Genesis of Citizenship in Palestine and Israel
Palestinian Nationality in the 1917-1925 Period
Genèse de la citoyenneté en Palestine et en Israël - Nationalité palestinienne de 1917 à 1925

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Bethlehem's population did not automatically acquire the nationality of the successor state in which they were living. This phenomenon is called "nationality by residence." In the case of Palestine, the inhabitants of the territory that became known as 'Palestine' and that had been part of the Ottoman Empire since 1516, during the period starting from the beginning of the British occupation on 9 December 1917 until the enforcement of the Palestinian Citizenship Order on 1 August 1925, from the perspective of international law.

Under the Turkish rule, according to the Ottoman Nationality Law of 19 January 1869, Palestine's inhabitants were Ottoman citizens. At that time, legally speaking, there was nothing called Palestine, Palestinian nationality, or Palestinians, neither was there anything called Israel, Israeli nationality, or Israelis.

By pursuing a historical-legal approach, this paper will look at the transitional years Palestinian inhabitants went through upon their detachment from the Turkish rule. It aims at clarifying the origin of the inhabitants of Palestine and Israel's nationality in an attempt to understand the various statuses that were created in the subsequent periods. A number of these statuses, in law and practice, are yet to be definitively determined.

Although the nationality of Palestine's inhabitants remained in transition before 1925, this eight-year period between 1917 and 1925 determined the future of the country's native inhabitants and migrants. While the 1922 Palestine Mandate and the Treaty of Lausanne recognized a distinct nationality for Palestine, nationality of this country lacked clear domestic regulation. This paper wishes to explore this ambiguous or "anomalous" situation, to borrow a term from Lassa Oppenheim.

In international law, when a state is dissolved and new states are established, "the population follows the change of sovereignty in matters of nationality." As a rule, therefore, citizens of the former state should automatically acquire the nationality of the successor state in which they had already been residing.

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Upon its detachment from the Ottomans, the territory of Palestine became distinct from its neighboring countries. In fact, this separation began between Palestine and the newly created Arab ‘states’: Trans-Jordan (as it was called), Egypt, Syria, and Lebanon. Soon thereafter, Palestine’s frontiers acquired permanent recognition through bilateral agreements with its neighbors. Following the international legal framework that had been established by the 1923 Treaty of Lausanne ending the Ottoman nominal/official sovereignty over the Arab Middle East, each of the four countries instituted a separate nationality for its population through domestic legislation. Nationalities in these countries have since then become well established.

Nationality constitutes a legal bond that connects individuals with a specific territory, making them citizens of that territory. It is therefore imperative to examine the boundaries of Palestine in order to define the piece of land on which Palestinian nationality was established. Determining borders will also help us identify the new nationalities of the inhabitants in the neighboring countries who were Ottoman citizens as well. Such a determination will thus identify, by exclusion, those who held Palestinian nationality.

The eastern border of Palestine with Trans-Jordan was of particular significance. The Palestine Mandate originally incorporated the territory of Trans-Jordan within the scope of ‘Palestine.’ Article 25 of the Mandate accorded Britain the power, “with consent of the Council of the League of Nations, to postpone or withhold application of such provisions of this mandate as… may consider inapplicable to the existing local conditions.” Subsequently, on 16 September 1922, the Council of the League of Nations passed a resolution by which it approved a proposal submitted by Britain to exclude Trans-Jordan from the scope of Palestine’s territory. Ultimately, the border between Palestine and Trans-Jordan was fixed as suggested by Britain. This resolution merely confirmed the previous practice as Trans-Jordan was earlier excluded from Palestine by Article 86 of the Palestine Order in Council (constitution) of 1922, which stated: “This Order in Council shall not apply to such parts of the territory comprised in Palestine to the east of the [River of] Jordan and the Dead Sea.” On 20 February 1928, Britain reached an agreement with the Amer of Trans-Jordan, by which the former recognized the existing autonomous government of Trans-Jordan, while maintaining the supervision under British administration in a form of mandate. (Britain continued to treat Trans-Jordan as part of Palestine for international relations purposes – it included Trans-Jordan within its annual reports to the League of Nations, pursuant to Article 24 of the Mandate, regarding its administration of Palestine.) The unilaterally drawn border of Palestine with Trans-Jordan had been thus confirmed. On 22 March 1946, after concluding a treaty of alliance with Britain (enforced on 17 June 1946), Trans-Jordan declared its independence as a state. And the lengthiest section of Palestine’s border had been settled.
Trans-Jordan instituted a nationality for its own population, distinct from Palestine’s. To begin with, the aforementioned resolution of 16 September 1922 resolved that Article 7 of the Palestine Mandate (relating to Palestinian nationality) would not be applicable to Trans-Jordan. Trans-Jordan’s inhabitants were then expressly excluded from the scope of Palestinian nationality by Article 21 of the 1925 Palestinian Citizenship Order:

“For the purpose of this Order: (1) The expression ‘Palestine’ includes the territories to which the mandate for Palestine applies, except such parts of the territory comprised in Palestine to the East of the [River of] Jordan and the Dead Sea as were defined by Order of the High Commissioner dated 1 September 1922.”

Trans-Jordan eventually enacted its Nationality Law on 1 May 1928. Article 1 of this Law conferred Trans-Jordanian nationality on all Ottoman subjects (citizens) residing in the territory of Trans-Jordan retroactively as of 6 August 1924 – the date on which the Treaty of Lausanne came into force. Trans-Jordanian nationality formed a distinct nationality from that of Palestine, not only in law but also in practice, throughout the mandate. Trans-Jordanians, for example, were required to obtain official permission to be admitted into Palestine, albeit with certain favorable facilities compared with other foreigners (such as exemption from possessing passports to enter, and work in, Palestine).

The peculiar relationship between Palestinian and Trans-Jordanian nationalities can be seen in a case before the Supreme Court of Palestine, which served as a High Court of Justice, on 14 December 1945. In Jawdat Badawi Sha’ban v. Commissioner for Migration and Statistics, Mr. Sha’ban, who was a Palestinian citizen and had acquired Trans-Jordanian nationality by naturalization, argued that “Trans-Jordan is a territory and not a state… [And] in any case it is not a foreign state [in relation to Palestine].” By rejecting Mr. Sha’ban’s defense, the Court, in a decision that summarized the status of Palestine vis-à-vis Trans-Jordan in general, and the question of nationality in particular, held:

“Now, Trans-Jordan has a government entirely independent of Palestine – the laws of Palestine are not applicable in Trans-Jordan nor are their laws applicable here. Moreover, although the High Commissioner of Palestine is also High Commissioner for Trans-Jordan, Trans-Jordan has an entirely independent government under the rule of an Ameer and apart from certain reserved matters the High Commissioner cannot interfere with the government of Trans-Jordan… Trans-Jordan comes within the meaning of the word ‘state’ as used in Article 15 [of the 1925 Palestinian Citizenship Order]… Trans-Jordan nationality is recognised and we know that Trans-Jordan can, as in this case, grant a person naturalisation, i.e. grant an alien or foreigner Trans-Jordan nationality which is a separate nationality and distinct from that of Palestine citizenship… Palestinians and Trans-Jordanians are foreigners and therefore Trans-Jordan must be regarded as a foreign state in relation to Palestine” [emphasis added].

With regard to the northern border of Palestine, Britain and France (the occupying powers at the time, and later the mandatory powers over Syria and Lebanon respectively) signed an agreement which settled key aspects relating to the Palestinian-Syrian-Lebanese border (Paris, 23 December 1920). The British High Commissioner of Palestine and the French High Commissioner of Syria and Lebanon reached, at Jerusalem on 16 December 1923, a complementary agreement on border issues. On 2 February 1926,
the agreement was replaced by the Bon Voisinage Agreement to Regulate Certain Administrative Matters in Connection with the Frontier between Palestine and Syria [including Lebanon].

