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THE CIRCULATION OF PALESTINIAN REFUGEES AND MIGRANTS

Asem Khalil

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Circular Migration Series

Legal Module

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Within this framework, CARIM aims, in an academic perspective, to observe, analyse, and predict migration in the North African and the Eastern Mediterranean Region (hereafter Region).

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The CARIM carries out the following activities:

- Mediterranean migration database;
- Research and publications;
- Meetings of academics;
- Meetings between experts and policy makers;
- Early warning system.

The activities of CARIM cover three aspects of international migration in the Region: economic and demographic, legal, and socio-political.

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Abstract

The paper considers circular migration with regard to Palestinian migrant workers and alien workers in Palestine, in the context of the EU Commission Communication on Circular Migration (2007). Throughout the paper, the unusualness of the Palestinian situation, both with regards to border control and the lack of sovereignty of the Palestinian Authorities is underlined. The paper looks in depth at the movement between Palestine and Israel as well as border crossings with the rest of the world. Owing to its sovereignty deficit, the Palestinian Authorities have not legislated directly on migration, but some legal norms do have an indirect impact. Further, the paper reviews legal obstacles to leaving the country and the question of dual nationality is also addressed and, the issuing of work permits by the Palestinian Authorities to non-Palestinian workers is explained. Finally, the role that Palestinian delegations should play with regard to their workers abroad is considered.

Résumé

Le papier envisage l'application de la logique de la migration circulaire au bénéfice des travailleurs migrants palestiniens et des travailleurs étrangers en Palestine, au moment où l'idée de promouvoir la migration circulaire dans ses relations avec les pays voisins est avancée par la Commission européenne (2007). La spécificité palestinienne liée au contrôle des frontières et à l'absence de souveraineté de l'Autorité Palestinienne est au centre de la réflexion. Les conditions de circulation entre la Palestine et Israël ainsi que les conditions de franchissement des frontières internationales vers le reste du monde sont analysées. En raison des conséquences juridiques liées à l'absence de souveraineté, les Autorités Palestiniennes ne sont pas en mesure de réglementer directement les migrations internationales, néanmoins certaines dispositions de droit interne ont une incidence indirecte en la matière. Les implications liées à la double nationalité sont traitées. Les procédures de délivrance des permis de travail par les Autorités palestiniennes sont décrites. Finalement, une invitation aux délégations palestiniennes à l'étranger à jouer un rôle plus significatif à l'égard des travailleurs palestiniens à l'étranger est faite.

1. Introduction

Circular migration reflects a dynamic concept of migration where the "out" and "in" from the country of origin to the country of destination is performed much more often.¹ This kind of migration has the advantage of avoiding brain drain, while profiting from the stay or work abroad. Circular migration, however, presupposes policies that facilitate movement of migrants.

This paper will address the particularity of the Palestinian situation² in terms of migration and look at possible institutional changes that would implement or favour circular migration.³ In fact, migration policies in territories under PA control and migration policies towards Palestinians dispersed in host countries are determined by alien authorities according to their national priorities and, above all, according to security measures. Accordingly, any extra-territorial movement of Palestinians cannot but be characterized by difficulties, suspicion and risks.⁴ Bilateral agreements between representatives of the Palestinian people and other states concerning the destination of Palestinian migrants and the residence of Palestinian refugees are almost inexistent, giving Palestinian refugees an unclear legal status and leading to very restrictive migration policies towards Palestinian migrants.⁵

I shall, then, tackle the issue of Palestinian legislations in terms of migration. Although limited by the Oslo Agreements and the powers transferred by the Israeli Military Governor (IMG), the PA, in fact, has the right to legislate in certain sectors and has done so since 1994; legislative activity then developed following the first elections in 1996, with the PLC –an elected Palestinian body- legislating for Palestinians. However, in terms of migration the PA's legislative record was poor for the simple reason that the PA is not a sovereign state in complete control of its borders, nor can it sign treaties and be legally responsible before the international community for the application of standards on the status of migrants and refugees; what is more, the PA was not competent to adopt a nationality law, nor does it include a distinction between Palestinians and foreigners in its domestic law (Khalil 2007a), at least in the economic sector; on the contrary, some laws (for example the Investment Encouragement Law) have adopted very open measures which aimed at attracting capitals into territories under PA control. The legislative activity of the PA shall be presented in section two.

2. Palestinians' Possible Movements

If circular migration is related to a more dynamic reality of people going backwards and forwards from and to their country of origin, and if applied to the Palestinian situation, we shall have different scenarios which accordingly require different terms of assessment and analysis:

1. Movement of Palestinians resident in host states towards other states and back to the country of 'first refuge';
2. Movement of the WBGs⁶ Palestinians towards other states;
3. Movement of Palestinians between the WB and the GS;
4. Movement of Palestinians between WB cities.

Scenarios 3 and 4 should be considered as 'internal migration' since the WB and the GS are considered as one legal and political entity;⁷ however, there is a *de facto* separation between the WB and the GS a result of the Israeli refusal to ease and permit free passage of Palestinians between those two entities.⁸ On the other hand, scenarios 1 and 2 are cases of 'international migration', which shall be analyzed in following sections; though one can question the absence of a clear territorial demarcation of what is 'Palestinian' and what is not, mainly what is Israeli, especially in a context of occupation. For the Palestinians in the oPt neither the freedom of movement nor the right to leave one's country are guaranteed; though some administrative duties were transferred to the PA by the Interim Agreements (following the *Second Intifada*, the PA was excluded from playing this role), Israel kept absolute

control of borders (thus controlling passage through Jordan and Egypt to the rest of the world) and the movement of Palestinians between the WB and the GS and within WB cities (Abu Mukh 2006, 1).

