

Palestinian Refugees

*Susan M. Akram**

I. Introduction

The Palestinian refugee issue is the fault line of the Palestinian-Israeli conflict, and resolving it is key to finding solutions for the outstanding issues between the parties. Globally, Palestinians number approximately 13 million persons, of which about 9 million have been forcibly displaced, including refugees. It is more accurate to refer to most Palestinians as ‘forcibly displaced persons,’ as the international treaty-based definitions of refugees or stateless persons to Palestinians do not readily apply to them, and there is more than one definition that applies to Palestinians in these categories. Nevertheless, available data includes the 5.55 million Palestinians registered as ‘Palestine refugees’ from the 1948 conflict with the UN Relief and Works Agency for Palestine Refugees (UNRWA), as well as another unregistered over 1 million Palestine refugees in UNRWA areas; 1.24 million ‘displaced Palestinians’ from the 1967 conflict also registered with UNRWA; and another million internally displaced Palestinians within the Occupied Palestinian Territories (OPT) and within Israel itself (American Friends Service Committee, n.d.).¹ However, UNRWA-registered ‘Palestine refugees’ comprise only about 64% of the population of Palestinians who have been displaced from the start of the conflict, and continue to be displaced today (BADIL 2016-18, ix).² Identifying and defining who is a Palestinian refugee or stateless person, and who among them is entitled to the benefits of the durable solutions required under international law, is critical to determining the beneficiaries of a negotiated settlement in any forthcoming peace process. This chapter summarizes the historical-legal background to the Palestinian refugee problem, how the United Nations has responded to it over time, the establishment of relevant UN agencies, and the complex definitional issues. It reviews the situation for Palestinians in the main host states today, the trajectory of peace negotiations, and the main issues to be resolved for a just and comprehensive solution.

II. Historical and Legal Background to the Palestinian Refugee Problem

Forced displacement of Palestinians began well before the establishment of the State of Israel on 15 May 1948. Following the passage of UN Resolution 181 on 29 November 1947 that

* Clinical Professor, Boston University School of Law and Director, International Human Rights Clinical program. The author thanks Boston University law student Kristina Fried for her excellent research assistance on this chapter.

recommended partitioning Palestine into two states, conflict broke out between the Jewish and Palestinian communities.³ The organized Zionist militias forced out, terrorized or massacred large numbers of Palestinians, and about 350,000 of the approximately 1.2 million pre-war Palestinian population were forcibly displaced from their homes by May 1948. Upon the declaration of the Israeli state, another 380,000 Palestinians were expelled or fled the fighting, and the 7-800,000 Palestinian refugees sheltered in encampments in the West Bank, Gaza Strip, Lebanon, Jordan and Syria (Akram and Lynk 2011, 27-28).⁴ In the aftermath of the 1967 Arab-Israeli conflict, Israel occupied East Jerusalem, the West Bank, Gaza, the Syrian Golan and the Egyptian Sinai Peninsula, forcing another 350-400,000 Palestinians to flee their homes. In addition to those who were displaced, approximately 60,000 Palestinians who were outside the area during the conflict were prevented from returning home (BADIL 2015).⁵

Responsibility for the forced displacement of Palestinians is heavily contested. The official Israeli view is that the refugees fled on their own, while a number of Israeli historians claim that Palestinians were encouraged to leave by the Arab leadership, or that there was an ‘exchange of populations’ between Arabs from Palestine and Jews from Arab states (Artz 1997).⁶ In his report to the General Assembly in September, 1948, the UN Mediator for Palestine stated that “the exodus of Palestinian Arabs resulted from panic created by fighting in their communities, by rumours concerning real or alleged acts of terrorism, or expulsion.”⁷ Historical evidence based on Israeli and Jewish archives reveals that ‘Transfer Committees’ were established by Zionist leadership in May 1948, to carry out Plan Dalet, which was a set of policies to expel Palestinians from their homes, destroy their houses, expropriate their property, settle Jews in their places and pass regulations and laws to prevent their return (Pappe 2006; Morris 1987).⁸ Plan Dalet was approved at the highest level, by the heads of the Zionist militias (Morris 1989).⁹

Closely related to the issue of the right of Palestinians to return is the issue of restitution of the massive property losses Palestinians suffered as a consequence of their displacement and Israeli law that confiscated their properties. By the end of 1947, there were 1.2 million Palestinians residing in all of Palestine, comprising two-thirds of the population, while the other one-third were Jews, numbering about 610,000 persons. The Jewish population at the time owned no more than 7 per cent of land in Palestine, while Palestinians owned the rest under individual or

communal title or usufruct: homes, villages, holy places, cultivated and uncultivated lands, citrus and olive groves, cemeteries, national, municipal and local official and other buildings throughout Palestine. As early as June 1948, the provisional Israeli government put a series of policies in place to prevent the refugees from returning and to confiscate their properties, expanding confiscations Jewish militias had already been carrying out when they took over Palestinian villages in the fighting. In July 1948, the Ministerial Committee for Abandoned Property and Custodian of Abandoned Property centralized the taking of Palestinian homes and lands, and leased them to Jews to live in and to use for agricultural purposes. In a series of successive regulations and laws, Israel confiscated refugee properties, froze refugee bank accounts in Israel, and put in place the mechanisms for permanent expropriation.¹⁰

Building on prior legislation, the most extensive law affecting Palestinian property was the 1950 Absentees' Property Law.¹¹ The law defined an 'absentee' as anyone who, as of November 29, 1947 (the date of the Partition Resolution), was a citizen of an Arab state, was in an Arab country, was in any part of Palestine that was not under Jewish control, or had left his habitual residence, even briefly.¹² The law authorized Israel to confiscate the property of any person defined as an 'absentee' and transfer it to the State Custodian of Absentee Property who controlled all use of Palestinian land, including the right to lease or sell. At the same time, Israel created a Development Authority, a public body authorized to acquire land for the Israeli state, and regulate public land use.¹³ The Custodian of Absentee Property was given almost unfettered discretion to confiscate, lease, or sell Palestinian land to the Development Authority, and the Israeli Supreme Court has affirmed this broad discretion in the face of decades of challenge by Palestinians landholders.¹⁴ The Development Authority also purchased large amounts of Palestinian refugee property from the Jewish National Fund (JNF)—land which is restricted by JNF charter for exclusive use and benefit of Jews. In 1960, Israel passed the Basic Law that defined the lands of the state, the Development Authority and the Jewish National Funds as 'Israel Lands', for the exclusive use of the Jewish people in perpetuity. Through these and other mechanisms, including more recent laws confiscating Palestinian properties in the West Bank, Jewish pre-1948 ownership of 7% of Palestine has been transformed to ownership of 92% of the lands and properties of historic Palestine. The vast majority of these lands can never be leased or otherwise alienated to or for the use of non-Jews.

In addition to the land laws designed to prevent Palestinians from reclaiming their properties, Israel passed laws to prevent Palestinians from returning and stripped them of citizenship in the new state. The 1950 Law of Return provided automatic citizenship to Jews from anywhere in the world who exercise their 'right of return' (performing *aliyah*), granting them the status of 'Jewish nationals.'¹⁵ Two years later, Israel passed the Nationality Law, which created two separate citizenship statuses: one for 'Jewish nationals' (as defined under the 1950 Law of Return) and one for 'Israel nationals.' Under Israeli law, only Jewish nationals can lease, own or benefit from all the lands claimed as 'Israel lands.'¹⁶ To acquire the status of 'Israel national,' an individual had to fulfill very stringent requirements, including unbroken residence and registration with Israeli authorities between May 14, 1948 and the date of the Law's passage on July 14, 1952.¹⁷ None of the Palestinians forced out during the conflict could satisfy the requirements, and many of the internally displaced Palestinians in Israel could not meet them either. Finally, the Nationality Law retroactively repealed Palestinian citizenship to the date Israel was declared a state. Thus, the vast majority of Palestinians were rendered stateless under the provisions of Israeli law.

From a legal perspective, the reasons for flight are not relevant to the rights of refugees to return to their homes, obtain restitution of their properties and compensation for losses, as these rights are grounded in international law that makes no distinction between forcible and voluntary displacement. As for the claim of population exchanges, there is no historical evidence of any agreement between Arab states and Israel that Arab Jews would be 'exchanged' for Palestinians. Moreover, forcible population exchanges were prohibited as a matter of customary international law well before 1948. The political debates over these issues, however, mostly fail to take international law into account, and the negotiations between the parties thus far have focused almost exclusively on contesting moral and political responsibility for the refugee problem.

III. UN Response, the Problem of Definitions and UN Agency Mandates

In the aftermath of passage of Res. 181 and the violence that ensued, the UN was intensely engaged with the Arab-Israeli conflict in general and with the refugee issue in particular. As the refugees were fleeing by the thousands from Palestine, the General Assembly passed Resolution

194 on 11 December 1948, the most important resolution on the rights of the refugees and international legal consensus for implementing them.¹⁸ In Resolution 194 the General Assembly established the first of several agencies with varying mandates towards the Palestinian refugees, the United Nations Conciliation Commission on Palestine (UNCCP). The UNCCP was authorized to mediate and resolve the outstanding issues between the warring parties, and to provide international protection to and implement durable solutions for the refugees. In its key paragraph 11, Resolution 194 required that the refugees were to be permitted to return to their homes ‘at the earliest practicable date,’ and obtain compensation for loss or damage to their properties.¹⁹ The UNCCP was required to implement the durable solutions embodied in paragraph 11 for the refugees within its mandate.