Both Syria and Lebanon regulated their own nationalities on 30 August 1924. Enacted by the French High Commissioner, the two nationality laws were formulated by separate Ordinances (arrêtés): the Ordinance Concerning Turkish Subjects Established in Syria, and the Ordinance Concerning Turkish Subjects Established in Greater Lebanon. Syrian and Lebanese nationality laws were further confirmed by two detailed ‘Orders’ issued on 19 January 1925. Syrian and Lebanese citizens were treated as foreigners in Palestine.

The southwestern border of Palestine with Egypt dates back to the late 19th century. Originally, this border was drawn up on a de facto basis, as the Ottoman Empire recognized Egypt’s autonomy. Formally, however, two border agreements between the Ottoman Empire and Egypt were reached in 1906. The first came in the form of an Exchange of Notes between Britain [which was controlling Egypt since 1882] and Turkey relative to the Maintenance of the Status Quo in the Sinai Peninsula, signed in Constantinople on 14 May. The second and more detailed border agreement, was the Agreement between Egypt and Turkey for the fixing of an Administrative Line between the Vilayet [province] of Hejaz and the Governorate [district] of Jerusalem and the Sinai Peninsula, signed in Rafah, on 1 October.

The separation of Egypt from Turkey (Palestine, in this instance), as of 5 November 1914, was ultimately recognized by the 1923 Treaty of Lausanne.

On 26 May 1926, Egypt regulated its own nationality by a Decree-Law. This legislation stipulated that Egyptian nationality had been originally established in November 1914, when Britain had declared itself as a Protectorate over Egypt, with retroactive effect. On 19 February 1929, a detailed Decree-Law concerning Egyptian nationality was enacted, which confirmed, in its Article 1, that Ottoman nationals who, on 5 November 1914, had their habitual residence in Egypt, had become Egyptian citizens.

In conclusion, nationalities in the neighboring countries of Palestine were clearly distinguishable from Palestinian nationality shortly after the collapse of the Ottoman Empire. Palestinian citizens were treated as foreigners in these countries. Citizens of these countries were likewise considered as foreigners in Palestine. This situation, both in law and in practice, would continue thereafter throughout the mandate period.

From the viewpoint of public international law, roughly speaking, Palestinian nationality underwent three stages during the transitional period of 1917-1925. The first stage began with British occupation on 9 December 1917 and continued until the adoption of the Palestine Mandate on 24 July 1922. The next stage ran from the latter date until the ratification of the Treaty of Lausanne on 6 August 1924. The last stage, the shortest but also the most significant one, lasted from the ratification of the said treaty until the enforcement of the Palestinian Citizenship Order on 1 August 1925.

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22 Palestine Gazette, 2 February 1926, p. 69.
23 Flournoy and Hudson, supra note 2, p. 303.
24 Id., p. 299.
25 Id., p. 301 (Order No. 16/S, Syria) and p. 298 (Order No. 15/S, Lebanon).
30 Décret-Loi sur la nationalité égyptienne (in Ghali, supra note 17, p. 343).
31 Flournoy and Hudson, supra note 2, p. 225.
Nationality in Palestine under British occupation, 1917-1922

During this period Palestine was first placed under military rule and then under civil administration. From 9 December 1917 (when the province of Jerusalem was occupied by the British army as part of World War I in which Britain and Turkey were enemies) until the adoption of the Palestine Mandate on 24 July 1922 by the Council of the League of Nations, the international legal status of the country remained undetermined. As a result, the nationality of Palestine inhabitants, like that of the inhabitants of other ex-Ottoman territories at the time, remained similarly undetermined.

Britain’s occupation did not alter, in law, the international status of Palestine as an occupied Turkish territory. The allied powers meanwhile gathered in San Remo, Italy, to discuss a deal with Turkey and determine the future of Palestine (then including Trans-Jordan), along with Iraq and Syria (then including Lebanon). On 25 April 1920, those powers decided that Ottoman Arabic-speaking territories would not be restored to Turkey. Instead, France was allotted a mandate for Syria and Britain was given mandates for Iraq and Palestine. Shortly after the San Remo conference, Britain declared unilateral mandate over Palestine on 1 July 1920. Britain simultaneously established a civil administration to replace the military government that had ruled the country since December 1917.

As the unilaterally declared mandate had no international legal effect, Palestine remained, at least nominally, an Ottoman territory. Britain itself accepted this international legal position. In May 1922, shortly before the adoption of the Mandate, Norman Bentwich, then Legal Secretary of the British-run government of Palestine, wrote:

“The principles enunciated in the Mandate await the beginning of realisation when the Council of the League of Nations shall at last have given its decision. And it is only when that step has been taken that the sovereign powers of the Mandatory can be effective, and the ‘damnosa hereditas’ from the Ottoman Empire… can be finally discarded… The Mandatory… will be entrusted with the control of the foreign relations of the Mandated State, and will have the right to afford diplomatic and consular protection to citizens of Palestine outside its territorial limits. Palestine will have a separate Government and form a separate national unity with its particular citizenship.”

In addition to being Ottoman citizens on the basis of the international law of state succession, Palestine’s inhabitants continued at the same time to be Ottomans in accordance with the 1869 Ottoman Nationality Law. The ongoing validity of the 1869 Law was part of the general application of Ottoman laws in Palestine. Thus, apart from military laws executed by military courts, “all civil matters according to the Ottoman law” were dealt by civil courts. Article I of the Palestinian Citizenship Order of 1925 considered the habitual residents in Palestine Ottoman citizens and would automatically grant them Palestinian nationality. In practice, however, Ottoman nationality had become ineffective.

The validity of Ottoman nationality was comparable in Palestine and in neighboring countries. Egypt is the clearest case in point given the fairly long British actual control of that Ottoman territory since early 1880s. While the 1869 Law was officially applicable, inhabitants were considered de facto as Egyptians until November 1914 (when Britain declared war against Turkey and Egypt, its protected territory). To this effect, Article 2 of the aforementioned 1926 Decree-Law concerning Egyptian Nationality defined Egyptian citizens as those Ottoman citizens who were habitually residing in Egypt as of 5 November 1914. Similar situations existed in Syria and Lebanon following the French occupation in 1918 until the enactment of two separate Syrian and Lebanese nationality legislations in 1925. Ottoman nationality was also applicable in Iraq since the British occupation in 1918 until 9 October

35 “Mandated Territories,” supra note 6, p. 53.
36 See Ghali, supra note 17, pp. 117-68.
37 Id., pp. 231-58.
1924, when the *Iraq Nationality Law*[^38] (Article 1) awarded Ottoman subjects residing in that mandated territory with Iraqi citizenship.

Such validity of Ottoman nationality at the time can be explained by the general rule in international law that occupation or conquest does not provide title to the occupying power over the occupied territory. This goes in line with international humanitarian law: Article 43 of both *The Hague Regulations Respecting the Laws and Customs of War on Land* of 1899[^40] and *The Hague Regulations Concerning the Laws and Customs of Land Warfare* of 1907[^41] obliged the occupant to respect “the laws in force in the country.”

This position was identical to British policy towards colonies. As Francis Piggott (the British Chief Justice of Hong Kong, then under British rule) observed in 1907, the rule of the Common Law is that “the laws of a conquered or ceded Colony remain in force until they are altered.”[^42] With regard to nationality, in particular, the British Empire did claim sovereignty over certain territories in which the French Civil Code, including its nationality rules, were in force. This was the case, for example, in Quebec (Canada) and Mauritius: where the French Civil Code referred to *France* and *français*, these terms had been interpreted to mean (*mutatis mutandis*) *Québec* and *québécois* or *Mauritius* and *Maurice*, as the case might be.[^43] By analogy, one could conclude that where ‘Ottoman Empire’ and ‘Ottoman subject’ were mentioned in the 1869 Law, these terms could be interpreted and replaced by ‘Palestine’ and ‘Palestinian citizen’ respectively.