2.1. Movement of Palestinians resident in host states towards other states and back to the country of 'first refuge':

Admitting that some of those Palestinians are forbidden to return to their homeland – that is historical Palestine (Palestinian refugees according to the larger definition of the concept)⁹, movement of Palestinians living in host states was always regarded with suspicion and was full of difficulties.

For one there is not a unique and common legal status for Palestinian refugees living in host states. According to Takkenberg (1997, 135), a formal legal status under national law, codified in legal instruments, in many instances does not exist. The legal position of Palestinian refugees in individual Arab states depends largely on administrative practices, sometimes laid down in circulars that are subject to constant change.¹⁰ However, we can roughly distinguish between two kinds of Palestinian refugees:

1. Those who have obtained the citizenship of a host state: and where they must prove loyalty to justify citizenship. Migration policies applied in the case of naturalized Palestinians (in Jordan for example)¹¹ are the same for all citizens.¹²
2. As for stateless Palestinians, they need a travel document issued by the host country or by UNRWA with the necessary permits and documents which guarantee their right of re-entering: i.e. these Palestinians need permission to remain refugees from the destination state (visa), and from the host country (Takkenberg 1997, 174).¹³

However, some Palestinian refugees left their 'first refuge' to work abroad (as other Palestinian migrants from the WBGs); these can be divided into three groups:

1. Those who migrated to Gulf States for example, have done, and continue to do so, in a migrant worker capacity with virtually no opportunity of obtaining permanent residence.
2. As for those who went to Algeria, Iraq, Libya, Sudan and Yemen, the PLO developed bilateral agreements with host states concerning their legal status (Zreik 1998, 51).
3. Others left for European countries and the Americas, obtaining, with time, citizenship in destination countries.

As for work, some Arab states allowed Palestinian refugees to work; others have prohibited work in certain professions; thus encouraging Palestinians to resort to illegal work. Other restrictions can be observed in access to governmental services or immovable property; the latest restriction being in some cases (the Gulf States, for example) applicable to all foreigners, including Palestinians (Takkenberg 1997, 174, Zreik 1998, 49). What is more, most Arab states' nationality laws are discriminatory as concerns women and their right to transfer citizenship to their children (Zreik 1998, 42) and forbid dual Arab nationality; cultural rights of minorities are not particularly good in many Arab states (Hanafi 2001, 230).

This reality is contrary to the official position of the Arab League regarding the treatment of Palestinian refugees, which was expressed in the 1965 Casablanca Protocol. According to this protocol: first, Palestinian refugees shall be granted full citizenship rights without being naturalized by host Arab states; and, second, Palestinian refugees shall be granted a Refugee Travel Document (RTD) in order to maintain their refugee status. In other words, two principles characterized the official Arab position: Arab solidarity and sympathy with refugees and the preservation of Palestinian identity (Takkenberg 1997, 135). However, this non-binding protocol has often been ignored by (most) Arab

states especially with regard to equality in employment (Syria and Jordan are the exceptions here); in other words, this document was simply a declaration of good intents (Zreik 1998, 40).

A common characteristic of Palestinian refugees in most host Arab states is the (almost total) absence of guarantees for basic rights for Palestinian refugees. 'National' origin has been used to do away with civil and political rights and discriminate against Palestinians in their countries of residence in the name of their right to return to their country of origin. Palestinians' rights as individuals were sacrificed for the sake of 'Palestinian national interest'. The attitude of host Arab states is criticized (Hanafi 2001, 44). After all it is not a position justified by any desire to protect refugees' rights since the status of refugee does not depend on location or misery but on the reason and manner of original departure. This lack of protection is mainly the result of Arab states' refusal of refugee re-settlement in their countries, combined with the general weakness of democracy and the lack of respect for the rule of law and human rights (Khalil 2007a, 28). Finally, it should be noted that part of the current attitude and treatment of Arab states towards Palestinian refugees depends on the policies of host states vis-à-vis the Palestine Liberation Organization (PLO) (Takkenberg 1997, 135), policies typically characterized by turbulence and mistrust.¹⁴

2.2. Movement of WBGs Palestinians towards other states

In this section I shall present the movement of those Palestinians who are residents or who have the right of residence in the WBGs. Different scenarios are possible here:

2.2.1. Movement between oPt and Israel

Since 1967, Palestinians of the WBGs are *de facto* stateless. Israel treated Palestinians remaining in the oPt as residents not as citizens; thus regulations and restrictions imposed on them were similar to those applied to foreigners (Shiblak 1996, 31; Shkeir 1996, 89). Since the first *Intifada* in 1987 however, Israel has applied restrictive movement policy towards Palestinians of the oPt. The peace process did not change the situation on the ground; on the contrary, restrictions of movement were aggravated through siege and curfews, mainly following the second *Intifada* in 2000; permits to enter Israel were hardly ever granted.¹⁵

Israel have been the main destination of Palestinian workers; since the first *Intifada*, however, the number of Palestinian workers in Israel has varied (decreasing more and more) according to the political situation. To work in Israel, permission must be obtained and quotas are unilaterally decided by the Israeli side. The economic advantages of work inside Israel and the lack of work opportunities in the oPt encouraged Palestinians to look for work opportunities in Israel rather than in the oPt. Social protection and security under Israeli legislation are much better developed than in the territories under PA control, even following the adoption of the Palestinian Labor law (7/2000), where different articles (such as minimum wage, maternal vacation, security measures and compensation in case of accident...) have fewer advantages than those included in the Israeli law (assuming that they are treated equally by Israeli law and by Israeli courts).