Resolution 194 did not include a definition of the ‘refugees’ whose ‘rights properties and interests’ the UNCCP was entrusted to protect. However, in a series of notes and authoritative interpretations, the UN Secretariat and Legal Advisor to the UNCCP clarified who were the categories of persons to be considered ‘refugees’ for purposes of the Resolution and the scope of UNCCP’s mandate. Although the categories were very specifically laid out, generally, the refugees were defined as all habitual residents and citizens of Palestine recognized as such by Palestinian Nationality law under the terms of the Lausanne Treaty who left, or were forced to leave that territory between August 6, 1924 up through the 1947-49 conflict.²⁰

Under the terms of the Lausanne Treaty at the end of World War I, Turkish subjects residing in Palestine became Palestine nationals when the Treaty was ratified on August 6, 1924.²¹ Subsequently, Britain codified the Treaty’s nationality provisions through the Palestine Citizenship Order of 1925, which conferred citizenship on approximately one million Palestinians by birth or parentage, the overwhelming majority of whom were Arab. As a matter of international law, Palestinian nationality was recognized by ratification of the Treaty, and Resolution 194’s definition of ‘refugee’ encompassed all these Palestinian nationals.²² The obligations that the UNCCP was entrusted to implement were not solely for ‘refugees’ as generally understood, but for the entire national population of Palestinians who had been forcibly displaced from Palestine.

With the UNCCP established as the Agency to provide international protection for the Palestinian refugees, the General Assembly realized that until the UNCCP could fulfill its mission, the urgent humanitarian needs of thousands of refugees would have to be addressed, and one year later passed Resolution 302 (IV) establishing UNRWA for that task.²³ UNRWA was set up as a short-term Agency with an initial three-year term to provide food, clothing and shelter to the refugees in the five major areas of their displacement—the West Bank, Gaza, Syria, Jordan and Lebanon. UNRWA's initial task was to define the 'refugees' for whom it was to provide its services, as it had inherited various lists from several humanitarian agencies that had been responding to the crisis. UNRWA's 'Palestine refugee' definition was based on the UNCCP definition (Palestine nationals), but included only those who were 'in need' who had fled the 1948 conflict and found themselves within UNRWA areas. In addition to the category of 'Palestine refugees,' UNRWA extended coverage to individuals who had been registered with predecessor aid agencies and were grandfathered onto the UNRWA rolls. However, registration with UNRWA was, and remains, voluntary.

The General Assembly acknowledged that the refugee problem was not going to be resolved through international efforts, and continued UNRWA's mandate, usually for five-year periods. When Israel invaded and occupied the West Bank and Gaza in June of 1967, it forced another 350-400,000 Palestinians to flee to neighboring countries. The General Assembly responded by passing Resolution 2252 to include Palestinian 'displaced persons' from the 1967 conflict as eligible for UNRWA's services—a category that has been renewed by the GA since then, along with others from 'subsequent hostilities.'²⁴

Today, UNRWA defines 'Palestine refugees' as:

Persons whose normal place of residence was Palestine during the period 1 June 1946 to 15 May 1948, and who lost both home and means of livelihood as a result of the 1948 conflict. Palestine Refugees, and descendants of Palestine refugee males, including legally adopted children, are eligible to register for UNRWA services (UNRWA 2009).²⁵

In addition to the 1967 'Palestinian displaced' category, UNRWA includes other beneficiaries in its CERIs based on emergency situations or extreme hardship. These include 'Jerusalem poor', 'Gaza poor,' orphans and non-refugee wives. Descendants of Palestine refugees and 1967

displaced Palestinians continue to be registered, but services to other categories do not extend to subsequent generations (UNRWA 2009; Bartholomeusz 2009, 457-60).²⁶

Just one week before establishing UNRWA, the General Assembly passed Resolution 319 (IV) creating the United Nations High Commissioner for Refugees (UNHCR).²⁷ UNHCR was established to provide international protection and assistance to all groups and individuals defined as refugees in its Statute, and to search for and implement durable solutions for them.²⁸ However, the Statute was passed on 14 December 1950, after the creation of UNRWA, and included a provision stating that ‘the competence of the High Commissioner...shall not extend to a person...(who) continues to receive from other organs or agencies of the United Nations protection or assistance.’²⁹ Although not explicitly mentioned in the Statute, Palestinians were the only ‘persons’ who were excluded from UNHCR’s mandate under the terms of this provision.

Between January 1950 and September 1954, the General Assembly debated and drafted two treaties: one that became the Convention on the Status of Refugees (Refugee Convention), and one that became the Convention on the Status of Stateless Persons (Stateless Persons Convention). In both these treaties, similar though not identical language appears as in the UNHCR Statute, excluding Palestinians from the benefits of the Refugee Convention under its Article 1D,³⁰ and from the benefits of the Stateless Persons Convention under its Article 1.³¹ The reasons for excluding Palestinians from the benefits of the Refugee Convention and the Stateless Persons Convention, as well as from the mandate of UNHCR, are explained in the drafting history of these instruments (Takkenberg 1998, 68-83).³² In essence, the UN delegates agreed that since Palestinians had become refugees as a result of the UN’s own action in partitioning their homeland (by passing Res. 181), the UN had a special responsibility towards their care and protection. In addition, the UN had already established a ‘special regime’ for them by the creation of two agencies, the UNCCP to provide them international protection, and UNRWA to provide for their humanitarian assistance. As such, there was no need for a third agency (UNHCR) to have overlapping competence with UNCCP and UNRWA. Finally, the delegates proposing these provisions were concerned that the focus of the new treaties was on placing greater responsibility on host states to absorb or resettle refugees and stateless persons, while the

UN had already formulated a specific durable solution for Palestinians focused on return to their homes. The delegates wanted to ensure the ongoing commitment of the UN as a whole on implementing Palestinians' right to return, to restitution of their properties and compensation for their losses, as formulated in paragraph 11 of Resolution 194.

However, it soon became clear that the UNCCP would be unable to fulfill either aspect of its mandate: to resolve the conflict between the parties, or to implement the required durable solutions for the Palestinian refugees. By the early 1960's, the General Assembly had reduced the UNCCP's funding so that it was unable to carry out most of its responsibilities, and it reduced its work to recording Palestinian property losses.³³ With the UNCCP no longer providing the full scope of protection to Palestinian refugees or displaced persons, and with UNRWA mandated to provide assistance but not international protection-- including access to durable solutions--many experts consider Palestinian refugees to have fallen into a 'protection gap.'³⁴

Although the existence and consequences of the protection gap are hotly debated along with a range of interpretations of the relevant 'exclusion clauses,' some important conclusions can be drawn.³⁵ The Arab host countries where UNRWA operates have refused to accede to the refugee or stateless treaties, and confine UNHCR's activities to non-Palestinian refugees in their territories. Thus, in the areas where the majority of forcibly displaced Palestinians reside, they are neither legally defined as 'refugees' or 'stateless persons' for purposes of UN Agency protection, do not have access to durable solutions, and have limited forms of protection from UNRWA due to host state and other constraints. Moreover, outside the Arab host states, there are a wide range of interpretations of the 'exclusion clauses,' with the majority of states failing to provide the benefits of the Refugee Convention to Palestinian refugees as the drafters intended.³⁶ Additional serious consequences of the lack of agreement on what definition applies to Palestinians as refugees and stateless persons are discussed below with regard to how the refugee issue has been framed in the peace negotiations to date. Nevertheless, the General Assembly has reaffirmed Resolution 194 every year since its passage, confirming the rights of Palestinians to return, property restitution and compensation, but leaving them with no UN mechanism for seeking implementation.³⁷

IV. Status and Conditions of Palestinians in Host States

The status and conditions of Palestinians in the host territories vary significantly, and have also fluctuated over time depending on politically-driven decisions. Jordan has been the most generous of the host countries, as it granted full citizenship to the majority of the 1948 refugees, who have been fairly well-integrated into the community. However, in Jordan as in the rest of the Arab states, refugee-related definitions do not necessarily designate a legal status, as there is little conformity in definitions and terms used for Palestinians. In Jordan, over 2 million Palestinians are registered ‘Palestine refugees’ with UNRWA, even though the majority are also Jordanian citizens with national ID numbers. However, most Palestinians displaced from the West Bank and Gaza during and after the 1967 conflict have only temporary Jordanian passports without national ID numbers that are essentially travel documents but not conferral of citizenship (Tiltnes and Zhang 2013).³⁸ In 1988, during the first *intifada* when Jordan relinquished all claims to the West Bank, it denationalized thousands of Palestinians and began issuing temporary passports to West Bankers.

About 300-360,000 Palestinian refugees live in the ten official UNRWA camps and the informal camps in Jordan. While Palestinians who are citizens of Jordan enjoy full rights and privileges, the socio-economic conditions of those living outside from those inside refugee camps differ markedly, and high levels of poverty and insecurity prevail in the camps (Tiltnes and Zhang 2013).³⁹ The situation for Palestinians in Jordan became far more precarious after the 1970-71 civil war of ‘Black September’ between the Palestine Liberation Organization (PLO) and the Hashemite kingdom, when the PLO was expelled from the country, along with thousands of fighters and their families. The Jordanian government has retained files on all the Black September fighters, their families and affiliates, bars them from entering the country, and arrests those it finds on its territory. Since the Syrian conflict began in 2011, the Jordanian government has placed new restrictions on entry of Palestinians, despite its initial generosity to Syrians (including Palestinian refugees from Syria) fleeing the war. Almost ten thousand Palestine refugees from Syria have entered Jordan and are receiving assistance from UNRWA.