Although the inhabitants of Palestine remained Ottoman citizens according to international law, in practice they started to be gradually regarded as Palestinians.

As occupying power, Britain had become responsible for the international relations of Palestine and for protecting its inhabitants abroad.[^44] Britain, as such, found itself compelled to take certain measures to regulate the inhabitants’ nationality. To this end, the government of Palestine, which was the authority established by Britain to administrate the country, issued provisional nationality certificates to Ottoman residents in Palestine; granted Palestinian passports and travel documents; extended diplomatic protection to those inhabitants residing and travelling abroad; and made a clear distinction between citizens and foreigners regarding the admission into Palestine as well as political and residence rights. ‘Palestinian’ and ‘Palestinian citizen’ terms were routinely employed.[^45]

Endorsing the actual separation of the territory from Turkey, the government of Palestine issued provisional certificates of Palestinian nationality.[^46] Serving as preliminary indication of Palestinian nationality, these certificates were “recognised by foreign countries and allow[ed] the holders to receive protection and assistance from a British Consular Officer.”[^47] To qualify for a Palestinian nationality certificate, the applicant had to meet three conditions: (1) that either he (females, as Britain wanted, had to follow their fathers or husbands), or his father, were born in Palestine; (2) that he had expressed his intention to opt for Palestinian nationality as soon as the law of Palestine’s nationality was passed; and (3) that he intended to reside permanently in Palestine.[^48]

Since the beginning of the occupation, the inhabitants were enabled to leave Palestine by using travel documents (*laissez-passer*) issued to them by British military authorities, apparently without detailed

[^38]: Flournoy and Hudson, *supra* note 2, p. 348.
[^41]: *Id.* Vol. 2 (supplement), 1908, p. 90.
[^43]: *Id.*, pp. 209, 216-17.
legislative regulation.\textsuperscript{49} An early proclamation issued by the British military in Palestine on 30 March 1918,\textsuperscript{50} in its Article 10, prescribed that “No person shall attempt to enter or leave Occupied Enemy Territory without complying with the passport regulations for the time being in force.” Such passport regulations apparently were the Ottoman Regulations Relative to the Passports Offices in the Empire of 17 July 1869,\textsuperscript{51} and the Ottoman Passport Law of 9 June 1911,\textsuperscript{52} in addition to the said proclamation itself. In the winter of 1918-19, W. D. McCrackan reported that “no one was allowed to cross to the east side of the Jordan, unless provided with a military pass.”\textsuperscript{53}

Shortly after replacing the military order by a civil administration, a preliminary system of Palestinian passports and travel documents was set up in August 1920 by the Palestine Passport Regulations.\textsuperscript{54} While passports were granted to Ottoman citizens residing in Palestine, a form of emergency 
\textit{laissez-passer} was given to foreigners whose countries were un-represented in Palestine and who could not obtain other forms of travel documentation.\textsuperscript{55} The issuance of passports and travel documents was motivated by security considerations – in addition to either a passport or a travel document, Palestinians as well as foreigners had to request a permit in order to leave Palestine.\textsuperscript{56} While not always granted, such a permit was obtainable from the Department of Immigration and Travel or from the police office of the district in which the person resided.\textsuperscript{57} The 
\textit{laissez-passer} was considered valid only for the journey for which it was issued.\textsuperscript{58} In order, apparently, to be applicable to all residents of the country (natives, migrants, stateless persons, refugees) the Passport Regulations employed the term ‘inhabitant of Palestine’ rather than ‘Palestinian citizen.’ Article 2 of this legislation, for instance, stated that “Pending the enactment of a Law of Nationality for the inhabitants of Palestine, an inhabitant of Palestine who is not a foreign subject, may obtain a 
\textit{laissez-passer} in lieu of a passport.”\textsuperscript{59}

Palestinian passports and travel documents were used abroad to claim diplomatic protection provided by British consuls. A case before the Anglo-Turkish Mixed Tribunal, established in accordance with the 1923 Treaty of Lausanne, on 14 December 1927, offers an example that reflects a general practice at the time. It was reported that, “the claimant produced \textit{[inter alia]} a 
\textit{laissez passer}, dated 16 March 1920, and issued by the British military authorities in occupation of Egypt, which described him as ‘\textit{sujet palestinien, protégé britannique}.”\textsuperscript{60} The inhabitants of Palestine were thus regarded by other states as both Palestinian citizens (subjects) and British protected persons.\textsuperscript{61}

Again, by issuing passports and extending international protection to the inhabitants, the British Empire treated Palestine similarly to other territories subjected to imperial control – protectorates, colonies, mandated areas.\textsuperscript{62} Such practice during this period would continue in Palestine, with certain modifications, until the end of the mandate in May 1948.

Locally, the government of Palestine made a distinction between the status of Ottoman citizens and foreigners residing in the country. It developed, to give an example, special rules relating to the treatment of foreigners before Palestinian courts. In June 1918, the senior British judicial officer issued Rules of Court that defined the term ‘foreign subjects’ as “subjects of any European or American state… but does not include [British] protected persons.”\textsuperscript{63} Though formulated for the purpose of the Rules, this definition would be endorsed (as we shall see soon) by the constitution of Palestine in 1922, with the intention of

\textsuperscript{50} Legislation of Palestine, \textit{supra} note 1, Vol. I, p. 599.
\textsuperscript{52} Aref Ramadan, ed., \textit{Completion of Laws: Ottoman Laws Valid in Arab States Detached from the Ottoman Government} (Beirut: Science Press, 1928 – Arabic), Vol. 5, p. 270.
\textsuperscript{53} The New Palestine (London: Jonathan Cape, 1922), p. 220.
\textsuperscript{54} \textit{Supra} note 49.
\textsuperscript{55} Report on Palestine Administration 1922, \textit{supra} note 45, p. 53.
\textsuperscript{56} Palestine Passport Regulations, \textit{supra} note 49, Article 1(1).
\textsuperscript{57} \textit{Id.}, Article 4.
\textsuperscript{58} \textit{Id.}, Article 5(2).
\textsuperscript{59} See also Articles 1, 3, 4, 6 and 9.
\textsuperscript{60} \textit{N.N. Berouit v. Turkish Government} – Arnold D. McNair and H. Lauterpacht, eds., \textit{Annual Digest of Public International Law Cases} (London/New York/Toronto: Longmans, 1927-8), p. 310.
\textsuperscript{61} More generally, see Oppenheim, \textit{supra} note 4, pp. 514-15.
providing privileges and immunities to certain categories of foreigners whose countries enjoyed Capitulation agreements under the Ottoman Empire.64

In order to be distinguished from Ottoman subjects, foreign citizens residing in Palestine continued to register at their respective consulates. The case of Nahum Razkovsky v. Leonine Razkovsky and Others,65 decided by the Supreme Court of Palestine, shows that Mr. Bernard Razkovsky, a French citizen who had been residing in Palestine since 1895, “renewed his inscription at the French Consulate in Jaffa” on 9 February 1922. Moreover, foreigners who wished to enter Palestine were required to get a visa either from the government of Palestine or from British consulates abroad, according to Article 3 of the Palestine Passport Regulations of 1920.