Israeli-Palestinian agreements did mention the issue of Palestinian workers in Israel; this did not forbid Israel from applying unilateral measures against Palestinian workers, as a 'security measure' or a punishment technique in reaction to what they describe as 'violence'. Two characteristics of the experience of Palestinians working in Israel are:

1. The application of Israeli domestic law, considering Palestinian workers as an internal issue. No agreements have been developed, and if any regulations were included in the Israeli Palestinian agreements, they are not always respected.
2. The daily movement of workers to and from Israel; in fact, permission for the purpose of work does not include permission to stay in Israel at night. Palestinian workers enter Israel in early

mornings and return in the evening. This made it possible for Palestinians to earn money from Israel and spend it in the oPt. The only problem here is that Palestinian markets are full of Israeli products; this means that Israeli money earned by Palestinians working in Israel, is mostly spent in the oPt on Israeli products. On the other hand, permission is granted for non-qualified jobs, thus making impossible exchange of expertise in domains where Palestinians and Israelis may profit from each other. As for tertiary studies, permission is needed to register in Israeli universities but to obtain permission a registration is needed!

In cases where the rights of Palestinian workers inside Israel are derogated, (Israeli) labor courts are approached in order to apply Israeli labor laws and social security laws to Palestinian workers (assuming that Palestinian workers, being in a weak position, have access to the Israeli legal system and have any knowledge of their rights). Having recourse to the courts is one of few avenues for labor protection as Palestinians cannot join workers' unions inside Israel (Kelly 2004, 6). It should also be noted that there are several cases where Palestinians having court hearings were not granted permission from the Israeli authorities to enter Israel and undertake legal process (Kelly 2006).

More complicated is the issue of Palestinians working illegally in Israel. These are under the continuous threat of being sanctioned; here Israeli law is very strict: Israeli citizens who hire illegal Palestinian workers can be also be held responsible before law. For this category of (legally non-existent) workers, rights are fragile, and in cases of discrimination or the violation of rights, they obviously don't enjoy access to the Israeli justice system (Kelly 2004, 6).

Another problem is the issue of Palestinian workers in Israeli settlements; recent court decisions, in fact, have admitted the application of Palestinian law on Palestinian workers inside the settlements and Israeli law on Israeli workers, thus discriminating against Palestinians on the basis of their ethnic and national group. This measure was, strangely, welcomed by Palestinians, who saw in this ruling of the Israeli court an acknowledgment of the non-legitimacy of Israeli settlements (Kelly 2006, 54 ff.). More recently, the High Court has unanimously handed down a precedent-setting ruling according to which Israeli labor law shall be applied to Palestinian workers in Israeli settlements.¹⁶

2.2.2. *Crossing International Borders of oPt*

The state of Israel, the occupation force, remains the ultimate sovereign authority; the IMG, directly responsible to the Israeli Defence Minister, maintains sovereign control over most of West Bank (*hereafter* the WB) and parts of the Gaza Strip (*hereafter* GS): this includes complete control over borders and thus, entries and exits with all related powers: controlling family-unification procedures (Abu-Mukh 2007), issuing visas and permits of stay; in other words, having the last word in matters of migration to and from oPt. What is more, the IMG maintains complete control over areas outside populated areas, and preserves the right of entry and exit, for security reasons, to any part of the oPt, including those under the jurisdiction of the PA. Finally, the IMG retains the power to legislate and enforce the legislations through military courts.

On the other hand, certain powers were 'transferred' from the military governor to the PA¹⁷ which provides in populated cities and surroundings, basic services to most Palestinians. Oslo agreements, however, did not end the occupation, but rather had institutionalized most of its provisions, institutions and laws.¹⁸

Crossing borders for Palestinians of the oPt is only possible by land; in fact, Israel closed the Dahanya airport (Gaza) in 2001 and later destroyed it in an air attack; what is more, Palestinians were forbidden from using the Israeli airport (Ben Gurion) (Abu-Mukh 2006, 12). WB Palestinians can cross the Allenby Bridge (Jericho) and for Gazans, the Rafah Crossing, respectively to Jordan and Egypt.¹⁹

The Interim Agreement included several principles and procedures concerning border crossings; Israel accepts the Passport issued by the PA in accordance with prior agreements: it has an ID number on it and is granted exclusively to those Palestinians with an ID number issued by Israel!. Following the Oslo agreements, policies restricting Palestinians from travelling abroad changed; however, Israel continued to request exit permits. In other words, Israel could forbid any Palestinian from crossing Allenby Bridge for any reason, at any time. Following the second *Intifada*, the Palestinian presence at the crossing point was minimized and Israel seized full control of the bridge once more to be in direct contact with the Palestinian public. Palestinians willing to travel abroad from the WB are still checked by Israeli soldiers.

Between February and September 2005, the disengagement plan was implemented, and 'the military governance in the GS ended', to quote an Israeli military commander (Al-Mukh 2006, 16).²⁰ In November 2005, a deal was made between Israel and the Palestinians (The Agreement on Movement and Access and the Agreed Principles for the Rafah Crossings²¹) giving full control to the Palestinians on the Palestinian side of the border, monitored by a EU mission (EU BAM Rafah) while Israel monitors the border via closed-circuit television (Al-Mukh 2006, 21).

Following the second legislative elections in 2006 and Hamas' victory, Israel threatened to close the Rafah Crossing if Hamas administered it; President Abbas adopted a presidential decree (16/2006) giving the Directorate of Crossings and Borders autonomy (from the Ministry of Interior) and placing it under his direct control. Since Hamas' *Coup d'état* in the GS on 14th June 2006, the Rafah crossing has been closed and hundreds were caught between the Egyptian and the Palestinian side. Despite Hamas' initial refusal, humanitarian cases passed to and from the GS only through Karm Abu Salem (via Israel), thus, with direct Israeli control.