Palestinians in Syria, including the pre-2011 populations of 552,000 refugees, enjoyed the most extensive civil and economic rights without distinctions between the types of status they held

until the start of the uprising and civil conflict in 2011. They had full employment, education, medical and other benefits on par with Syrian citizens with the exception of the ability to vote or to own more than one piece of real property. Palestinians in Syria could obtain travel documents on the basis of their UNRWA refugee registration. However, as with Syrian citizens, Palestinians faced extreme political censorship and repression under the Assad regime, and have suffered thousands of casualties from the violence of the civil conflict. Several of the Palestinian refugee camps have been completely destroyed, and UNRWA has struggled to provide basic services to the 430,000 Palestinian refugees remaining in the country.

Lebanon has been the least hospitable host country for Palestinians, and most of the over 470,000 Palestine refugees registered with UNRWA live in poverty-stricken camps. Lebanon has instituted a series of laws and regulations that severely restrict the rights of Palestinians to work in a host of professions, to have access to higher education, and obtain other government benefits (UNRWA 2019).⁴⁰ For a short time, Lebanon allowed some Palestinians to obtain citizenship, but few succeeded in becoming citizens. UNRWA has recorded 29,000 Palestinian refugees from Syria for assistance, but due to Lebanon's 'no-camps' policy, Palestinians from Syria have been forced to live in the already-overcrowded Palestinian refugee camps, or struggle to find scarce living accommodations in urban areas or informal encampments.

Palestinians in Lebanon have also suffered extreme forms of discrimination and targeted violence due to the history of the PLO's involvement in the Lebanese civil war and its operations as a 'state within a state' until the PLO was forced out of Lebanon in 1982. Palestinians and Lebanese have bitter memories of the brutal war: Lebanese partially blame the Palestinians for the Israeli invasion and occupation of Lebanon from 1982-2000, while Palestinians blame the Lebanese for destruction of their camps and for colluding with Israel in the Sabra-Shatila camp massacre of thousands of unarmed refugees in 1982.

In the West Bank, UNRWA has registered about 775,000 Palestine refugees, about a quarter of whom live in nineteen camps, and the rest in towns and villages. All Palestinians in the West Bank came under Israeli occupation in 1967, and have been subject to Israeli military law since then, while 500,000 Jewish settlers receive all the benefits of full Israeli citizenship in the same area. Palestinians in the West Bank and in East Jerusalem lack Israeli citizenship and have

various forms of residency status regulated by Israel through an arbitrary and discriminatory permit system. After the Oslo Accord and establishment of the Palestinian Authority (PA) based in Ramallah in 1994, Palestinians in part of the West Bank have enjoyed some limited autonomy. Under Oslo, the West Bank was divided into three administrative areas, of which only one (Area A), covering 18% of the West Bank, is under full PA control. Despite the Oslo arrangements, all of the West Bank remains under *de facto* Israeli occupation, as Israel has divided it into over 100 fragments through the concrete wall that cuts off Palestinian towns and villages and through a system of checkpoints, permits and segregated roads that allow unrestricted travel for Jewish settlers but are prohibited for Palestinian use. At the same time, Israel has continued policies of mass administrative detention of thousands of Palestinians—including children—property seizures and house demolitions, seizure of resources and discriminatory allocation of water that favors Jewish settlers but deprives Palestinians of sufficient water for basic needs, and separating Palestinian families through the discriminatory residency permit system.

Conditions for Palestinians in Gaza are the most dire of the areas where Palestinians reside. Almost 1.4 million Gazans are registered refugees with UNRWA out of the approximately 2 million Palestinians living in the Gaza Strip—that is, over half of the Gazan population are refugees. Gaza has been under almost total blockade by Israel since 2007, ostensibly in response to Hamas' overwhelming electoral win there in the Palestinian national elections. Israel enforces the blockade by preventing any entry or egress to or from Gaza by air, sea or land, restricting internal movement through barred areas within Gaza and snipers targeting Palestinians coming close to those areas or for other reasons. According to UN data, 80% of the population of Gaza now depends on international assistance, with 50% of Gazans unemployed, 95% of the population without access to potable water, electricity available only 4-5 hours per day on average while sometimes unavailable for up to 12 hours per day—all of which are regulated by Israel. All of these shortages have severe effects on Gazans' health, education, access to medical care and essential services.

Conditions for Gazans have also deteriorated as a result of Israel's full-scale attacks on Gaza in 2006, 2007, 2008-9, 2012 and 2014. In July 2014, as a result of Israel's 50-day bombardment of Gaza, UNRWA declared a humanitarian emergency to address the massive loss of life,

destruction of houses, schools and other property, and widespread displacement across the Gaza Strip. On March 30, 2018, Gazans launched the ‘Great March of Return,’ a weekly peaceful protest near the border between Israel and Gaza, demanding an end to the blockade and implementation of their right to return. Israel has responded by killing almost 200 Palestinians, injuring approximately 25,000, including 3,000 children with live ammunition and other means. In 2018, the UN issued a report on conditions in Gaza, concluding that it would be ‘unlivable by 2020’ (UNCTAD 2018).⁴¹

V. Efforts at Negotiations and Key Issues to be Resolved

Just as the Palestinian refugee issue is the core of outstanding issues to be resolved in any negotiated settlement between Israel, the Palestinians and the Arab states, the Palestinian demand for implementation of their right to return is the core to resolving the refugee issue. However, the right of return is itself complex, involving competing claims of nationality between Palestinians and Jews; competing claims of property and restitution rights; and competing claims for compensation for losses and wider reparations. The legal claims are also bound up with contested narratives of historic and moral responsibility for the population displacement, of a link between the Holocaust and the need for a ‘Jewish homeland’ in Palestine, and of religious entitlement. This brief overview unpacks the legal rights from non-legal claims, and reviews how these have been addressed in negotiations thus far.

Right of Return: For Whom and to Where?

Palestinians, the PLO and the host Arab states have consistently maintained that Palestinians have a right to return to their homes, that successive generations of Palestinian refugees continue to have that right, and that this right must be implemented according to international law as embodied in Resolution 194. Israel, on the other hand, has steadfastly refuted a Palestinian right of return, particularly if implementing such a right would in any way undermine the claim to a Jewish state.

The Palestinian position focuses on the language of paragraph 11 of Resolution 194, stating that:

“[T]he refugees wishing to return to their homes and live at peace with their neighbours should be permitted to do so at the earliest practicable date, and that compensation should be

paid for the property of those choosing not to return and for loss or damage to property which, under principles of international law or in equity, should be made good by the Governments or authorities responsible.”

Their position is that Resolution 194 guarantees all Palestinians displaced from their homes the right to return to them, to obtain restitution of the properties they held, and to obtain compensation for those homes or properties lost or destroyed. Israel has claimed that Resolution 194 is non-binding, since it is a General Assembly and not a Security Council resolution. As for its language, Israel has contested the provisions of 194: that Palestinians are not willing to ‘live at peace with their neighbours;’ that ‘the earliest practicable date’ refers to a comprehensive solution to the conflict (which has not been reached); and that, in any case, Israel is not ‘responsible’ for Palestinian losses. In addition, Israel claims that the internationally-recognized right of return applies only to nationals of a territory, and since Palestinians are not Israeli nationals, they have no right to return there. Finally, Israel claims that the right of return applies only to individuals, and does not require the return of masses of refugees.

Examining these competing arguments requires a short excursus into the legal sources of the right of return. The internationally-recognized ‘right of return’ rests on four distinct bodies of law and is not limited to the right of refugees to return home. The first and earliest law guaranteeing return to one’s home is found in humanitarian law, codified in 1907 in the Hague Regulations, and recognized by the Permanent Court of International Justice (PCIJ) as customary international law in 1939.⁴² Today, the humanitarian law principle of the right of every person displaced by conflict to return to his/her own home appears in one of the most widely-ratified international law instruments, the Fourth Geneva Convention of 1949.⁴³ Israel has reaffirmed the binding nature of the Hague Regulations, and that it applies the Fourth Geneva Convention.⁴⁴ The second body of law that guarantees the right to return is the law of nationality and state succession. The two core principles of nationality and state succession law are that persons who are nationals of a territory have an absolute right to return there, and habitual residents of a territory that undergoes a change of sovereignty must be granted citizenship in the new state, to which they have an absolute right to return. These principles were considered customary international law—and codified—as early as 1923.⁴⁵ The General Assembly has adopted the

principles in its Article on Nationality of Natural Persons in Relation to the Succession of States, affirming their status as customary international law.⁴⁶

Related to the law of state succession and nationality is human rights law, which has incorporated the above principles in two of the core human rights treaties. Israel is a party to both of the main treaties that codify the principles on right of return of nationals and habitual residents in the context of state succession, the Civil and Political Rights Convention (ICCPR) and the Racial Discrimination Convention (CERD).⁴⁷ Finally, the law on refugees, forced displacement and stateless persons incorporates parallel principles prohibiting mass expulsion, arbitrary deprivation of nationality, and deprivation of citizenship that causes individuals on the territory to become stateless. Mass forcible expulsion is absolutely prohibited, and under humanitarian law may constitute a war crime.⁴⁸ Since mass forcible expulsion is prohibited, mass return is an absolute obligation on a state from which mass expulsion has occurred—in other words, the right of return is guaranteed, whether for an individual or for masses of displaced persons.