The entry of Palestinians and foreigners into Palestine was systematically regulated by the Immigration Ordinance of 26 August 1920.66 This legislation gave the government of Palestine the authority to regulate the entry of persons “according to the conditions and needs of the country” (Article 1). Specifically, the Ordinance: (1) established the position of Immigration Director; (2) prescribed the conditions for admission into Palestine; (3) authorized the inspection of entering persons; (4) compelled such persons to register at police stations; (5) waived the application of immigration rules for certain foreigners.67

Various terms were used to describe the actual, de facto, existence of nationality. The Immigration Ordinance directly employed the term ‘citizen of Palestine. For instance, the Ordinance permitted the deportation of any person “who has not become a citizen of Palestine” (Article 8). The same Ordinance also employed the term ‘permanent residents’ of Palestine (Article 5). In practice, according to the new reality on the ground, the government of Palestine used the term ‘Palestinian’ to describe the inhabitants in a number of formulae, including: ‘Palestinian officials,’ ‘Palestinian magistrates,’ ‘Palestinian Public Prosecutor,’ ‘young Palestinians,’ ‘British and Palestinian.’

Palestinian nationality existed despite the lack of comprehensive legislative regulation. A similar situation existed in Egypt after its separation from the Ottoman Empire in the early 1880s. By the time the aforementioned 1926 Decree-Law concerning Egyptian Nationality was enacted, the Ottoman Nationality Law of 1869 was practically ineffective. Most jurists were of the opinion that Egyptian nationality came into existence as early as the 1880s or following the official separation of Egypt from the Ottomans back in 1914. Others, however, believed that Egypt’s inhabitants remained Ottoman citizens until the said Decree-Law was passed.69 In Georges Abi-Saab’s words, “Egypt… in the period from 1880 to 1914, was nominally a part of the Ottoman Empire, but had a separate government…. The inhabitants were called ‘Egyptiens sujets local [sic]’ [local Egyptian subjects].”70

With respect to nationality in such situations, more generally, it has been concluded that:

“A State promises diplomatic protection within the boundaries of certain Oriental countries to certain natives…. Such protected natives are… called ‘de facto subjects’ of the protecting State. Their position is quite anomalous; it is based on custom and treaties, and no special rules of the Law of Nations itself are in existence concerning them… [A]s soon as these Oriental States have

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65 Supreme Court of Palestine sitting as a Court of Appeal, 23 May 1927 – Baker, supra note 26, p. 144.
67 Articles 2, 5-7, 9-10.
68 Samuel, supra note 34, various sections.
69 See Shams Eddin Alwakil, Nationality and Status of Foreigners (Alexandria: Munshaat Al-Maaref, 1966 – Arabic), pp. 70-1; Ghali, supra note 17, pp. 117-68.
reached a level of civilization equal to that of the Western States [sic], the whole institution of de facto subjects will disappear.”  

The foregoing was in line with the overall British policy towards Palestine at the time. Such policy was included in a statement presented to the British Parliament by the Secretary of State for the Colonies on 23 June 1922 – known as ‘the White Paper.’ Among other things, the Paper declared, “it is contemplated that the status of all citizens of Palestine in the eyes of the law shall be Palestinian, and it has never been intended that they, or any section of them, should possess any other juridical status.”

The foregoing shows that Palestinian nationality was effectively established or, at the least, began to emerge after 1917. This de facto nationality was created at the local level in accordance with both the domestic law applicable to Palestine and British practice. At the same time, Palestine’s inhabitants remained de jure (i.e. according to public international law) Ottoman citizens, however nominal that status was.

Nationality after the adoption of the Palestine Mandate, 1922-1924

“In the period between the creation of the Mandates system and the ratification of the Treaty of Lausanne,” (a situation quite similar to the one found in the pre-mandate period in Palestine) “the inhabitants of these [mandated] territories were theoretically still Ottoman subjects… This was obviously an anomalous situation that could not be easily characterized in law.” This section, nevertheless, will try to characterize such a situation based on international law and existing domestic legal instruments in Palestine, with particular focus on the influence of the Palestine Mandate on Palestinian nationality.

This stage commenced on 24 July 1922 with the adoption of the Palestine Mandate by the Council of the League of Nations. It ended when Britain ratified the Treaty of Lausanne on 6 August 1924. Two important points are worth noting here. One is that although a mandate over Palestine was declared by Britain in 1920, the Palestine Mandate legally entered into force only on 29 September 1923. Yet what matters for the present discussion is the date on which the Mandate was adopted: on that day, Palestine was recognized as a separate political entity at the international level. Secondly, despite the fact that the Palestine Mandate, including its nationality article, continued to be applicable until 1948, this section is limited to the development of Palestinian nationality during this transitional stage that lasted for a bit over two years.

The Mandate system was established after World War I, by Article 22 of the Covenant of the League of Nations, to deal with ex-Turkish and ex-German territories. In practice, mandates were classified as A, B, or C, based on what was considered a country’s readiness for self-rule. The five occupied Middle Eastern territories (Iraq, Palestine, Trans-Jordan, Syria, and Lebanon) were placed under class A. Regarding Palestine, the Council of the League of Nations that convened in London confirmed the Palestine Mandate on 24 July 1922. Britain hence acquired an international legal basis for its presence in that territory.

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71 Oppenheim, supra note 4, pp. 514-15.
73 Id., p. 18. See also British Government, Mandate for Palestine: Letter from the Secretary to the Cabinet to the Secretary-General of the League of Nations of July 1, 1922, enclosing a Note in reply to Cardinal Gasparri’s letter of May 15, 1922, addressed to the Secretary-General of the League of Nations presented to Parliament by Command of His Majesty (London: His Majesty’s Stationary Office, 1922), p. 4.
74 N.N. Berouti v. Turkish Government, supra note 61.
75 Abi-Saab, supra note 70, p. 48.
76 Id.
78 Id., October 1923, p. 1217.
In Article 7 of the Palestine Mandate – a special rule which did not exist in other territories’ Mandate texts – the framework for Palestinian nationality was drawn up:

“The Administration of Palestine shall be responsible for enacting a nationality law. There shall be included in this law provisions framed so as to facilitate the acquisition of Palestinian citizenship by Jews who take up their permanent residence in Palestine.”

Obviously, the main objective of regulating nationality, according to this article, was to turn immigrant Jews into Palestinian citizens. This came as a logical consequence to the overall goal of the Palestine Mandate: to create a Jewish national home in the territory. However, using the terms ‘nationality’ and ‘citizenship’ in this article implied that both terms were synonymous, and demonstrated that nationality was designed to presume the existence of a legal relationship between individuals and Palestine as a mandated state. Moreover, Palestinian nationality, at least in the way by which it was projected to be ‘framed,’ was not based upon racial, religious, or political considerations. Indeed, “Palestinian citizenship is no Jewish citizenship,” nor, similarly, was such citizenship deemed to be “an Arab nationality.” Therefore, “under Article 7 of the Mandate, the intention to take up permanent residence in Palestine is a sine qua non in the case of those Jews whose acquisition of Palestinian citizenship is to be facilitated.”

The origin of Article 7 of the Palestine Mandate dates back to 10 August 1920, when the (draft) Treaty of Sèvres was signed between Turkey and the Allies of the World War I. This Treaty never came into force as Turkey refused to ratify it. Instead, the draft was re-framed and was replaced by the Treaty of Lausanne, signed in 1923.

With respect to nationality in Palestine, Article 129 of the Treaty of Sèvres stipulated:

“Jews of other than Turkish nationality who are habitually resident, on the coming into force of the present Treaty, within the boundaries of Palestine… will ipso facto become citizens of Palestine to the exclusion of any other nationality.”

This article was not adopted at Lausanne, in order to comply with human rights, apparently. Norman Bentwich reported that the article intended to impose “Palestinian citizenship on foreign Jews habitually resident in Palestine. But objection was taken to that clause as derogating from the principle that a person should not be deprived of his nationality against his will.” And “in the end the clause was not included in the definitive treaty.”

