Lebanon is governed by article 2 of Decree No. 17561 dated 9/18/1964 (Work Regulations for Foreigners), which requires foreigners to obtain a work permit. The Decree of 1964 was the first decree to regulate work permits issued to foreigners working in Lebanon.<sup>365</sup> Article 2 stipulates that "a foreigner who desires to enter Lebanon to practice a profession or work, with or without remuneration, should get a pre-authorization from the Ministry of Labour and Social Affairs, before coming to the country".<sup>366</sup> It is clear from this article that a work permit is compulsory for Palestinians as well as non-Palestinians. The principles that govern the status of foreign workers in Lebanese labour law and social security law are the principle of reciprocity and the principle of preference for Lebanese nationals, which were introduced with the

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< [www.dailystar.com.lb/Opinion/Commentary/2012/Mar-16/166826-stop-humiliating-palestinian-refugees.ashx](http://www.dailystar.com.lb/Opinion/Commentary/2012/Mar-16/166826-stop-humiliating-palestinian-refugees.ashx) >, visited on June 27 2012.

<sup>362</sup> R. Abouzaki, Lebanese Labour Minister: 'Palestinians Are Doing Just Fine', *The Alakhbar*, June 27, 2012, < [english.al-akhbar.com/content/lebanese-labor-minister-palestinians-are-doing-just-fine](http://english.al-akhbar.com/content/lebanese-labor-minister-palestinians-are-doing-just-fine) >, visited on July, 5 2012.

<sup>363</sup> S. Hanafi, J. Chaban *et al.*, *supra* note 43, p. 34.

<sup>364</sup> Interview with Charbel Nahhas, *supra* note 350.

<sup>365</sup> ILO, 'Review of Studies on the Employability of Palestinian Refugees in the Lebanese labour Market', 2012, p. 14, < [cep-lb.org/pdf/v2ILO-FCEPReviewStudies\\_en.pdf](http://cep-lb.org/pdf/v2ILO-FCEPReviewStudies_en.pdf) >, visited on June 29 2012.

<sup>366</sup> Lebanese Labour Law, Decree No. 17561 dated 9/18/1964, Article 2 (Work Regulations for Foreigners).

Decree No. 17561 in 1964. The reciprocity principle, by which foreigners are allowed to work in Lebanon to the extent that the country of the particular foreigner accords a Lebanese the same rights, was partially lifted with the 2012 amendments. Such a principle causes an insurmountable situation for the Palestinians in the absence of an international entity for the state of Palestine and of recognized legislation issued by the Palestinian authorities. The reciprocity principle however continues to bar Palestinians from a wide range of occupations as well as from benefitting fully from the National Social Security Fund (NSSF).<sup>367</sup>

One criticism that was voiced in the AUB study, in regards to the legal framework that regulates Palestinian access to the Lebanese labour market, is that it lacks long-term certainty and predictability. Ministerial decrees are not equal to parliamentary law and can be revoked, amended or annulled by another Ministerial Decision issued by a succeeding Minister of Labour<sup>368</sup>.

The sections below will outline how the work of foreigners is organized in Lebanese law and how the principles of reciprocity and preference operate, as well as the consequences of these regulations.

### 8.2.3 Work Permit Requirement

The Labour Law No. 17561 from 1964 is still in force today and regulates which occupations that require a work permit for foreigners. Article 9 authorizes the Minister of Labour and Social Affairs, to each year identify the jobs and professions that are to be restricted to Lebanese citizens, in accordance with the principle of preference. It must be noted that the scope of restricted jobs for foreigners in Lebanon goes far beyond what is normally the case. This category of jobs is enumerated in a list in the Labour Law and has been subjected to several amendments. Palestinians were in earlier times able to benefit from an exception by which foreigners who fulfill certain requirements, such as being born on Lebanese territory, can be exempt from the restriction by virtue of a decision from the Labour Ministry on a case-by-case basis. A legal change came in 2005, when the Labour Minister at that time, Trad Hamadeh issued a Ministerial Decision, opening up the list of over 70 jobs to the Palestinians. The decision stated that Palestinians who are born on Lebanese territory and who are registered within the Lebanese Ministry of Interior are excluded from the restrictions imposed on foreigners. This decision was seen by some as a change in the official position towards Palestinian refugees.<sup>369</sup> Ministerial Decision No. 10/1 is another such amendment, issued by the Ministry of Labour. Article 2 of this decision contains the current list of jobs that are reserved for Lebanese citizens:

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<sup>367</sup> AUB Survey, *supra* note 281, pp. 12-13.