3. Needs for Legislation and Policies on Migration²²

Despite its structural and functional anomalies, the PA was enabled to legislate in different sectors. Nevertheless, the PA did not pass certain legislation related to migration, nor was it able to enforce others, because of the occupation. Accordingly, the legislative position of the PA with regard to migration issues is anomalous. First, the regulation of migration implies the sovereign control of borders, which the PA does not currently exercise. Second, conformity with international standards on the status of migrants and refugees, and the issues of citizenship, presumes accountability and statehood, which the PA does not enjoy. In fact, the PA is not competent under international law to sign 'treaties'; this power remains the prerogative of the PLO which signs agreements on behalf of the PA'.²³

Some PA legislation, however, has an impact on migration: the regulation of settlement and the residence of foreigners, their integration and rights. It also partially covers the relationship of Palestinians of the Diaspora with their country of origin. In this section we will mention only those relating to this paper: several key areas where Palestinian legislators will need to intervene in the future, namely the question of Palestinian citizenship, the rights of foreign spouses and the status of the children of mixed marriages, the distinction in legal status between citizens and non-citizens, entry and termination of stay, and the question of Palestinian refugees and their country of origin. Some of these issues will have to be resolved within a general framework of political compromise and a peace agreement, based on the 'two states solution'. Others will need to take into consideration international human-rights provisions and national declarations that form the basis of the Palestinian struggle for independence and statehood.

3.1. Legal Obstacles to leaving the Country

Policy making in terms of migration does not depend exclusively on the PA; instead, the Israeli role in facilitating or rather complicating movement of Palestinians outside the borders of the oPt is decisive.

On this issue, the PA is a recipient of unilateral decisions and actions taken by Israel. The PA (or the PLO), however, should develop bilateral agreements with neighbouring states, mainly those used as a transit for Palestinians of the WBGs (Jordan and Egypt) in order to facilitate passage through their territories.²⁴

WBGs Palestinians are entitled to hold a travel document issued by the PA (Passport), in accordance with Israeli-Palestinian Agreements. The passport is not indicative of a sovereign state's authority, though recognized worldwide as a valid travel document.²⁵ Moreover the PA's passport includes the ID number. Jerusalemites are not entitled to hold PA passports (they would lose their Jerusalem ID card). They use a *Laissez Passer* issued by Israeli authorities for the purpose of travelling abroad, or a permit to visit Jordan.

PA passports are issued for three years and are not subject to renewal; new passports are issued and old ones are cancelled. Demands to renew passports cannot be made from outside the country; Palestinian students and workers living abroad need to return to the WBGs before the passport expires to substitute the old passport with a new one, or to send a "procurator". The result is obvious: renewal costs are high and complicated. Besides, passports were initially issued exclusively in the GS; though given the territorial disconnection between the WB and the GS and the difficulties of movement, passports can now be issued in Ramallah. Following Hamas' *coup d'état* in the GS, there was a conflict over which authority was entitled to issue PA passports.

It is worth mentioning that there is no endorsed law regulating passport issuing; however, it is subject to agreements with Israel and the internal regulations of the Ministry of the Interior of the PA (not easily accessible to the public). This fact is, as I shall suggest, subject to manipulation and misuse at the hands of the central (executive) authority: so, for example, following the establishment of the PA, women applying for a passport were told that they needed to have a male guardian. Women organizations and some individuals lobbied to end this, and their efforts changed the PA's attitude; according to observers, a presidential decree was made permitting women to apply for passports individually (Bullata 2006, 113).

All the above indicates that a migration law should be adopted; however, given the PA's lack of sovereign control of borders, formulating a migration policy would be an important immediate step. And the contents of the law or policy would be: First, it should not leave space for the executive authority or the administration to limit the access of women to travel documents; second, it should regulate the way VIP and "passports for external use"²⁶ are granted, in order to avoid favouritism or possible corruption; third, the law should include the possibility of appealing against the refusal to issue a passport or its forced withdrawal, especially in gender-related cases.

3.2. The issue of Dual nationality

The BL for the PA states that nationality should be regulated by law (art. 7). The PA did not yet adopt a nationality law; a draft, however, has circulated since the early PA years without being adopted, as it is considered problematic owing to the particularly uncertain and transitory character of the Interim period. The fact that the nationality law draft was left aside was a wise decision. Many issues related to nationality, shall be determined by agreements, and will be later decided after statehood is established. However, the issue of dual nationality (in particular when related to dual Arab nationality) is problematic, especially if granting a Palestinian citizenship is considered a reason to withdraw citizenship of another country.

Once the PA is an internationally-recognised state, it shall be free to issue passports to its citizens in accordance with the law. Regulation of issuing dual nationality should then be tackled by law. During the PA era, nothing indicates that holding a foreign or Arab nationality is a reason for refusing to grant a PA passport or a reason for refusal to participate in PA elections (that is with the exception

of having Israeli citizenship). As a result, there is a confusion regarding the jurisdiction of the PA over its nationals holding foreign citizenships (see Hanafi 2001, 232).²⁷

Diplomatic law (13/2005) mentions the possibility of a Palestinian diplomat having citizenship of another country (art. 12). One of the priorities of the Palestinian state (though a priority yet to be established) is the adoption of a nationality law and one of the priorities of that nationality law is to decide who is to be considered a Palestinian for the purpose of the law and who is entitled to Palestinian (here referring to the state) citizenship and the position of the state relating to possible dual nationality.

I shall argue here that the issue of dual nationality should be regulated in a way that reflects Palestinian needs to maintain the connections and liaisons of Palestinians who decide to return to the state of Palestine with the country where they have been growing up for decades, where they have developed businesses that they may need their continuing input. For Hanafi (2001, 234), an ex-territorialized nation-state could be a solution to the question of center-diaspora relations in the Palestinian context, where agreements with host states are developed to allow permit refugees and migrants willing to stay the right to remain; this solution needs to develop open citizenship where it permits dual nationality from one side, but also dual loyalties, to Palestine, and to the country of residence.

