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### NATIONALITY IN PALESTINE UNDER THE OTTOMAN EMPIRE

#### 1. *A short history*

The land of Palestine formed part of the Ottoman/Turkish Empire from 1516. By the end of the sixteenth century, Ottoman rule extended westward in Europe to the borders of Austria and along the southern rim of the Mediterranean Sea into Algeria.<sup>89</sup> During this period, there was no entity called ‘Palestine’. Rather, this land fell under the administrative divisions of the Turks. In 1874 towards the end of the Ottoman Empire, Jerusalem and its surrounding towns became a separate district governed directly from Istanbul. This division did not change the international legal status of that Ottoman territory. In the midst of World War I, during which Britain and Turkey were enemies, the territory that became known as Palestine fell under British military occupation on 9 December 1917.<sup>90</sup>

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<sup>89</sup> On the history of the Ottoman Empire, in general, see Lucy M. Garnett, *Turkey of the Ottomans*, Sir Isaac Pitman & Sons Ltd., London, 1911; André Mandelstam, *Le sort de l'Empire Ottoman*, Librairie Payot, Lausanne/Paris, 1917; René Pinon, *L'Europe et l'Empire Ottoman: les aspects actuels de la question d'orient*, Librairie académique, Paris, 1917; William Miller, *The Ottoman Empire and its Successors, 1801–1922*, University Press, Cambridge, 1923; Antoine Hokayem and Marie Claude Bittar, *L'Empire Ottoman: les Arabes et les grandes puissances, 1914–1920*, Les éditions universitaires du Liban, Beyrouth, 1981; Efraim Karsh and Inari Karsh, *Empire of the Sand: The Struggle for Mastery in the Middle East, 1789–1923*, Harvard University Press, Cambridge/Massachusetts/London, 1999; Mohammad Harb, *The Ottomans in History and Civilization*, Al-Qalam House, Damascus, 1999 (Arabic).

<sup>90</sup> On the history of Palestine under the Ottoman Empire, see, *inter alia*, Vital Cuinet, *Syrie, Liban et Palestine, géographie administrative: statistique, descriptive et raisonnée*, Ernest Leroux, Paris, 1896, pp. 513 ff.; Noël Verney and George Dambmann, *Les puissances étrangères dans le levant en Syrie et en Palestine*, Librairie Guillaumin, Paris, 1900; Ellsworth Huntington, *Palestine and its Transformation*, Houghton Mifflin Company, Boston/New York, 1911; Albert M. Hyamson, *Palestine: The Rebirth of an Ancient People*, Sidgwick & Jackson, London, 1917; Historical Section of the [British] Foreign Office, *Mohammedanism: Turkey in Asia*, H.M. Stationary Office, London, Vol. I, 1920; Stephen S. Wise and Jacob De Haas, *The Great Betrayal*, Stratford Press,

Under Ottoman rule, the inhabitants of Palestine were Ottoman subjects. Those persons known later as ‘Palestinians’, had no particular legal status under Ottoman rule. As such, a distinct ‘Palestinian people’ did not exist at that time. The ‘Palestinians’ constituted a sector of the larger ‘Ottoman people’.

To acquire Palestinian nationality at its first inception, one was required to hold the status of ‘Ottoman subject’, or Ottoman citizen. Upon the entry into force of the Treaty of Lausanne (the international instrument according to which Palestine was legally separated from Turkey) on 24 July 1923,<sup>91</sup> Ottomans who resided in the territory of Palestine became *ipso facto* ‘Palestinian citizens’. This was domestically confirmed by the Palestinian Citizenship Order, which was enacted by Britain in 1925.<sup>92</sup> Hence, it is imperative to review Ottoman nationality as it forms the root of Palestinian nationality in accordance with international law.<sup>93</sup>

## 2. Ottoman Nationality Law, 1869

### A. General

Ottoman nationality was first codified by the Ottoman Nationality Law, enacted on 19 January 1869 (hereinafter: ‘the 1869 Law’).<sup>94</sup> This Law constituted the only

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New York, 1930, pp. 11–50; Angelo S. Rappoport, *Histoire de la Palestine des origines jusqu’à nos jours*, Payot, Paris, 1932, pp. 211–226; Norman Bentwich, *Palestine*, Ernest Benn, London, 1934, pp. 31–72; Herbert Sidebotham, *Great Britain and Palestine*, Macmillan and Co., London, 1937, pp. 3–66; Nevill Barbour, *Nisi Dominus: A Survey of the Palestine Controversy*, George G. Harrap, London, 1946, pp. 42–87; Kayyali, *Palestine: A Modern History*, Billing and Sons, London, 1979, pp. 11–41; A.W. Ann Mosely Lesch, *Arab Politics in Palestine: The Frustration of a National Movement*, Cornell University Press, London, 1979; Joan Peters, *From Time Immemorial: The Origins of Arab-Jewish Conflict over Palestine*, Harper & Row, New York, 1984; Charles D. Smith, *Palestine and the Arab Israeli Conflict*, St. Martin’s Press, New York, 1992, pp. 10–25; Alexander Scholch, *Palestine in Transformation 1856–1882: Studies in Social, Economic and Political Development*, Institute for Palestine Studies, Washington, D.C., 1993; Samih K. Farsoun and Christina E. Zacharia, *Palestine and the Palestinians*, Westview Press, Colorado, 1997, pp. 67–72. On the legal system under the Ottoman Empire, with particular reference to Palestine, see Feras Milhem, *The Origins and Evolution of the Palestinian Sources of Law*, Vrije Universiteit Brussel, Faculty of Law, Brussels, 2004, pp. 17–51 (Ph.D. thesis—unpublished).

<sup>91</sup> See below Chapter III, Section 4.

<sup>92</sup> See below Chapter IV.

<sup>93</sup> For details on Ottoman nationality, see P. Arminjon, “De la nationalité dans l’Empire ottoman spécialement en Egypte”, *Revue générale de droit international public*, Vol. VIII, 1901, pp. 520–567; Pierre Arminjon, *Etrangers et protégés dans l’Empire ottoman*, Librairie Marescq Ainé, Paris, 1903, pp. 81–259 (Mr. Arminjon was a judge in the Egyptian Mixed Courts, which adjudicated cases involving foreigners); Goadby, *op. cit.*, pp. 37–42; Ghali, *op. cit.*, pp. 57–78.

<sup>94</sup> For the text of this law, see Collection of Nationality Laws, p. 568.