<sup>368</sup> *Ibid.*, p. 14; ILO, 'Review of Studies on the Employability of Palestinian Refugees in the Lebanese labour Market', *supra* note 365, p. 15.

<sup>369</sup> *Ibid.*, p. 15.

## **Article 2**

The right to exercise the following professions and jobs shall be *limited to the Lebanese people*: (Emphasis added)

### **a- Procedural Professions:**

All types of administrative and banking jobs, namely the positions of: Manager, deputy manager, head of staff, treasurer, accountant, secretary, clerk, notary, archivist, computer clerk, commercial agent, marketing agent, supervisor, warehouse keeper, sales person, jeweler, tailor and cloth mending with the exception of carpet mending, electrician, mechanic, maintenance, painting jobs, glass installation, janitor, guard, driver, butler, barber/hairdresser, electronic works, Arabic cuisine chef, technical professions in the field of construction and the likes, such as tiling, papering, installation of gypsum, aluminum, iron, wood, decoration and the like, teaching in elementary, complementary and secondary classes, except for teaching foreign languages whenever necessary, all types of engineering jobs, blacksmith, upholster, nurse, all kinds of jobs in pharmacies, medication warehouses, medical laboratories, beauty care, measurement and survey, and in general all jobs and professions that may be carried out by any Lebanese person.

### **a- Business Owners:**

All kinds of commercial works, currency exchange, accounting, commission, all kinds of engineering jobs, jeweler, printing, publishing and distribution, tailor and clothes mending, barber/hairdresser, laundry and dry cleaning, car repair (blacksmith, painting, mechanic, glass installation, upholstery, electricity), freelancing jobs (engineering, medicine, pharmacy, legal profession, etc...). Unless the foreigner receives a permit to practice such jobs from the pertinent authorities, he shall be prohibited from practicing any profession or job that can compete with or harm the Lebanese business owners.<sup>370</sup>

Article 3, excludes Palestinians from these restrictions, provided that they are born in Lebanon, registered in the records of the Lebanese Ministry of Interior and have obtained a work permit. Article 3 subsequently reads:

## **Article 3**

Taking into account the preference of the Lebanese people:

- 1- Palestinians born on the Lebanese territories and officially registered within the Lebanese Ministry of Interior *shall be exempt* from the provisions of Article 1.<sup>371</sup> (Read article 2) (Emphasis added)

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<sup>370</sup> Ministerial Decision No. 10/1 pursuant to Decree no. 17561 on 18/09/1964 on the Regulation of the Labor of Foreigners, Article 2.

<sup>371</sup> Ibid., Article 3.

Furthermore, with the amendments in 2012 of article 59 of the Labour Law, Palestinians are also exempted from the work permit fees otherwise required for foreigners. Article 59, paragraph 3 now reads:

**Article 59**

Upon dismissal, foreign employees shall benefit from the same rights granted to Lebanese employees, on condition of reciprocity. Said employees must have obtained a work permit from the Ministry of Labor. *Palestinian refugees duly registered in the Ministry of Interior and Municipalities - Directorate of Political Affairs and Refugees - shall be exclusively exempt from the conditions of reciprocity and the fees of the work permits issued by the Ministry of Labor.*<sup>372</sup> (Emphasis added)

In theory Palestinian refugees can practice all of the occupations and professions that are restricted to Lebanese nationals, while obliged to obtain a work permit. The formalities related to the work permit procedure are difficult and pose practical obstacles for Palestinians. Foreigners are obliged to present various documents to obtain the work permit, including an original labour contract authenticated by a notary that specifies the type of work, an insurance policy with a photocopy of the card or the original receipt, a Palestinian refugee ID, and a photocopy of the employer's commercial circular and certificate of registration in the trade register (if the employer is a business or a company) or a photocopy of the employer's ID.<sup>373</sup> Furthermore, the work permit is linked to a pre-existing work contract and thus expires when the work contract, for which the permit was granted, ends. As for the insurance, the employee rather than the employer often pays it.<sup>374</sup>