3.3. Managing the Borders

Allenby Bridge, the only crossing point Palestinians of the WB can use to travel abroad, is under direct and complete Israeli control.²⁸ Israeli regulations on borders varies, and the documents needed for travelling changes accordingly; the public is not well informed about the regulation and often need to try crossing the borders to discover any changes. Palestinians, with foreign citizenship are obliged to pass through the Palestinian crossing points if they have an ID card; and are thus treated as citizens of the WB by Israel. Israel maintains the right to reject the departure of a Palestinian or deny him entrance, for 'security' reasons, decided by Israel. Consequently, Israel maintains the right to regulate Palestinian family reunification as well.

The PA has its own Directorate for Border Crossings; their offices are inside the territorial jurisdiction of the PA in Jericho, but they have no effective jurisdiction over borders; and they do not participate in security controls. Palestinian police officers register ID card numbers of travellers upon arrival and departure and ensure smooth arrival and departure more generally.

As for the Palestinians of the GS, they have two crossing borders (for persons): the first connects the GS with Israel (Erez); to pass through it, a permit issued by Israel is needed. Numbers of permits granted for work and other purposes vary according to Israeli political and security needs. They are, however, constantly decreasing! What is more, Gazans need to pass through Israel if they want to go to the WB. There is no safe passage between the two areas and the airport, constructed following the Oslo Agreements and destroyed by Israel.

The second crossing point is Rafah, where Palestinians can pass to Egypt, and to the rest of the world; the Rafah crossing was under direct Israeli control for a long period. Following the disengagement and the Agreement on Access and Borders, Palestinians took control of the borders under the supervision of a specifically-formed EU mission under the indirect control of Israelis. Israel, however, maintains for itself the right to close the crossing point by force (through the control of Philadelphia Road) when it considers the terms of agreement are not being respected. Following Hamas' arrival in power and Israeli threats to close the border, the department of Borders Crossing passed under the direct authority of the President. In June 2007, following Hamas taking control of the GS, Rafah was closed to public and Karm Salem (Karem Shalom) was used as an emergency crossing point in urgent cases.

It should not pass unnoticed that the movement of Palestinians from and to the oPt (especially from the GS) is often used as a tool for political gains. The territorial and political isolation of the GS is aggravated with recent development. Free internal movement between the two territories should be a priority to the PA. Besides, the economic situation in the GS is catastrophic. Access to the Israeli labour market was always presented as part of a solution; access to the WB labour market may be also presented as part of the solution; however, the already difficult economic situation in the WB should also be taken into consideration.

Sovereignty over borders is primordial if statehood is an objective. Palestinians do not have at their disposal tools for ensuring the security of their population without control over crossing points. On the other hand, Israel refuses - for 'security reasons'- to grant Palestinians the right to use Israeli airports. This policy is discriminatory and makes more difficult an already difficult situation. These measures, in fact, make travelling difficult, long and highly priced for Palestinians, especially in certain months of the year, where thousands of extra voyagers are crossing Allenby Bridge for vacation, work, family visits or Hajj.

Augmenting capacity of border staff, or their working hours during certain months may be a good solution until another exit border is provided (maybe an airport for Palestinians?). And logistics should be better coordinated with the Jordanian side to ensure humane treatment of travellers and their belongings on the bridge.

On the other hand, I shall argue that the PA cannot play a determinant role in terms of migration control if excluded from security control. Exchange of information and coordination between the Israeli side and the Palestinian side is a must, until the Palestinians take complete control of their borders. The administration of Palestinian borders should be in the hands of Palestinians. However, border control is a must, especially to ensure that borders are not used for arms and drugs. Controlling borders should be in the hands of legitimate authority and cannot be left to individuals or parties whose initiatives and interests are often contrary, the one to the other.

3.4. Legal Residence and Work Permits

The PA is not able to issue visas. However, for a non-Palestinian to work in territories under PA control, a permit request should be deposited at the Ministry of Labour. The ministry may refuse the demand without justification. However, if granted, the permit should be for a year maximum, renewable upon submission of the necessary documents. Labour law (7/2000) mentions seasonal work in articles 1 and 35 without specifying any particular treatment or measures.²⁹

The issuing of work permits for foreign workers (or to use the terms of Labor Law, non-Palestinian workers) is centralized. The ministry of labour is the only PA institution entitled to issue such work permits. Given the political instability and the insufficiency of technical and human resources, centralization of permit granting is an advantage. It should be noted, however, that there is a disconnection between legal stay and work permits; in other words, a non-WBGS Palestinian who is residing illegally in territories under PA control can obtain a permit to work and may have a contract. The "illegal" resident is a result of the illegal occupation force that does not easily grant permits of stay and, if granted, it does not renew them according to Palestinian needs or priorities. In other words, the PA seems willing to disassociate itself from the occupation restrictive legal instruments used to limit access of Palestinian nationals to the oPt.

The disconnection between legal residence or stay and work permit should be resolved; however, it cannot be resolved unless another issue is tackled: the PA is not competent in issuing entrance and stay permits and does not control borders; many "illegal" residents (non-WBGS Palestinians) may be Palestinians who are not granted the right of family reunification or whose visas or permits are not extended by the Israeli military authority. The PA should continue its policy of disassociation with both until statehood is achieved. Then, labour policies should change to accommodate the new reality

of the sovereign Palestinian state, in complete control of its borders and migration policies. New measures are needed once the state of Palestine is established, in order to ensure it controls the labour market and protects local workers from uncontrolled and unbalanced competition with foreign nationals.