In fact, an amended version of Article 129 was incorporated into Article 35 of the Draft Final Act of the Treaty of Lausanne and presented to the Turkish delegation at the Lausanne Conference on 2 December 1922. Article 35 reads:

“Jews of other than Turkish nationality who are habitually resident in Palestine on the coming into force of the present Treaty will have the right to become citizens of Palestine by making a declaration in such form and under such conditions as may be prescribed by law.”

The sub-committee appointed to negotiate the question of nationalities at the Lausanne Conference concluded its work on 26 January 1923 and, after extensive discussion on the draft, chose in the final instance not to adopt the above article.

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82 Ghali, supra note 17, p. 217. See also Mock, supra note 33, pp. 178-81.
85 See infra note 125.
86 “The Mandate for Palestine,” The British Year Book of International Law, 1929, p. 140.
87 “Nationality in Mandated Territories Detached from Turkey,” The British Year Book of International Law, 1926, p. 102.
There was no need, in effect, to retain this provision. When the definitive Treaty of Lausanne was finalized in 1923, the content of both Article 129 of the draft Treaty of Sèvres and Article 35 of the draft Treaty of Lausanne had already been incorporated a few months earlier, albeit in a different form, in Article 7 of the Palestine Mandate.

In a broader international context, the “Nationality law… showed that the Palestinians formed a nation, and that Palestine was a State, though provisionally under guardianship.”90 The inclusion of Palestinian nationality in the text of the Palestine Mandate was the first step towards an international recognition of the Palestinian people as distinct from the Ottoman people and other peoples. Palestinian nationality, like any other nationality, constitutes the formula by which a certain group of individuals are being legally connected and enabled to form the people element of the state.91

With regard to nationality of the inhabitants of mandated territories, in general, the Council of the League of Nations adopted the following resolution on 23 April 1923:

“(1) The status of the native inhabitants of a Mandated territory is distinct from that of the nationals of the Mandatory Power,...
(2) The native inhabitants of a Mandated territory are not invested with the nationality of the Mandatory Power by means of the protection extended to them...”92

Although this resolution relates to B and C mandates, it covered, given its broad language, all types of mandates, including type A. While the nationality question was ambiguous in other mandated territories,93 it had already been settled in the ex-Turkish territories (type A, including Palestine), by Article 123 of the Treaty of Sèvres, back in 1920 and, more precisely, in Article 22 of the Covenant of the League of Nations, which recognized a separate national character for the inhabitants of such territories.94 There was consequently no reason to include the question of nationality for the inhabitants of type A mandated areas within the aforementioned resolution.95 Indeed, it was widely believed that this League’s resolution “embodie[d] the correct doctrine [for all mandated territories].”96

Despite the absence of specific legislation on citizenship, Palestinian nationality had already begun to be well defined by the highest-ranked legislation of Palestine. Besides Article 7 of the Mandate, a definition of Palestinian nationality can be found in two key Orders – in the Palestine Order in Council (constitution) and in the Legislative Election Order – as well as in other lower-level legislation. In them, a clear distinction between Palestinian citizens and foreigners was drawn. Governmental and judicial practice in Palestine, together with international supporting factors, gave effect to these instruments, as I shall explain below.

Seventeen days after the adoption of the Palestine Mandate, Britain issued the Palestine Order in Council on 10 August 1922. The Order intended to execute, through domestic legislation, the international obligations laid down in the Mandate. It was regarded, both substantively and administratively, as a constitution – it set up the legal foundations for the Legislature as well as the

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90 Id., p. 532.
93 League of Nations, Official Journal, June 1923, p. 604. For background information on this resolution, see Council of the League of Nations, Minutes of the Sixty Meeting, 20 April 1923 (id, pp. 567-72, 658-9).
94 Stoyanovsky, supra note 80, p. 263.
Judiciary and the Executive in Palestine. In its official Arabic version, that order was called dustour, which literally means ‘constitution,’ and courts dealt with it as such. In several cases before the Supreme Court of Palestine, it was confirmed that the said Order in Council had a constitutional value to the extent that all lower-level legislation should comply with it and all authorities had to adhere to its provisions, including the High Commissioner.97 (Furthermore, the text of the Palestine Mandate was part of the constitutional structure of the country; Article 18 of the constitution provided that “No law shall be enacted in contrary to the Palestine Mandate in any aspect.”)98

The constitution provided a functional definition of the term ‘foreigner.’ Article 59 (1) defined ‘foreigner’ as “any person who is a national or subject of a European or American State or of Japan, but shall not include: (i) Native inhabitants of a territory protected by or administered under a mandate granted to a European State, (ii) Ottoman subjects, (iii) Persons who have lost Ottoman nationality and have not acquired any other nationality.” This definition confirmed that the inhabitants of Palestine were still Ottoman citizens but protected by a European state – Britain.99 Referring to ‘foreigners’ and ‘Palestinian citizens,’ Article 65 of the constitution additionally stated that “Nothing… shall be construed to prevent foreigners from consenting to such matters being tried by the Courts… having jurisdiction in like matters affecting Palestinian citizens.”

Clearly, such constitutional provisions failed to concretely define who exactly the ‘Palestinians’ were. In Articles 58-67 of the constitution, the definition of ‘foreigner’ intended to accord, as already noted, ‘Western’ and Japanese citizens certain privileges before Palestinian courts, such as consular assistance in criminal proceedings. These special articles came as a result of the ongoing effects of the capitulation system that had been applicable in the Ottoman Empire in previous centuries favoring Western states and Japan.100 Privileges were also accorded to Europeans and Japanese because their countries were members of the League of Nations and their citizens enjoyed certain rights in accordance with the Palestine Mandate, enacted by the League itself.101 (Concerning American citizens, Britain reached in 1924 an agreement with the United States, which was not a League member, according Americans similar rights and placing them on the same footing as those citizens who belonged to the League’s member states.)102

The day on which the constitution was enacted (10 August 1922), Britain introduced the Palestine Legislative Council Election Order in Council.103 Whereas the constitution had defined the term ‘foreigner,’ the Election Order defined the term ‘Palestinian citizens.’ Article 2 stipulated that “the following persons shall be deemed to be Palestinian citizens… Turkish subjects habitually resident in the territory of Palestine at the date of commencement of this Order.”104 Although it was provided for the purpose of the legislative election, this definition had in fact established the future status of those individuals who would henceforth be regarded as Palestinian nationals: Turkish subjects habitually resident in Palestine. Thus, as Paul Ghali rightly observed, this definition constituted a practical amendment to the Ottoman Nationality Law of 1869.105

Other domestically enacted legislation set out different rights and duties for Palestinians and for foreigners. Such legislation included, inter alia, the Regulations made under Article 67 of the Palestine Order in Council on the Powers of Consuls in matters of Personal Status of Nationals of their State of

97 See, e.g., Attorney-General v. Abraham Altshuler, Supreme Court of Palestine, May 1928 – McNair and Lauterpacht, supra note 60, 1927-8, p. 56; Rozenblatt v. Register of Land, Supreme Court of Palestine sitting as a High Court of Justice, 9 June 1947 – id., 1947, p. 29.
100 See the references in supra note 64.
101 However, after the enactment of the Palestinian Citizenship Order in 1925, the definition of ‘foreigner’ was altered as the order defined who the Palestinian citizen was. To be sure, Article 59 of the constitution was specifically modified by Article 2(d) of the Palestine (Amendment) Order-in-Council of 1935 (Palestine Gazette, No. 496, 28 February 1935, p. 263); ‘foreigner,’ herein, was defined in a simple manner to include all persons who were not Palestinian citizens.
103 Drayton, supra note 11, p. 3386.
104 See Nathan Feinberg, Some Problems of the Palestine Mandate (Tel-Aviv: 1936), pp. 65-94.
106 Supra note 17, p. 232.
15 November 1922,¹⁰⁷ and the Succession Ordinance of 8 March 1923.¹⁰⁸ The latter Ordinance distinguished between foreigners and Palestinians with regard to the jurisdiction of civil courts in cases of inheritance. It directly employed the term ‘Palestinian citizen’ in Articles 3 and 4. The same Ordinance used the term ‘foreigner’ as defined in the constitution. Such legislative instruments had been operative besides the existing regulations on migration and passports.