This reading of the right of return was reinforced in one of several authoritative Working Papers issued by the UN Secretariat interpreting the provisions and legal bases of each of the key provisions in Resolution 194. In its Analysis of Paragraph 11, the Secretariat clarified the intentions of the drafters on key points on the right of return: 1) that the language ‘return to their homes’ meant to the exact places from which they had been displaced, and that several amendments were rejected that did not make that clear; 2) that ‘the earliest practicable date’ meant the date of cessation of conflict (ie, the Armistice Agreements), consistent with the requirements of humanitarian law; 3) and that the decision whether to return, whether to obtain restitution of his/her property, or obtain compensation must be the voluntary choice of each individual refugee.⁴⁹

Restitution of Property and Compensation for Losses

Palestinians claim that in addition to their right to return to their homes, they have a right to restitution of all their lost or abandoned properties in Israel, and to compensation for the losses they have suffered. They also ground these claims on Resolution 194 and on international law more generally. Israel claims that Palestinians abandoned their properties voluntarily, or that

these properties have been ‘exchanged’ for properties Jews left behind in Arab countries. Israel also claims that it has complete discretion to legislate the use and takings of properties in its territory, and that it has been willing to compensate Palestinians for such takings. However, both parties have hotly contested the scope and value of Palestinian refugee properties, the legal rights underlying claims to restitution and/or compensation, and, of course, who owns legitimate title to the properties left behind.

Palestinians maintain that Israel’s expropriation of their properties, the land and nationality/citizenship laws that denationalized them and deprived them of citizenship in their homeland, were all illegal acts. They claim that they remain the holders of title to all the private and communal property in historic Palestine, and that their properties must be restored to them. Israel’s position on Palestinian properties paralleled the position on Palestinians’ demands to return: that Palestinians had abandoned their properties, which Israel had legally expropriated and were now inhabited by Jews. Israel claimed from the outset that it was prepared to pay compensation for the property Palestinians had left behind, but that such compensation would be offset by the value of properties Jews had left behind in Arab countries.

Palestinians rest their position primarily on Resolution 194 and the law underlying rights to restitution and compensation. Resolution 194’s language ‘refugees...wishing to return to their homes...should be permitted to do so...and compensation should be paid for the property of those choosing not to return,’ implies that both return to homes and restitution of their homes are to be implemented *as well as* compensation for properties lost or damaged. The UN Secretariat’s Working Papers explaining the language chosen and the legal basis, support such a reading.⁵⁰ In addition, they claim that all benefits from Palestinian land from the time the lands were taken until the present, must be paid in the form of compensation. The UN shares the Palestinian position on land restitution and compensation, and the General Assembly has repeatedly passed resolutions consistent with this view.⁵¹ In a detailed Working Paper, the UN Secretariat gave an exhaustive review of the law supporting the claim that ‘return’ also meant ‘property restitution.’⁵²

The law underlying the right to restitution of property for persons whose property was confiscated has been firmly established since at least 1928, when the PCIJ found that to be a binding principle of customary international law. In the *Chorzow Factory (Indemnity) Case*, the PCIJ stated that to remedy wrongful property takings, the state responsible must restore the exact property to the victim—and compensation for the full value of the property can only be paid if it is ‘impossible’ to restore the property itself to the owner (PCIJ 1928).⁵³ The successor to the PCIJ, the International Court of Justice (ICJ), has reiterated this principle in Palestinian property takings by Israel in its 2004 *Advisory Opinion on the Wall* (ICJ 2004).⁵⁴ This principle as customary international law is incorporated in humanitarian and human rights law, as well as widespread state practice, and, increasingly, in peace agreements involving return of refugees in many parts of the world.⁵⁵

Summary of Negotiations over the Key Issues

As early as 1948, an Israeli government committee to assess possibilities for Palestinians to permanently resettle in Arab countries, appointed by Prime Minister Ben Gurion, produced a report estimating the scope and value of ‘Abandoned Land’ in Israel. In line with Israel’s perspective on who owned the land, this report only included their estimates of privately-owned refugee property, and excluded the vast amounts of village, communal, uncultivated and municipal properties Palestinians owned and used throughout Palestine (Fishbach 2006).⁵⁶ For its part, the UNCCP pursued its mandate to protect the rights, properties and interests of the refugees by also studying the scope and value of Palestinian refugee property. Its produced a ‘Global Estimate’ in 1951 concluding that Palestinian abandoned land amounted to 16,329.707 dunums valued at 100,383,784 British pounds. The Global Estimate, however, also included movable property, valued at 20,000,000 British pounds (Fishbach 2006).⁵⁷

In 1952, the UNCCP undertook a Technical Program to document Palestinian property based on land records, title and other property documents (where available). It aimed at a complete record of Palestinian landholdings in Israel up until May 14, 1948, to assess both individual and collective holdings. The Technical Program was completed in 1964, but only the global data was released; individual property data has remained in the UNCCP offices, unavailable to the public. The release of the UNCCP estimates was met with immediate criticism by Palestinians and Arab

states as being inaccurate on various grounds and far too low. Palestinian and Arab experts had begun working on their own estimates as early as 1948 (Fishbach 2003).⁵⁸ The two most widely-cited studies for the Palestinians are those by economist Yusuf Sayigh published in 1966 and by Sami Hadawi and Atif Kubursi in 1988. Sayigh's study covered overall losses for Palestinians, estimating them at a value of 752,700,000 British Pounds, while Hadawi and Kubursi's focused on land losses, calculating their value at 528,900,000 British pounds (Fishbach 2006).⁵⁹ The gap between the various estimates and valuations produced in the early years while the UN was still actively engaged in seeking resolution to the conflict over the refugees, has only grown wider. Since then, there have been more recent efforts at mapping refugee properties and losses produced by the UN, the PLO, governments, and independent experts, particularly for purposes of the various rounds of negotiations.⁶⁰

On the key issues of concern for the refugees—return, restitution and compensation—little progress had been made in all the peace negotiations to date. Negotiations for settlement of the conflict began with the Camp David Accords and the Egyptian-Israeli peace treaty of March 1979. Jordan and Israel participated in the Madrid Conference in October, 1991, which led to the Israel-Jordan peace treaty in October 1994. The Madrid Process set up five multilateral working groups, including a Refugee Working Group, that met between 1992-1995. Although Palestinian participants maintained their demands of return and property restitution, these issues were not discussed in detail, and efforts were focused on the conditions for refugees in host communities. No real progress was made by the Working Groups when the multilateral process ended with the 2000 *intifada*.

For the first time, Palestinians and Israelis negotiated face-to-face during the Oslo process that began in September 1993 and concluded with the failed Camp David II meetings in September 2000. The Oslo process postponed the refugees to 'final status' issues, and were not included in the agreements that emerged from the process, the Declaration of Principles (DOP), the Gaza-Jericho Agreement and the Interim Agreement between Israel and the PLO.⁶¹ Notably, the only references to legal frameworks in these documents are to Security Council Resolutions 242 and 338;⁶² there is no reference to Res. 194. The Oslo agreements also established what was to be the

foundations of a Palestinian state, with the Palestine Authority in full control of Area A, Israeli-Palestinian joint administration of Area B, and full Israeli control continuing over Area C.⁶³

The Camp David Summit of July 2000 was intended to address the issues postponed from the Oslo process. At the talks, the focus was on territory, settlements, Jerusalem and security, and the refugee issues were given short shrift, with each side reiterating their positions. The Palestinians demanded Israel acknowledge the right of refugee return, restitution and compensation before any modalities of implementation could be discussed. They also insisted that Israel must bear primary responsibility for reparations for Palestinian losses. Israel responded that it bore no responsibility for the refugee problem, and that Israel would recognize a right for Palestinians to 'return' only to a Palestinian state in the West Bank and Gaza. It did not agree that Res. 194 created any obligation to accept Palestinian return or any related rights. However, it would agree to a limited number of Palestinians into Israel as part of a phased 'family unification' program over several years, but only for a few thousand individuals. Israel also claimed that any compensation would be through a compensation fund to be established and paid for by the international community. In return for a final agreement, Israel would require an 'end of claims' to all issues relating to the refugees. Israel also sought to link the claims of Jewish refugees' property in Arab states to resolution of Palestinian claims (Brynen and El-Rifai 2007).⁶⁴

In December, 2000, President Clinton proposed a compromise on refugee return within the context of a two-state solution. His proposal was, in essence, that the 'right of return' be accepted in principle, but that it would encompass 'return' primarily within the West Bank and Gaza, resettlement in host and third countries, and acceptance by Israel of a limited number under family unification. According to Clinton, these arrangements would fulfill Res. 194.⁶⁵ The only outcome of the negotiations was a trilateral statement that the parties aimed to achieve a "just and lasting peace" based on UNSC Resolutions 242 and 338. Although the Clinton Parameters did not further an agreement, they were the basis of the subsequent Taba negotiations.