Another issue is the work of foreign "experts" in the multiple NGOs, international organizations and sometimes the PA institutions. Many of these have their main seat in Jerusalem and thus abide by Israeli law. There is no way to enforce law by imposing registration on NGOs, that is registration with the competent PA ministry (i.e. the Ministry of Planning) or to inform the Ministry of the people working therein. In this case, many foreign workers are contracted by those institutions without getting the PA involved hence the PA laws are respected. Policies should be adopted so as to deal with the fact that many international organizations are working in the country with several non-declared (to the PA) foreign nationals working in sectors where Palestinian expertise is present.

However, the PA does not have legal measures to enforce these obligations especially in the absence of the concept of "illegal employment" in Palestinian labour law, that is a work activity which is not done according to a contract. In fact, having a contract is not even a condition for work according to the law; accordingly the PA budget suffers scarcity due to workers' lack of contributions since most work contracts are unwritten and the only conditions are those terms included in the labour law. Besides, the Palestinian social-security system is not well-developed and unemployed Palestinians are left without public financial support; accordingly, participation in social security during employment is not viewed as a priority. The entire social security system should be revised and labour law should be adapted accordingly. This should be achieved at least in the medium term limit.

As for the non-declaration of workers to competent authorities and the lack of contracts (i.e. illegal employment); these do not seem a priority for the PA at this time of socio-economic and political instability and weakness; what is more, the labor market does not support changes towards legalisation. If illegal employment is taken as referring to those kinds of workers who are not following the minimum requirements of work imposed by law, many techniques are provided by law to check, through the Ministry of Labour, the social affairs. A determinant role is played by unions and several concerned NGOs.

3.5. Palestinian Workers outside oPt

Palestinian delegations should play a role in circulating information regarding Palestinian workers, their status and difficulties, and they should play a role in negotiating with destination countries regarding conditions of work. Possibility of expulsion should be communicated to those offices and their return to their country of origin should be coordinated by them (first refuge or the WBGS). Coordination should also be undertaken for now with the "transit" countries: Jordan for WB Palestinians and Egypt for GS Palestinians. However, the lack of sovereignty and international subjectivity of the PA, the continuous occupation of the oPt, and the lack of control of borders and migration policies, have made exchange of information and security checks on passengers an impossible task. Information in that domain is not available to the public.

Following up Palestinian workers who decide to return to oPt should become a priority. Investment law already plays a determinant role in encouraging Palestinians and foreigners to invest in the WBGS. What is more, the money needed to enjoy those privileges, being of a Palestinian origin may be of help. There is no accessible information regarding existing coordination between the PA and authorities of states where significant numbers of Palestinians are permanently or temporarily residing. There is not even any way for official authorities to give a census.

On the other hand, the declaration of principles (1993) talked about establishing a Palestinian Interim Self-Government Authority, the elected Council, for *the Palestinian people in the West Bank and the Gaza Strip* (Art. 1). Contrary to what was stated in article 5 concerning certain issues left for

final negotiations, Jerusalemites should have the right to participate in the elections (Annex 1). The same notion was adopted and detailed in the Interim Agreement (1995) and by election law 13/1995 (art 6-7). The same articles were included in election law n. 9/2005 which substituted the first election law.³⁰ Accordingly, Palestinian refugees do not enjoy "political rights" under the PA Election Law; as for those other Palestinians living or working abroad, they need to register in one of the election posts in the WBS and be present the day of election in order to enjoy their voting right. Voting from abroad, through Palestinian delegation offices, is not possible.

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¹ The concept is still fluid; it appeared recently in the "Communication from the European commission on circular migration and mobility partnerships between the European Union and third countries", issued May 2007 (COM(2007) 248 final). However, there is still no agreement on the time frame of this movement and on the definition in general.

² There is first of all a problem of definitions: what is Palestine? And, from this, who is Palestinian? To answer those questions, one must go back in history: the concept of "Palestinian" -as much as the concept of "Palestine" - developed with time; defining who Palestinian is would enable us to define who are Palestinian refugees and migrants. I shall argue here that the concept of "Palestine" is developing towards a more 'demotic' rather than an ethnic concept of nation, where it refers to certain 'citizens' of Palestine - the state yet to be established, to mean West Bank and Gaza Strip (*hereafter* the WBGS) Palestinians and others admitted by the state, in accordance with the law (and maybe peace agreements). In fact, since Oslo (or earlier, with the PNC declaration of independence in Algiers in 1988) the reference to the "creation of the state of Palestine" is made much more often than the "liberation of Palestine": Palestine refers to two different territorial entities with all consequences for whom is to be considered Palestinian. For those refugees in host countries, the right to citizenship of the state of Palestine (in parts of historical Palestine) may not satisfy their right of return to their homeland, Palestine. For Palestinians, the country of origin and country of residence and country of citizenship may not coincide. Thus migration policies and restrictions vary according to their current legal status. The creation of the state of Palestine may resolve the issue of statelessness of the majority of the Palestinian people. However, it will not necessarily allow their right to return to their homeland.

³ However, in the case of Palestinians, the movement "in" and "out" are not necessarily regulated between country of origin and third states; in fact, the "in" and "out" refer to two countries that are not the country of origin. Despite the fact that they are originally from historical Palestine, refugees are forbidden from returning to their homeland. Thus, the country of first refuge becomes the country of residence, from where some have migrated to other countries.

⁴ Not all those Palestinians who move from their country of residence (the WBGS, host state or other states) to a third state are necessarily to be considered migrants. However, for the purpose of this analysis, I shall assess the regulations and legal framework of crossing borders that apply on all those who leave that country.

⁵ The distinction between refugee and migrant shall be outlined: the concept of migrant is a concept that includes the refugee (who was forced to leave his country of origin) and the voluntary migrant who leaves his country of origin to look for better a economic, social or political environment in the destination country. Individuals are at the center of interest in migration, while groups are the center of interest in the case of refugees (Zreik 1998, 7). Another distinction is that which exists between Internally Displaced Persons (IDPs) and refugees, the first being a "refugee in their own country" because they do not pass over international borders; this concept is often used to distinguish those Palestinians who left from their homes following the 1967 war (Shiblak 1996, 29). However, for the purpose of this paper, I shall use the term refugee to distinguish it from voluntary migrants regardless of the legal definition (according to international law or organizations) shall include all those Palestinians who are not granted the right to return and settle in Palestine. The problem here is to determine what Palestine is and who Palestinians are; an issue that shall be tackled in the first section.