A distinction between Palestinians and foreigners had further been recognized at the international level. A typical example can be found in the Mavrommatis Palestine Concessions case before the Permanent Court of International Justice on 19 August 1924.¹⁰⁹ This case arose from the alleged refusal of the government of Palestine to recognize the rights acquired by Mr. Mavrommatis, a Greek citizen, under contracts and agreements he concluded with the Ottoman authorities regarding concessions for certain public works to be constructed in Palestine (Jordan Valley, Jerusalem, Jaffa). Greece, on behalf of Mavrommatis, filed a claim on 13 May 1924 at the Permanent Court against the government of Palestine – represented at the Court by Britain – for the government’s alleged failure to fulfill its contractual obligations with the Greek citizen.¹¹⁰

Although the Palestine Mandate authorized Britain to pass a law on Palestinian nationality, the enactment of such a law was delayed for three years. This late enactment was questioned at the international level. In 1922, the Permanent Mandates Commission of the League of Nations asked Britain, inter alia, whether it had enacted a nationality law for Palestine. The commission also enquired as to whether that law had been framed in such a way as to facilitate the acquisition of Palestinian citizenship by Jews whose permanent residence in Palestine was established in accordance with Article 7 of the Mandate.¹¹¹ In its annual report submitted to the League Council in 1923, Britain replied by stating that: “An Order in Council concerning Palestinian Nationality is now under consideration.”¹¹² And before defining who the ‘Palestinians’ were, Article 2 of the Legislative Council Election Order of 1922 stated: “For the purpose of this Order, until the enactment of the Palestinian Citizenship Order, the following persons shall be considered Palestinians…” (emphasis added). Thus, draft legislation on nationality was apparently ready at the time. Yet it seems that Britain waited to acquire full legal basis for its presence in the country by concluding a peace agreement with Turkey.

As in the previous stage, the 1869 Ottoman Nationality Law remained the domestic basis for the Palestinian inhabitants’ nationality. The application of that Law was similar to other Ottoman legislation valid at this time, which was confirmed in general terms by the constitution of Palestine that, in its Article 46, pronounced: “The jurisdiction of the Civil Courts shall be exercised in conformity with the Ottoman Law…” Palestinian courts reaffirmed that the applicability of Ottoman laws in the country be in accordance with that article.¹¹³ However, having been authorized by the Mandate to enact a Palestinian nationality law, Britain was politically empowered to amend or repeal the 1869 Law.

The British-run government of Palestine had naturalized certain groups of foreign residents in the country to enable them to participate in the legislative election in accordance with the 1922 Palestine Legislative Council Election Order in Council. These residents, as Norman Bentwich reported in 1926, were “mostly immigrant Jews who had come to settle in the national home.”¹¹⁴ Most of them had

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¹⁰⁹ Objection of the Jurisdiction of the Court – Permanent Court of International Justice, Collection of Judgments, Series A, No. 2, 1924, p. 7. See Stoyanovsky, supra note 80, pp. 325-34.
¹¹¹ League of Nations, Mandate for Palestine: Questionnaire Intended to Assist the Preparations of the Annual Reports of the Mandatory Powers – Doc. No. C.553.M.335.1922.VI, 23 August 1922, p. 3.
immigrated to Palestine in the period of 1920-1922.115 “A Proclamation was made on September 1st [1922],116 providing that any person of other than Ottoman nationality, habitually resident in Palestine on that date, might within two months apply for Palestinian Citizenship.”117 As a result, “19,293 Provisional Certificates of Citizenship were granted in respect of 37,997 persons, wives and minor children being included on certificates issued to heads of families.”118 In addition, naturalization was granted “exceptionally to ex-Russian nationals, who… had been permanently resident in this country and were forced to assume Ottoman nationality during [the First World] War.”119 At this stage, all these persons were considered Palestinian citizens only for the purpose of the legislative election and were not viewed as full citizens. Three years later, however, these persons would ultimately be granted Palestinian nationality by naturalization under a special proviso inserted in the 1925 Palestinian Citizenship Order – Article 5(1).

Palestinian courts recognized a provisional Palestinian nationality. In a case before the Supreme Court of Palestine regarding the extradition of two persons residing in Jerusalem, the Court, inter alia, stated:

“The accused persons in Palestine were alleged to have been Ottoman subjects. They had applied and obtained provisional certificates of special [Palestinian] citizenship, which were issued by the Government [of Palestine] prior to the enactment of the Palestine Citizenship Order in Council.”120

In sum, during this period, the de facto existence of Palestinian nationality was strengthened by the adoption of the Palestine Mandate and the enactment of a number of key legislation. Palestinian nationality had yet to be de jure acknowledged from the standpoint of international law. This was because the entry into force of the peace treaty between Turkey and the Allies (including Britain), on the basis of which Palestine would officially and definitively be separated from Turkey, was still pending.

**Palestinian nationality after the Treaty of Lausanne, 1924-1925**

The Treaty of Peace between the allied powers and Turkey officially ending World War I was signed in Lausanne, Switzerland, on 24 July 1923.121 Setting out the legal status of the territories detached from Turkey, the Treaty had the effect of law in Palestine, as it was extended to this country by an ordinance,122 on 6 August 1924.

The status of Palestine and the nationality of its inhabitants were finally settled by the Treaty of Lausanne from the perspective of public international law. In a report submitted to the League of Nations, the British government pointed out: “The ratification of the Treaty of Lausanne in Aug., 1924, finally regularised the international status of Palestine.”123 And, thereafter, “Palestine could, at last, obtain a separate nationality.”124

Most of the post-World War I peace treaties embodied nationality provisions and the Treaty of Lausanne was no exception.125 It addressed the nationality of the inhabitants in the territories detached from Turkey in Articles 30-6. These articles replaced, with certain modifications, Articles 123-31 of the draft Treaty of Sèvres of 1920.126

Drawing up the framework of nationality, Article 30 of the Treaty of Lausanne stated:

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115 Report on Palestine Administration 1922, supra note 46, p. 5.
116 1 September 1922 was the day on which the Legislative Council Election Order was published in the Palestine Gazette and came into force (Article 21). See Drayton, supra note 11, p. 3394 – footnote.
118 Id. See also Permanent Mandates Commission, Minutes of the Fifth Session (Extraordinary) (Geneva: League of Nations, 1924). At this session, the High Commissioner for Palestine, Sir Herbert Samuel, was present. Samuel, in replying to a question posed by the Commission’s Chairman, said, “almost the whole Jewish population had announced their intention of accepting Palestinian nationality… The number of persons affected… was about 38,000. This figure… for the most part consisted of Jews” (p. 81).
120 Attorney-General v. Goralschwilli and Another – McNair and Lauterpacht, supra note 60, 1925-6, p. 47.
126 See Paul C. Helmreich, From Paris to Sèvres: The Partition of the Ottoman Empire at the Peace Conference of 1919-1920 (Columbus: Ohio State University Press), 1974; Ghali, supra note 17, pp. 95-114.
“Turkish subjects habitually resident in territory which in accordance with the provisions of the present Treaty is detached from Turkey will become ipso facto, in the conditions laid down by the local law, nationals of the State to which such territory is transferred.”