In January 2001, Israeli and Palestinian negotiators met again at Taba, produced two separate papers, but did not reach an agreement. The Taba talks were the first time Palestinian refugee

rights were discussed in significant detail, and clear reference was made to the principles underlying Res. 194. The Palestinian proposal set out categories of claimants and their entitlements: returning refugees would obtain restitution of their properties and compensation for losses for movable property; refugees who did not return would be compensated for both land and movable properties; and refugees for whom it would be ‘impossible’ to provide restitution would receive substitute property in Israel. The proposal included establishing a compensation commission with an international fund towards which Israel would contribute, that would calculate losses and distribute compensation to all Palestinians refugees for all their losses over the decades. In contrast, the Israeli proposal set out five ‘options’ to resolve the refugee issue: a limited number of refugees ‘returning’ to Israel; resettlement primarily in the Palestinian ‘state’; absorption and rehabilitation for the majority of the refugees in the Arab states; a land swap between the Palestinian and Israeli territories; and some resettlement in third states. The Israeli proposal does not accept responsibility for the refugee problem, claiming ‘indirect responsibility...with all those parties directly or indirectly responsible.’⁶⁶

After the Taba talks, several other ‘Track II’ or unofficial negotiations took place, notably the July 2002 People’s Voice Initiative and the October 2003 Geneva Accord. Subsequent official proposals such as the Road Map, the Arab Peace Initiative and the Kushner plan, have not produced much detail or been taken up by the parties to the conflict.⁶⁷

VI. Conclusion

To date, Israel has not exhibited a willingness to recognize a right of Palestinian refugees to voluntarily return to their homes, to offer restitution of Palestinian properties, nor bear more than token responsibility for paying compensation for their losses. On the other hand, Palestinians have retreated significantly from their initial position demanding the right of all Palestinian refugees to return to their homes and lands from where they were forcibly displaced, whether in present-day Israel or in the West Bank and Gaza, as their positions during the Oslo and Taba processes indicated.

From a legal point of view, the unresolved political issues relate directly to dramatically opposing perspectives on what the parties are entitled to and what obligations they bear. On the

right to return, Israel claims that its Nationality Law and Law of Return were valid exercises of the new state's sovereignty, and Palestinians who could not meet the criteria of those laws never became nationals of the new state. Hence, they have no right to return to Israel. Israel also claims no responsibility for the displacement, that Palestinians voluntarily abandoned their homes, which Israel legally expropriated, so title to Palestinian property has lawfully transferred to Israel and the current inhabitants.

Palestinians maintain that these Israeli laws violated Israel's international legal obligations, that Palestinians remain 'nationals' of the territory, and the rightful holders of the homes and lands that were dispossessed. The claim to nationality is based on Palestinians' international legal status from the Lausanne Treaty onwards as nationals of Palestine. The ramifications of this are not trivial. If the Palestinian position is correct, then all Palestinians tracing their ancestry to the Lausanne Treaty provisions are the 'persons' towards whom the UNCCP (and the international community) was responsible for implementing the solutions of return, restitution and compensation under Res. 194. This interpretation would cover between 10-13 million Palestinians worldwide. In contrast, all the negotiations so far have contemplated that only those Palestinians falling under UNRWA categories would be eligible for the agreed resolution to the refugee problem—that is, 5.5 million persons today.

Both sides dispute which UN Resolutions establish the legal framework for resolution of the refugee question. Israel has thus far successfully excluded reference to UNGA Resolution 194, the key resolution on individual refugee rights from negotiations (other than at Taba), while insisting that only Security Council resolutions are binding, and that the guiding resolutions are UNSC Resolutions 242 and 338. The latter resolutions have no reference to individual refugee rights, and establish the 'land for peace' formula—that is, in exchange for establishing a Palestinian state alongside an Israeli one, Palestinians agree that refugee (and all other outstanding) rights are satisfied. This is the exchange intended to be binding in an 'end of claims' clause. The UNSC resolution framework substitutes a collective agreement for the individual rights of the refugees, while the General Assembly framework puts individual refugee rights at the core of the required solution.

The lack of consensus on definitions extends, as well, to Palestinians in Arab host states as well as Palestinians outside the Arab world. Whether they are refugees or stateless persons, foreigners or displaced persons affects their ability to access fundamental rights and, in particular, their access to temporary or permanent protection from third states. The factors underlying the protection gap affecting Palestinian refugees relate, as well, to whether Palestinians as refugees or stateless persons have access to an international Agency that can ensure and promote their legal rights. UNRWA acknowledges it does not have a mandate to seek and implement durable solutions for Palestinian refugees, nor does it have a mandate towards Palestinians as stateless persons. UNHCR has no mandate towards Palestinians as either refugees or stateless persons within the UNRWA areas, and has not exercised its protection authority towards Palestinians as stateless persons outside UNRWA areas, other than in exceptionally urgent situations.

Finally, the future of UNRWA as the main Agency representing the will and obligations of the international community to the ongoing welfare of Palestinian refugees has never been more precarious. In August, 2018, the Trump Administration terminated all US contributions to UNRWA, which had been the largest single source of UNRWA funding. The US' actions were consistent with its position that UNRWA was prolonging the Palestinian refugee problem and should be eliminated. The UN and majority of the world's governments have not agreed, and have renewed UNRWA's mandate as well as stepped up contributions to make up for the US' shortfall.⁶⁸

Legal rights and political positions are inextricably intertwined, and a durable solution to the Palestinian refugee problem requires agreement on both. The 2020 Trump-Kushner 'Deal of the Century' announced on January 28, 2020, was remarkable in the total absence of Palestinian participation. The 'Deal' would legitimize Israeli annexation of one-third of the West Bank including all of the Jordan Valley, Israeli claims to all of Jerusalem as its capital, and the creation of a Palestinian 'state' in non-contiguous, separated areas in pockets of the West Bank and Gaza. There is no provision for return of Palestinian refugees or compensation for their properties by Israel.⁶⁹ Not surprisingly, the 'Deal' has been rejected by the Palestinians, and precipitated widespread protests across the Middle East and beyond. Meanwhile, Palestinians continue to suffer ongoing forced displacement, not only from within the Occupied Territories due to Israeli

settlement expansion, land expropriation and the siege of Gaza, but from renewed conflict in Syria, Iraq, Libya and elsewhere in the Arab world. As the largest and longest displaced population in the world, resolution to the Palestinian refugee problem is more urgent than ever, but appears no closer in the decades since it began.

Key Recommended Readings

1. Akram, Susan and Lynk, Michael S. 2011. "Arab-Israeli Conflict." *Max Planck Encyclopedia of Public International Law*.
2. Fishbach, Michael R. 2003. *Records of Dispossession: Palestinian Refugee Property and the Arab-Israeli Conflict*. Institute for Palestine Studies Series.
3. Brynen, Rex and El-Rifai, Roula. 2007. *Palestinian Refugees: Challenges of Repatriation and Development*. I.B. Tauris.
4. Pappé, Ilan. 2006. *The Ethnic Cleansing of Palestine*. Oxford: One World Publishing.
5. Morris, Benny. 1989. *The Birth of the Palestinian Refugee Problem*. Cambridge: Cambridge University Press.

Discussion Questions

1. How is the situation of Palestinian refugees different from or similar to that of other protracted refugee groups, such as the Kurds or Bedouin? Why do Palestinians fall under "special" protection and why are they excluded from UNHCR protection, when these other groups are not?
2. What is the difference between the claims to Palestine nationality and Jewish nationality? How does international law address these competing claims to national rights?
3. To what extent are host states (e.g. Lebanon, Jordan, Syria) responsible for helping to fill in the gaps in international protection for Palestinian refugees? Do the obligations of these states to provide greater protection, or even citizenship, to Palestinian refugees supersede the obligations of Israel to accept Palestinians to return to their homes?
4. How does the legal perspective presented in this chapter affect your view of how the Palestinian refugee problem should be resolved? If the 'right of return' is grounded in international legal obligations, what is the difference between Palestinian refugees' right

of return and Arab Jewish refugees' right of return to their countries of origin? Are they linked? Should they be linked in an ultimate resolution?

5. There are a number of different perspectives regarding how to calculate losses for which Palestinians are entitled to restitution. Discuss the possible legal and political reasons for the different means of calculating losses and restitution, and who should be responsible for paying compensation.
6. What are the implications of the various claims that have been put forward in the negotiations for the possibility of a durable solution for the refugee problem?

References

Abu Hussein, Hussein and McKay, Fiona. 2003. *Access Denied: Palestinian Land Rights in Israel*. Zed Books.

Akram, Susan M. 2002. "Palestinian Refugees and Their Legal Status: Rights, Politics, and Implications for a Just Solution." *Journal of Palestinian Studies* 31.

Akram, Susan Musarrat and Al-Azza, Nidal. 2015. *Closing Protection Gaps: Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention*. BADIL Resource Center for Palestinian Residency and Refugee Rights.

Akram, Susan and Lynk, Michael S. 2011. "Arab-Israeli Conflict." *Max Planck Encyclopedia of Public International Law*.

American Friends Service Committee. n.d. "Palestinian refugees and the right of return." Accessed Jan. 24, 2020. <https://www.afsc.org/resource/palestinian-refugees-and-right-return>.

Artz, Donna. 1997. *Refugees into Citizens: Palestinians and the End of the Arab-Israeli Conflict*. New York: Council on Foreign Relations Press.