Statistics show that the number of work permits delivered to Palestinians throughout the years is very low. In 2009, 99 work permits were given to Palestinians compared to 145,684 permits issued to Arab and foreign workers in Lebanon the same year (these numbers include renewed permits). An ILO study from 2010 on Palestinian employment showed that from 1968 to 2010 the number of work permits granted to Palestinians was equal to the number given to Filipino workers in 2004 alone. In general, the number of Palestinian work permits has been on the decline over the years.<sup>375</sup>

The numbers of work permits issued are not a reflection of how many Palestinians actually work, but rather an indication that the majority of Palestinian labour remains in the informal economy.<sup>376</sup> Palestinian work in the informal sector is concentrated in the construction and agriculture sectors, where demand for workers is high. The access to the informal

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<sup>372</sup> Lebanese Labour Law, article 59. amended by virtue of Article 1 of Law no. 129 dated 24/08/2010.

<sup>373</sup> Information handouts, Committee for Employment of Palestinian Refugees in Lebanon (CEP).

<sup>374</sup> AUB Survey, *supra* note 281, p. 13.

<sup>375</sup> ILO, 'Review of Studies on the Employability of Palestinian Refugees in the Lebanese Labour Market', *supra* note 365, p.17.

<sup>376</sup> *Ibid.*

market is of course much easier, but it most often comes with lower standards of working conditions in terms of working hours, wages, social security and health and safety conditions (all elements that form the basis for decent work as formulated by the ILO). Palestinians consequently find themselves in vulnerable employment situations from which the employer benefits to a large extent. By avoiding an official employment contract, the employer is relieved from his or her obligation to advertise in three newspapers to satisfy the Lebanese Labour Office that Lebanese candidates have competed with the foreigner in accordance with the principle of national preference. Furthermore, the employer will not pay social security contributions without the employee being entitled to benefit from the social security services, except in the case of end of service indemnities according to the new law.<sup>377</sup>

Although Palestinians officially have the right to work in these professions, in reality, many practical impediments remain. Dr. Souheil Al Natour, Director General of the Human Development Center in Mar Elias Refugee Camp mentions some of those practical implications: “If you are a Palestinian working without permission, you will accept the minimum salary. The difference goes to the employer. The employers are therefore not pushing for a change since they are gaining from this set up. These employers are the Lebanese political leadership. They are not in a hurry to regularize the situation of Palestinians.”<sup>378</sup>

## 8.2.4 Syndicated Professions

The 2010 amendments do not address the main problem faced by Palestinian refugees who remain barred from exercising more than 30 syndicated professions. The syndicates can be compared to associations of professionals with the purpose of promoting the common interests of their members. Membership is required in the respective syndicate or order for the practice of the profession at hand. All professional associations require work permits to allow a person to exercise his or her profession. The various associations have their own internal regulations that determine the policy towards foreign professionals. The restricted liberal professions are classified into two categories: first, those that are subject to the reciprocity principle (medical doctors, pharmacists, travel agents, news editors, topographers, engineers and architects, nurses, certified accountants, dentists etc.) and second those that are restricted to Lebanese citizens (professions in the law, journalists, technicians, taxi drivers, publishers etc.) Palestinians are effectively excluded, as they can fulfill neither the reciprocity clause nor the national preference principle. A system where third parties such as the Lebanese professional associations, actualizes the question of horizontal relationships and the obligation to protect, mentioned in chapter 4.3.1, regarding the state obligations under the ICESCR. The

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<sup>377</sup> *Ibid.*

<sup>378</sup> Interview with Souheil Al Natour, *supra* note 342.

government has a responsibility to ensure that third parties, in this case the syndicates respect the right to equal access to the labour market.<sup>379</sup>

There does not seem to be any prospects of policy change in this field in the near future. The Head of the Beirut Bar Association, Nohad Jaber expressed the standpoint of the Association towards foreigners and Palestinian refugees; “The Bar Association is only for Lebanese citizens, and Palestinians are considered as foreigners. They don’t have the right to either register with the bar or to open a law firm.”<sup>380</sup>