To qualify for Palestinian nationality in virtue of this Article, the individual had to meet two conditions. He or she should be, first, a Turkish subject, or citizen. Secondly, such a person had to be a habitual resident (‘établis,’ or established, in the original French version) in Palestine as of 6 August 1924, the day on which the Treaty came into being. Thus, residents having no Ottoman nationality (i.e., foreign citizens or stateless persons) had no right to become Palestinians. Nor were Ottomans residing outside Palestine on the date mentioned above deemed as Palestinians; an exception was applied to those individuals who were born in Palestine and who fell under Article 34 of the Treaty, as we shall see.

Article 30 is of a great significance. It constituted a declaration of existing international law and the standard practice of states. This was despite the absence of a definite international law rule of state succession under which the nationals of predecessor state could ipso facto acquire the nationality of the successor. “As a rule, however, States have conferred their nationality on the former nationals of the predecessor State.” In practice, almost all peace treaties concluded between the Allies and other states at the end of World War I embodied nationality provisions similar to those of the Treaty of Lausanne. The inhabitants of Palestine, as the successors of this territory, henceforth acquired Palestinian nationality even if there was no treaty with Turkey.

‘Palestine’ was not mentioned in the Treaty of Lausanne, let alone ‘Palestinian nationality.’ However, there was no need to mention these terms because the Treaty provided generic provisions applicable to all territories detached from Turkey, including Palestine. This 1923 Treaty differed from the draft 1920 Treaty of Sèvres, which introduced a separate regime for each ex-Turkish territory, with special reference to Palestinian nationality in Article 129. A similar clause to the latter article was instead embodied, as already detailed, in Article 7 of the Palestine Mandate. Hence, both the Mandate and the Treaty of Lausanne complemented one another on nationality.

The Treaty of Lausanne regulated Palestinian nationality in a way similar to the one by which nationalities of other mandated territories in the Middle East were fixed. The Iraq Nationality Law defined Iraqi citizens as those Ottoman subjects who were habitually resident in Iraq on 6 August 1924. Likewise, the Trans-Jordan Nationality Law considered all Ottoman subjects habitually resident in Trans-Jordan on 6 August 1924 to be citizens. Inhabitants residing in Syria and Lebanon under the French on 30 August 1924 (the day on which France ratified the Treaty of Lausanne) were deemed as Syrian or Lebanese. In Egypt, as noted earlier, the Treaty entered into force retroactively on 5 November 1914 and Ottoman inhabitants were considered Egyptians from that date on.

Courts had confirmed such provisions. An example of this can be found in a judgment passed in an international tribunal in Egypt, which relates to all mandated territories detached from Turkey in pursuant to the Treaty. It was held that “Syria and the Lebanon, being countries placed under an ‘A’ Mandate, are, in accordance with the Covenant of the League of Nations, to be deemed to be independent States and persons of public international law, and the inhabitants have acquired the nationality of those States. Syrians and Lebanese must, therefore, be considered in Egypt as foreigners on the same basis as the subjects of countries which had been detached from the Turkish Empire prior to the Great War.”

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127 In the original French text, ‘subjects’ read as ‘ressortissants.’
128 See Stoyanovsky, supra note 80, pp. 265-9.
130 See supra note 96, p. 149.
132 Antoine Bey Sabagh v. Mohamed Pacha Ahmed and Others, Mixed Court of Mansura, Egypt, 15 November 1927 – McNair and Lauterpacht, supra note 60, 1927-8, pp. 44-5.
Article 30 of the Treaty of Lausanne stipulated that the new nationality should be acquired in accordance with “the conditions laid down by the local law.” The local law in Palestine was at the time the Ottoman Nationality Law of 1869. The Treaty, therefore, could be considered to have been complementary to the provisions of the said Ottoman Law. In case of conflict, the Treaty would prevail over the local law as it provided a broader basis. And, in any event, the future nationality legislation of Palestine (the 1925 Citizenship Order) had to comply with the Treaty’s nationality rules. The Treaty of Lausanne gave persons born in Palestine and residing abroad the right to opt for Palestinian nationality. But this option had no automatic effect: it required (1) an application within two years after the Treaty’s enforcement, and (2) the government of Palestine’s approval. Article 34 of the Treaty runs, in part, as follows:

“Turkish nationals of over eighteen years of age who are natives of a territory detached from Turkey under the present Treaty, and who on its coming into force are habitually resident abroad, may opt for the nationality of the territory of which they are natives, if they belong by race to the majority of the population of that territory, and subject to the consent of the government exercising authority therein. This right of option must be exercised within two years from the coming into force of the present Treaty.”

The application of this article, as translated into Article 2 of the Palestinian Citizenship Order of 1925, created hardships for thousands of Palestine’s natives who were resident abroad. Most of these individuals, overwhelmingly Arab, resided mostly in Europe and the Americas; they were thus prevented from returning home and became stateless (see below.)

The Treaty confirmed the previous practice whereby inhabitants were effectively regarded as Palestinians. To be sure, most of the Treaty’s nationality rules were later embodied in the 1925 Palestinian Citizenship Order and became part of the country’s law.

The Treaty of Lausanne, including its nationality rules, remained legally binding and effectively applicable throughout the mandate period until 14 May 1948. For instance, the Bon Voisinage Agreement between Syria and Palestine of 1926, mentioned above, stipulated in Article 10 that the nationality of inhabitants living near Syrian and Lebanese border could be determined, should any conflict arise, in accordance with Articles 30-6 of the Treaty. The Treaty was additionally invoked several times in judicial proceedings before Palestinian courts. Examples included, inter alia, a case before the Palestine Land Court of Jaffa in November 1937, another before the Supreme Court of Palestine sitting as a Court of Civil Appeal in March 1947. Internationally, the Treaty was first invoked, as already indicated, before the Permanent Court of International Justice in Mavrommatis Palestine Concessions, and before courts in England and Egypt.

Henceforth, Palestinian nationality was first founded, according to international law, on 6 August 1924. And “treaty nationality in Palestine runs from that date.” The Treaty of Lausanne had transformed the de facto status of Palestinian nationality into de jure existence from the angle of international law. Meanwhile, the Ottoman Empire ceased to exist. Likewise, on 6 August 1924, for the first time ever, international law certified the birth of the ‘Palestinian people’ as distinct from all other peoples.

133 Robinson v. Press and Others, Supreme Court of Palestine, 20 February 1925 – McDonnell, supra note 84, p. 27.
136 Permanent Court of International Justice, supra note 109, p. 11.
137 The King v. Ketter, Court of Criminal Appeal, 21 February 1939 – McNair and Lauterpacht, supra note 60, 1938-40, p. 46.
141 See Treaty of Lausanne, Articles 2-3.
As the Treaty of Lausanne did not regulate the details of nationality, this task was to be carried out within the demesne of domestic law. 142 This legislation, along with its connection with the Treaty, is the 1925 Palestinian Citizenship Order.

Among its twenty-seven articles, the 1925 Citizenship Order had three key provisions that shaped the future of Palestine’s inhabitants. One relates to the automatic change of the inhabitants’ nationality from Ottoman subjects into Palestinian citizens. The second regulated the nationality of Palestine’s natives residing abroad. The third was designed to grant Palestinian nationality to immigrants by naturalization. Each of these provisions, along with its practical effects within Palestine, will be briefly addressed here.

The automatic, ipso facto, change from Ottoman to Palestinian nationality was dealt with in Article 1, paragraph 1, of the Citizenship Order, which declared:

“Turkish subjects habitually resident in the territory of Palestine upon the 1st day of August, 1925, shall become Palestinian citizens.”