BADIL Resource Center for Palestinian Residency and Refugee Rights. 2015. *Closing Protection Gaps: Handbook on Protection of Palestinian Refugees*. Al-Ayyam Printing, Press, Publishing and Distribution Company.

BADIL Resource Center for Palestinian Residency and Refugee Rights. 2016-2018. *Survey of Palestinian Refugees and Internally Displaced Persons*. Vol. IX. Al-Ayyam Printing, Press, Publishing and Distribution Company.

Bartholomeusz, Lance. 2009. "The Mandate of UNRWA at Sixty" *Refugee Survey Quarterly* 28.

Brynen, Rex, "Palestinian Refugees," in *Routledge Handbook on the Israeli-Palestinian Conflict*, ed. Joel Peters and David Newman (Routledge, 2013).

Brynen, Rex and El-Rifai, Roula. 2007. *Palestinian Refugees: Challenges of Repatriation and Development*. I.B. Tauris.

Fishbach, Michael R. 2003. *Records of Dispossession: Palestinian Refugee Property and the Arab-Israeli Conflict*. Institute for Palestine Studies Series.

Fishbach, Michael R. 2006. *The Peace Process and Palestinian Refugee Claims*. United States Institute of Peace.

Kagan, Michael. 2009. "Is there Really a Protection Gap? UNRWA's Role vis-à-vis Palestinian Refugees." *Refugee Survey Quarterly* 28.

Kubursi, Atif. A, "Palestinian Losses in 1948: Calculating Refugee Compensation," *Palestinian Refugee ResearchNet*, Aug. 3, 2001, <https://prrn.mcgill.ca/research/papers/kubursi.htm>.

Leckie, Scott. 2007. *Housing, Land, and Property Restitution Rights of Refugees and Displaced Persons*. Cambridge University Press.

Morris, Benny. 1989. *The Birth of the Palestinian Refugee Problem*. Cambridge: Cambridge University Press.

Pappe, Ilan. 2006. *The Ethnic Cleansing of Palestine*. Oxford: One World Publishing.

Richmond, Nancy C. 1993. "Israel's Law of Return: Analysis of Its Evolution and Present Application." *Dickinson Journal of International Law* 12.

Takkenberg, Lex. 1998. *The Status of Palestinian Refugees in International Law*. Oxford: Clarendon Press.

Tiltnes, Åge A. and Zhang, Huafeng. 2013. "Progress, Challenges, Diversity: Insight into the Socio-economic conditions of Palestinian Refugees in Jordan." *Fafo Report* 2013.

UN Conciliation Commission for Palestine (UNCCP), Addendum to Definition of a "Refugee" under paragraph 11 of the General Assembly Resolution of 11 December 1948, A/AC.25/W/61/Add.1 (29 May 1951).

UN Conciliation Commission for Palestine (UNCCP), Analysis of paragraph 11 of the General Assembly's Resolution of 11 December 1948, A/AC.25/W/45 (15 May 1950).

UN Conciliation Commission for Palestine (UNCCP), Definition of a "Refugee" under paragraph 11 of the General Assembly Resolution of 11 December 1948, A/AC.25/W/61 (9 April 1951).

UN Conference on Trade and Development (UNCTAD). 2018. "Annual Report 2018." <https://unctad.org/annualreport/2018/Pages/index.html>.

UN Mediator for Palestine, Progress Report of the UN Mediator on Palestine delivered to the General Assembly, A/648 (Sept. 16, 1948).

UN Secretariat, Working Paper, Compensation to Refugees for Loss of or Damage to Property to be Made Good under Principles of International Law or in Equity, A/AC.25/W/30 (Oct. 31, 1949).

UN Secretariat, Working Paper, Historical Precedents for Restitution of Property or Payment of Compensation to Refugees, A/AC.25/W/41 (Mar. 18, 1950).

UN Secretariat, Working Paper, Returning Refugees and the Question of Compensation, A/AC.25/W/36 (Feb. 7, 1950).

UNHCR, Guidelines on International Protection No. 13: Applicability of Article 1D of the 1951 Convention Relating to the Status of Refugees to Palestinian Refugees, HCR/GIP/16/12 (Dec. 2017).

UNHCR. 2002. "Note on the Applicability of Article 1D of the 1951 Convention relating to the Status of Refugees to Palestinian refugees." *International Journal of Refugee Law* 14.

UNHCR. 2009. "Revised Note on the Applicability of Article 1D of the 1951 Convention relating to the Status of Refugees to Palestinian Refugees."

<https://www.un.org/unispal/document/auto-insert-205174/>

UNRWA. 2009. "Consolidated Eligibility and Registration Instructions (CERI)."

<https://www.unrwa.org/sites/default/files/2010011995652.pdf>.

¹ American Friends Service Committee. n.d. "Palestinian refugees and the right of return." Accessed Jan. 24, 2020. <https://www.afsc.org/resource/palestinian-refugees-and-right-return>.

² BADIL Resource Center for Palestinian Residency and Refugee Rights. 2016-2018. *Survey of Palestinian Refugees and Internally Displaced Persons*. Vol. IX. Al-Ayyam Printing, Press, Publishing and Distribution Company, iv.

- ³ UN General Assembly, Resolution 181(II), Concerning the Future Government of Palestine, A/RES/181 (Nov. 29, 1947).
- ⁴ Susan Akram and Michael S. Lynk, "Arab-Israeli Conflict," *Max Planck Encyclopedia of Public International Law* (2011), ¶¶ 27-28.
- ⁵ BADIL Resource Center for Palestinian Residency and Refugee Rights. 2015. *Closing Protection Gaps: Handbook on Protection of Palestinian Refugees*. Al-Ayyam Printing, Press, Publishing and Distribution Company, 8.
- ⁶ Donna Artz, *Refugees into Citizens: Palestinians and the End of the Arab-Israeli Conflict* (New York: Council on Foreign Relations Press, 1997).
- ⁷ UN Mediator for Palestine, Progress Report of the UN Mediator on Palestine delivered to the General Assembly, A/648 (Sept. 16, 1948).
- ⁸ Ilan Pappé, *The Ethnic Cleansing of Palestine*, (Oxford: One World Publishing, 2006).
- ⁹ Benny Morris, *The Birth of the Palestinian Refugee Problem* (Cambridge: Cambridge University Press, 1989).
- ¹⁰ Among these laws and regulations were the Emergency Regulations for the Cultivation of Fallow Land and the Use of Unexploited Water Sources, 5709-1948, 2 LSI 71 (1948); Emergency Regulations (Cultivation of Waste Lands) (Extension of Validity) Ordinance, 5709-1949, 2 LSI 70 (1949).
- ¹¹ Absentee's Property Law, 5710-1950, 4 LSI 68 (1950).
- ¹² Emergency Regulations Concerning Absentee Property, 5708-1948, 1 LSI 8 (1948); Absentee's Property Law, 5710-1950, 4 LSI 68 (1950).
- ¹³ Development Authority (Transfer of Property) Law, 4 LSI 151 July 1950.
- ¹⁴ For a thorough review of cases affirming the Custodian of Absentee Property decision on Palestinian property confiscations, see Hussein Abu Hussein and Fiona McKay, *Access Denied: Palestinian Land Rights in Israel* (Zed Books, 2003).
- ¹⁵ Law of Return, 5710-1950, 4 LSI 114 (1950). For explanation of the ramifications of this law, see Nancy C. Richmond, "Israel's Law of Return: Analysis of Its Evolution and Present Application," *Dickinson Journal of International Law* 12:99 (1993), 109.
- ¹⁶ Walter Lehn, "The Jewish National Fund," *Journal of Palestine Studies* 3:87-88 (1974) (citing Report on the Legal Structure, Activities, Assets, Income and Liabilities of the Keren Kayemeth Leisrael, Jewish National Fund Jerusalem (1973), 78-83); George Bisharat, "Land, Law, and Legitimacy in Israel and the Occupied Territories," *American University Law Review* 43:467 (1993-94); Sandy Kedar, "The Legal Transformation of Ethnic Geography," *New York University Journal of International Law and Politics* 33:923 (2001).
- ¹⁷ Nationality Law, 5712-1952, 6 LSI 50 (1952).
- ¹⁸ UN General Assembly, Resolution 194(III), A/RES/194 (Dec. 11, 1948).
- ¹⁹ A/RES/194, ¶ 11.
- ²⁰ See UN Conciliation Commission for Palestine (UNCCP), Analysis of paragraph 11 of the General Assembly's Resolution of 11 December 1948, A/AC.25/W/45 (15 May 1950); UN Conciliation Commission for Palestine (UNCCP), Definition of a "Refugee" under paragraph 11 of the General Assembly Resolution of 11 December 1948, A/AC.25/W/61 (9 April 1951); UN Conciliation Commission for Palestine (UNCCP), Addendum to Definition of a "Refugee" under paragraph 11 of the General Assembly Resolution of 11 December 1948, A/AC.25/W/61/Add.1 (29 May 1951).
- ²¹ Treaty of Lausanne, July 24, 1923, 28 L.N.T.S 11.
- ²² Order defining Boundaries of Territory to which the Palestine Order-in-Council does not apply, Sept. 1, 1922 (Legislation of Palestine, Vol. II, p. 405). The population of 847,000 persons who met the Citizenship Order criteria included foreign residents entering Palestine between 1920-22 who did not meet the Lausanne Treaty requirements, while excluding thousands of Palestinians who did meet the Treaty criteria.
- ²³ UN General Assembly, Resolution 302(IV), A/RES/302 (Dec. 8, 1949), ¶ 5.
- ²⁴ UN General Assembly, Resolution 2252 (ES-V), A/RES/2252 (July 4, 1967). See also UN General Assembly, Resolution 63/92, A/RES/63/92 (Dec. 18, 2008) (referring to persons displaced as a result of the June 1967 conflict and subsequent hostilities); UN General Assembly, Resolution 63/93, A/RES/63/93 (Dec. 5, 2008), ¶ 7 (referring to persons displaced in the OPT and Lebanon).
- ²⁵ UNRWA, "Consolidated Eligibility and Registration Instructions (CERI)," 2009, <https://www.unrwa.org/sites/default/files/2010011995652.pdf>.
- ²⁶ See UNRWA, "Consolidated Eligibility and Registration Instructions (CERI)." See Lance Bartholomeusz, "The Mandate of UNRWA at Sixty," *Refugee Survey Quarterly* 28:457-460 (2009).
- ²⁷ UN General Assembly, Resolution 31(IV), A/RES/319 (Dec. 3, 1949).