Because of the reciprocity and national preference principles that continue to govern the entrance regulations of the associations, Palestinians are left effectively excluded. This leads to great discouragement among young Palestinians to follow the academic path as most of the professions are barred. Rola Badran at the PHRO expressed her concern about the decline in education in the Palestinian community. “Now youth are not going to university because it is useless to study, as there is no future in terms of finding a job within the right field. And if we don’t have an educated community with for example lawyers we will not be able to advocate for our rights and to accomplish a change. It impacts dreams and hopes.”<sup>381</sup>

## 8.2.5 Social Security Regulations

The Lebanese Social Security Law requires that all Lebanese nationals and foreigners register for social security as the fund’s revenues are mainly composed of its member’s contributions. If non-Lebanese workers did not have to contribute to the fund, it would lead to the preferential employment of foreigners over Lebanese nationals. For a foreigner to benefit from the allowances of the National Social Security Fund, he or she must possess a work permit and there has to be a reciprocity agreement in place between the country to which the foreigner belongs and the Lebanese state. The amendments of 2010 also included changes to the Social Security Law to some extent as Palestinians were relieved from the reciprocity condition in regards to end of service indemnities. Palestinians do however still not benefit from the sickness, maternity or family allowances funds. The new law also established a separate fund for Palestinians that does not burden the treasury of the NSSF.<sup>382</sup> The amended law added a section on the Palestinian refugees in article 9, paragraph 3 of the Social Security Law:

### **Article 9, paragraph 3:**

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<sup>379</sup> In this context, it should be mentioned that the state also has a responsibility to uphold the negative freedom of association, i.e. the right not to associate, which is included in article 8 of the ICESCR.

<sup>380</sup> Interview with Nohad Jaber, Head of the Beirut Bar Association and lawyer, (Beirut, Lebanon, April 5 2012), on file with author.

<sup>381</sup> Interview with Rola Badran, *supra* note 239.

<sup>382</sup> AUB Survey, *supra* note 281, p. 13; information handouts, Committee for Employment of Palestinian Refugees in Lebanon (CEP).

- The Palestinian refugee working and residing in Lebanon and registered in the Department of Political and Refugee Affairs - Ministry of Interior and Municipalities - shall only be subject to the provisions of Labor Law concerning end-of-service benefit and work emergencies.
- Any beneficiary worker of the Palestinian refugees shall be *exempt of the provision of reciprocal treatment stipulated in Labor Law and Social Security Law and shall profit from the benefits of end-of-service benefit according to the terms from which the Lebanese worker benefits.*
- The National Social Security Fund must set up a *separate account* therein for the subscriptions pertaining to workers of Palestinian refugees provided that neither the treasury nor the National Social Security Fund bears any obligation or financial obligation towards him. *Workers included in the provisions of the present Law shall not benefit from the benefits of the sickness and maternity funds and familial benefits.*<sup>383</sup> (Emphasis added)

Although the amendments to the Social Security Law can be seen as a step forward, Palestinians still do not benefit from most of the allowances. This creates a disincentive for Palestinians to work in the formal market, as they have to pay into the social security system while not being able to benefit from it.<sup>384</sup> This is of course also a discouragement for the employer to formally hire Palestinian workers, as they will pay social security contributions without the employee being entitled to receive services.<sup>385</sup>

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<sup>383</sup> Lebanese Social Security Law.

<sup>384</sup> ILO, 'Review of Studies on the Employability of Palestinian Refugees in the Lebanese labour Market', *supra* note 365, p. 18.

<sup>385</sup> AUB Survey, *supra* note 281, p. 14.

## 9 Concluding Remarks

The starting point of this thesis was the recognition of what seemed to be a considerable legal protection gap, in relation to the Palestinian refugees in Lebanon. A detailed picture of the deteriorating human rights conditions that the Palestinian refugees endure has been painted above. Historical and political controversies set aside, the dire situation and precarious status of the Palestinian refugees in Lebanon stands out as a naked truth, in stark contrast to the values of equality and non-discrimination, fundamental to liberal democracies and that are said to guide state policy and action in today's society – a society salvaged by the secular religion of international human rights. The disparity between this blueprint of an ideal world and reality, demanded a broader and more critical approach to the Palestinian predicament, in an effort to bring to light the underlying complexities of this issue, which in my opinion, a mere formal legal assessment of contemporary law would not be capable of. Unfortunately there does not seem to be a solution in near sight for the Palestinian refugee question, and up until today the Lebanese government has made no significant efforts to improve the situation for the refugee community that they host, regardless of commitments to international human rights law. For this reason I have been determined not to partake in the reproduction of superficial and uncritical accounts of neither international law, nor the status of Palestinians within the human rights regime and the Lebanese context. A traditional approach to this complex issue, will not offer any new perspectives or explanations to why the law continuously seems to fail this particular group.