⁶ The WBGS is usually indicated in Palestinian and (largely also the) international literature as including East Jerusalem. The last being part of the occupied Palestinian territory (oPt) of 1967. But unlike the rest of the occupied territory, it was annexed to Israel without citizenship being granted for

the Palestinian population of the city (unlike the Palestinians who remained in Palestine following the creation of the state of Israel in 1948, and obtained Israeli citizenship later on). Palestinians of Jerusalem (*hereafter* Jerusalemites) enjoy certain rights related to their status (distinguished by different ID cards – blue ones), and treated as 'permanent residents' in the state of Israel (Abu Mukh 2006, 2) with the right to work and the right of movement in Israel, not to mention the possibility of enjoying social security and medical services which other Palestinians (from the WBGS) do not enjoy. They experience different treatment when it comes to leaving the country and can use the exit borders of Israel and the oPt.

⁷ Although of great interest, I shall not be considering internal migration in this paper. It should be noted, however, that movement between the WB and the GS and within WB cities is highly restricted since the first *Intifada*; the territorial disassociation, on the other hand, accompanied by legal disassociation started much earlier.

⁸ Movement between the WB and the GS was permitted before 1987; at that time, entering Israel was possible, thus, passing through Israeli territory from the WB and the GS was not problematic. The WBGS are, indeed, two territorial entities, geographically separated, but they are considered by various documents and from the Palestinian perspective as one political unit; this was embodied even in the Interim agreement (Art. 1 and 11). A comprehensive closure was later imposed and permits were rarely granted. Oslo peace process brought big expectations and bigger disappointments: a secure passage between the GS and the WB should have been built (Annex 1, Art. 1) but an electric fence around the GS was constructed by 1995 instead (Al-Mukh 2006, 22). An agreement concerning safe passage was made in 1999, but the outbreak of the second *Intifada* froze all measures with the intention of facilitating movement of Palestinians between the two territorial entities. Following the disengagement plan, the Israeli position was to not allow Palestinians passage through its sovereign territory. Most recently, Israel declared Gaza as a 'hostile entity' causing further restrictions on Palestinians' movements.

⁹ Refugees, under the UNRWA's operational definition, are "persons whose normal place of residence was Palestine between June 1946 and May 1948, who lost both their homes and means of livelihood as a result of the 1948 Arab-Israeli conflict". UNRWA's definition of a refugee also covers the descendants of persons who became refugees in 1948 (<http://www.un.org/unrwa/refugees/whois.html>); according to this definition, not all Palestinian refugees are UNRWA refugees or at least, are not necessarily in the areas of its operation (Jordan, Syria, Lebanon and WBGS); while according to the 1951 Convention relating to the Status of Refugees, a broader definition of refugee was adopted but with limitations regarding the persecution element; however, a strict interpretation of article 1D had led to limited if not inexistent coverage of the mandate of the convention. 'Refugee' as I use it here refers to all those Palestinians who left historical Palestine and were not able to return. This definition includes UNRWA refugees, convention refugees and IDPs. The term, as I use it here, include all those who left Palestine freely but were forbidden from returning to their country of origin. However, some of the Palestinian refugees are residing in the WBGS and "enjoy" the same rights as other Palestinians of the WBGS. When tackling the issue of crossing borders, PA legislations and policies in terms of migration, those "WBGS refugees" are not treated differently from other WBGS Palestinians.

¹⁰ For the comprehensive presentation of the legal status of Palestinian refugees in Arab states: (Takkenberg 1997, 153 ff., Khalil 2007a).

¹¹ Excluded Palestinians of Gaza and those of the WB arriving in Jordan following the royal decision to separate the West Bank from Jordan on 31st July 1988; for more details regarding the impact and results of this decision see: (Shiblak 1996, 33). For more details regarding Gazans in Jordan, see several research papers of Oroub El-Abed: 'Palestinian Refugees in Jordan', FMO Research Guide, 2004. <http://www.forcedmigration.org/guides/fmo025/fmo025.pdf>. 'Immobile Palestinians: ongoing plight of Gazans in Jordan', Forced Migration Review, No. 26, August 2006,

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¹² Jordanian policies towards circular migration, as a country of origin of migration, do not interest us here directly and take us beyond the terms of this paper.

¹³ The host state may issue a travel document for Palestinian refugees; this power which is left entirely in the hand of the Ministry of the Interior of host states and to its security apparatus, is not irrelevant; what is more, the limited validity of the travel document (usually up to one year) complicates the movement of Palestinian refugees. Some countries, such as Lebanon, also requested permission from Palestinian refugees; *sine qua non* refugees who leave are not entitled to return to Lebanon (Suleiman 2006). Despite the fact that Ministerial Decision Order No.478 of 23rd September, 1995 -which states that a Palestinian refugee residing in Lebanon needs an entry or exit visa to leave or re-enter the country - was cancelled; its consequences still exist and discourages Palestinian refugees from going abroad but also makes other countries reluctant to grant them visas (PHRO 2005, 18).

¹⁴ Indeed the PLO was kicked out of Jordan by force in 1970-1971 and had a role and impact on the civil war in Lebanon until total evacuation of its military forces in 1982 (Shiblak 1996, 40), while thousands of Palestinians were forced out of Kuwait and other Gulf states, following the end of 1991 Gulf War, as a retaliation against the PLO Chairman's position in support of Saddam Hussein; some other five thousands Palestinians were expelled from Libya in 1995 following an economic crisis (Shiblak 1996, 41).