To qualify for Palestinian nationality by virtue of this paragraph, the person had to be: (1) a Turkish subject, or citizen; and (2) habitually resident in Palestine. While Palestinian nationality in accordance with international law (the Treaty of Lausanne) was created, as shown above, on 6 August 1924, the same nationality was effectively created on 1 August 1925 based on domestic law (the Palestinian Citizenship Order).

Exactly one month before the enforcement of the Citizenship Order in August 1925, the British-run government of Palestine, through censes, estimated that the total number of the population of Palestine was 847,238 individuals. 143 This figure included both Turkish (Ottoman) subjects and foreigners who were registered as permanent residents in the country. Unfortunately, there is no available data regarding the population’s nationality. However, the exact number of Turkish subjects may be obtained by deducting the number of foreigners from the overall population of Palestine. The total number of registered immigrants from 1920 to 1925 was 79,368 persons. 144 Another number of foreigners should also be subtracted from the total of population; that number is the 37,997 individuals who acquired provisional Palestinian naturalization certificates in September 1922 in order to vote in the legislative election (see above). The remaining inhabitants were Turkish subjects. Hence, the result of this calculation indicates that the total number of Ottoman subjects was as follows: 847,238 - (79,368 + 37,997) = 729,873 persons. Those were the majority of inhabitants who acquired Palestinian nationality based on the aforementioned Article 1, paragraph 1.

As for the Arab and Jewish Turks who were residing in Palestine, another calculation is required. In mid-1925, the number of Arabs in the total population was 717,006 inhabitants: 641,494 Muslims and 75,512 Christians. 145 There were also 8,507 persons who were classified as Others, 146 mainly Druze, Baha’i and Samiritans – all were Arabs in fact. The number of Arab immigrants who entered Palestine and registered therein as residents from 1920 to 1925 was 2,783. 147 Thus, the net number of Arabs who were Ottomans, and then automatically acquired Palestinian nationality, was as follows: (717,006 + 8,507) – 2,783 = 722,730, about 99% of the total population in Palestine at the time. On the other hand, the number of Jews within the total population, at the same moment, was 121,725. 148 Of these, the majority were foreigners: 37,997 acquired provisional Palestinian nationality in 1922, as mentioned above, plus 76,585 registered as immigrants upon entering Palestine between 1920 and 1925. 149 Thus, the net number of Jews who were Turkish and then became Palestinian citizens was: 121,725 - (37,997 + 76,585) = 7,143 individuals, a bit below 1% of the total population.

The nationality of Palestine’s natives residing abroad was addressed in Article 2 of the 1925 Palestinian Citizenship Order, which, inter alia, stated:

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142 J. Mervyn Jones, British Nationality Law and Practice (Oxford: Oxford University Press, 1947), p. 279; Ghali, supra note 17, p. 112; Abi-Saab, supra note 70, p. 56.
143 Id., p. 185.
144 Id., p. 144.
145 Id., p. 141.
146 Id., p. 185.
147 Id., p. 144.
148 Id., p. 185.
149 Id., p. 185.
“Persons of over eighteen years of age who were born within Palestine and acquired on birth… Turkish nationality and on the 1st day of August 1925, are habitually resident abroad, may acquire Palestinian citizenship by opting in such manner… subject to the consent of the government of Palestine which may be granted or withheld in its absolute discretion…. This right of option must be exercised within two years of the coming into force of this Order.”

Accordingly, the right of individuals of this group to opt for Palestinian nationality had to be exercised, in virtue of Article 2, within two years starting from the date on which the Citizenship Order entered into force (between 1 August 1925 and 31 July 1927). However, in November 1925, the (British) High Commissioner for Palestine decided that the right of option should begin retroactively from 6 August 1924. Henceforth, the ultimate deadline to apply for Palestinian nationality became 5 August 1926, one year after the enactment of the Order. This less than nine-month period (16 November 1925 to 5 August 1926) was insufficient for natives who were working or studying abroad to return home. Consequently, most of these natives became stateless. On one hand, they had lost their Turkish nationality by virtue of the Treaty of Lausanne, on the other hand, they could not acquire Palestinian nationality according to the Citizenship Order.151

Unlike for those natives residing in Palestine, it is difficult to know the exact number of Palestinian natives who were residing abroad on 6 August 1924, as precise statistics are lacking. Some prediction is still possible, nonetheless. In 1936, a British report estimated the number to be at 40,000 souls (the report did not say whether children and women were included, or whether the number covered only male heads of families),152 but we have good reason to believe that the actual number is much higher. Certain data suggest that the total number of emigrants from the Greater Syria – from Lebanon and Palestine, in particular – to the Americas up to 1914 amounted to about 600,000 persons.153 A report published in 1907 mentioned that emigrants from Palestine to the U.S.A. alone totaled 4,000 men in ten years – half of them brought their families over afterwards.154 This number is yet small if compared with the majority of Palestine’s emigrants who moved to Latin America155 (no data is available there). Henceforth, only a very limited number of natives were able to get Palestinian nationality; in 1946, it was documented that only 465 persons of those who were born in Palestine and who were residing abroad could have acquired Palestinian nationality since 1925.156 As a result, the nationality of this group of natives of Palestine and their descendants remained unresolved. These people constitute, it can be safely said, the first generation of Palestinian refugees.

Naturalization, as regulated by the Citizenship Order, was designed to grant Palestinian nationality to foreign Jews who would immigrate into Palestine. Article 7 of the Order (which practically translated Article 7 of the Palestine Mandate), inter alia, provided:

“The High Commissioner may grant a certificate of naturalisation as a Palestinian citizen to any person who makes application therefor [sic] and who satisfies him:

(a) That he has resided in Palestine for a period not less than two years out of the three years immediately preceding the date of his application;

154 Id., p. 180.
155 Adnan A. Musallam, Folded Pages from Local Palestinian History in the 20th Century, WIAM/Palestinian Resolution Center, Bethlehem, 2002 (Arabic), pp. 37-56.
(b) That he is of good character and has an adequate knowledge of either the English, the Arabic or the Hebrew language;

(c) That he intends, if his application is granted, to reside in Palestine.”

The significance of this provision was summarized by the Supreme Court of Palestine, on 28 February 1929, in Palevitch v. Chief Immigration Officer.\textsuperscript{157} This case related to an immigrant Jew from Italy who applied for naturalization in Palestine. The Court held:

“Article [7 of the Mandate] is concerned with the enactment of a nationality law in which, so says this Article of the Mandate, there are to be included provisions framed so as to facilitate the acquisition of Palestinian citizenship by Jews who take up their permanent residence in Palestine. This has been done by the passing of the Palestine Citizenship Order, 1925, in which there are embodied, in Art. 7(1), a number of qualifications [for] naturalisation.”

Based on this provision, massive numbers of foreign Jews were naturalized in Palestine. At the end of the mandate, the total number of persons who acquired Palestinian nationality by naturalization reached 132,616; about 99\% of them were Jews.\textsuperscript{158} Officially, Jewish representatives encouraged Jews to apply for Palestinian nationality.\textsuperscript{159}

Conclusion

The overall purpose of the regulation of Palestinian nationality from 1917 through 1925 and the years that followed has been to bring to Palestine as many Jews as possible and to reduce the number of Palestine’s Arabs as much as possible – a policy that is still in place today.

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\textsuperscript{157} Supra note 84.


\textsuperscript{159} British Government, \textit{Report to the Council of the League of Nations on the Administration of Palestine and Trans-Jordan}, 1936 p. 44. However, not all immigrants were interested. In 1936, for example, it was estimated that 43\% of the Jews who qualified for naturalization did not apply for Palestinian nationality; Royal Commission Report, supra note 132, p. 332.