²⁸ The durable solutions of voluntary return, host country integration and third country resettlement are set out in the Statute. UN General Assembly, Resolution 428(V), Statute of the Office of the United Nations High Commissioner for Refugees, A/RES/428 (Dec. 14, 1950), Annex.

²⁹ The General Assembly passed UNHCR's Statute as an Annex to Resolution 428(V) on 14 December 1950.

³⁰ Convention Relating to the Status of Refugees, July 28, 1951, 189 U.N.T.S. 137. Art 1D states in full: "This Convention shall not apply to persons who are at present receiving from organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees protection or assistance. When such protection or assistance has ceased for any reason, without the position of such persons being definitively settled in accordance with the relevant resolutions adopted by the General Assembly of the United Nations, these persons shall *ipso facto* be entitled to the benefits of this Convention."

³¹ Convention Relating to the Status of Stateless Persons, Sept. 28, 1954, 360 U.N.T.S. 117, art. 1(2)(i).

³² For a thorough review of the drafting history of the Refugee and Stateless Conventions, see Lex Takkenberg, *The Status of Palestinian Refugees in International Law* (Oxford: Clarendon Press, 1998), 68-83.

³³ See UN Conciliation Commission for Palestine (UNCCP), Progress Report of the United Nations Conciliation Commission for Palestine for the Period 23 January to 19 November 1951, A/1985 (Nov. 20, 1951).

³⁴ For the range of conflicting views on the interpretation of Article 1D and related provisions, see, e.g., Bartholomeusz 2009; Nicholas Morris, "Towards a Protection Strategy for UNRWA," *Refugee Survey Quarterly* 28:550 (2009); Brenda Goddard, "UNHCR and the International Protection of Palestinian Refugees," *Refugee Survey Quarterly* 28:475 (2009); Michael Kagan, "Is There Really a Protection Gap? UNRWA's Role vis-à-vis Palestinian Refugees," *Refugee Survey Quarterly* 28:511 (2009); Susan M. Akram, "Palestinian Refugees and Their Legal Status: Rights, Politics, and Implications for a Just Solution," *Journal of Palestinian Studies* 31:36 (2002).

³⁵ For UNHCR's interpretations of the 'exclusion clauses' of art. 1D of the Refugee Convention, art. 1(2) and UNHCR Statute ¶ 7(c), see UNHCR. 2002. "Note on the Applicability of Article 1D of the 1951 Convention relating to the Status of Refugees to Palestinian refugees." *International Journal of Refugee Law* 14: 450; UNHCR. 2009. "Revised Note on the Applicability of Article 1D of the 1951 Convention relating to the Status of Refugees to Palestinian Refugees." <https://www.un.org/unispal/document/auto-insert-205174/>; UNHCR, Guidelines on International Protection No. 13: Applicability of Article 1D of the 1951 Convention Relating to the Status of Refugees to Palestinian Refugees, HCR/GIP/16/12 (Dec. 2017).

³⁶ For European Court of Justice (CJEU) jurisprudence on these provisions, Case C-31/09, Nawras Bolbol v. Bevándorlási és Állampolgársági Hivatal, 2010 E.C.R. I-05539, ¶ 53. Mrs. Bolbol, a Palestinian from Gaza, was not registered with UNRWA, and thus had not "availed herself of [UNRWA's] protection or assistance." *Ibid.* ¶¶ 27, 41, 55. See also Case C-364/11, Mostafa Abed El Karem El Kott and Others v. Bevándorlási és Állampolgársági Hivatal, 2012 ECLI:EU:C:2012:826, ¶ 82. This was a case involving stateless Palestinian refugees who fled Lebanon for Hungary due to threats and arson. The CJEU found that the reasons a Palestinian could be considered to have lost protection or assistance against his/her volition include when his/her personal safety is at serious risk and it was impossible for the organ or agency to guarantee his living conditions commensurate with its mission. *Ibid.* ¶¶ 63, 65. For a thorough review of the jurisprudence over thirty countries on the interpretation of art 1D and related provisions and an analysis of compatibility with the drafting history of the instruments, see Akram, Susan Musarrat and Al-Azza, Nidal. 2015. *Closing Protection Gaps: Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention*. BADIL Resource Center for Palestinian Residency and Refugee Rights.

³⁷ See, e.g., General Assembly, Resolution 64/87, A/Res/64/87 (Dec. 10, 2009).

³⁸ Most Palestinians displaced from Gaza in 1967 have two-year temporary passports, while most Palestinians from the West Bank who have not obtained Jordanian citizenship hold five-year temporary passports. About 80,000 Gazans ('ex-Gazans') have Egyptian travel documents but no status or Jordanian ID's and are considered 'foreigners' by the Jordanian government. See Åge A. Tiltnes and Huafeng Zhang, "Progress, Challenges, Diversity: Insight into the Socio-economic conditions of Palestinian Refugees in Jordan," *Fafo Report* 2013:42 (2013).

³⁹ Tiltnes and Zhang 2013.

⁴⁰ See UNRWA, "Where we Work: Lebanon," last modified Jan. 1, 2019, <https://www.unrwa.org/where-we-work/lebanon>.

⁴¹ UN Conference on Trade and Development (UNCTAD), "Annual Report 2018," <https://unctad.org/annualreport/2018/Pages/index.html>.

⁴² Hague Convention (IV) Respecting the Laws and Customs of War on Land, and Annex: Regulations Respecting the Laws and Customs of War on Land, Oct. 18, 1907, T.S. 539.

⁴³ Geneva Convention (IV) Relative to the Protection of Civilian Persons in Time of War, Aug. 12, 1949, 75 U.N.T.S. 287.

⁴⁴ Israel has consistently maintained that it is bound to the Hague Regulations. See, e.g., *CrimA 336/61 Attorney-General of the Government of Israel v. Adolf Eichmann* 16 PD 2033; *H CJ 606/78 Ayyoub v. Minister of Defence* 33(2) PD 113 (The ‘Beit El’ case). While Israel has claims that it is not bound by Geneva Convention IV in the occupied territories, the International Court of Justice declared in its advisory opinion, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, that Geneva Convention IV applies in the Occupied Palestinian Territories. *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, 2004 I.C.J. Rep. 136 (July 9), ¶ 101. For a detailed discussion on Israel’s position with regard to the Hague Regulations and Geneva Convention IV, see Akram and Lynk 2011, ¶¶ 85-95.

⁴⁵ For jurisprudence affirming these principles, see *Tunis and Morocco Nationality Decrees*, Advisory Opinion, 1923 P.C.I.J. (ser. B) No. 4 (Feb. 7); *Panevezys-Saldutiskis Railway (Est. v. Lith.)*, Judgment, 1939 P.C.I.J. (ser. A/B) No. 76 (Feb. 28); *Nottebohm (Liech. v. Guat.)*, Second Phase, 1955 I.C.J. Rep. 4 (April 6). The Convention on Certain Questions Relating to the Conflict of Nationality Laws incorporated the principles in 1930, and the widely-ratified International Convention on Civil and Political Rights and the Convention on the Elimination of Racial Discrimination have codified the principles in contemporary form. See *Convention on Certain Questions Relating to the Conflict of Nationality Laws*, April 13, 1930, 179 L.N.T.S. 89; *International Covenant on Civil and Political Rights*, Dec. 16, 1966, 999 U.N.T.S. 171; *International Convention on the Elimination of all Forms of Racial Discrimination*, March 7, 1966, 660 U.N.T.S. 195.

⁴⁶ UN General Assembly, Resolution 55/153, *Articles on Nationality of Natural Persons in Relation to the Succession of States*, 1/RES/55/153 (Dec. 12, 2000), arts. 5, 6, 14.

⁴⁷ ICCPR, art. 12(4); CERD art. 5(d)(ii).