The word 'critique', has its origin in the Greek word 'krisis', and is linked to the notion of a 'critical condition', implying a need for immediate, accurate and effective action. It is described in legal literature on research methodology, as an "urgent call for knowledge, deliberation, judgment and action to stave off catastrophe".<sup>386</sup> The circumstances of the Palestinian refugees in Lebanon were my 'krisis', prompting me to take action.

The approach most appropriate for this critical condition was one which took into consideration the 'non-status' of Palestinians both on an international and national level, and that addressed the ambiguities of a human rights regime that for over 60 years so blatantly has failed to protect the rights of those individuals most vulnerable. It is against this backdrop that I chose to return to Hannah Arendt's writings on statelessness and the 'right to have rights', in an attempt to make sense of the troubled relationship between citizenship and human rights entitlements.

Sovereignty, citizenship and identity are notions that lie at the core of the Palestinian predicament, as well as the international human rights regime, in this context the right to work, and between those host-guest relationships, described by Derrida as the discourse of hospitality. These concepts permeate the three very distinct parts of my work, that together all constitute important building blocks in illustrating my critique and providing a broader perspective on the human rights situation and labour

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<sup>386</sup> R. Cryer, T. Hervey et al., *supra* note 2.

conditions for Palestinian refugees in Lebanon. The ambiguities of work as a human right, and the tensions this right embodies in terms of sovereignty, social and economic integration and universal egalitarian values are explored in connection to the case of the Palestinians. The field study in the context of hospitality is used as a tool to conceptualize these underlying tensions that shape the implementation of human rights and equal labour market access. Hopefully, this alternative perspective, will serve as an inspiration and platform for further research and a more constructive debate on Palestinian rights in the Lebanese public discourse.

I begin by interrogating the norm of universality that emerged with the international human rights regime, and questioning the ‘human’ as the subject of rights. The point of departure is citizenship as a precondition for right-bearing. The counter narrative that I offer is based on scholarship that addresses the role of immigration and community membership control as a means for the distortion of first and foremost social and economic rights. The inherent tensions in the human rights regime, clearly illustrated by the evaluation of the right to work in international law and the ambiguous position of non-nationals within this framework, between universality and state sovereignty, are materialized in the immigration context. As described by Catherine Dauvergne, “migration law is the last bastion of sovereignty”, and as such remains as the last bulwark against the cosmopolitan human rights project, a project that states indeed, ironically enough, also are the architects of. The point that has to be made is that states’ right to control and shape its own community is accepted and taken for granted, while no specific definition of migration control, with the exception for the international refugee regime, and *non-refoulement* in particular, is given, and the limits deciding where it begins and ends, left for the states to settle.

The right to restrict the labour market for foreigners is an accepted practice, and is rather the norm in today’s society. Work is seen as a threat to the sovereign right of states to decide which individuals they want to include or exclude from their membership communities. The ‘sovereignty tensions’ in the human rights regime are no more evident than in the context of the right to work, as defined in international law. As we have seen, the right to work implies a commitment to social integration and equality and is interrelated to most other socio-economic rights as well as being an important factor in building relationships, forming identity and for social inclusion. For this reason and to assert the state authority over integration, governments are eager to control the distribution of these social and economic entitlements, that supposedly are universal and inalienable, as to extend them only to those individuals that they, in the process of exercising “immigration control”, have identified as the proper ‘human’ – a prospective citizen. This identification procedure is carried out in an effort by the state to shape its community, and can be compared to the racialization of society, by which the allocation of rights and benefits is organized along the lines of socially constructed ethnic identities. The Palestinian refugees in Lebanon are accorded certain attributes and stereotypical qualities rooted in Derrida’s hospitality discourse and the perceived risks associated with their prospective integration.