¹⁵ Most recently the Israeli Supreme Court rejected a petition against the temporary order 2003 (the nationality and Entry into Israel Law, published 6th August 2003); that law prevents Palestinians from the oPt from entering Israel, thus forbidding family reunifications between Israeli spouses and Palestinian ones residing in the oPt (Al-Mukh 2006, 9).

¹⁶ As appeared in the electronic version of Haaretz newspaper of 10/10/2007.

¹⁷ The "Council", if we want to use the same terminology as the agreements.

¹⁸ Negotiations between Israel and the Palestinians began on 30th October 1991 at the Middle East Peace Conference held in Madrid, sponsored by the United States and Russia. Negotiations between the two delegations continued in Washington while others were taking place secretly in Oslo, between Israel and the PLO. The Government of Israel and the PLO, 'the representative of the Palestinian people', signed the DOP on Interim self-Government in Washington D.C on 13th September 1993 (better known as the Declaration of Principles, or simply Oslo I). The Israeli Knesset ratified the agreement on 23rd September 1993 and the PLO Central Council (CC) approved it on 11th October 1993, at its meeting in Tunis. Hence a phased 'peace process' was born: the interim period and the permanent status settlement. Most importantly, the Declaration of Principles on Interim Self-Government Arrangements, had included recognition of Palestinian requirements for the first time and recognized that the WB and the GS are considered as one unit. The Israeli-Palestinian Interim Agreement, signed in Washington DC, 28th September 1995, referred to the safe passage of persons and transportation between the WB and the GS, then regulated it in Annex I. The same applies to the regulation of the border crossings which gave a shadow role to Palestinians, leaving actual control to Israel. Most of these arrangements were halted following the second *Intifada*.

¹⁹ Following the second *Intifada* further restrictive measures were taken against Palestinians from the GS who were willing to travel abroad; special permission was needed but rarely granted by the Israeli authorities; accordingly, the Rafah crossing became the only possible exit for Gazans through Egypt, after Israel stopped issuing transit permits through Allenby. It shall be noted that crossing points (mainly Rafah) were repeatedly and unilaterally closed by Israeli authorities causing continuous humanitarian crises (Al-Mukh 2006, 12). What is more, transit states (Jordan and Egypt) may adopt restrictive measures that complicate the Palestinian's movements.

²⁰ The situation of the GS changed following the unilateral Israeli withdrawal in late 2005, but its legal status remained unaltered: since, as in the case of the occupied WB, Israel continues to be in complete control of borders: exits and entries remain within the hands of Israel, the occupation power and all possible Palestinian migration policies (refugees or migrants deciding to return to the WBGS) remains dependent on the will of an alien state, Israel, which favors its own security over Palestinian national security, economy and rights.

²¹ [http://domino.un.org/UNISPAL.NSF/796f8bc05ec4f30885256cef0073cf3a/c9a5aa5245d910bb852570bb0051711c/\\$FILE/Rafah%20agreement.pdf](http://domino.un.org/UNISPAL.NSF/796f8bc05ec4f30885256cef0073cf3a/c9a5aa5245d910bb852570bb0051711c/$FILE/Rafah%20agreement.pdf)

²² Initial and detailed version on PA legislative activity on migration can be found in: (Khalil 2006, 2007b).

²³ A case in point being the Euro-Mediterranean Interim Association Agreement on Trade and Cooperation which came into force in 1997. OJL 187 16.7.1997, pp. 3–135. Also available at: [http://europa.eu.int/eur-lex/lex/LexUriServ/LexUriServ.do?uri=CELEX:21997A0716\(01\):EN:HTML](http://europa.eu.int/eur-lex/lex/LexUriServ/LexUriServ.do?uri=CELEX:21997A0716(01):EN:HTML)

However, several international actors and organizations accorded special consideration to the PA. As a result the Authority started to play a quasi-state role, rather than that of a liberation movement. The PA, mainly through its foreign ministry, began to negotiate agreements with states and international organizations.

²⁴ For that purpose, there is a need to clarify and determine the role of the PLO in issues of foreign affairs.

²⁵ It is worth mentioning that Jordan withdrew Jordanian passports from those Palestinians who have obtained a PA passport; thus, disallowing dual nationality for Palestinians having a PA passport. In case of a Palestinian state, all those who become citizens of the new state shall face serious challenges in keeping their Jordanian citizenship.

²⁶ There is no way to document the information regarding the issuing of PA passports for "external use", i.e. for Palestinians living abroad (without ID number); those passports do not entitle their holders to enter the oPt (still under Israeli control); it is not clear how the Rafah crossing border handled the issue of PA passports which do not have an ID number (before the closure of the crossing border in June 2007).

²⁷ The case of Isam Abu Issa in 1999: he is Palestinian with Qatar nationality. Following a financial scandal, security forces tried to capture him; he went to the Qatar representative office causing a 'diplomatic' crisis between PA and Qatar; according to Hanafi (2001, 232), the absence of bilateral agreement concerning dual nationality was the reason for this crisis.

²⁸ There several crossing points to Israel from the WB but this is not our focus here.

²⁹ I shall argue here that, in the absence of a clear meaning of the concept of 'Palestinian', and thus, non-Palestinian, the content of the above legal provisions are not well-defined. Does a 'non-Palestinian' refer to all non-Palestinian nationals or those who do not have an ID number (the WBGS Palestinians?). What can be done in case of dual nationality? How to handle an Israeli citizen (Palestinian national) working in the territories under PA control? What about Jerusalemites?

³⁰ President Abbas had adopted a problematic decree law on elections issued on 02/09/2007; this decree law adopts the same notion as found in previous documents concerning entitlement to election.