⁴⁸ See Geneva Convention (IV), arts. 49, 147; see also Additional Protocol I, Dec. 7, 1978, 1125 U.N.T.S. 3, art. 85(4)(a) and Additional Protocol II, Dec. 7, 1978, 1125 U.N.T.S. 609, art. 17. Under the Rome Statute, the unlawful deportation or forcible transfer of a population can be either a war crime or a crime against humanity. Rome Statute of the International Criminal Court, July 17, 1998, 2187 U.N.T.S. 3, arts. 7(1)(d), 8(2)(a)(vii), 8(2)(b). The prohibition against mass expulsions of nationals, habitual residents, aliens or refugees on a territory appears in the 1951 Refugee Convention (art. 33), the European Convention on Human Rights (art. 3; art. 4 of Protocol 4), the African Convention on Human Rights (art. 22) and the American Convention on Human Rights (art. 22). Jurisprudence in the regional human rights courts have consistently confirmed the prohibition.

⁴⁹ See United Nations Conciliation Commission for Palestine (UNCCP), *Analysis of Paragraph 11 of the General Assembly Resolution of 11 December 1948*, Working Paper Prepared by the UN Secretariat, A/AC.25/W.45 (May 15, 1950).

⁵⁰ See, in particular UN Secretariat, Working Paper, *Compensation to Refugees for Loss of or Damage to Property to be Made Good under Principles of International Law or in Equity*, A/AC.25/W/30 (Oct. 31, 1949), ¶¶ 1-2. See also, UN Secretariat, Working Paper, *Returning Refugees and the Question of Compensation*, A/AC.25/W/36 (Feb. 7, 1950).

⁵¹ See UN General Assembly, Resolution 36/146 (C), A/RES/36/146 (C) (Dec. 16, 1981). The General Assembly has passed similar resolutions affirming the demand to return the refugees’ properties each year. See, e.g., UN General Assembly, Resolution 62/105, *Palestine refugees’ properties and their revenues*, A/RES/62/105 (Jan. 10, 2008) (reaffirming that Palestine refugees are entitled to their property and to the income derived therefrom... and requests the Secretary-General to take all appropriate steps, in consultation with the UNCCP, for the protection of Arab property, assets and property rights in Israel).

⁵² UN Secretariat, Working Paper, *Historical Precedents for Restitution of Property or Payment of Compensation to Refugees*, A/AC.25/W/41 (Mar. 18, 1950), ¶ 1.

⁵³ *Factory at Chorzów (F.R.G. v. Pol.)*, Judgment, 1928 P.C.I.J. (ser. A) No. 17 (Sept. 13). The Court construed ‘impossible’ strictly in order not to benefit the state responsible for unlawful takings.

⁵⁴ *The Legal Consequences of the Construction of the Wall in the Occupied Palestinian Territory*, Advisory Opinion, 2004 I.C.J. Rep. 136 (July 9).

⁵⁵ Hague Convention (IV), Annex, arts. 28, 46, 47, 56; Geneva Convention (IV); ICCPR; CERD; International Covenant on Economic, Social, and Cultural Rights, Dec. 16, 1966, 993 U.N.T.S. 3; UN General Assembly, Resolution 217 (A) (III), *Universal Declaration of Human Rights*, A/RES/217 (Dec. 10, 1948). Peace agreements around the world include the right of property restitution as part of durable solutions post-conflict, along with return of refugees. For a thorough review of these agreements, see Scott Leckie, *Housing, Land, and Property Restitution Rights of Refugees and Displaced Persons* (Cambridge University Press, 2007).

⁵⁶ The Committee’s Report estimated 2,008,114 dunums of land were abandoned by Palestinians, with a net value of 81,500,000 Israeli pounds. See Michael R. Fishbach, *The Peace Process and Palestinian Refugee Claims* (United States Institute of Peace, 2006), 22-23 (citing Israel State Archives (ISA) (138) 2445/3 “Report on a Settlement of

the Arab Refugee [Issue] (November 25, 1948, and Central Zionist Archives (CZA) A246/57, “Comments on Value Assessments of Absentee Landed Property (November 12, 1962)).

⁵⁷ Fishbach 2006, 36-39 (citing UNSA DAG 13-3, UNCCP; Subgroup: Office of the Principal Secretary. Series: Records Relating to Compensation/Box 18/1949051/Working Papers; document: W/60, “Sampling Study of Abandoned Property Claimed by Arab Refugees” (April 12, 1951)).

⁵⁸ See Michael R. Fishbach, *Records of Dispossession: Palestinian Refugee Property and the Arab-Israeli Conflict*, (Institute for Palestine Studies Series, 2003), 28-30 (citing Tannous, Izzat. 1951. *Value of Refugee Property According to Izzat Tannous and the Arab Refugee Property Owners in Palestine*, 216; Baydas, Sa'id. 1951. *Scope and Value of Refugee Land According to Sa'id Baydas*, 217; Arab Higher Committee. 1955. *Value of Refugee Property According to the Arab Higher Committee*, 225; Arab League. 1956. *Value of Refugee Property According to the Arab League*, 225).

⁵⁹ See Fishbach 2006, 31-35 (citing Sayigh, Yusuf. 1966. *Al-Iqtisad al-Isra'ili (The Israeli Economy)*. Cairo: League of Arab States, Institute for Higher Arab Studies; Hadawi, Sami. 1988 *Palestinian Rights and Losses in 1948: A Comprehensive Study. Part V: An Economic Assessment of Total Palestinian Losses Written by Dr. Atef Kubursi*. London: Saqi Books).

⁶⁰ Estimates range from just under \$3 billion to approximately \$327 billion, depending on the losses considered, how they are valued, and how 1948 losses are converted to current values. See, e.g., Rex Brynen, “Palestinian Refugees,” in *Routledge Handbook on the Israeli-Palestinian Conflict*, ed. Joel Peters and David Newman (Routledge, 2013), 115; Atif A. Kubursi, “Palestinian Losses in 1948: Calculating Refugee Compensation,” *Palestinian Refugee ResearchNet*, Aug. 3, 2001, <https://prn.mcgill.ca/research/papers/kubursi.htm>.

⁶¹ Declaration of Principles on Interim Self-Government Arrangements (Oslo I), O.P.T.-Isr., Sept. 13, 1993; Agreement on the Gaza Strip and the Jericho Area, O.P.T.-Isr., May 4, 1994; Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip (Oslo II), O.P.T.-Isr., Sept. 28, 1995.

⁶² UN Security Council, Resolution 242, S/RES/242 (Nov. 22, 1967) (requiring the withdrawal of Israeli armed forces from the OPT and the “[t]ermination of all claims or states of belligerency and respect for and acknowledgment of the sovereignty, territorial integrity and political independence of every State in the area and their right to live in peace within secure and recognized boundaries free from threats or acts of force”); UN Security Council, Resolution 338, S/RES/338 (Oct. 22, 1973) (calling upon all parties to cease firing and terminate all military activity, and to immediately apply the terms of UN Security Council Resolution 242).

⁶³ Area A is under full civil and security control of the Palestine Authority. Although Israeli citizens are formally prohibited from entering Area A, the Israeli armed forces retain the right to enter and conduct regular raids in the area. Area B is under Palestinian civil control and joint-Israeli-Palestinian security control. As in Area A, Israeli armed forces retain the right to enter at all times. Area C is under full Israeli civil and security control. Palestinians are restricted from building on or accessing much of the land and resources (including water) in Area C. UN Office for the Coordination of Humanitarian Affairs, Occupied Palestinian Territory. n.d. “Area C.” Accessed Feb. 10, 2020. <https://www.ochaopt.org/location/area-c>; Economic Cooperation Foundation. n.d. “Israeli-Palestinian Interim Agreement (Oslo II, 1995).” Accessed Feb. 10, 2020. <http://ecf.org.il/issues/issue/818>

⁶⁴ Rex Brynen and Roula El-Rifai, *Palestinian Refugees: Challenges of Repatriation and Development*, (I.B. Tauris, 2007), 118 (“At the time of the Taba negotiations, Israeli officials seem to envisage an Israeli contribution in the low single-digit billions”).

⁶⁵ Brynen and El-Rifai 2007 (citing Clinton, B. (2000) *The Clinton Parameters*, Washington DC: White House).

⁶⁶ Brynen and El-Rifai 2007 (citing Palestinian Authority/Palestine Liberation Organization (PA/PLO) (2001) *Palestinian Statement on Refugees*, Taba: Palestinian Authority; Israel (2001) ‘Non-Paper’: Private Response to the Palestinian Refugee Paper of January 22, 2001, Taba).

⁶⁷ U.S. Department of State, “A Performance-Based Roadmap to a Permanent Two-State Solution to the Israeli-Palestinian Conflict,” April 30, 2003, <https://2001-2009.state.gov/r/pa/prs/ps/2003/20062.htm>; European Parliament, “Arab Peace Initiative,” March 28, 2002, https://www.europarl.europa.eu/meetdocs/2009_2014/documents/empa/dv/1_arab-initiative-beirut_/1_arab-initiative-beirut_en.pdf; Donald Trump, “Peace to Prosperity,” Jan. 28, 2020, Washington DC: White House, <https://www.whitehouse.gov/wp-content/uploads/2020/01/Peace-to-Prosperity-0120.pdf>.

⁶⁸ UN General Assembly, Resolution 74/83, A/RES/74/83 (Dec. 26, 2019); Fourth Committee, Press Release, UNRWA Faces Greatest Financial Crisis in Its History Following 2018 Funding Cuts, Commissioner-General Tells Fourth Committee, GA/SPD/684 (Nov. 9, 2018).

⁶⁹ Trump, “Peace to Prosperity.”