This system of community membership determination undoubtedly creates a complex situation for those individuals residing as non-nationals within a state territory as a result of illegal entry or as in the case of the stateless Palestinian refugees in Lebanon, because of their protracted status as refugees. Legal status or immigration status effectively transforms into what has been compared to a caste-like system, whereby those individuals that for some reason have evaded the border process of membership determination, are targeted under the banner of immigration policy, by restricting or denying their basic human rights. The legal status decides who will be entitled to the rights and benefits that *everyone* within state jurisdiction supposedly has a claim to. Within the immigration context, states are given an opportunity to extend conditional rights rooted in a very political decision, as proposed by Walzer, and based on the preferences of the members of each and every membership community i.e. the citizens. Although, Walzer has offered a counter narrative to this explicitly exclusionary system, his metrics analogy falls short of addressing cases where non-nationals are present on state territory, not as a result of a membership process, but as a consequence of for example being refugees. Walzer thus fails to conceptualize a world in which human beings fall outside the framework of the nation state and the situation for refugees.

The membership process, or the construction of human rights in relation to non-nationals, is based on the preferences of the community. I have identified those preferences within the context of Derrida's hospitality discourse, which also puts sovereignty and identity at the core of the relationships between the citizen and the outsider, or in Derrida's words, the host and the guest. The case of the Palestinian refugees in Lebanon distinctly illustrates the host-guest discourse. Because of the integration that the right to work implies, full access to the labour market is viewed as a direct threat to the host community. The authority of the Lebanese government and as such also Lebanese citizens, to assert their sovereignty and to shape immigration policy and preferences for members, results in the restriction of rights for the Palestinian refugees, a group that in the mind of the Lebanese is associated with a wide range of risks and challenges. The protracted refugee situation has resulted in the reinforcement of the host-guest identities, explaining the increasing isolation of the Palestinian community and the absence of any real and effective progress in terms of legislation. The recent labour law amendments passed by the Lebanese government in the summer of 2010, is clear evidence of the stalemate that continues to plague Lebanese-Palestinian relations. The public discourse and to a large extent the sectarian system feed into and reproduce the fears that dictate the Lebanese policies on exclusion and inclusion, and as such also the distribution of rights – the politics of human rights.

Going beyond Arendt, I would say that statelessness is not a condition that leads to rightlessness, but actually the consequence of the politics of human rights. In other words states make the political decisions of whom to include in the 'human' and subsequently who is entitled to rights protection by the state. The link between human rights protection and national belonging, rather than being a coincidence, appears to be the consequence of calculated risk assessments made on behalf of the community. This would

help to explain why in this case some countries have granted citizenship to Palestinians but also why they in for example Syria are able to enjoy social and economic rights even though they do not possess nationality.

I started out by making clear that I do not intend to offer any clear legal or political solutions to the human rights situation for the Palestinian refugees in Lebanon. My hope has rather been to contribute and to broaden the understanding of the Lebanese-Palestinian relationship and to participate in the creation of an alternative discourse that can alter status quo. The first step toward change and progress is understanding and having a vocabulary to approach problems from an unprejudiced perspective. By recognizing the politics of the human rights discourse and the role of perceptions, in terms of perceived risks and benefits, in shaping Lebanese policy on Palestinian rights, a new platform for action for human rights activists and political actors may be built.

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Nohad Jaber, Head of the Beirut Bar Association and lawyer, (Beirut, Lebanon, April 5, 2012)

Nizar Sayegh, human rights lawyer, academic, journalist and activist, (Beirut, Lebanon, February 21, 2012)

Edmond Saab, journalist and political writer, (Beirut, Lebanon, March 27, 2012)

Sawsan Masri, ILO representative, (Beirut, Lebanon, February 29, 2012)

Rola Badran, Programs Director at the Palestinian Human Rights Organization (PHRO), (Beirut, Lebanon, February 27, 2012)

Souheil El-Natour, Director General of the Human Development Center, jurist and human rights activist, (Beirut, Lebanon, March 3, 2012)

Dalia Mikdashi, research coordinator at the Issam Fares Institute for Public Policy and International Affaires (AUB), (Beirut, Lebanon, March 20, 2012)

Elias Moukheiber, lawyer and previous legal adviser to the Lebanese Palestinian Dialogue Committee (LPDC), (Beirut, Lebanon, March 22, 2012)